

COURT ENFORCEABLE UNDERTAKING

National Consumer Credit Protection Act 2009
Section 322(1)

The commitments in this undertaking are offered to the Australian Securities and Investments Commission (ASIC) by:

LOCAL APPLIANCE RENTALS PTY LTD
ACN 128 351 084

1. Definitions

In addition to terms defined elsewhere in this undertaking, the following definitions are used:

ACL means an Australian credit licence as defined in section 35 of the National Credit Act¹

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cth)

Commencement Date means the date this undertaking is accepted by ASIC

LAR means Local Appliance Rentals Pty Ltd (ACN 128 351 084)

National Credit Act means the *National Consumer Credit Protection Act 2009* (Cth)

National Credit Code means Schedule 1 to the National Credit Act

Relevant Period means 5 April 2011 to 20 August 2018

2. Background

ASIC's role

2.1 Under section 1 of the ASIC Act, ASIC is charged with a statutory responsibility to perform its functions and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system, and includes administration and enforcement of the National Credit Act which regulates consumer credit in Australia.

LAR's business

2.2 LAR holds an ACL (No 394374) and operates under a franchised business model. It currently has just under 100 individuals and/or corporate entities authorised as credit representatives under its ACL. LAR has advised that

¹ In this undertaking references to sections are references to sections of the National Credit Act unless otherwise stated.

it currently has 55 active operators located throughout Australia (down from 2016/2017).

- 2.3 LAR's franchisees operate throughout Australia, including in remote regional areas such as the Tiwi Islands, Katherine, Broome and Thursday Island, and service many Indigenous consumers for which English is not their first language. Due to the special circumstances of many of those consumers, including their remote location, many of LAR's customers have different, and often higher, costs of living than those living in urban areas.
- 2.4 LAR leases household items such as televisions, mobile phones, computers, furniture and whitegoods to consumers. The leases are typically for a 24-month term and most of its consumers use Centrepay to make payments. Consumers typically retain the leased goods at the end of the lease period.
- 2.5 LAR's most recent annual compliance certificate shows that during the 12-month period between April 2017-2018, it had 18,401 consumer accounts.

ASIC's views concerning LAR's conduct

- 2.6 Since 2014, ASIC has received numerous reports of misconduct (**ROMs**) relating to LAR's responsible lending practices. The majority of ROMs have been submitted by financial counsellors on behalf of clients located in Broome and Alice Springs. Many of the ROMs from financial counsellors concern multiple consumers.
- 2.7 As a result of a surveillance and investigation carried out by ASIC into LAR's practices and procedures, ASIC has identified the conduct and concerns in paragraphs 2.8 to 2.16 relating to LAR's compliance with the National Credit Act.

Responsible lending

- 2.8 ASIC is concerned that during the Relevant Period, LAR entered into consumer leases without undertaking an adequate assessment of the unsuitability of the lease for the consumer by failing to make reasonable inquiries about, and to verify, the consumer's income and expenses.
- 2.9 ASIC's concern set out in paragraph 2.8 is based on failures by LAR to:
 - 2.9.1 obtain adequate documentation to verify income and expenditure;
 - 2.9.2 make reasonable inquiries to obtain information about consumers' expenses and instead substitute inappropriate benchmarks for those expenses;
 - 2.9.3 make reasonable further inquiries where information provided by the consumer warrants such inquiries, particularly in relation to rent and housing expenses, utility and transport expenses, cash

withdrawals, direct debits, ongoing payments and regular negative bank account balances; and

- 2.9.4 include accurate information about dependants and/or to factor dependants appropriately into the unsuitability assessment.

Excess payments and late fees

- 2.10 During the Relevant Period LAR at times inadvertently received payments from consumers that exceeded the total amount payable under the consumer's lease, thereby causing the accounts of those consumers to be overpaid (**Excess Payments**).
- 2.11 LAR's standard form consumer lease agreement provides for the imposition of late fees in instances where a consumer falls into arrears and sets out the various charges payable.
- 2.12 During the Relevant Period, LAR at times charged late fees in excess of the amounts stipulated in the lease agreement (**Excess Late Fees**).
- 2.13 ASIC is concerned that the fact that LAR has charged and collected from consumers the Excess Payments and Excess Late Fees indicates that it has failed to comply with its obligations as the holder of an ACL to:
- 2.13.1 do all things necessary to ensure that its credit activities are engaged in efficiently, honestly and fairly as required by section 47(1)(a) of the National Credit Act; and
- 2.13.2 have adequate arrangements and systems to ensure compliance with its general conduct obligations as a licensee, and a written plan that documents those arrangements and systems, as required by section 47(1)(k).
- 2.14 Following notification by ASIC of its concerns regarding the Excess Payments and Excess Late Fees, LAR commenced a remediation programme (**Remediation Programme**) which will be completed pursuant to the undertakings in paragraph 3.2 below.

Supervision of franchisees

- 2.15 LAR's franchise business model, with currently 97 authorised credit representatives located throughout Australia, necessitates a high level of proactive and effective supervision, monitoring and training by LAR of those businesses to ensure that they comply with the obligations imposed by the National Credit Act.
- 2.16 By reason of the matters stated in paragraphs 2.8 to 2.9 above, ASIC is concerned that LAR may have failed to comply with subsections 47(1)(e) and (g) which require an ACL holder to take reasonable steps to ensure that its representatives comply with the credit legislation and to ensure that its representatives are adequately trained and competent to engage in the credit activities authorised by the ACL.

Acknowledgment of ASIC's concerns

- 2.17 LAR acknowledges that ASIC's concerns as set out above are reasonably held.
- 2.18 LAR acknowledges that it must comply with all of the requirements of this court enforceable undertaking in order to address ASIC's concerns.

3. Undertakings

- 3.1 Under section 322(1) of the National Credit Act LAR has offered, and ASIC has agreed to accept, the undertakings in paragraphs 3.2 to 3.30 below as an alternative to commencing civil penalty proceedings against LAR, its officers, employees, agents and related entities in respect of the matters set out in paragraphs 2.8 to 2.16 above.

Remediation of consumers

- 3.2 LAR undertakes to provide remediation to each of the Affected Consumers and the Specified Consumers as set out below (**Remediation Programme**).

Remediation of Affected Consumers

- 3.3 LAR has identified consumers who:
- 3.3.1 paid to LAR Excess Payments (in the Relevant Period); and
 - 3.3.2 were charged Excess Late Fees (in the period 1 July 2014 to 30 June 2016)
- (together the **Affected Consumers**), and the amounts payable to those consumers.
- 3.4 For an Affected Consumer who has made any Excess Payments, LAR must refund the total amount of all Excess Payments to the consumer within 2 months of the Commencement Date.
- 3.5 For an Affected Consumer who has paid Excess Late Fees, LAR must refund the total amount of all Excess Late Fees to the Affected Consumer within 2 months of the Commencement Date.
- 3.6 For an Affected Consumer who has been charged but has not paid Excess Late Fees, LAR must write off those amounts and must not collect the Excess Late Fees.
- 3.7 After the expiry of four months after the Commencement Date where LAR is, after using its best endeavours, unable to refund an Affected Consumer as contemplated by paragraphs 3.3 to 3.6, LAR will pay any amount that is unable to be refunded to The Smith Family for the purposes contemplated and in addition to the amount detailed at paragraph 3.26.

Remediation of Specified Consumers

- 3.8 ASIC has raised concerns with LAR about three specific consumer leases being the lease agreements numbered IP00985, IP00990, IP00998 (the **Specified Consumers**), in respect of which ASIC considers LAR may have failed to comply with its responsible lending obligations prior to entering into the leases.
- 3.9 LAR has provided remediation to the Specified Consumers by cancelling their lease contracts, allowing the consumers to retain the goods, and refunding to the consumers the amount paid by the Specified Consumers in excess of the cost to LAR of the goods leased.

Compliance and remediation review by an Independent Compliance Consultant

Appointment of Independent Compliance Consultant

- 3.10 LAR undertakes to request ASIC to approve, within 2 weeks of the Commencement Date, or within such longer period as agreed by ASIC in writing:
- 3.10.1 the appointment of an Independent Compliance Consultant who meets the criteria in paragraph 3.12 below; and
- 3.10.2 draft terms of engagement of the Independent Compliance Consultant that meet the requirements of this enforceable undertaking.
- 3.11 If ASIC approves the Independent Compliance Consultant and the draft terms of engagement following a request by LAR under paragraph 3.10, LAR undertakes to appoint the approved Independent Compliance Consultant on the terms approved by ASIC, within 2 weeks of receiving ASIC's approval, or within such longer period as may be agreed by ASIC in writing.
- 3.12 LAR undertakes to nominate, under paragraph 3.10 above, an Independent Compliance Consultant who, in LAR's opinion:
- 3.12.1 has the necessary expertise, experience and operational capacity to perform the role contemplated by this enforceable undertaking; and
- 3.12.2 is independent of LAR, its related bodies corporate and its officers at the time of the appointment, and who will at all material times be capable of exercising objective and impartial judgment.

Terms of engagement

- 3.13 LAR undertakes to ensure that the terms of the Independent Compliance Consultant's engagement provided to ASIC for approval under paragraph 3.10.2:

- 3.13.1 include a statement that the work of the Independent Compliance Consultant is being carried out for LAR and ASIC, and acknowledging that ASIC is relying on the work of the Independent Compliance Consultant;
 - 3.13.2 include a statement that upon ASIC's request, ASIC is to be copied into all or some communications between LAR and the Independent Compliance Consultant;
 - 3.13.3 require the Independent Compliance Consultant to notify ASIC and LAR if a conflict of interest arises during the engagement or if the Independent Compliance Consultant becomes aware of information that adversely affects their ability to exercise objective and impartial judgment;
 - 3.13.4 require the Independent Compliance Consultant to provide a summary of all written reports which are to be provided to ASIC and LAR as described at paragraphs 3.16.1 and 3.16.3;
 - 3.13.5 include acknowledgement that, in relation to the written reports, ASIC may from time to time publicly refer to the content of the reports, and may make public a summary of the content of the reports or a statement that refers to the content of the report.
- 3.14 LAR will engage the Independent Compliance Consultant to:
- 3.14.1 review, monitor, assess and where necessary, make recommendations in respect of LAR's compliance with:
 - (a) its obligations under its Australian Credit Licence;
 - (b) the general conduct obligations under section 47 of the National Credit Act including supervision of its authorised credit representatives; and
 - (c) its responsible lending obligations as a lessor under Chapter 3, Part 3-4, Division 3 of the National Credit Act.
 - 3.14.2 review and assess whether the Affected Consumers have been remediated in accordance with the Remediation Programme, and where necessary, make recommendations to ensure compliance with the Remediation Programme.
- 3.15 In performing the work required under paragraph 3.14, LAR will require the Independent Compliance Consultant to take all reasonable steps to enable the consultant to obtain a full understanding of LAR's practices and procedures, including reviewing consumer lease files and all relevant documents, interviewing relevant staff, and reviewing LAR's websites.

Compliance reports – first review

- 3.16 LAR undertakes to include in the terms of engagement of the Independent Compliance Consultant:

- 3.16.1 a requirement that the Independent Compliance Consultant provides a report to ASIC (**Compliance Report**), concerning the period from the Commencement Date to 6 months thereafter (**Review Period**), within 30 days of the end of the Review Period (or such longer period as agreed by ASIC in writing) which includes:
- 3.16.1.1 consideration of the matters at paragraph 3.14;
 - 3.16.1.2 a description of the method/s used for the review, including details of the matters referred to in paragraph 3.15 and the dates they were carried out;
 - 3.16.1.3 recommendations for actions that, in the opinion of the Independent Compliance Consultant, would be necessary for LAR to implement the deficiencies (if any) identified in the Compliance Report;
 - 3.16.1.4 details of the compliance by LAR with the Remediation Programme and payment of the Community Benefit Payment referred to in paragraph 3.26, specifically noting:
 - (a) whether the amounts payable to Affected Consumers and the Specified Consumers have been correctly calculated;
 - (b) how many of the Affected Consumers and the Specified Consumers have been paid as at the date of the report, and whether those payments have been made correctly; and
 - (c) how many consumers are still to be paid and the reasons why those payments remain outstanding.

Further review

- 3.16.2 If the Independent Compliance Consultant identifies in the Compliance Report deficiencies in LAR's processes, policies or procedures, ASIC, at its discretion, may require the Independent Compliance Consultant's appointment to be extended for a further six months (**Further Review Period**).
- 3.16.3 Within 30 days of the end of the Further Review Period (or such later date as agreed by ASIC), the Independent Compliance Consultant must provide to ASIC and LAR a further written report (**Further Report**) which sets out:
- 3.16.3.1 the matters detailed in paragraph 3.14 as observed during the Further Review Period; and

- 3.16.3.2 whether LAR has adequately implemented the recommendations made in the Compliance Report; and
- 3.16.3.3 any further recommendations for action required to ensure that LAR addresses any issues arising out of the Compliance Report (**Further Recommendations**).
- 3.16.4 ASIC may require the Independent Compliance Consultant to test whether the Further Recommendations have been reasonably implemented 4 months after the date of the Further Report and to provide a report to ASIC and LAR as soon as practicable after the testing.
- 3.17 LAR undertakes not to vary the terms of the engagement of the Independent Expert without the prior written approval of ASIC.

Implementation of recommendations

- 3.18 Within 30 days (or such later date as agreed between ASIC and LAR of receipt of the Compliance Report, LAR must provide to ASIC a plan to implement the recommendations (if any) contained in the Compliance Report (**Compliance Plan**) which:
 - 3.18.1 sets out the action LAR proposes to take to implement recommendations in the Compliance Report;
 - 3.18.2 demonstrates that sufficiently qualified and skilled staff are employed to discharge the Compliance Plan; and
 - 3.18.3 specifies the date by which each action will be completed.
- 3.19 LAR undertakes to make all modifications to the Compliance Plan as reasonably required by ASIC within ten business days of receiving the relevant notification.
- 3.20 LAR undertakes to implement the Compliance Plan in full and within the timeframes specified in the Compliance Plan, or such varied timeframes as are agreed by ASIC.
- 3.21 If the Independent Compliance Expert's appointment is extended for the Further Review Period and a Further Report is provided, LAR must provide to ASIC, within 30 days of receipt of the Further Report (or such later date as agreed between ASIC and LAR), a plan to implement the recommendations (if any) contained in the Further Report (**Further Compliance Plan**) which:
 - 3.21.1 sets out the action LAR proposes to take to implement recommendations in the Further Report;
 - 3.21.2 demonstrates that sufficiently qualified and skilled staff are employed to discharge the Further Compliance Plan; and

- 3.21.3 specifies the date by which each action will be completed.
- 3.22 LAR undertakes to make all modifications to the Further Compliance Plan as reasonably required by ASIC within ten business days of receiving the relevant notification.
- 3.23 LAR undertakes to implement the Further Compliance Plan in full, and within the timeframes specified in the Further Compliance Plan, or such varied timeframes as are agreed by ASIC.

Undertakings to ensure access for the Independent Compliance Consultant

- 3.24 LAR undertakes to:
- 3.24.1 permit the Independent Compliance Consultant, to the extent that it is reasonable having regard to the requirements of this enforceable undertaking, to have access to its books and to interview current employees;
- 3.24.2 give the Independent Compliance Consultant any information or explanation reasonably requested by the consultant of any matter in any way connected with the reports required to be prepared by the Independent Compliance Consultant under this court enforceable undertaking; and
- 3.24.3 otherwise reasonably assist the Independent Compliance Consultant in carrying out the terms of their engagement and producing the requisite reports.

Appointment of alternative Independent Compliance Consultant

- 3.25 LAR undertakes to seek approval under paragraph 3.10 for the appointment of a new Independent Compliance Consultant expert, within 15 business days of becoming aware the appointed Independent Compliance Consultant is unable to continue their appointment.

Community Benefit Payment

- 3.26 For the purpose of funding consumer advocacy, financial literacy programs and research, financial literacy or financial counselling in Australia, LAR will pay \$100,000 within three months of the Commencement Date to The Smith Family.

Other matters

- 3.27 LAR undertakes that it will pay the costs of its compliance with this enforceable undertaking, including all costs associated with the engagement of the Independent Compliance Consultant.
- 3.28 LAR will provide all documents and information requested by ASIC from time to time for the purpose of assessing LAR's compliance with the terms of this enforceable undertaking.

- 3.29 LAR undertakes to provide to ASIC, within 30 days of implementation of the Compliance Plan (and Further Compliance Plan if there is one) with a statement about whether the undertakings in paragraphs 3.2 to 3.26 have been complied with.
- 3.30 LAR will notify ASIC as soon as reasonably practicable, and in any event within ten business days of becoming aware, of any failure by LAR to comply with a term of this enforceable undertaking.

4. Acknowledgements

- 4.1 LAR acknowledges that ASIC:
- 4.1.1 may issue a media release on execution of this undertaking referring to its terms and to the concerns of ASIC which led to its execution;
 - 4.1.2 may from time to time publicly refer to this undertaking;
 - 4.1.3 will from time to time publicly report about LAR's compliance with this undertaking;
 - 4.1.4 will make this enforceable undertaking available for public inspection;
 - 4.1.5 may issue a media release referring to the contents of the Compliance Report and/or Further Compliance Report;
 - 4.1.6 may from time to time publicly refer to the contents of the Compliance Report and/or Further Compliance Report; and
 - 4.1.7 will make available for public inspection a summary of the contents of the Compliance Report and/or Further Compliance Report, or a statement that refers to the content of those reports.
- 4.2 ASIC acknowledges that it will not refer to any information from a report by the Independent Compliance Consultant that:
- 4.2.1 consists of personal information of an identified natural person whose acts or omissions are not the subject of, or a concern mentioned in, the enforceable undertaking;
 - 4.2.2 ASIC is satisfied would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of LAR or a third party otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of this enforceable undertaking;
 - 4.2.3 ASIC is satisfied should not be released because it would be against the public interest to do so; or
 - 4.2.4 LAR has asked not to be released if ASIC is satisfied that:

4.2.4.1 it would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of LAR other than in a way that arises from the execution, implementation and reporting of the outcomes of this enforceable undertaking; or

4.2.4.2 it should not be released because it would be against the public interest to do so.

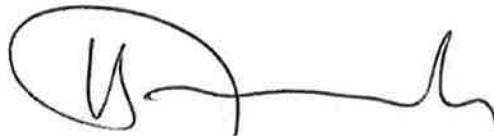
4.3 Further LAR acknowledges that:

4.3.1 ASIC's acceptance of this undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue a criminal prosecution, or its power to lay charges or seek a pecuniary civil order in relation to any contravention not the subject of ASIC's concerns in this enforceable undertaking or arising from future conduct; and

4.3.2 this undertaking in no way derogates from the rights and remedies available to any other person or entity, including consumers receiving the benefit of remediation paid in accordance with paragraph 3.2, arising from any conduct described in this undertaking or arising from future conduct.

4.4 LAR acknowledges that this undertaking has no operative force until accepted by ASIC, and LAR and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.

EXECUTED for and on behalf of **LOCAL APPLIANCE RENTALS PTY LTD** (ACN 128 351 084) in accordance with Section 127(1) of the *Corporations Act 2001* (Cth):

) 
)
)

.....*Kenneth French*.....

Director

.....*Director*.....

Director/Company Secretary

Accepted by the Australian Securities and Investments Commission under section 322 of the National Credit Act by its duly authorised delegate:

..........

Name: *Tim Mountain*

Delegate of Australian Securities and Investments Commission

Date: *29 OCTOBER 2018*

