

Court Enforceable Undertaking

National Consumer Credit Protection Act 2009 (Cth)
Subsection 322(1)

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

Volkswagen Financial Services Australia Pty Limited

ACN 097 071 460

Australian Credit Licence 389344

1 DEFINITIONS

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

ASIC means the Australian Securities and Investments Commission.

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

Business Day means a day that is not a Saturday, Sunday or public holiday in Sydney, New South Wales.

CEU means this court enforceable undertaking.

Campaign Rate means a promotional rate of interest offered to consumers from time to time.

Commencement Date means the date this CEU is accepted by ASIC.

Credit Activities has the meaning given in section 6 of the National Credit Act.

Credit Contract has the meaning given in section 4 of the National Credit Code.

Current Customer means a consumer who:

- (a) entered into a Credit Contract with VWFSA during the Relevant Period; and
- (b) has an obligation to repay an amount of debt under the Credit Contract as at the Commencement Date.

Eligible Consumer is a Current Customer or Non-Current Customer who entered into a Credit Contract with VWFSA in the Relevant Period and meets the criteria set out in clauses 4.1 and 4.2.

Hardship Notice has the meaning given in section 72(1) of the National Credit Code.

Independent Remediation Consultant means an entity/person agreed between ASIC and VWFSA, engaged by VWFSA in accordance with clause 4.17 in this CEU.

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

National Credit Code means Schedule 1 to the National Credit Act.

Non-Current Customer means a consumer who:

- (a) entered into a Credit Contract with VWFSA during the Relevant Period; and
- (b) does not have a debt under the Credit Contract as at the Commencement Date.

Relevant Period means the period from 1 July 2012 to 30 April 2017 (inclusive).

Remediation Program is the program for remediation (which includes the Remediation Categories and Remediation Payments) as outlined in section 4 of this CEU.

VWFSA means Volkswagen Financial Services Australia Pty Ltd ACN 097 071 460.

Write Off means that VWFSA has closed the account under the Credit Contract and no longer attempts to recover or accept moneys that would otherwise be owed under the Credit Contract.

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.
- 2.2 ASIC is responsible for the administration and enforcement of the National Credit Act.

VWFSA's business

- 2.3 Since 16 December 2010, VWFSA has held an Australian Credit Licence, number 389 344, which authorises it to engage in Credit Activities as a credit provider.
- 2.4 VWFSA is a wholly owned subsidiary of Volkswagen Financial Services AG, registered in Germany, which is in turn owned by Volkswagen AG, also registered in Germany.

- 2.5 VWFSA's core business is providing finance for new and used motor vehicles. VWFSA Credit Contracts are secured by a registered security interest over motor vehicles.
- 2.6 VWFSA provides finance for the purchase of Volkswagen as well as other brands of motor vehicles.
- 2.7 During the Relevant Period, VWFSA entered into 90,317 Credit Contracts which are subject to the responsible lending obligations under Part 3-2 of the National Credit Act, including the obligation to make reasonable inquiries about a consumer's financial situation and to take reasonable steps to verify the consumer's financial situation, and the hardship and enforcement provisions under Part 4 and Part 5 of the National Credit Code.

ASIC's concerns

- 2.8 ASIC is concerned that:
- (a) During the Relevant Period, VWFSA may have contravened sections 128(d), 130(1)(b) and 130(1)(c) of the National Credit Act by not inquiring as to certain categories of living expenses (**Living Expenses**) and/or taking steps to verify Living Expenses when offering and entering into Consumer Credit Contracts;
 - (b) During the Relevant Period, VWFSA may have contravened section 47(1)(a) of the National Credit Act by not having adequate policies, processes or training in place regarding the making of inquiries and verification of Living Expenses; and
- 2.9 During the Relevant Period, VWFSA utilised an automated capacity calculation system, using the higher of the figure provided by consumers for Living Expenses and a weighted benchmark figure (derived through the application of the Henderson Poverty Index and later the Household Expenditure Measure benchmark).
- 2.10 ASIC commenced proceeding NSD2105/2019 in the Federal Court of Australia on 19 December 2019 (the **Proceeding**).
- 2.11 VWFSA acknowledges:
- (a) that under the National Credit Act, VWFSA has obligations to make reasonable inquiries about a consumer's financial situation

and to take reasonable steps to verify the consumer's financial situation before entering into a consumer credit contract; and

(b) ASIC's concerns identified in clause 2.8.

2.12 Under section 322(1) of the National Credit Act, VWFSA has offered, and ASIC has agreed to accept, the undertakings contained in this CEU as a resolution of the Proceeding.

3 UNDERTAKINGS

3.1 VWFSA undertakes to remediate Eligible Consumers who entered into a Credit Contract with VWFSA during the Relevant Period, in accordance with the Remediation Program as set out in section 4 of this CEU and otherwise fulfil each of its obligations as set out in this CEU.

4 REMEDIATION

4.1 VWFSA will remediate Eligible Consumers being Current Customers or Non-Current Customers who:

- (a) experienced a default (being a failure to meet repayment obligations for at least 30 days after the obligation fell due) on more than one occasion, or experienced a default which extended beyond 60 days, in either case in the first 12 months after the date the Credit Contract was entered into by VWFSA and the customer (**Settlement Date**) (**Group 1**); or
- (b) who gave VWFSA a Hardship Notice within the first 12 months after the Settlement Date (**Group 2**); or
- (c) who experienced a default as described in (a) above and/or gave a Hardship Notice as described (b). above, where the motor vehicle the subject of the Credit Contract was voluntarily surrendered, repossessed or sold privately with VWFSA's consent at any time during the life of the Credit Contract (**Group 3**). For remediation purposes, a customer who meets the criteria of subparagraph (c). will be regarded as a Group 3 customer rather than a Group 1 customer or Group 2 customer.

4.2 A consumer will not be an Eligible Consumer in the following circumstances:

- (a) where the motor vehicle for which the customer obtained the VWFSA Credit Contract is missing or damaged to the extent that it must be written-off; or
- (b) where the customer obtained the VWFSA Credit Contract via a fraud or deceit practised on VWFSA.

4.3 The remediation an Eligible Consumer receives will be dependent on the remediation category they are in, namely Group 1, 2 or 3.

4.4 In accordance with the calculations set out in clauses 4.5 and 4.6, VWFSA will make payments to Eligible Consumers (**Remediation Payments**) in respect of each of the following categories of remediation (**Remediation Categories**):

- (a) default fees including dishonour fees or late payment fees charged to the customer (**Default Fees**); and
- (b) loan establishment fees (**Establishment Fees**); and
- (c) fees, expenses or costs paid by the customer in connection with repossession by or on behalf of VWFSA of the motor vehicle including any agent repossession costs charged to the customer (**Enforcement Costs**); and
- (d) an amount representing the difference between the interest rate paid by the customer on the Credit Contract and the new business monthly cost of funds (including overhead costs associated with the Credit Contract) (**Base Cost**) to VWFSA (**Interest Differential**). The Interest Differential will be applied from the date the Credit Contract was entered into and in respect of the life of the Credit Contract (including for Current Customers the unexpired balance of the life of the Credit Contract in accordance with clause 4.7).

4.5 Subject to the application of clause 4.7 to Current Customers, remediation for Eligible Consumers in Groups 1 and 2 will be calculated on the basis of the below tiered remediation scale applied to each of the Remediation Categories:

Date of first default or hardship application	Calculation Lever (% payable to customer)
Within first 3 months of Settlement Date	100%
Between 3 months and 6 months of Settlement Date	75%
Between 6 months and 9 months of the Settlement Date	50%
Between 9 months and 12 months of Settlement Date	25%

- 4.6 Eligible Consumers in Group 3 are not subject to the calculation levers set out in clause 4.5 and will receive 100% of the payment (P) determined on the basis of the calculation set out below. Where P is a negative number, no payment will be made to (or by) the Eligible Consumer.

$$P = (\text{Default Fees} + \text{Enforcement Costs} + \text{Interest Differential} + \text{any amount the Eligible Consumer has paid towards the Credit Contract after the motor vehicle was returned to VWFSa} + \text{any payments made by the customer in respect of the Credit Contract after surrender or repossession of the motor vehicle}) - (\text{the amount that VWFSa has written off the Credit Contract} + \text{any amounts required to be paid by VWFSa to repair damage to the motor vehicle incurred by the Eligible Consumer}).$$

- 4.7 Subject to the application of clauses 4.8 and 4.9, for Current Customers in Groups 1 and 2:
- (a) the calculation of the Interest Differential will also take into account interest payable over the balance of the life of the Credit Contract; and
 - (b) the Remediation Payment will be applied as a credit against the balance of the Credit Contract outstanding, and if the Remediation Payment exceeds the balance outstanding, the customer will receive payment of the difference.

- 4.8 VWFSA will identify and contact all Current Customers who appear to be experiencing difficulty in meeting ongoing Credit Contract repayments (**Identified Customers**) and offer them the options outlined in clause 4.10.
- 4.9 Identified Customers are those Current Eligible Customers:
- (a) whose Credit Contract is in arrears by more than 30 days as at the Commencement Date; or
 - (b) whose Credit Contract goes into arrears by more than 30 days after the Commencement Date and before the Credit Contract concludes; or
 - (c) who has given a Hardship Notice in the 12-month period prior to the Commencement Date; or
 - (d) who gives a Hardship Notice after the Commencement Date and before the Credit Contract concludes.
- 4.10 VWFSA will work with each Identified Customer to assist the customer determine the option most suitable to their needs. Options that will be offered to Identified Customers will include the following:
- (a) the arrangement outlined in clause 4.7;
 - (b) deferring payments for a period of time;
 - (c) re-financing the Credit Contract, subject to a credit assessment in accordance with VWFSA's lending criteria, at the VWFSA Base Cost or available Campaign Rate, whichever is the lower; or
 - (d) surrender the motor vehicle, waiver of all recovery and enforcement costs, the outstanding Credit Contract balance written off (less any amounts required by VWFSA to repair the damage to the motor vehicle) and the Credit Contract brought to an end.
- 4.11 As at the Commencement Date, VWFSA estimates that the number of Eligible Consumers is 1,882 and the estimated total of remediation is \$4.1 million in payments to Eligible Consumers and \$0.6 million for interest reductions on current Credit Contracts, assuming Eligible Consumers make repayments under their Credit Contracts as and when they fall due. These figures are VWFSA's estimates only and may vary depending on the outcome of the processes set out in the Remediation Program. As part of its obligations, the Independent Remediation Consultant will independently verify the figures.

4.12 In addition to the matters otherwise set out in this section 4, VWFSA agrees that the Remediation Program will require:

- (a) Reasonable attempts to be made to contact Eligible Consumers using different modes of communication, for example, email, telephone calls and post (where contact details can be ascertained);
- (b) VWFSA and the Independent Remediation Consultant to maintain adequate records to allow both independent assessment (by the Independent Remediation Consultant and/or ASIC, where appropriate) and for future reference;
- (c) VWFSA to consult with the Independent Remediation Consultant regarding the most appropriate method for making payments to Non-Current Customers; and
- (d) VWFSA to contact Eligible Consumers within a reasonable timeframe.

- 4.13 VWFSA undertakes to remediate all Eligible Consumers by the second anniversary of the Commencement Date or such longer period as agreed between ASIC and VWFSA.
- 4.14 VWFSA will take all reasonable steps to remove any record of default from relevant credit bureau files in respect of Eligible Consumers where the record of default relates to the Eligible Consumer's VWFSA Credit Contract.

Remediation Account

- 4.15 To the extent that VWFSA is unable to make contact with Eligible Consumers or make Remediation Payments to those customers, all amounts payable to such customers will be deposited into an account (**Remediation Account**) and held for a period of 12 months or such other period as agreed between VWFSA and ASIC. At the end of that period, the balance of the amounts deposited to the Remediation Account will be donated to an organisation or organisations that are dedicated to funding financial literacy programs and research or financial counselling in Australia. VWFSA and ASIC will agree on the appropriate organisation(s) to receive these amounts.
- 4.16 VWFSA (or its agents and/or any related entities) undertakes not to claim, at any time, a tax deduction as a charitable donation on any funds remaining in the Remediation Account and to be donated to any organisation as a result of funds being unclaimed.

Independent Remediation Consultant

- 4.17 VWFSA will engage an Independent Remediation Consultant to:
- (a) review and confirm the number of Eligible Consumers;
 - (b) assist VWFSA in the design and development of the Remediation Program, including to provide guidance in drafting consumer correspondence and advice in respect of resourcing and implementation;
 - (c) suggest process improvements;
 - (d) assist with determining whether any Credit Contracts were obtained fraudulently; and
 - (e) assist VWFSA with its periodic reports to ASIC on the progress of the remediation.

- 4.18 VWFSA will:
- (a) provide the Independent Remediation Consultant with all materials requested or required by the Independent Remediation Consultant to permit the Independent Consultant to verify the figures as contemplated by clause 4.11 and perform the engagement referred to in clause 4.17; and
 - (b) otherwise give all reasonable assistance requested or required by the Independent Remediation Consultant to perform the engagement referred to in 4.17.

5 REPORTING TO ASIC

- 5.1 VWFSA will report to ASIC on the status of its compliance with this CEU at six-monthly intervals, until the Remediation Program is concluded (**Reports**).
- 5.2 The content of the Reports will include:
- (a) the steps VWFSA took to contact Eligible Consumers and how many Eligible Consumers responded to that contact;
 - (b) the total number of Eligible Consumers to whom remediation amounts were paid or amounts credited against Current Customer contracts;
 - (c) the total dollar value of the Remediation Payments, including the amounts credited to Current Customer contracts;
 - (d) the total number of Eligible Consumers who had amounts written off their Consumer Contracts;
 - (e) the total amount of write-offs applied to the Credit Contracts of Eligible Consumers;
 - (f) any difficulties in contacting Eligible Consumers or otherwise implementing the program;
 - (g) arrangements made with Identified Consumers; and
 - (h) the estimated amount of remaining remediation to be paid to Eligible Consumers.

- 5.3 VWFSA will, within a reasonable period of receiving a request from ASIC, provide all documents and information requested by ASIC from time to time for the purpose of assessing VWFSA's compliance with the terms of this CEU.
- 5.4 In addition to any other reports or documents prepared under this CEU, VWFSA undertakes to provide to ASIC within one month after the conclusion of the Remediation Program, a statement as to whether the undertakings in this CEU have been complied with.
- 5.5 VWFSA will notify ASIC as soon as reasonably practicable and in any event within 10 Business Days of becoming aware of any failure by VWFSA to comply with the terms of this CEU.

6 **ACKNOWLEDGEMENTS**

- 6.1 VWFSA acknowledges that ASIC:
- (a) may issue a media release on execution of this CEU referring to its terms and the matters which led to its execution;
 - (b) may make this CEU available for public inspection;
 - (c) may from time to time publicly refer to this CEU;
 - (d) may from time to time publicly report about compliance with this CEU;
 - (e) may issue a media release referring to the content of the Reports; and
 - (f) will make available for public inspection a summary of the contents of the Reports, or a statement that refers to the contents of the Reports.
- 6.2 ASIC acknowledges that it will not refer to any information in the Reports that:
- (a) consist of personal information of an identified individual;
 - (b) ASIC is satisfied would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of VWFSA or a third party otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of the CEU; or

- (c) ASIC is satisfied should not be released because it would not be in the public interest to do so.
- (d) VWFSA has asked not to be released if ASIC is satisfied:
 - (1) it would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of the VWFSA otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of the enforceable undertaking; or
 - (2) it should not be released because it would be against the public interest to do so.

6.3 ASIC acknowledges that:

- (a) it will discontinue its Federal Court proceedings NSD 2105 of 2019 against VWFSA;
- (b) ASIC will not commence alternative legal proceedings or other actions against VWFSA, its officers, employees or related entities based on or arising out of the matters the subject of the Federal Court proceedings or the CEU; and
- (c) each party to bear its own costs of the litigation and the CEU.

6.4 VWFSA acknowledges that:

- (a) ASIC's acceptance of this CEU 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 specifically the subject of ASIC's concerns as set out in this CEU or arising from future conduct;
- (b) this CEU has no operative force until accepted by ASIC, and VWFSA and ASIC acknowledge that the date of this CEU is the date on which it is accepted by ASIC; and
- (c) this CEU remains in force until all terms of the CEU have been complied with and that VWFSA has provided ASIC with a final six-monthly Report, at the conclusion of the remediation program.

6.5 VWFSa will pay the costs of its compliance with this CEU, including the costs associated with the Remediation Program and the engagement of the Independent Remediation Consultant and will not seek reimbursement of, contribution towards, or otherwise directly pass on these costs to consumers.

7 NOTIFICATION


7.1 The address for providing ASIC with any document or notification required by this CEU is Level 7, 120 Collins Street, Melbourne Victoria 3000.

7.2 The address for providing VWFSa with any document or notification required by this CEU is Level 1, 24 Muir Road, Chullora, New South Wales 2190.

Signed on behalf of **VOLKSWAGEN FINANCIAL SERVICES AUSTRALIA PTY LIMITED (ACN: 097 071 460)** in accordance with section 127 of the Corporations Act 2001 (Cth) by:



Signature of Director



Signature of Director


Zhang Zhong

Name of Director

Joern Kurzrock

Name of Director

Accepted by the Australian Securities and Investments Commission under section 322(1) of the National Consumer Credit Protection Act 2009 (Cth) by its duly authorised delegate:


.....
Melissa Smith, Senior Executive Leader, Financial Services Enforcement
Delegate of Australian Securities and Investments Commission

7/10/2020