FEDERAL COURT OF AUSTRALIA

Australian Securities and Investments Commission v Teleloans Pty Ltd [2015] FCA 648

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| Citation: | Australian Securities and Investments Commission v Teleloans Pty Ltd [2015] FCA 648 |
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| Parties: | **AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v TELELOANS PTY LTD and FINANCE & LOANS DIRECT PTY LTD**  |
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| File number: | QUD 299 of 2014 |
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| Judge: | **LOGAN J** |
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| Date of judgment: | 30 June 2015 |
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| Catchwords: | **CONSUMER LAW** – consumer credit – conduct as a credit provider – alleged contraventions of the *National Consumer Credit Protection Act 2009* (Cth) (the Act) and National Credit Code (Sch 1 to the Act) – application of the Act and the Code to the respondent companies’ activities – first respondent provided loan application services to applicants for credit, the second respondent provided loans to successful applicants for credit – whether respondents had arrangement such that amounts payable to them under their respective contracts were each charges for the provision of credit – definition of contract**Held**: need to apply terms of the statute – first respondent provided service not credit – charges by first respondent merely a fee for service – no direct relationship to loan with second respondent – no contraventions of the Act  |
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| Legislation: | *Evidence Act 1995* (Cth)s 191*National Consumer Credit Protection Act 2009* (Cth) ss 3, 5*Consumer Credit (NSW) Act 1995* (NSW) |
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| Cases cited: | *Australian Finance Direct Ltd v Director of Consumer Affairs Victoria* (2007) 234 CLR 96 applied *Bahadori v Permanent Mortgages Pty Ltd* (2008) 72 NSWLR 44 distinguished*Europa Oil NZ Ltd v Inland Revenue Commissioners* [1976] 1 WLR 464 cited *Federal Commissioner of Taxation v Gulland* (1985) 160 CLR 55 considered *Furniss v Dawson* [1984] AC 474 cited *Gauntlett v Repatriation Commission* (1991) 32 FCR 73 applied*MacNiven v Westmorland Investments Ltd* [2003] 1 AC 311 cited *Newton v Federal Commissioner of Taxation* (1958) 98 CLR 1 cited *Slutzkin v Federal Commissioner of Taxation* (1977) 140 CLR 314 cited *Walker v Consumer, Trade and Tenancy Tribunal (NSW)* [2013] NSWSC 1432 distinguished*WT Ramsay v Inland Revenue Commissioners* [1981] 2 WLR 449 cited  |
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| Date of hearing: | 27 October 2014 |
|  |  |
| Date of last submissions filed by the First Respondent: | 26 November 2014 |
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| Date of last submissions filed by the Applicant: | 1 December 2014 |
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| Place: |  |
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| Division: | GENERAL DIVISION |
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| Category: | Catchwords |
|  |  |
| Number of paragraphs: | 46 |
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| Counsel for the Applicant: | Mr M de Waard |
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| Solicitor for the Applicant: | Australian Securities and Investments Commission |
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| Counsel for the Respondents: | Mr K Barlow QC with Mr P Travis |
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| Solicitor for the Respondents: | Elliott May |

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| IN THE FEDERAL COURT OF AUSTRALIA |  |
| QUEENSLAND DISTRICT REGISTRY |  |
| GENERAL DIVISION | QUD 299 of 2014 |

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| BETWEEN: | AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSIONApplicant |
| AND: | TELELOANS PTY LTD First RespondentFINANCE & LOANS DIRECT PTY LTD Second Respondent |

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| JUDGE: | LOGAN J |
| DATE OF ORDER: | 30 JUNE 2015 |
| WHERE MADE: | BRISBANE |

THE COURT ORDERS THAT:

1. The application is dismissed.
2. There be no order as to costs.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

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| IN THE FEDERAL COURT OF AUSTRALIA |  |
| QUEENSLAND DISTRICT REGISTRY |  |
| GENERAL DIVISION | QUD 299 of 2014 |

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| BETWEEN: | AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSIONApplicant |
| AND: | TELELOANS PTY LTD First RespondentFINANCE & LOANS DIRECT PTY LTD Second Respondent |

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| --- | --- |
| JUDGE: | LOGAN J |
| DATE: | 30 JUNE 2015 |
| PLACE: | BRISBANE |

**REASONS FOR JUDGMENT**

1. The Australian Securities and Investments Commission (ASIC) has regulatory responsibilities in respect of the *National Consumer Credit Protection Act 2009* (Cth) (the Act), including the National Credit Code (the Code), which forms Sch 1 to the Act.
2. In the course of the ASIC discharging its regulatory responsibilities, differences have emerged between it and the two respondent companies, Teleloans Pty Ltd (Teleloans) and Finance & Loans Direct Pty Ltd (FLD) with respect to the meaning and effect and application, if any, of the Act and the Code to the business activities of those companies. These differences have been exemplified by the dealings of particular individuals with the two companies. As a consequence and using those dealings as a factual foundation, the ASIC has instituted proceedings to which those two companies are respondents in which it seeks certain declaratory and injunctive relief in respect of the subjects of difference between them.
3. There is no dispute between the parties as to the factual foundation for the relief which the ASIC seeks. That factual foundation has come to be the subject of an agreed statement of facts (agreed statement). The agreed statement has been signed on behalf of the respective parties by their solicitors. A copy of the agreed statement, including copies of the documents referred to in it, is annexed to an affidavit of an ASIC officer, Mr Kevin Foo filed in the proceedings. The facts in the agreed statement are agreed facts for the purposes of s 191 of the *Evidence Act 1995* (Cth). I make findings of fact accordingly.
4. Because the agreed facts are extensive, the more convenient course to follow is to annex them to these reasons for judgment, rather than set them out in the body of the judgment and thereby make assimilation of the discussion of the meaning and effect of the Act and the Code more difficult.
5. Of the two “options” referred to in the agreed statement, the ASIC submitted and the respondents conceded that Option 1 entailed an elaborate, time consuming process which, if an application for funds were successful, resulted in the provision of funds to the person concerned via a cheque sent by mail. It was not controversial that an inference ought to be drawn (which I do) that it was inherently likely that a person would choose Option 2 rather than Option 1.
6. I turn to the issues for determination which emerge from the differences between the parties.
7. On the basis of the agreed facts and the inference mentioned, the ASIC sought the following relief in its originating application:

1. Declarations pursuant to section 21(1) of the *Federal Court of Australia Act 1976* (Cth) (the Act) that the credit provided under the Second Respondent’s [FLD] Loan Agreements dated 14 August 2013, which were entered into with each the following consumers, was not subject to the short term credit exemption under section 6(1) of the National Credit Code (the Code):

a. Linda Wait (Ms Wait);

b. Lucy Jane Meek (Ms Meek);

c. Gary John Donohue (Mr Donohue);

d. Law Van Siong (Fabrice) Law-Foon (Mr Law-Foon); and

e. Burak Gurkan (Mr Gurkan).

2. Declarations pursuant to section 21(1) of the Act that the Code applies to the credit provided under First Respondent’s [Teleloans] Services Agreement and the Second Respondent’s Loan Agreement which were entered into with each the following consumers on 14 August 2013:

a. Ms Wait;

b. Ms Meek;

c. Mr Donohue;

d. Mr Law-Foon; and

e. Mr Gurkan.

3. Declaration pursuant to section 21(1) of the Act that the First Respondent provided credit assistance in relation to a credit contract entered into by Ms Wait and the Second Respondent on 14 August 2013 that came within the definition of a ‘short-term credit contract’ in section 5(1) of the National Credit Act in contravention of section 124A(1) of the *National Consumer Credit Protection Act 2009* (Cth) (National Credit Act).

4. Declaration pursuant to section 21(1) of the Act that the Second Respondent entered into a credit contract with Ms Wait on 14 August 2013 that came within the definition of a ‘short-term credit contract’ in section 5(1) of the National Credit Act in contravention of section 133CA(1) of the National Credit Act.

5. Declarations pursuant to section 21(1) of the Act that the First Respondent and the Second Respondent have provided credit under Loan Agreements and Services Agreements entered into with the following consumers, which are ‘small amount credit contracts within the definition under section 5(1) of the National Credit Act, under which the fees and charges payable do not comply with the fees and charges permitted for small amount credit contracts under section 31A(1) of the Code:

a. Ms Meek;

b. Mr Donohue;

c. Mr Law-Foon; and

d. Mr Gurkan.

6. Pursuant to section 23 of the Act, an order that the First Respondent and the Second Respondent be restrained from providing credit or credit assistance without complying with all the relevant obligations in the Code unless:

a. the provision of credit is limited to a total period that does not exceed 62 days; and

b. the maximum amount of credit fees and charges that may be imposed or provided for does not exceed 5% of the amount of credit; and

c. the maximum amount of interest charges that may be imposed or provided for does not exceed an amount (calculated as if the Code applied to the contract) equal to the amount payable if the annual percentage rate were 24% per annum.

7. Pursuant to section 177(1) of the National Credit Act an order that the First Respondent be restrained from providing credit assistance in relation to short-term credit contracts, as defined in section 5(1) of the National Credit Act, in contravention of section 124A(1) of the National Credit Act.

8. Pursuant to section 177(1) of the National Credit Act, an order that the Second Respondent be restrained from entering into or increasing the credit limit of short-term credit contracts, as defined in section 5(1) of the National Credit Act, in contravention of section 133CA(1) of the National Credit Act.

9. Pursuant to section 177(1) of the National Credit Act, an order that the First Respondent and the Second Respondent be restrained from imposing or providing for fees and charges in relation to small amount credit contracts if, in contravention of section 31A(1) of the Code, the fees and charges are not as follows:

a. a permitted establishment fee, as defined in section 31A(2) of the Code;

b. a fee or charge (a permitted monthly fee) that is payable on a monthly basis starting on the day the contract is entered into;

c. a fee or charge that is payable in the event of a default in payment under the contract; and

d. a government fee, charge or duty payable in relation to the contract.

1. The ASIC submitted that the Code applied to each Loan Agreement and to each Services Agreement as respectively made with FLD or, as the case may be, Teleloans on 14 August 2013.
2. Section 3 of the Act makes the Code apply as a law of the Commonwealth.
3. By s 5, the Code applies to “the provision of credit (and to the credit contract and related matters)” subject to the conditions specified in that section, unless an exemption for which s 6 of the Code provides is applicable. Within s 5 of the Code, a number of terms are the subject of further definition either by s 4 of the Code or in s 204 within Pt 13 of the Code (or by reference to other provisions to which one is directed by s 204), as interpreted by reference to the provisions of Pt 14 of the Code. In turn, in some of those definitions are terms which are further defined.
4. All in all, this result of this method of drafting brings to mind as equally applicable here a description of Russia once offered by Winston Churchill (BBC Broadcast, London, 1 October 1939), “It is a riddle wrapped in a mystery inside an enigma”. Optimistically, he added, “but perhaps there is a key”.
5. In light of this method of drafting and having regard to the relief sought and to the submissions of the parties, it will be necessary progressively to set out the material parts of a number of provisions of the Act and the Code as they stood at the time when the various contracts were entered into and services and funds were provided. So as to alert the reader to a term which is defined in the Act or, as the case may be, the Code, I have extended the drafting practice of putting that term in bold type by also putting the term in bold type before setting out the applicable definition.
6. The meaning of ***credit contract*** is found in s 4 of the Code:

**4 Meaning of credit contract**

For the purposes of this Code, a credit contract is a contract under which credit is or may be provided, being the provision of credit to which this Code applies.

1. ***Contract*** is also a defined term (s 204 of the Code) and one of some importance, having regard to the submissions made by the ASIC:

***contract*** includes a series or combination of contracts, or contracts and arrangements.

1. By s 3 of the Code, ***credit*** and ***amount of credit*** are respectively defined as follows:

**3 Meaning of *credit* and *amount of credit***

(1) For the purposes of this Code, ***credit*** is provided if under a contract:

(a) payment of a debt owed by one person (the ***debtor***) to another (the ***credit provider***) is deferred; or

(b) one person (the ***debtor***) incurs a deferred debt to another (the ***credit provider***).

(2) For the purposes of this Code, the ***amount of credit*** is the amount of the debt actually deferred. The ***amount of credit*** does not include:

(a) any interest charge under the contract; or

(b) any fee or charge:

(i) that is to be or may be debited after credit is first provided under the contract; and

(ii) that is not payable in connection with the making of the contract or the making of a mortgage or guarantee related to the contract.

1. Materially, s 5 of the Code provides:

**5 Provision of credit to which this Code applies**

(1) This Code applies to the provision of credit (and to the credit contract and related matters) if when the credit contract is entered into or (in the case of precontractual obligations) is proposed to be entered into:

(a) the debtor is a natural person or a strata corporation; and

(b) the credit is provided or intended to be provided wholly or predominantly:

(i) for personal, domestic or household purposes; or

(ii) to purchase, renovate or improve residential property for investment purposes; or

(iii) to refinance credit that has been provided wholly or predominantly to purchase, renovate or improve residential property for investment purposes; and

(c) a charge is or may be made for providing the credit; and

(d) the credit provider provides the credit in the course of a business of providing credit carried on in this jurisdiction or as part of or incidentally to any other business of the credit provider carried on in this jurisdiction.

(2) If this Code applies to the provision of credit (and to the credit contract and related matters):

(a) this Code applies in relation to all transactions or acts under the contract whether or not they take place in this jurisdiction; and

(b) this Code continues to apply even though the credit provider ceases to carry on a business in this jurisdiction.

1. Within s 3, the meaning and effect to afford the conditional clause, “if under the contract” assumed a particular importance in this case.
2. The ASIC submitted that the key to the riddle was supplied by the reasoning of the New South Wales Court of Appeal in *Bahadori v Permanent Mortgages Pty Ltd* (2008) 72 NSWLR 44 (*Bahadori*) and a recent application in that State of that reasoning in *Walker v Consumer, Trader and Tenancy Tribunal* *(NSW)* [2013] NSWSC 1432 (*Walker*).
3. Each of these cases concerned the meaning and effect of the *Consumer Credit (NSW) Act 1995* (NSW) and the *Consumer Credit (New South Wales) Code 1995* (NSW Code) for which that Act provided. There to be found in the NSW Code are analogue definitions of “credit contract” (s 5) and “Provision of credit to which this Code applies” (s 6) and a like extended definition of “contract” (Sch 1).
4. The controversy in *Bahadori* arose out of a series of loan offers having been signed by the borrowers and a controversy as to the application of the NSW Code. Materially, the application of the NSW Code depended upon whether the credit was provided “wholly or predominantly for personal, domestic or household purposes”. The NSW Code contained a deeming provision, s 11(2), whereby credit was presumed conclusively for the purposes of that Code not to be provided wholly or predominantly for personal, domestic or household purposes if the debtor declared, before entering into the credit contract, that the credit was to be applied wholly or predominantly for business or investment purposes (or for both purposes).
5. More particularly and as summarised in the headnote, the would be borrowers in *Bahadori* approached a finance company which in turn approached two lenders to obtain a loan. Initially there was to be a loan by way of a second mortgage and the relevant documents were executed but later, on 13 November 2002, the solicitors for the two lenders forwarded to the finance company two letters of offers of loans which were signed and accepted by the family on that date. Two prior letters of offer addressed to the family and dated 28 October 2002 were signed by the family on 15 November 2002. On that same date, but not before the letters of offer were signed, the family signed s 11(2) declarations. Due to these declarations the Consumer, Trader and Tenancy Tribunal ruled that it did not have jurisdiction to grant relief.
6. Against this background, Tobias JA, with whose reasoning in this regard Giles and Campbell JJA agreed stated, at [160] to [162]:

160 There can be no doubt that the “credit contract” must be one to which the credit provider, against whom relief is sought under the Code, is a party. But that does not require that where the extended definition of “contract” applies, the credit provider, in this case Conway, must have been a party to each and every contract or arrangement that formed the relevant series.

161 As was pointed out during the course of argument, there is much to be said for the view that where the relevant credit contract comprises a series or combination of contracts or contracts and arrangements which have closely connected parties, it matters not that each of those contracts or arrangements must involve the ultimate credit provider so long as, at the end of the day, it can be said that that credit provider is a party to the credit contract.

162 It is apparent that one mischief to which the extended definition of “contract” was directed was the necessity to avoid a situation where the requirements of the Code could be avoided by having a last minute switch of credit provider or lender. In other words, the legislature could not have intended that the provisions of the Code could be rendered inapplicable in circumstances where a credit contract had been entered into between a borrower and Lender A without first obtaining a s 11(2) declaration but then the identity of the credit provider or lender was changed to one which although related to Lender A, was a different legal entity and before the change, a s 11(2) declaration was obtained.

1. I accept that this reasoning has equal application to the Code but it does not follow from this that the ASIC must succeed. In *Bahadori* there was no separate contract with a service provider such as those here with Teleloans and no question as to whether those separate contracts for services formed part of a series of contracts under which credit was provided. *Walker* was said by the ASIC to supply an answer as to why that was a distinction without a difference.
2. *Walker*, too, was decided against the background of a controversy as to the jurisdiction of the Consumer, Trader and Tenancy Tribunal. To give context to the passages in the judgment of Hall J upon which the ASIC relied by analogy in the present case, it is necessary to set out the summary of the background facts offered by His Honour (at [1] to [13]):

1 On 24 July 2005, the plaintiff purchased a second hand Toyota Landcruiser motor vehicle, (the Landcruiser) from the third defendant, previously known as Motor Finance Wizard (Sydney Sales) Pty Ltd (MFW) pursuant to a contract for sale (Sale Contract). The price for the Landcruiser pursuant to the Sale Contract was $25,990 (the Sale Price).

2 At the time of purchasing the Landcruiser, the plaintiff also purchased from MFW a motor vehicle mechanical parts and labour warranty for $1,295.

3 The total price for the Landcruiser and the warranty was $27,285.

4 The plaintiff paid a deposit of $3,000 and was allowed $4,000 by way of trade in for her Mitsubishi Pajero. Under the Sale Contract the balance payable by her to MFW was $20,285.

5 Contemporaneously, the plaintiff entered into a loan agreement with the second defendant, Kwik Finance (Sydney) Pty Ltd (Kwik) (Loan Contract). Under the Loan Contract, the plaintiff agreed to borrow and Kwik agreed to lend the sum of $20,285. The plaintiff's obligations under the Loan Contract were secured by a Bill of Sale over the Landcruiser also entered into by the plaintiff contemporaneously with the Loan Contract (Bill of Sale).

6 The Loan Contract was dated 25 July 2005 and provided for the loan amount to be repaid in 144 weekly instalments of $140 per week plus one payment of $125 without any provision for interest. The aggregate amount of repayments required under the Loan Contract equalled the principal sum of $20,285 that was lent. The “Total Interest Charges” in the Loan Contract were expressed to be nil.

7 MFW and Kwik are both wholly owned subsidiaries of the fourth defendant, PR Finance Group Limited (PRFG).

8 PRFG is a public company which provides finance to customers for the purchase of second-hand motor vehicles provided by entities within the PRFG group which includes MFW and Kwik. MFW operates motor vehicle dealerships and Kwik is the entity that "provides finance".

9 PRFG sources funds to be utilised in the entities. It makes those funds in turn available to MFW.

10 Although Kwik's accounts in relation to MFW sales indicate that it provides loans to customers, there was no physical movement of cash upon the completion of a sale to a consumer. All transactions are general journal entries only: ....

11 After a dispute arose between the plaintiff and Kwik in 2007/2008 as to the obligations of the plaintiff under the Loan Contract, the plaintiff commenced proceedings in the Commercial Division of the Consumer, Trader and Tenancy Tribunal (the Tribunal) on 1 December 2008 against Kwik and MFW and subsequently PRFG seeking relief under ss 70 and 71 of the *Consumer Credit (New South Wales) Code 1995* (the Code) and alleging breaches of s 15 of the Code, in particular ss 15(B) and 15(G).

12 On 20 August 2009, Kwik filed an application seeking that the Tribunal dismiss the plaintiff's claim on the basis that the Tribunal had no jurisdiction to hear and determine the claim. The basis of the challenge was that the Code did not apply because no charge was made for the provision of credit provided to the plaintiff within the meaning of s 6(1)(c) of the Code. …

13 On 9 November 2011, the Tribunal dismissed the plaintiff's application on the basis that there was no charge that was or may be made for the provision of credit to the plaintiff pursuant to s 6(1)(c) of the Code.

1. Against this background, Hall J came to conclude, on the basis of his interpretation of the meaning of the NSW Code and its application to the facts just related, that the NSW Code was applicable and that the Tribunal had jurisdiction. The following passage (at [188] to [190]) discloses the basis for this conclusion:

188 Section 6(1)(c) could have readily been expressed by the legislature in terms of a charge made under a credit contract. However, it was drafted in broader terms "a charge is or may be made for providing the credit" without referring to whether a charge is one that is imposed under a credit contract by the relevant credit provider or a charge otherwise arising and imposed by a third person.

189 Having regard to the use of the phrases in s 4(1), 4(2) "under a contract" and “under the contract”, similar wording could be expected to have been employed in s 6(1)(c) if the legislature's intention had been to confine it to a charge imposed by a credit provider but by no one else.

190 I accordingly consider that the construction contended for on behalf of the plaintiff that gives meaning to the phrase in s 6(1)(c) "for providing" as denoting a causal connection, is the correct one. In that way it applies to a charge imposed by the credit provider or a third party and avoids reading the provision as subject to unexpressed limitations. It also is a construction that gives the Code a suitably broad operation consistent with the legislative purpose of the Code itself.

1. The language of s 6(1)(c) of the NSW Code was, as the ASIC correctly submitted, not materially distinguishable from that used in s 5(1)(c) of the Code and neither is the context in which that language is used.
2. Also stressed by the ASIC was [154] of *Walker* in which Hall J referred to particular features of the contracts and parties to contracts in that case relied upon by the plaintiff, which proved to be persuasive in his concluding, having regard to his preferred construction of s 6(1)(c) of the NSW Code, that it was applicable in that case:

154 On these premises, the plaintiff's contention was that the Sale Contract, the Loan Contract and the “Deal Fee Arrangement” together formed a “series” or a “combination” of contracts and/or arrangements for the purpose of the extended definition of “contract” in the Code. The “connecting features” were identified as follows:

(i) MFW and Kwik are “closely connected” each being wholly owned subsidiaries of PRFG.

(ii) The Sale Contract and the Loan Contract were entered into contemporaneously.

(iii) The sale pursuant to the Sale Contract was a "deal" for the purpose of the Deal Fee Arrangement, enlivening the entitlement of Kwik to the payment by MFW of $1,000. The basis for such a conclusion was put that if the plaintiff had not entered into a sale contract with MFW, then the annual fee paid by MFW to Kwik for the 2006 year, pursuant to the Deal Fee Arrangement, would have been $1,000 less that is $684,000 not $685,000.

1. So in *Walker*, as in the present the ASIC submitted, here, too, the contracts were contemporaneous and inter-connected. Further, FLD had but one officer and employee, its managing director. The two companies shared premises. Effectively, so the submission went, the only link between FLD and its customers was via Teleloans. Teleloans was the “gateway” to FLD. The two companies had a symbiotic relationship.
2. In these circumstances, the ASIC drew attention to the presence of the word, “arrangement” in the definition of “contract” and to observations made in *Walker* at [195] to [197] and, in turn, in *Newton v Federal Commissioner of Taxation* (1958) 98 CLR 1 about the embrace of that word:

195 The term “arrangement” has been employed in legislation of varying kinds in a way that broadens the reach of the legislation beyond legally enforceable contracts.

196 In *Newton v Federal Commissioner of Taxation* (1958) 98 CLR 1 the Privy Council considered transactions involving the distribution of profits to shareholders by three private companies which dealt in motor vehicles. The issue was whether the sums declared by the companies as special dividends were assessable income of the appellants. Section 260 of the *Income Tax and Social Securities Contribution Assessment Act 1936-1950* (Cth) which rendered void against the Commissioner “every contract, agreement or arrangement” that had the effect, inter alia, of altering the incidence of income tax. The Privy Council observed:

“Their Lordships are of opinion that the word ‘arrangement’ is apt to describe something less than a binding contract or agreement, something in the nature of an understanding between two or more persons - a plan arranged between them which may not be enforceable at law. But it must in this section comprehend, not only the initial plan, but also the transactions by which it is carried into effect.” (At 7)

197 Consistent with the approach taken in that case, in determining the existence of an “arrangement” in the definition of “contract” in the Code, it is necessary to look at the conduct or the overt acts of the defendants for the purpose of identifying whether any such “arrangement” existed and, if there was, its nature and purpose and how it was devised and/or implemented.

1. Also stressed by the ASIC was the further observation of Hall J in *Walker*, at [199]:

199 The extended definition of “contract” serves the purpose, as Tobias JA stated in *Bahadori* at [162] of responding to a situation where the requirements of the Code can be avoided by strategies or devices. A sale contract that includes but conceals an allowance for or a charge offsetting the cost of credit provided under an associated loan contract entered into by a related party would, of course, directly undermine the key legislative purpose, inter alia, of protecting consumers or recipients of credit.

1. Taking into account these observations about the embrace of the word “arrangement”, the ASIC submitted that the “reality of the situation” was that an “arrangement” existed between FLD and Teleloans and the amounts payable to them were each charges for the provision of credit.
2. The essence of the riposte made to this on behalf of the respondent companies was pithily put on their behalf thus, “The Code is not directed to helpers. Teleloans is nothing more than a ‘helper’, the provider of a service and an agent of the borrower at that.”
3. The respondent companies pointed to the statement made by Gleeson CJ, Gummow, Hayne and Crennan JJ in *Australian Finance Direct Ltd v Director of Consumer Affairs Victoria* (2007) 234 CLR 96 at [21] (*Australian Finance Direct*) as to the task of a court in a case like the present (that case concerned a predecessor scheme as found in the *Consumer Credit (Victoria) Code*):

21 Maxwell P gave weight to an argument of economic equivalence. The holdback, he said, was equivalent to a payment to AFD at the direction of the seminar provider. It was the same as if the whole amount (eg $15,340) was payable to NII or Capital, and received by NII or Capital, and then the amount of the holdback was then paid to AFD. Three comments may be made. **First, the task is to apply the terms of s 15(B) to this case, and not to consider how they would apply to a different case**. Secondly, although it is unnecessary to decide the question, it is far from clear that AFD would be in a better position had it contracted, with NII or Capital, for a payment to AFD, rather than a holdback. Thirdly, Kaye J mentioned in his reasons that NII is in liquidation and that an administrator and receiver was appointed to Capital. The possibility of insolvency dictates the form of many commercial transactions, and for good reason. The risk that NII or Capital might become insolvent may explain why the holdback method was preferred to a different method of securing the intended commercial objective. At least it would highlight the danger of assuming the equivalence postulated.

[Emphasis added]

Within the passage quoted, the emphasised sentence assumed particular importance in the respondent companies’ submissions. Their submission was that the contracts between Teleloans and those who came to borrow amounts from FLD were not contracts under which credit was provided. Teleloans provided a service, not credit.

1. Other distinguishing features from authorities relied upon by the ASIC which the respondent companies submitted were present were these. In *Bahadori* there were two credit contracts; here there is but one in each case, that with FLD. Further, and again in contradistinction to *Bahadori*, the fee payable under the contract with Teleloans has no direct relationship with the amount loaned. Neither was there any direct relationship at the time of the contracts between Teleloans and FLD nor was there anything payable, directly to FLD from the fee for Teleloans services. The latter were also said to be features which distinguished the present case from *Walker*.
2. An issue of particular relevance only to Ms Wait’s case was whether, as the ASIC alleged, she was a party to a “short term credit contract”. That term is defined by s 5 of the Act as follows:

***short-term credit contract***: a credit contract is a ***short-term credit contract*** if:

(a) the contract is not a continuing credit contract; and

(b) the credit provider under the contract is not an ADI; and

(c) the credit limit of the contract is $2,000 (or such other amount as is prescribed by the regulations) or less; and

(d) the term of the contract is 15 days or less; and

(e) the contract meets any other requirements prescribed by the regulations.

1. Neither her contract with Teleloans nor that with FLD, either alone or in conjunction, were said by the respondents to be “short term credit contracts”. As to her contract with FLD, it was submitted this was because the contract fell within the exemption found within s 6(1)(b) of the Code in that “the maximum amount of credit fees and charges that may be imposed or provided for does not exceed 5% of the amount of credit”. As to her contract with Teleloans, the point made was the same as that generally made for the respondents, ie that the contract was not a credit contract at all. It was further likewise put that there was no “arrangement” which enabled any aggregation. Thus, neither s 124A nor s 133CA were said to be applicable. A like rationale attended the respondent companies’ submission as to why there was no “small amount credit contract” in terms of s 31A of the Code to which Ms Meek, Mr Donohue, Mr Law-Foon or Mr Gurkan was a party.
2. As to the movements of funds between Teleloans and FLD, it was submitted for the respondents that these had nothing to do with particular loans. Rather, as was an agreed fact, they were consultation and business advice fees. That investments in FLD could be seen to have either a direct or indirect connection with Darylyn Harrison, the mother of Teleloans’ director, Mr Brenton Harrison was, the respondent companies submitted, nothing to the point.
3. In my view, the various submissions made on behalf of the respondent companies should be accepted.
4. The case made for the ASIC is, in my view, but a variant of the economic equivalence approach rejected by the High Court in *Australian Finance Direct*. What was stressed in the joint judgment in that case was the need to apply the terms of the statute. That application is not, in my view, advanced by resort to descriptive slogans such as “truth in lending” (repeatedly employed in the Explanatory Memorandum). Of course it may be said at a general level of abstraction that an objective of the Act and the Code is to ensure that certain classes of borrower know in full the charges they face for borrowing. But the means employed to achieve that objective are the terms of the Act and the Code. Instead, the approach favoured in *Australian Finance Direct* is akin to that favoured in revenue law by the Judicial Committee of the Privy Council in *Europa Oil NZ Ltd v Inland Revenue Commissioners* [1976] 1 WLR 464 (*Europa No 2*), an approach later described by Barwick CJ, who had been a member of the Board in *Europa No 2*, as “fundamental” in that area of the law: *Slutzkin v Federal Commissioner of Taxation* (1977) 140 CLR 314 at 321 (*Slutzkin*).
5. Later, in *Federal Commissioner of Taxation v Gulland* (1985) 160 CLR 55 at 66, Gibbs CJ cited *Slutzkin* as one case in a line of decisions which illustrated that, if the income tax legislation offered to the taxpayer “a choice of alternative tax consequences, either of which he is free to choose, or offers certain tax benefits to taxpayers who adopt a particular course of conduct, the choice of the advantageous alternative or the adoption of the beneficial course does not mean that s 260 [the then general anti-avoidance provision in the income tax legislation] is attracted”. In my view, it must follow from the High Court’s rejection in *Australian Finance Direct* of reasoning based on economic equivalence that it is nothing to the point that the respondent companies (or those who controlled them) might have adopted a different model which could, on analysis, be seen to have yielded the same economic gains as the present but which was a model to which, as a matter of ordinary language, the Act and the Code applied. Put another way, neither the Act nor the Code prevents the making of choices. And some of those choices may, as a matter of ordinary language, fall outside the reach of the Act and the Code.
6. It may possibly, even probably, be that the level of credit charges made by FLD, its minimal staffing and its overall business model are, from a practical, business point of view, inexplicable unless one takes into account the separate income streams FLD derives from Teleloans. It was not though part of the case advanced by the ASIC that any foundation of those income streams was a sham. Neither did the ASIC submit that there ought to be developed a “doctrine of consumer credit nullity”, akin to the doctrine of fiscal nullity which developed in revenue law in the United Kingdom, after *Europa No 2*, in *WT Ramsay v Inland Revenue Commissioners* [1981] 2 WLR 449 at 456; *Furniss v Dawson* [1984] AC 474 and *MacNiven v Westmorland Investments Ltd* [2003] 1 AC 311.
7. In any event, a difficulty with any such development would be that, even though there is no general anti-avoidance provision in either the Act or the Code, s 6(2) of the Code contains some particular anti-avoidance measures. The presence of these would make it difficult to conclude that some more general doctrine ought to be imported. It is to be remembered, too, that the Act and the Code were enacted after *Australian Finance Direct* and *Bahadori*. Had Parliament wished further to extend the definition of “contract” or the anti-avoidance measures found in earlier State consumer credit models so as to extend to “helpers”, it could have done so.
8. As it happens, s 6(2) of the Code does not apply to the circumstances of the present case.
9. “Arrangement” is a word of such generality that it is apt to capture the relationship between Teleloans and FLD. But the position which obtains remains that credit is provided only under the contract with FLD. There is no credit provided under the contract with Teleloans. The charges made under that contract are a fee for services provided by Teleloans to the would be borrower. Those charges have no direct relationship with the loan which comes to be made by FLD under its separate contract with the borrower. In these circumstances, the Code is not applicable.
10. In light of this conclusion, it is unnecessary to consider the form of the declaratory and injunctive relief sought by the ASIC. For it is not entitled to any relief. Instead, an observation made by Pincus J in *Gauntlett v Repatriation Commission* (1991) 32 FCR 73 at 77 when a judge of this Court is applicable by analogy:

[T]his is not the first time in which the respondent Commission has implied in argument that provisions of this sort could not possibly have been intended to produce such anomalies as, literally read, seem to follow from them; but it is the constitutional function of Parliament, and not that of the judges, to correct any anomalies thought to arise from applying the plain language of legislation.

1. The application must be dismissed. The parties agreed between themselves that there should be no order as to costs.

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| I certify that the preceding forty-six (46) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Logan. |

Associate:

Dated: 30 June 2015

# ANNEXURE

# STATEMENT OF AGREED FACTS

# PARTIES AND CUSTOMERS

# ASIC

1. The Australian Securities and Investments Commission (ASIC) is and was at all material times a body corporate established by section 7 of the *Australian Securities & Investments Commission Act 1989* (Cth). ASIC may sue and be sued in its corporate name under section 8 of the *Australian Securities & Investments Commission Act 2001* (Cth).

### Teleloans

1. At all material times, Teleloans Pty Ltd (ACN 112 366 015) (Teleloans):
	1. had one director, Mr Brenton Harrison;
	2. had one shareholder, Mr Rade Nenadic;
	3. had between 25 and 30 employees, including call centre operators, administration staff, book keepers and management;
	4. held an Australian credit licence (a Licence);
	5. could sue in its corporate name;
	6. was not an authorised deposit taking institution as defined by sections 5 and 9(3) of the *Banking Act 1959* (Cth);
	7. owned and operated the website with domain name www.teleloans.com.au (the Teleloans Website);
	8. carried on business from its offices located at Suite 3, 66 Appel Street, Surfers Paradise in the State of Queensland; and
	9. had its registered office at May Huang & Co, ‘Parkrise’ Unit 15 Level 4, 3 Alison Street, Surfers Paradise in the State of Queensland.

### FLD

1. At all material times, Finance and Loans Direct Pty Ltd (ACN 125 776 696) (FLD):

a. had one director, Mr Ryan Swanepoel;

b. had two shareholders, JKRMJ Pty Ltd and Mr Stuart Carey;

c. had one employee who is also the managing director;

d. held a Licence;

e. could sue in its corporate name;

f. was not an authorised deposit taking institution as defined by sections 5 and 9(3) of the *Banking Act 1959* (Cth).

g. carried on business from a separate office at Suite 3, 66 Appel Street, Surfers Paradise in the State of Queensland, which it subleased from Teleloans according to a Sub-Lease Agreement it entered into with Teleloans on 11 April 2011 (the Sub-Lease Agreement);

h. had two invoices issued to it by Teleloans dated 1 August 2012 and 1 July 2013 which operate as written demands under the Sub-Lease Agreement (the Teleloans Invoice dated 1 August 2012 and the Teleloans Invoice dated 1 July 2013);

i. notwithstanding the terms of the Sub-Lease Agreement, paid no GST under the Teleloans Invoice dated 1 August 2012 and the Teleloans Invoice dated 1 July 2013 in addition to the rental amount;

j. paid the Teleloans Invoice dated 1 August 2012 and the Teleloans Invoice dated 1 July 2013 by way of a contra journal entry as follows:

* + 1. the Teleloans Invoice dated 1 August 2012 was paid as a contra entry in respect of an invoice issued by FLD to Teleloans dated 5 September 2012 (the FLD Invoice dated 5 September 2012); and
		2. the Teleloans Invoice dated 1 July 2013 was paid as a contra entry in respect of an invoice issued by FLD to Teleloans dated 3 July 2013 (the FLD Invoice dated 3 July 2013). An amount of $1,900 in respect of these invoices was paid by Teleloans on 3 July 2013; and

k. had its registered office at May Huang & Co, ‘Parkrise’ Unit 15 Level 4, 3 Alison Street, Surfers Paradise in the State of Queensland.

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| *A copy of the Sub-Lease Agreement is Attachment A to this Statement of Agreed Facts**A copy of the Teleloans Invoice dated 1 August 2012 is Attachment B to this Statement of Agreed Facts**A copy of the Teleloans Invoice dated 1 July 2013 is Attachment C to this Statement of Agreed Facts**A copy of FLD Invoice dated 5 September 2012 is Attachment D to this Statement of Agreed Facts**A copy of the FLD Invoice dated 3 July 2013 is Attachment E to this Statement of Agreed Facts* |

### Ms Wait

1. Ms Linda Wait (Ms Wait) was a Teleloans customer and a FLD customer from, at least, 14 August 2013, and at all material times:

a. was a natural person;

b. held a bank account in her name bearing BSB 015 456 and account number 262 449 107, with the Australia and New Zealand Banking Group (ANZ), which is an authorised deposit taking institution (ADI) (the Wait Bank Account); and

c. maintained the Wait Bank Account as her usual bank account.

### Ms Meek

1. Ms Lucy Jane Meek (Ms Meek) was a Teleloans customer and a FLD customer from, at least, 14 August 2013, and at all material times:

a. was a natural person;

b. held a bank account in her name bearing BSB 013 835 and account number 208 641 245 with ANZ (the Meek Bank Account); and

c. maintained the Meek Bank Account as her usual bank account.

1. Prior to 14 August 2013, Ms Meek had used Teleloans’ services.

### Mr Donohue

1. Mr Gary John Donohue (Mr Donohue) was a Teleloans customer and a FLD customer from, at least, 14 August 2013, and at all material times:

a. was a natural person;

b. held a bank account in his name bearing BSB 086 461 and account number 169 417 340 with the National Australia Bank, which is an ADI (the Donohue Bank Account); and

c. maintained the Donohue Bank Account as his usual bank account.

1. Prior to 14 August 2013, Mr Donohue had used Teleloans’ services.

### Mr Law-Foon

1. Mr Law Van Siong (Fabrice) Law-Foon (Mr Law-Foon) was a Teleloans customer and a FLD customer from, at least, 14 August 2013, and at all material times:

a. was a natural person;

b. held a bank account in his name bearing BSB 063 595 and account number 103 999 64 with the Commonwealth Bank of Australia, which is an ADI (the Law-Foon Bank Account); and

c. maintained the Law-Foon Bank Account as his usual bank account.

1. Prior to 14 August 2013, Mr Law-Foon had used Teleloans’ services.

### Mr Gurkan

1. Mr Burak Gurkan (Mr Gurkan) was a Teleloans customer and a FLD customer from, at least, 14 August 2013, and at all material times:

a. was a natural person;

b. held a bank account in his name bearing BSB 193 879 and account number 431 188 922 with the Macquarie Bank, which is an ADI (the Gurkan Bank Account); and

c. maintained the Gurkan Bank Account as his usual bank account.

# THE TELELOANS BUSINESS

1. At all material times, Teleloans carried on the business of:

a. assisting its customers with the completion of loan applications for financing with FLD;

b. verifying its customers’ information in accordance with processes that were satisfactory to FLD and Teleloans as demonstrated in:

i. a script (Teleloans Script) which is read out to new Teleloans customers by a Teleloans staff member during a recorded telephone call;

ii. the FLD application for credit form (FLD Application); and

iii. a document titled “Credit Procedure – Loan Amounts” (Credit Procedure Document).

c. assessing its customers’ eligibility for short term personal loans against lending criteria that were satisfactory to FLD and Teleloans as demonstrated in the Teleloans Script, the FLD Application and the Credit Procedure Document;

d. recommending qualified customers to FLD for financing;

e. facilitating its customers’ acceptance of FLD’s offer to advance the loan amount;

f. quickly obtaining approved loan amounts from FLD;

g. arranging for the expeditious deposit of approved loan amounts into its customers’ bank accounts on the same or next day;

h. maintaining accounts and records with respect to its customers;

i. arranging for collection of payments of amounts owing by its customers to FLD; and

j. responding to customers’ inquiries and requests.

(Teleloans Services).

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| *A copy of the Teleloans Script is Attachment F to this Statement of Agreed Facts.**A copy of the FLD Application is Attachment G to this Statement of Agreed Facts.**A copy of the Credit Procedure Document is Attachment H to this Statement of Agreed Facts.* |

1. In the course of the Teleloans business, Teleloans:

a. markets the Teleloans Services for the purpose of sourcing new customers;

b. maintains the Teleloans Website;

c. guarantees to FLD the Teleloans customer’s obligation to repay the amounts advanced by FLD to the customer under a loan agreement between the customer and FLD;

d. refers, at no charge to either the consumer or FLD, those consumers who choose to deal directly with FLD, rather than pay for the services offered to consumers by Teleloans.

1. Teleloans does not pay to FLD, and nor does it receive from FLD, any referral fees or commissions relating to the provision of credit to consumers.
2. Teleloans charges its customers for the Teleloans Services and is paid by its customers for those services under the terms of an agreement that the customer enters into directly with Teleloans (Services Agreement). The Teleloans Services are provided, and the charges under the Services Agreement are imposed, only if the customer obtains a loan from FLD.
3. At all relevant times, Teleloans only provided its services to Teleloans customers who were customers of FLD.
4. The terms of the Services Agreement are contained in:

a. either:

i. the Teleloans Script; or

ii. a script (Returning Teleloans Customer Script), which is read to former customers of Teleloans who contact Teleloans again seeking the same services; and

b. disclosures contained in the Disclosures and Authorisations on the Teleloans Website (Disclosures and Authorisations).

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| *A copy of the Returning Teleloans Customer Script is Attachment I to this Statement of Agreed Facts.**A copy of the Disclosures and Authorisation is Attachment J to this Statement of Agreed Facts.* |

1. Among other things, the Services Agreement allows Teleloans to charge its customers:

a. a Financial Supply Fee;

b. an Account Keeping Fee;

c. other fees relating to optional services (if selected by the customer); and

d. charges relating to collections and default (if applicable).

# THE FLD BUSINESS

1. At all material times, FLD:

a. carried on the business of providing various forms of credit;

b. entered into loan agreements with consumers for personal loans with a period of less than 62 days at a fixed rate of 5% of the loan amount, inclusive of all interest, fees and charges (the Loan Agreement);

c. the Loan Agreements involved the provision of credit wholly or predominantly for personal, domestic or household purposes, relating to an emergency such as an unexpected expense;

d. did not charge consumers anything above the fixed rate of 5% of the loan amount for any service, including any service related to the provision of credit;

e. did not engage in any marketing activities for short term consumer loans; and

f. did not pay to Teleloans or receive from Teleloans any referral fees, finder’s fees, commissions or any other bonuses or amounts related to the referral of customers from Teleloans to FLD.

1. The terms of the Loan Agreement are in:

a. the Teleloans Script or Returning Teleloans Customer Script; and

b. the Disclosures and Authorisations.

1. No fees or charges are imposed under the Loan Agreement, except for the fixed rate of 5% of the loan amount advanced under the Loan Agreement (the FLD Charge).
2. FLD does not refer consumers to Teleloans.

# FLD AND TELELOANS BACKGROUND

1. On 4 June 2007, FLD was registered as an Australian company. Mr Ryan Swanepoel was the sole director and shareholder.
2. From July 2007, FLD started the business of providing consumers with small emergency cash loans. Initially, there were less than ten loans per week.
3. During 2007, but after FLD had commenced trading, Mr John Swanepoel, on behalf of his son, Mr Ryan Swanepoel, approached various people for investment funds to grow the FLD business. Among those who Mr John Swanepoel approached was Mr Stuart Carey. Mr Carey agreed to invest in FLD.
4. On or about 30 August 2008, Mr Ryan Swanepoel and Mr Carey each invested $10,000 into FLD. Since that initial investment, the following investments in FLD have also been made:

a. On or about 19 January 2009, Mr Carey’s brother, Mr. Graham Carey invested into FLD;

b. From 14 May 2009 to 12 October 2009, Mr Carey made twelve additional investments totaling just over $57,000;

c. From about 12 February 2010 to 25 June 2012, SPCSF Pty Ltd (Mr Carey’s self-managed super fund) invested in FLD amounts totaling $252,000;

d. On or about 13 December 2010, Mr and Mrs Mackay invested into FLD.

1. FLD made payments to its investors in accordance with the agreed rate of return on capital agreed to with each investor.
2. FLD made payments to its investor, SPCSF Pty Ltd at its agreed rate of 18% p.a. paid fortnightly.
3. From about July 2007 FLD provided small loans to consumers of between $50 and $250, which were arranged through a separate entity, referred to as ‘Tele Loan'. During this time, the cost of the loan varied depending on the loan amount and the number of repayments. The average cost was a “Transfer Service Fee” of approximately 30% of the loan amount, which was paid to Tele Loan, and an interest rate of 48% per annum, which was paid to FLD.
4. The registered business name 'Tele Loan' (QLD BN 20937404) was registered to Mr Ryan Swanepoel on 3 October 2008 and ceased on 6 February 2010.
5. The documentation that was used at this time by FLD and Tele Loan was developed in consultation with Mr John Swanepoel. These documents included Tele Loan call scripts, Enquiry Forms, internal checklists and FLD Loan Contracts.
6. Around March 2010, a decision was made to incorporate Teleloans. Instead of creating a new company, the name of a company controlled by Mr Stuart Carey, Trans Tasman Car Hire (NSW) Pty Ltd, was changed to Teleloans Pty Ltd on 26 March 2010. Mr Carey remained the director and sole shareholder of Teleloans.
7. Between 12 April 2010 and 22 July 2010, Mr Ryan Swanepoel became the director and sole shareholder of Teleloans and Mr Carey became the director and sole shareholder of FLD.
8. On 22 July 2010, Mr Ryan Swanepoel was reinstated as the director and sole shareholder of FLD.
9. Mr Carey was reinstated as the director and sole shareholder of Teleloans from 22 July 2010 until 5 June 2012, when Mr Brenton Harrison was appointed as director.
10. The directorships were initially changed in order to address Mr Carey’s desire for additional control over the entity that contained his investments. The original directorships were reinstated a short time later after a view was taken that the initial directorships were preferable.
11. On 9 April 2013, Mr Carey sold and transferred all of his shares in Teleloans to Rade Nenandic.
12. On 9 April 2013, Ryan Swanepoel sold and transferred his shares in FLD equally to Mr Carey and JKRMJ Pty Ltd. Karen Swanepoel is the sole director and shareholder of JKRMJ Pty Ltd. Karen Swanepoel is Ryan Swanepoel's mother.
13. From May 2010, Teleloans and FLD worked from the premises at Suite 14, 3 Alison Street, Surfers Paradise (the Alison Street Premises).
14. In May 2011, Teleloans and FLD both moved to the Appel Street Premises.
15. FLD did not maintain an office phone number at either the Alison Street Premises or the Appel Street Premises.

# THE LOAN SERVICES MANAGEMENT AGREEMENT

1. FLD entered into a Loan Services Management Agreement with Teleloans on or about 1 July 2010.
2. Under the Loan Services Management Agreement, Teleloans guaranteed to FLD a Teleloans customer’s repayment to FLD of the principal amount advanced and the FLD Charge owed by that Teleloans customer to FLD under the relevant Loan Agreement.

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| *A copy of the Loan Services Management Agreement is Attachment K to this Statement of Agreed Facts*. |

# THE LOAN APPLICATION PROCESS

### The Teleloans Website

1. Teleloans assists its customers to apply for a loan through the Teleloans Website and over the telephone.
2. When a potential customer accesses the Teleloans Website, the website darkens and a pop-up box appears. The box contains text that reads as follows:

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| Do you really need a loan today? |
| It can be expensive to borrow small amounts of money and borrowing may not solve your money problems. |
| Check your options before you borrow:* For information about other options for managing bills and debts, ring 1800 007 007 from anywhere in Australia to talk to a free and independent financial counselor
* Talk to your electricity, gas, phone or water provider to see if you can work out a payment plan
* If you are on government benefits, ask if you can receive an advance from Centrelink: Phone: 13 17 94

The Government’s Moneysmart website shows you how small amount loans work and suggests other options that may help you. |

1. The potential customer can only remove the pop-up box (and use the Teleloans Website) by clicking on the ‘x’ that appears at the top right of the pop-up box.

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| A copy of the screenshot of the Teleloans Website with the pop-up box open is Attachment L to this Statement of Agreed Facts.A copy of the Teleloans Website landing page is Attachment M to this Statement of Agreed Facts. |

1. When the pop-up box is removed, the Teleloans Website discloses the eligibility criteria (the Eligibility Criteria) for a personal loan as follows:

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| **Emergency Cash up to $300**Your credit history is **history**You only need one of the following to qualify:* Current job
* A home phone number in your name
* A mobile phone on a plan
* A guarantor who qualified with one of the above
 |

1. For those potential customers who want to apply for a loan, the Teleloans Website provides:

a. telephone numbers for speaking with Teleloans staff;

b. an online chat facility;

c. a call back facility; and

d. an online personal loan application form.

### The Options Offered to Potential Customers

1. The Teleloans Website discloses to potential customers two options with respect to applying for a loan:

a. According to ‘OPTION ONE’ the potential customer may “Deal directly with the finance company and pay only 5% for the loan.”

b. According to ‘OPTION TWO’ the potential customer may “Deal with Teleloans.”

1. Under each of those options, the Teleloans Website identifies the relevant finance company as FLD.

### The Disclosures and Authorisation

1. The Teleloans Website contains Disclosures and Authorisations. See Attachment J.
2. The Disclosures and Authorisations provide:

a. a summary of the services offered by Teleloans;

b. a disclosure concerning the Services Agreement with Teleloans;

c. a disclosure concerning the Loan Agreement with FLD;

d. authorisations and consents under the *Privacy Act 1988* (Cth) and *Electronic Transactions Act 1999* (Cth);

e. direct debit authority terms and conditions; and

f. a warning concerning the expense of short term loans.

### The Teleloans Script

1. When a Teleloans staff member first speaks with a potential new customer, the staff member follows the Teleloans Script. See Attachment F.
2. In accordance with the Teleloans Script, there is a short greeting, and the potential customer is asked to confirm that he or she has “read and understood the Disclosures and Authorisations on our website”. If the potential customer has previously submitted an online personal loan application form, the online form also required the applicant to electronically confirm that he or she had read the Disclosures and Authorisations.
3. Under the Teleloans Script, the Teleloans staff member continues the call only when the applicant confirms that he or she has read and understood the Disclosures and Authorisations.
4. If the potential customer confirms that he or she has read and understood the Disclosures and Authorisations, the Teleloans staff member reminds the applicant of the choice to deal directly with FLD (“Option One”) or to deal with Teleloans at an additional cost (“Option Two”).

### Option One

1. If the potential customer chooses Option One, then:

a. Teleloans refers the applicant to FLD and Teleloans takes no further part in the process;

b. the applicant is advised by FLD that he or she must satisfy FLD that the applicant meets the Eligibility Criteria by sending by email, mail, or fax, all of the following documents witnessed by a Justice of the Peace or Commissioner of Declarations:

i. a copy of 100 points of ID;

ii. a copy of the applicant’s most recent monthly bank statement;

iii. a bill with the applicant’s name and current address; and

iv. three most recent pay slips or the most recent telephone bill.

c. upon approval, the applicant enters into a Loan Agreement;

d. FLD sends a cheque by mail to the applicant for the loan amount; and

e. Teleloans does not receive any fees, commissions or other charges from either the customer or FLD.

### Option Two

1. If the applicant chooses Option Two, then:

a. Teleloans obtains from the applicant any information that has not been provided already through use of the online personal loan application form;

b. Teleloans assesses and verifies the applicant’s information in accordance with procedures satisfactory to FLD and Teleloans, and which appear in the Teleloans Script;

c. Teleloans advises the applicant whether Teleloans is prepared to recommend the application to FLD;

d. Teleloans recommends qualified customers to FLD for consideration;

e. Teleloans guarantees the customer’s Loan Agreement obligations, pursuant to the Loan Services Management Agreement;

f. FLD reviews the information submitted by Teleloans and either rejects the application or allows the application to proceed based on whether FLD is satisfied that the Eligibility Criteria has been met;

g. upon approval of the application by FLD, FLD authorises the advance of the loan amount;

h. Teleloans communicates FLD’s approval of the application and the customer enters into a Services Agreement with Teleloans and, then, into a Loan Agreement with FLD; Teleloans obtains a cash cheque from FLD for the total amount of approved funds (a cash cheque is written twice a day and each cheque includes the total amount of approved funds since the writing of the previous cheque);

i. Teleloans cashes the FLD cash cheque at FLD’s bank;

j. Teleloans deposits the cash over the counter at each Teleloans customer’s bank for the amount of the individual customer’s loan amount on the same day that the application is approved, or the following business day; and

k. Teleloans facilitates payment of amounts owing under the Services Agreement and under the Loan Agreement from the customer’s bank account by direct debit using a third party service provider called PeopleHub.

1. FLD provides various forms of credit, directly and through other companies.
2. FLD provides business loans to small businesses for amounts up to $15,000 for cash flow or growth purposes as well as to larger businesses for purposes of on lending.
3. Except in situations where FLD offers loans according to Option One, FLD deals directly with Teleloans when FLD provides loans to persons seeking loans for wholly or predominantly for personal, domestic or household purposes.
4. FLD receives an average of 12 applications per year to provide credit under Option One. However, those applicants generally change to Option Two when they realise that the service provided according to Option One is slower and requires more work from the applicant.
5. Since 1 July 2010, there has been one loan completed and provided by FLD under Option One.
6. Since 1 July 2010, FLD has also provided loans to persons who are not Teleloans customers. Specifically, FLD has provided:

a. 660 loans to persons not seeking loans wholly or predominantly for personal, domestic or household purposes;

b. 501 loans to small businesses;

c. 2 loans to large businesses; and

d. loans to an overseas company.

### Returning Teleloans Customers Who Apply by Telephone

1. A person who has previously used the Teleloans Services (a Returning Customer) may apply for a new loan by telephone. Those applications are processed by a Teleloans staff member in accordance with the following verification and documentation procedure and the document titled "Existing Client Procedure" (Existing Client Document):

a. Teleloans staff member asks the Returning Customer ‘security questions’ to confirm his or her identity;

b. Teleloans staff member confirms that the Returning Customer has read the Disclosures and Authorisations;

c. Teleloans staff member confirms that the Returning Customer wants to use Option Two;

d. Teleloans staff member confirms that the Returning Customer’s personal details remain current;

e. Teleloans staff member confirms that the Returning Customer’s income and expenditure information remains current;

f. Teleloans staff member assesses the Returning Customer’s repayment history;

g. Teleloans staff member reads the Returning Teleloans Customer Script to the Returning Customer and records his or her entering into of a Services Agreement with Teleloans and a Loan Agreement with FLD;

h. Teleloans recommends to FLD those Returning Customers who have been qualified based on Teleloans’ criteria; and

i. Subject to a serious concern being identified by FLD, FLD disburses the loan amount.

(Returning Customer Telephone Procedure).

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| *A copy of the Existing Client Document is Attachment N to this Statement of Agreed Facts.* |

### Returning Teleloans Customers Who Apply Online Via the Teleloans Website

1. A Returning Customer may apply for a new loan through the Teleloans Website. Those applications are processed by a Teleloans staff member in accordance with the following verification and documentation procedures:

a. The Returning Customer fills out an online form that collects the Returning Customer’s personal details and application information;

b. The Teleloans Website automatically generates a Returning Customer Services Agreement and a Returning Customer Loan Agreement;

c. The Returning Customer is required to confirm that he or she has read and agreed to the terms of the Returning Customer Services Agreement and the Returning Customer Loan Agreement before the application can be submitted to Teleloans;

d. Returning Customers who apply online for new loans cannot proceed with the loan application until they have confirmed that they are choosing to deal with Teleloans.

e. Once the Returning Customer’s online application is submitted, a Teleloans staff member:

i. confirms that the Returning Customer’s personal details remain current;

ii. confirms that the Returning Customer’s income and expenditure information remains current;

iii. assesses the Returning Customer’s repayment history;

f. Teleloans recommends to FLD those Returning Customers who have been qualified based on Teleloans’ criteria;

g. Subject to a serious concern being identified by FLD, FLD disburses the loan amount.

(Returning Customer Online Procedure).

1. The application process used for a Returning Customer is otherwise the same as that which applies to new Teleloans Customers.

# MS WAIT

### Agreements with Ms Wait

1. On or about 14 August 2013, Ms Wait visited the Teleloans Website, and then called Teleloans to apply for a loan from FLD.
2. Ms Wait confirmed for the Teleloans staff member that she wanted to use Option Two. Accordingly, the Teleloans staff member assisted Ms Wait with the application process in accordance with the Teleloans Script.
3. Ms Wait stated that the purpose for the proposed loan was to meet an “unexpected bill car rego”.
4. After Teleloans verified Ms Wait’s information, Teleloans recommended the application to FLD, and FLD reviewed and approved the application.
5. On or about 14 August 2013, Ms Wait entered:

a. firstly, into a Services Agreement with Teleloans (the Wait Services Agreement); and

b. secondly, into a Loan Agreement with FLD (the Wait Loan Agreement).

1. The Wait Services Agreement and the Wait Loan Agreement were entered into contemporaneously.

### The Wait Loan Agreement

1. Under the Wait Loan Agreement, Ms Wait agreed with FLD to:

a. borrow the amount of $120.00 (the Wait Loan Amount) from FLD for a term of 14 days;

b. pay FLD the amount of $6.00 (the Wait FLD Charge), being 5% of the Wait Loan Amount; and

c. repay the Wait Loan Amount and pay the Wait FLD Charge in one payment to be direct debited from the Wait Bank Account on or before 28 August 2013.

1. The Wait Loan Agreement contemplated a single advance, and a single charge for that advance.

### The Wait Services Agreement

1. Under the Wait Services Agreement, Ms Wait agreed with Teleloans to:

a. engage Teleloans to provide services to her;

b. pay Teleloans the total amount of $51.90 (the Wait Teleloans Charges), being:

i. $42.00 as a Financial Supply Fee; and

ii. $9.90 as an Account Keeping Fee,

in return for Teleloans providing those services; and

c. pay the Wait Teleloans Charges, the Wait FLD Charge, and to repay the Wait Loan Amount in one repayment to be direct debited from the Wait Bank Account on or before 28 August 2013.

### The Advance of the Wait Loan Amount

1. On or about 15 August 2013, Teleloans caused the Wait Loan Amount to be deposited into the Wait Bank Account.
2. The Wait Loan Amount:

a. was advanced by FLD, in the course of FLD’s business, pursuant to the Wait Loan Agreement; and

b. was deposited by Teleloans within one day of Ms Wait’s application pursuant to the Services Agreement.

1. Teleloans guaranteed Ms Wait’s obligations under the Wait Loan Agreement and Ms Wait did not provide further security for the advance of the Wait Loan Amount.
2. Teleloans verified the matters disclosed by Ms Wait in her application by following the steps set out in the Teleloans Script.
3. Teleloans and FLD did not obtain or consider Ms Wait’s bank statements as part of the verification procedure.

### Repayment of Amounts Owing Under the Wait Loan Agreement and Under the Wait Services Agreement

1. On or about 21 August 2013, Ms Wait caused the amount of $168.00 to be paid to Teleloans via direct debit from the Wait Bank Account (the Wait Repayment).
2. The Wait Repayment:

a. consisted of the following amounts:

i. the Wait Loan Amount (paid under the Wait Loan Agreement);

ii. the Wait FLD Charge (paid under the Wait Loan Agreement); and

iii. the Wait Teleloans Charges (paid under the Wait Services Agreement); and

b. was paid entirely to Teleloans, who then paid to FLD the Wait Loan Amount and Wait FLD Charge.

1. Throughout the above process, Ms Wait did not have any direct contact with FLD.

# MS MEEK

### Agreements with Ms Meek

1. On or about 14 August 2013, Ms Meek visited the Teleloans Website where she completed an online personal loan application for $300.
2. Ms Meek was a Returning Customer.
3. Ms Meek stated in her loan application that the purpose for the proposed loan was to meet a “family emergency”.
4. As a Returning Customer who applied online via the Teleloans Website, the Returning Customer Online Procedure applied to her application.
5. Accordingly, on or about 14 August 2013, Ms Meek entered:

a. firstly, into a Services Agreement with Teleloans (the Meek Services Agreement); and

b. secondly, into a Loan Agreement with FLD (the Meek Loan Agreement).

1. The Meek Services Agreement and the Meek Loan Agreement were entered into contemporaneously.

### The Meek Loan Agreement

1. Pursuant to the Meek Loan Agreement, Ms Meek agreed with FLD to:

a. borrow the amount of $200.00 (the Meek Loan Amount) from FLD for a term of 49 days;

b. pay FLD the amount of $10.00 (the Meek FLD Charge), being 5% of the Meek Loan Amount; and

c. repay the Meek Loan Amount and pay the Meek FLD Charge over four fortnightly payments, to be direct debited from the Meek Bank Account, beginning on 21 August 2013.

1. The Meek Loan Agreement contemplated a single advance, and a single charge for that advance.

### The Meek Services Agreement

1. Pursuant to the Meek Services Agreement, Ms Meek agreed with Teleloans to:

a. engage Teleloans to provide services to her;

b. pay to Teleloans the total amount of $184.65 (the Meek Teleloans Charges), being:

i. $150.00 as a Financial Supply Fee; and

ii. $34.65 as an Account Keeping Fee,

in return for Teleloans providing those services; and

c. pay the Meek Teleloans Charge, the Meek FLD Charge, and to repay the Meek Loan Amount over four fortnightly payments, to be direct debited from the Meek Bank Account, commencing on 21 August 2013.

### The Advance of the Meek Loan Amount

1. On or about 15 August 2013, Teleloans caused the Meek Loan Amount to be deposited into the Meek Bank Account.
2. The Meek Loan Amount:

a. was advanced by FLD, in the course of FLD’s business, pursuant to the Meek Loan Agreement; and

b. was deposited by Teleloans within one day of Ms Meek’s application pursuant to the Meek Services Agreement.

1. Teleloans guaranteed Ms Meek’s obligations under the Meek Loan Agreement and Ms Meek did not provide further security for the advance of the Meek Loan Amount.
2. Teleloans verified the matters disclosed by Ms Meek in her application by following the verification steps set out in the Returning Customer Online Procedure.
3. Teleloans and FLD did not obtain or consider Ms Meek’s bank statements as part of the verification procedure.

### Repayment of Amounts Owing Under the Meek Loan Agreement and Under the Meek Services Agreement

1. On 21 August 2013, Ms Meek caused the amount of $104.00 to be paid to Teleloans via direct debit from the Meek Bank Account. That amount included amounts owing under the Meek Loan Agreement and amounts owing under the Meek Services Agreement.
2. As at 26 August 2013, the amount of $260.95 remained payable by Ms Meek for the remainder of the following:

a. Meek Loan Amount (under the Meek Loan Agreement);

b. Meek FLD Charge (under the Meek Loan Agreement); and

c. Meek Teleloans Charges as accrued (under the Meek Services Agreement).

1. Throughout the above process, Ms Meek did not have any direct contact with FLD.

# MR DONOHUE

### Agreements with Mr Donohue

1. On or about 14 August 2013, Mr Donohue called Teleloans and applied for a loan.
2. Mr Donohue was a Returning Customer.
3. Mr Donohue stated that the purpose for the proposed loan was to meet an “unexpected bill”.
4. As a Returning Customer who applied over the telephone, Teleloans adopted the Returning Customer Telephone Procedure, during which Mr Donohue confirmed that he wanted to use Option Two.
5. On or about 14 August 2013, Mr Donohue entered:

a. firstly, into a Services Agreement with Teleloans (the Donohue Services Agreement); and

b. secondly, into a Loan Agreement with FLD (the Donohue Loan Agreement).

1. The Donohue Services Agreement and the Donohue Loan Agreement were entered into contemporaneously.

### The Donohue Loan Agreement

1. Under the Donohue Loan Agreement, Mr Donohue agreed with FLD to:

a. borrow the amount of $200.00 (the Donohue Loan Amount) from FLD, for a term of 30 days;

b. pay FLD the amount of $10.00 (the Donohue FLD Charge), being 5% of the Donohue Loan Amount; and

c. repay the Donohue Loan Amount and pay the Donohue FLD Charge over two fortnightly payments to be direct debited from the Donohue Bank Account.

1. The Donohue Loan Agreement contemplated a single advance, and a single charge for that advance.

### The Donohue Services Agreement

1. Under the Donohue Services Agreement, Mr Donohue agreed with Teleloans to:

a. engage Teleloans to provide services to him;

b. pay Teleloans the total amount of $109.80 (the Donohue Teleloans Charges), being:

i. $90.00 as a Financial Supply Fee; and

ii. $19.80 as an Account Keeping Fee,

in return for Teleloans providing those services; and

c. pay the Donohue Teleloans Charges, the Donohue FLD Charge, and to repay the Donohue Loan Amount over two fortnightly payments to be direct debited from the Donohue Bank Account.

### The Advance of the Donohue Loan Amount

1. On or about 15 August 2013, Teleloans caused the Donohue Loan Amount to be deposited into the Donohue Bank Account.
2. The Donohue Loan Amount:

a. was advanced by FLD, in the course of FLD’s business, pursuant to the Donohue Loan Agreement; and

b. was deposited by Teleloans within one day of Mr Donohue’s application pursuant to the Services Agreement.

1. Teleloans guaranteed Mr Donohue’s obligations under the Donohue Loan Agreement and Mr Donohue did not provide further security for the advance of the Donohue Loan Amount.
2. Teleloans verified the matters disclosed by Mr Donohue in his application by following the verification steps set out in the Returning Customer Telephone Procedure.
3. Teleloans and FLD did not obtain or consider Mr Donohue’s bank statements as part of the verification procedure.

### Repayment of Amounts Owing Under the Donohue Loan Agreement and Under the Donohue Services Agreement

1. As at 26 August 2013, the amount of $304.95 remained payable by Mr Donohue for the following:

a. the Donohue Loan Amount (under the Donohue Loan Agreement);

b. the Donohue FLD Charge (under the Donohue Loan Agreement); and

c. the Donohue Teleloans Charges as accrued (under the Donohue Services Agreement).

1. Throughout the above process, Mr Donohue did not have any direct contact with FLD.

# MR LAW-FOON

### Agreements with Mr Law-Foon

1. On or about 14 August 2013, Mr Law-Foon called Teleloans and applied for a loan.
2. Mr Law-Foon was a Returning Customer.
3. Mr Law-Foon stated that the purpose for the proposed loan was to meet an “unexpected bill”.
4. As a Returning Customer who applied over the telephone, Teleloans adopted the Returning Customer Telephone Procedure, during which Mr Law-Foon confirmed for the Teleloans staff member that he wanted to use Option Two.
5. On or about 14 August 2013, Mr Law-Foon entered:

a. firstly, into a Services Agreement with Teleloans (the Law-Foon Services Agreement); and

b. secondly, into a Loan Agreement with FLD (the Law-Foon Loan Agreement).

1. The Law-Foon Services Agreement and the Law-Foon Loan Agreement were entered into contemporaneously.

### The Law-Foon Loan Agreement

1. Pursuant to the Law-Foon Loan Agreement, Mr Law-Foon agreed with FLD to:

a. borrow the amount of $100.00 (the Law-Foon Loan Amount), from FLD, for a term of 56 days;

b. pay FLD the amount of $5.00 (the Law-Foon FLD Charge), being 5% of the Law-Foon Loan Amount; and

c. repay the Law-Foon Loan Amount and pay the Law-Foon FLD Charge over four fortnightly repayments to be direct debited from the Law-Foon Bank Account.

1. The Law-Foon Loan Agreement contemplated a single advance, and a single charge for that advance.

### The Law-Foon Services Agreement

1. Pursuant to the Law-Foon Services Agreement, Mr Law-Foon agreed with Teleloans to:

a. engage Teleloans to provide services to him;

b. pay Teleloans the total amount of $114.60 (the Law-Foon Teleloans Charges), being:

i. $75.00 as a Financial Supply Fee; and

ii. $39.60 as Account Keeping Fees,

in return for Teleloans providing those services; and

c. pay the Law-Foon Teleloans Charges, the Law-Foon FLD Charge, and to repay the Law-Foon Loan Amount over two fortnightly payments to be direct debited from the Law-Foon Bank Account.

### The Advance of the Law-Foon Loan Amount

1. On or about 15 August 2013, Teleloans caused the Law-Foon Loan Amount to be deposited into the Law-Foon Bank Account.
2. The Law-Foon Loan Amount:

a. was advanced by FLD, in the course of FLD’s business, pursuant to the Law-Foon Loan Agreement; and

b. was deposited by Teleloans within one day of Mr Law-Foon’s application pursuant to the Law-Foon Services Agreement.

1. Teleloans guaranteed Mr Law-Foon’s obligations under the Law-Foon Loan Agreement and Mr Law-Foon did not provide further security for the advance of the Law-Foon Loan Amount.
2. Teleloans verified the matters disclosed by Mr Law-Foon in his application by following the verification steps set out in the Returning Customer Telephone Procedure.
3. Teleloans and FLD did not obtain or consider Mr Law-Foon’s bank statements as part of the verification process.

### Repayment of Amounts Owing Under the Law-Foon Agreement and Under the Law-Foon Services Agreement

1. As at 26 August 2013, the amount of $184.95 remained payable by Mr Law-Foon for the following:

a. the Law-Foon Loan Amount (under the Law-Foon Loan Agreement);

b. the Law-Foon FLD Charges (under the Law-Foon Loan Agreement); and

c. the Law-Foon Teleloans Charges as accrued (under the Law-Foon Services Agreement).

1. Throughout the above process, Mr Law-Foon did not have any direct contact with FLD.

# MR GURKAN

### Agreements with Mr Gurkan

1. On or about 14 August 2013, Mr Gurkan called Teleloans and applied for a loan.
2. Mr Gurkan confirmed for the Teleloans staff member that he wanted to use Option Two. Accordingly, the Teleloans staff member assisted Mr Gurkan with the application process by following the Teleloans Script.
3. Mr Gurkan stated that the purpose for the proposed loan was to meet an “unexpected medical reason”.
4. After Teleloans verified Mr Gurkan’s information, Teleloans recommended the application to FLD, and FLD reviewed and approved the application.
5. On or about 14 August 2013, Mr Gurkan entered:

a. firstly, into a Services Agreement with Teleloans (the Gurkan Services Agreement); and

b. secondly, into a Loan Agreement with FLD (the Gurkan Loan Agreement).

1. The Gurkan Services Agreement and the Gurkan Loan Agreement were entered into contemporaneously.

### The Gurkan Loan Agreement

1. Pursuant to the Gurkan Loan Agreement, Mr Gurkan agreed with FLD to:

a. borrow the amount of $150.00 (the Gurkan Loan Amount) from FLD for a term of 62 days;

b. pay FLD the amount of $7.50 (the Gurkan FLD Charges), being 5% of the Gurkan Loan Amount; and

c. repay the Gurkan Loan Amount and pay the Gurkan FLD Charge over eight weekly payments to be direct debited from the Gurkan Bank Account.

1. The Gurkan Loan Agreement contemplated a single advance, and a single charge for that advance.

### The Gurkan Services Agreement

1. Pursuant to the Gurkan Services Agreement, Mr Gurkan agreed with Teleloans to:

a. engage Teleloans to provide services to him;

b. pay Teleloans the total amount of $232.10 (the Gurkan Teleloans Charges), being:

i. $172.50 as a Financial Supply Fee;

ii. $39.60 as Account Keeping Fees; and

iii. $20.00 as an extension of first payment fee,

in return for Teleloans providing those services; and

c. pay the Gurkan Teleloans Charges, the Gurkan FLD Charge, and to repay the Gurkan Loan Amount over eight weekly payments to be direct debited from the Gurkan Bank Account.

### The Advance of the Gurkan Loan Amount

1. On or about 15 August 2013, Teleloans caused the Gurkan Loan Amount to be deposited into the Gurkan Bank Account.
2. The Gurkan Loan Amount:

a. was advanced by FLD, in the course of FLD’s business, pursuant to the Gurkan Loan Agreement; and

b. was deposited by Teleloans within one day of Mr Gurkan’s application pursuant to the Gurkan Services Agreement.

1. Teleloans guaranteed Mr Gurkan’s obligations under the Gurkan Loan Agreement.
2. Mr Erkan Gurkan guaranteed Mr Gurkan’s obligations under the Gurkan Loan Agreement and Mr Gurkan did not provide further security for the advance of the Gurkan Loan Amount.
3. Teleloans verified the matters disclosed by Mr Gurkan in his application by following the verification steps set out in the Teleloans Script and that Mr Gurkan met the Eligibility Criteria.
4. Teleloans and FLD did not obtain or consider Mr Gurkan’s bank statements as part of the verification process.

### Repayment of Amounts Owing Under the Gurkan Loan Agreement and Under the Gurkan Services Agreement

1. On 27 August 2013, an attempt to cause payment from the Gurkan Bank Account via direct debit failed and the amount of $47.00, which was due to be paid to Teleloans on that date, was not made.
2. As at 27 August 2013, the amount of $383.95 remained payable by Mr Gurkan for the remainder of the following:

a. Gurkan Loan Amount (under the Gurkan Loan Agreement);

b. Gurkan FLD Charges (under the Gurkan Loan Agreement); and

c. Gurkan Teleloans Charges as accrued (under the Gurkan Services Agreement).

1. Throughout the above process, Mr Gurkan did not have any direct contact with FLD.

# RECENT FINANCIAL PAYMENTS - FLD AND TELELOANS

1. During all relevant times, FLD and Teleloans have each held accounts with the Commonwealth Bank of Australia (CBA).

### Payments made by Teleloans to FLD

1. On 20 May 2013 Teleloans transferred $30,000 from its account (the Teleloans Account) to FLD’s account (the FLD Account) in separate amounts of $8,950, $11,200 and $9,850. Each transaction was described as ‘Teleloans Man Inv’ in the FLD Account and as ‘FLD Man Inv’ in the Teleloans Account.
2. Between 17 May 2013 and 11 June 2013, Teleloans made 22 separate payments to the FLD Account totalling $213,700 described as ‘Teleloans Invoice’ in the FLD Account and as a ‘FLD Invoice’ in the Teleloans Account as follows:

a. 17 May 2013 - $14,000 and $10,000;

b. 21 May 2013 - $7,800, $8,300 and $12,600;

c. 28 May 2013 - $10,200, $7,000, $12,500, $9,800 and $10,500;

d. 3 June 2013 - $9,800, $10,300 and $11,900;

e. 5 June 2013 - $10,800, $9,500 and $8,700;

f. 7 June 2013 - $9,800 and $8,200;

g. 11 June 2013 - $6,600, $7,800, $8,400 and $9,200.

1. Teleloans transferred the funds referred to in paragraphs 159 above in accordance with invoices issued by FLD for consultation and business advice concerning, among other things, budgeting, regulations, compliance, cash flow and management systems during the previous financial year.
2. Since 8 May 2013, Teleloans has made a weekly payment of $1,900 to FLD described as ‘SC Man Fee Inv’. The payments are made for the benefit of FLD for consultation regarding systems, legislation and regulations.

### Investment in FLD

1. On 26 April 2013, $50,000 was deposited into the FLD Account via the Bank of Queensland. This payment was an investment in FLD made by Mrs Darylyn Harrison (Mrs Harrison), the mother of the current director of Teleloans, Mr Brenton Harrison,
2. From 3 May 2013, FLD made a weekly payment described as ‘Harrison Int on K’ to Mrs Harrison which represented a 15% return on her $50,000 investment in FLD
3. On 23 May 2013, the Radar Super Fund deposited $50,000 into the FLD Account. On 26 June 2013, the Radar Super Fund deposited $100,000 into the FLD Account. These payments were investments in FLD by the Radar Super Fund at a time when Mrs Darylyn Harrison was the sole member of the Radar Super Fund.

### Other FLD Payments and Management Fees

1. Since 4 May 2013, FLD has made a payment of $135 per week described as ‘S Carey Man Fee’.
2. Since 4 May 2013, FLD has made a payment of $315 per week described as ‘Sal Sac Sup SCarey’.
3. Since 4 May 2013, FLD has made a payment of $650 per week described as ‘Management Fee’.
4. Since 8 May 2013, FLD made a payment of $400 per week described as ‘JS Inv’. These payments have since ceased.