

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:

Lend NT Pty Ltd

ACN 626 737 442

as trustee for C&L Te Maro Lending Trust

C/ - Hunt & Hunt Lawyers, Level 2 13 Cavenagh Street Darwin, NT 0801

(**Lend NT**)

and

Laddawan Te Maro

DOB: 07 February 1978

C/ - Hunt & Hunt Lawyers, Level 2 13 Cavenagh Street Darwin, NT 0801

(**Ms Te Maro**)

1. Definitions

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

- (a) **ACL** means Australian Credit Licence.
- (b) **ACNC** means the Australian Charities and Not-for-profits Commission.
- (c) **ASIC Act** means the *Australian Securities and Investments Commission Act 2001* (Cth).
- (d) **Borrower** means a consumer who entered into a DA Loan with Lend NT during the Relevant Period and who qualifies for remediation in accordance with the Remediation Program, regardless of whether or not the Borrower has an obligation to repay an amount of debt under the DA Loan as at the Commencement Date.
- (e) **Business Day** means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the Northern Territory.
- (f) **CEU** means this court enforceable undertaking.
- (g) **Commencement Date** means the date this CEU is accepted by ASIC.
- (h) **Consumer Purpose** means provided or intended to be provided wholly or predominantly (that is, with respect to credit, more than half the value of the

credit, and, with respect to goods or services, intended to be most used) for a personal, domestic or household purpose.

- (i) **Corporations Act** means the *Corporations Act 2001* (Cth).
- (j) **Credit** has the meaning given in subsection 3(1) of the National Credit Code and means credit to which the National Credit Code applies.
- (k) **Credit Activity** has the meaning given in section 6 of the National Credit Act.
- (l) **Credit Contracts** has the meaning given in section 4 of the National Credit Code.
- (m) **Current Loan** means a DA Loan which had an outstanding balance and/or which was not closed and/or finalised as at 13 January 2024.
- (n) **DA Loan** means, together, the Loan Agreement and the Pawn Ticket.
- (o) **Loan Agreement** means a loan agreement entitled 'Drive Away Loan Agreement' entered into by Lend NT with a Borrower for the provision of the Loan Amount to the Borrower against the repayment of the Loan Amount plus payment of interest, fees, charges, expenses and costs.
- (p) **Loan Amount** means the amount of Credit that has been or may be advanced under a DA Loan.
- (q) **National Credit Act** means the *National Consumer Credit Protection Act 2009* (Cth).
- (r) **National Credit Code** means Schedule 1 to the National Credit Act.
- (s) **NT Pawnbroking Laws** means the *Consumer Affairs and Fair Trading Act 1990* (NT).
- (t) **Pawnbroking Exemption** means the exemption for pawnbrokers contained in s6(9) of the National Credit Code.
- (u) **Pawn Ticket** means the agreement entitled 'Pawn Ticket' entered into by Lend NT and a Borrower detailing the security provided by a Borrower which secures the Loan Amount.
- (v) **Relevant Period** means the period from 10 September 2019 to the Commencement Date (inclusive).
- (w) **Remediation Consultant** means the remediation consultant engaged by Lend NT and/or Ms Te Maro in accordance with paragraphs 4.6 of this CEU.
- (x) **Remediation Program** means the program for remediation as outlined in section 4 of this CEU.

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 also responsible for, among other things, the administration and enforcement of the National Credit Act.

Lend NT's business

- 2.3 Lend NT is a pawnbroking business in the Northern Territory. It was incorporated on 12 June 2018. Ms Te Maro is and was the sole director of Lend NT at all material times during the Relevant Period.
- 2.4 During the Relevant Period Lend NT did not, and currently does not, hold an ACL and is not a credit representative of an ACL holder.
- 2.5 In September 2019, Lend NT began offering DA Loans to Borrowers by among others, advertising the loans on its website, by radio and Facebook..
- 2.6 During the Relevant Period, Lend NT advertised and offered DA Loans. The maximum amount lent under a DA Loan was \$8,000 over a two -year term, with interest calculated and charged at 2.5% per week (130% pa). Borrowers would provide their motor vehicle as security for the DA Loan pursuant to the Pawn Ticket but were permitted to keep their motor vehicles during the term of the DA Loan, with a GPS tracker attached.
- 2.7 On 20 October 2023, ASIC commenced a surveillance into Lend NT regarding concerns that, by entering DA Loans, Lend NT had engaged in unlicensed credit activities in contravention of s29 of the National Credit Act and had charged prohibited fees and/or charges or other amounts in contravention of s32 of the National Credit Act during the Relevant Period.
- 2.8 On 30 November 2023, Lend NT ceased offering DA Loans.
- 2.9 Lend NT has confirmed, by its solicitors, that:
 - 2.9.1 during the Relevant Period Lend NT provided approximately 58 DA Loans to Borrowers;

- 2.9.2 until about 24 November 2023, Ms Te Maro was 'unaware that she was operating in breach of her [pawnbroking] licence';
- 2.9.3 since its establishment, Lend NT has never sold or disposed of any motor vehicle as a means of recovering outstanding debt under a DA Loan;
- 2.9.4 as of 13 January 2024, Lend NT, had ceased the part of the Lend NT business that involved motor vehicles as collateral for the DA Loans; and
- 2.9.5 as of 13 January 2024, Lend NT had remediated all Borrowers who had Current Loans by Lend NT:
 - (a) writing off any outstanding balances on the DA Loans; and
 - (b) refunding any amounts paid by the Borrower above the original loan amount (principal) of the DA Loan (for example including interest and other charges).

2.10 On 22 March 2024, Ms Te Maro informed ASIC that:

- 2.10.1 Lend NT had remediated Borrowers who entered DA Loans as of 1 January 2023 but only those with Current Loans; and
- 2.10.2 Lend NT is amenable to remediating all Borrowers not already remediated under paragraph 2.10.1 including Borrowers with DA Loans entered pre 2023 and Borrowers with closed and/or finalised DA Loans entered after 1 January 2023.

ASIC's findings

2.11 As a result of ASIC's surveillance ASIC formed the view that:

- 2.11.1 NT Pawnbroking Laws require pawnbrokers to keep pawned goods on their premises at all times until the Pawn Ticket is settled;
- 2.11.2 DA Loans allowed Borrowers to keep and/or use their motor vehicles while 'pawned' (outside the scope of the NT Pawnbroking Laws); and
- 2.11.3 Lend NT's rights under its DA Loans to recover funds lent also extended beyond funds recovered from the sale of the secured motor vehicles and therefore beyond the Pawnbroking Exemption.

- 2.12 As a result of paragraphs 2.11.1 to 2.11.3, ASIC formed the view that:
- 2.12.1 Lend NT was not operating within the scope of its pawnbroking licence;
 - 2.12.2 Lend NT was unable to take advantage of the Pawnbroking Exemption;
 - 2.12.3 Lend NT engaged in unlicensed credit activities; and
 - 2.12.4 the attributes of the Borrowers and nature of the DA Loans suggest that Borrowers had obtained the loans for Consumer Purposes rather than for a predominantly business purposes.
- 2.13 By reason of the matters set out in paragraphs 2.4, 2.6 and 2.12, ASIC considers that:
- 2.13.1 Lend NT contravened sections 29 and 32 of the National Credit Act on multiple occasions during the Relevant Period;
 - 2.13.2 Lend NT contravened section 29 of the National Credit Act by engaging in a Credit Activity while not holding an ACL, in respect of DA Loans entered into during the Relevant Period which loans were in fact Credit Contracts; and
 - 2.13.3 Lend NT contravened section 32 of the National Credit Act by demanding and receiving a fee, charge or other amount pursuant to the DA Loans which were Credit Contracts during the Relevant Period.

Admissions and offer of CEU

- 2.14 Lend NT and Ms Te Maro:
- 2.14.1 admit the conduct identified in paragraph 2.11.2, paragraph 2.11.3 and paragraph 2.12;
 - 2.14.2 admit the contraventions and other matters set out in paragraph 2.13; and
 - 2.14.3 have offered the CEU in the terms of paragraph 3 below.

3. Undertakings

- 3.1 Under section 322(1) of the National Credit Act, Lend NT and Ms Te Maro have offered, and ASIC has agreed to accept, the undertakings in this CEU.

- 3.2 Lend NT and Ms Te Maro undertake not to engage or be engaged or involved, directly or indirectly in any Credit Activity for a period of five years from the Commencement Date.
- 3.3 Lend NT and Ms Te Maro undertake to conduct and remediate Borrowers under the Remediation Program as set out in paragraph 4 of this CEU and which is to be overseen by the Remediation Consultant.
- 3.4 Lend NT and Ms Te Maro each agree that they will be jointly and severally liable to perform all of the undertakings set out in this paragraph 3.
- 3.5 Lend NT and Ms Te Maro otherwise undertake to fulfil each of its obligations set out in this CEU.

4. Remediation Program

- 4.1 The Remediation Program will be governed by the following overarching principles:
 - 4.1.1 the Remediation Program will be available to all Borrowers (including those referred to in paragraphs 2.9 and 2.10 above);
 - 4.1.2 Lend NT will remediate all Borrowers who entered into a DA Loan in accordance with this Remediation Program;
 - 4.1.3 Lend NT and/or Ms Te Maro will not retain and/or seek to retain any form and/or amount of interest, fee, expense or charge paid and/or payable by a Borrower under a DA Loan; and
 - 4.1.4 Lend NT and/or Ms Te Maro will not recover and/or seek to recover:
 - (a) any form and/or amount of interest, fee, expense or charge paid and/or payable under a DA Loan;
 - (b) the Loan Amount or any part of it owing at the Commencement Date for as long as they are not lawfully entitled to do so.
- 4.2 Lend NT will make payments to Borrowers (**Remediation Payments**) in respect of all amounts paid by Borrowers to Lend NT other than the Loan Amount, including but not limited to each of the following:
 - 4.2.1 default fees including dishonour fees or late payment fees charged to and paid by Borrowers;

- 4.2.2 all fees, expenses or costs paid by the Borrower in connection with repossession and/or sale by or on behalf of Lend NT of a motor vehicle including any agent repossession costs and/or sale commissions, transport charges, insurance costs and storage costs charged to the Borrower;
 - 4.2.3 all interest charges, costs of sale charges and daily costs of sale accrual charges paid by Borrowers under DA Loans;
 - 4.2.4 any surplus of sale of a motor vehicle retained by Lend NT;
 - 4.2.5 any other charges and/or costs paid by Borrowers to Lend NT under a DA Loan including bank charges.
- 4.3 As at the Commencement Date, Lend NT estimates that the total number Borrowers (including those referred to in paragraph 2.9 above) is 58 and:
- 4.3.1 the estimated total Remediation Payment is \$49,685.55.
- These figures are Lend NT'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 Remediation Consultant will independently verify the figures.
- 4.4 As of the Commencement Date, Lend NT has made remediation payments for loans in accordance with paragraph 2.9.5, totalling \$13,369.42.
- 4.5 In addition to the matters set out elsewhere in this paragraph 4, Lend NT agrees that the Remediation Program will require:
- 4.5.1 Lend NT to contact Borrowers within a reasonable timeframe;
 - 4.5.2 reasonable attempts to be made by Lend NT and/or Ms Te Maro and/or the Remediation Consultant to contact Borrowers using different modes of communication, for example, email, telephone calls and post (where contact details can be ascertained);
 - 4.5.3 Lend NT and Ms Te Maro will use their best endeavours to identify and remediate all Borrowers within twelve months of the Commencement Date or such longer period as agreed between ASIC and Lend NT;

- 4.5.4 Lend NT, Ms Te Maro and the Remediation Consultant to maintain adequate records to allow both independent assessment (by the Remediation Consultant and/or ASIC, where appropriate) and for future reference;
- 4.5.5 Lend NT and/or Ms Te Maro to consult with the Remediation Consultant regarding the most appropriate method for making payments to Borrowers;
- 4.5.6 Lend NT and Ms Te Maro 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 Lend NT's, Ms Te Maro's and the Remediation Consultant's compliance with the terms of this CEU and/or the Remediation Program; and
- 4.5.7 Lend NT, Ms Te Maro and the Remediation Consultant will notify ASIC in writing as soon as reasonably practicable, and in any event within two Business Days of becoming aware, of any failure by Lend NT and/or Ms Te Maro and/or the Remediation Consultant to comply with a term of this CEU and/or the Remediation Program.

Independent overview of the Remediation Program

- 4.6 Lend NT will, subject to ASIC consent of the engagement and its terms, engage a Remediation Consultant which will carry out work for Lend NT and ASIC including to:
 - 4.6.1 review and confirm the number of Borrowers;
 - 4.6.2 review and confirm the amount of remediation paid as referred to in clause 4.4 and the number and total dollar amount of Remediation Payments to be made;
 - 4.6.3 assist Lend NT in the design and development of the Remediation Program, including to provide guidance in drafting Borrower correspondence and advice in respect of resourcing and implementation;
 - 4.6.4 suggest process improvements; and

4.6.5 assist Lend NT with its reporting to ASIC on the progress of the remediation as ASIC is relying on the Remediation Consultant's work.

4.7 Lend NT will:

4.7.1 provide the Remediation Consultant with all materials they request or require to verify the figures as contemplated by clause 4.6 and perform the engagement referred to in clause 4.6; and

4.7.2 otherwise give all reasonable assistance requested or required by the Remediation Consultant to perform the engagement referred to in clause 4.6.

Reporting by the Lend NT/Remediation Consultant

4.8 Lend NT and/or the Remediation Consultant will report to ASIC on the status of its compliance with this CEU and Remediation Program at six-monthly intervals, until the Remediation Program is concluded (**Reports**).

4.9 The content of the Reports will include:

4.9.1 the steps Lend NT took to contact Borrowers and how many Borrowers responded to that contact;

4.9.2 the total number of Borrowers who received Remediation Payments;

4.9.3 the total dollar value of the Remediation Payments;

4.9.4 the total number of Borrowers who had amounts waived and/or written off their DA Loans;

4.9.5 the total amount of waived amounts and/or write-offs applied to the DA Loans of Borrowers;

4.9.6 any difficulties in contacting Borrowers or otherwise implementing the Remediation Program;

4.9.7 arrangements made with Borrowers; and

4.9.8 the estimated amount of remaining remediation to be paid to Borrowers.

4.10 In addition to any other reports or documents prepared under this CEU, Lend NT 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.

Unclaimed Funds

- 4.11 To the extent that Lend NT is unable to contact Borrowers or make Remediation Payments to those Borrowers, all amounts payable to such Borrowers will be deposited into a non-interest-bearing account (**Remediation Account**) and held for and on behalf of Borrowers for a period of 12 months or such other period as agreed between Lend NT and ASIC. At the end of that period, the unclaimed balance of the amounts deposited to the Remediation Account, being all amounts payable to such Borrowers, will be donated to a charity or not-for-profit organisation registered with the ACNC within 30 Business Days from the end of that period.
- 4.12 Lend NT (or its agents and/or any related entities) and/or Ms Te Maro undertake 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.

Variation

- 4.13 This CEU may be varied by the consent of the parties in writing.

5. Closing the Remediation Program

- 5.1 The Remediation Program is to remain open until:
- 5.1.1 Lend NT and/or Ms Te Maro have provided remediation to all Borrowers and paid all Remediation Payments;
- 5.1.2 all DA Loans have either been resolved through the Remediation Program or, if any unclaimed funds remain, until those funds have been deposited into the Remediation Account as set out in paragraph 4.11 above; and
- 5.1.3 ASIC, after receiving written confirmation from the Remediation Consultant that all requirements and obligations set out in the Remediation Program have been complied with, consents in writing to the Remediation Program being closed. ASIC's consent will not be unreasonably withheld.

6. Settlements with Borrowers outside the Remediation Program

- 6.1 All Borrowers who have settled and/or received any payments and/or who had any outstanding balances due and payable under a DA Loan waived and/or written off by Lend NT and/or Ms Te Maro before the CEU and Remediation Program commenced, must not be left in a worse financial position that they would have been in if they had been remediated under the Remediation Program.
- 6.2 The Borrowers referred to in paragraph 6.1 above will be included in the Remediation Program and will be remediated in accordance with paragraph 6.1 above and the Remediation Program.

7. Winding up of Lend NT

- 7.1 Subject to the Corporations Act, Lend NT and Ms Te Maro undertake that, unless otherwise agreed with ASIC in writing, they will not take any step to voluntarily wind up Lend NT under section 513B of the Corporations Act until Lend NT and Ms Te Maro have complied with all undertakings in this CEU and the Remediation Program has been completed.

8. Costs

- 8.1 Lend NT and Ms Te Maro undertake to pay the costs of their compliance with this CEU and the Remediation Program, including, but not limited to, all costs associated with the engagement of the Remediation Consultant.

9. Acknowledgements

- 9.1 Lend NT and Ms Te Maro acknowledge that ASIC:
- 9.1.1 may issue a media release on execution of this CEU referring to its terms, the terms of the Remediation Program, and to the concerns of ASIC which led to their execution;
 - 9.1.2 may from time to time publicly refer to this CEU and/or the Remediation Program;
 - 9.1.3 will from time to time publicly report about compliance with this CEU and/or the Remediation Program;
 - 9.1.4 will make this CEU available for public inspection;
 - 9.1.5 may issue a media release referring to the content of any report from Lend NT, Ms Te Maro and/or the Remediation Consultant;

- 9.1.6 may from time to time publicly refer to the content of any report from Lend NT, Ms Te Maro and/or the Remediation Consultant; and
 - 9.1.7 will make available for public inspection a summary of the content of any report from Lend NT, Ms Te Maro and/or the Remediation Consultant, or a statement that refers to the content of those report(s).
- 9.2 ASIC acknowledges that it will not refer to any information from a report from Lend NT, Ms Te Maro and/or the Remediation Consultant that:
- 9.2.1 consists of personal information of an identified natural person whose acts or omissions are not the subject of, or a concern mentioned in, the CEU and/or the Remediation Program;
 - 9.2.2 ASIC is satisfied would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of Lend NT, Ms Te Maro or a third party otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of the CEU and/or the Remediation Program;
 - 9.2.3 ASIC is satisfied should not be released because it would be against the public interest to do so; or
 - 9.2.4 Lend NT or Ms Te Maro has asked not to be released if ASIC is satisfied:
 - (a) it would be unreasonable to release because the release of the information would unreasonably affect the business, commercial or financial affairs of Lend NT or Ms Te Maro otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of the CEU and/or the Remediation Program; or
 - (b) it should not be released because it would be against the public interest to do so.
- 9.3 Lend NT and Ms Te Maro acknowledge that:
- 9.3.1 this CEU has no operative force until accepted by ASIC, and Lend NT and Ms Te Maro and ASIC acknowledge that the date of the CEU is the date on which it is accepted by ASIC.

- 9.3.2 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 the subject of ASIC's concerns in this CEU or arising from future conduct;
- 9.3.3 ASIC's acceptance of this CEU does not affect ASIC's power to pursue action, including administrative action and civil penalty proceedings, if Lend NT and Ms Te Maro do not comply with this CEU and the Remediation Program;
- 9.3.4 this CEU in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this CEU or arising from future conduct; and
- 9.3.5 this CEU remains in force until all terms of the CEU have been complied with including the Remediation Consultant providing ASIC with a final Report at the conclusion of the Remediation Program and ASIC consenting in writing to the Remediation Program being closed pursuant to paragraph 5.

10. Confidentiality

- 10.1 All information received from Borrowers during the CEU and Remediation Program will be treated as confidential, save that information which will be provided to Lend NT, Ms Te Maro, the Remediation Consultant and/or to ASIC as necessary to meet the requirements of this Remediation Program and the CEU.

11. Notification

- 11.1 Unless otherwise notified in writing by ASIC, the address for providing ASIC with any document or notification required by this CEU is:

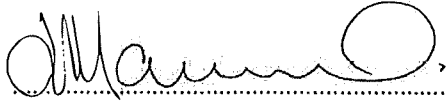
Senior Manager, Enforcement, Inquiries & Compliance – Credit & Banking

Level 7, 120 Collins Street, Melbourne, Victoria 3000

- 11.2 Unless otherwise notified in writing by Lend NT and/or Ms Te Maro, the address for providing Lend NT and Ms Te Maro with any document or notification required by this CEU is:

Hunt & Hunt Lawyers, Level 2, 13 Cavenagh Street Darwin NT 0810

Executed by Lend NT Pty Ltd ACN 626 737 442)
in accordance with subsection 127(1) of the)
Corporations Act 2001:



Director

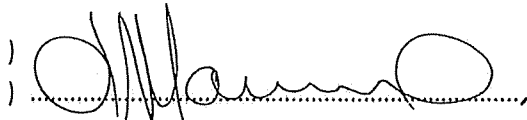
Director/Company Secretary

Laddawan Te Maro

Full name

Full name

Executed by Laddawan Te Maro in the)
presence of:



Laddawan Te Maro



Signature of Witness

SHAINÉ TABORADA

Name of Witness in full

04/12/2024

Date

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



Signature of Delegate of ASIC

Tom O'Shea

6/12/2024

Date