



ASIC

Australian Securities & Investments Commission



S02070130

INFRINGEMENT NOTICE

Section 12GXA of the *Australian Securities and Investments Commission Act 2001*

Day of issue: 12 January 2015

Unique identification code: A4351235

TO: Australian Financial Planning Solutions Pty Ltd
ACN 125 634 595
Unit 2
785 Toorak Road
Hawthorn East Vic 3123

1. ASIC issues this infringement notice under section 12GXA of the *Australian Securities and Investments Commission Act 2001 (ASIC Act)*.
2. ASIC has reasonable grounds to believe that you have contravened an infringement notice provision as follows:

Between 22 July 2014 and 4 November 2014, you contravened section 12DB(1)(e) of the ASIC Act by, in trade or commerce, in connection with the supply or possible supply of financial services or in connection with the promotion by any means of the supply or use of financial services, making false or misleading representations (in the same form or substantially the same form as **Annexure A** – article titled “Benefits of a self-managed super fund (SMSF)” (**the Article**)) on website <http://www.australianfinancialplanningsolutions.com.au> as to the uses or benefits of services offered by you, being the establishment of self-managed superannuation funds (SMSFs).

Particulars

- (a) The Article contained a representation (under the heading “Ownership”) that in the near future, major retail and industry superannuation funds will experience payout difficulties due to insufficient liquidity as baby boomers begin to retire and worker contributions are insufficient to meet retiree withdrawals (**Payout Representation**). The Payout Representation gave the impression that using SMSFs for retirement saving has the benefit of avoiding the payout difficulties to be experienced by the major retail and industry superannuation funds. This is false or misleading because the claim that major retail and industry superannuation funds experiencing payout difficulties is unsubstantiated.
- (b) The Article contained a representation (under the heading “Taxation Benefits”) that when a person commences a Simple Account-based Pension or Transition to Retirement Pension:
 - (i) that person can generate unlimited income and capital gains and pay no tax on those earnings and capital gains because after commencing receipt of a pension, the SMSF tax rate falls to nil;

- (ii) the SMSF is entitled to receive franking credits on Australian share dividends in cash from the ATO; and
- (iii) any company tax paid is refundable to the SMSF, which differs where superannuation is held in industry or retail superannuation funds, as those types of funds can decide how to allocate refunds or retain them

(Taxation Representation).

The Taxation Representation was false or misleading because:

- (i) as a whole, it gave the impression that the tax implications for benefits held in SMSFs were advantageous compared with the tax implications for benefits held in industry and retail superannuation funds, which is factually incorrect as the taxation for superannuation in pension phase are the same for all types of superannuation funds (including SMSFs);
- (ii) it gave the impression that a person who held their superannuation in an industry or retail superannuation fund had no control over their tax refunds, which is factually incorrect as some APRA-regulated superannuation products do allow members to manage their tax refunds; and
- (iii) it gave the impression that a special tax rate was applied to SMSFs, which is factually incorrect – tax rates apply to superannuation generally and not just to SMSFs.

Penalty under this notice

3. The penalty payable under this notice in relation to the alleged contravention is \$10,200.

This penalty is payable to ASIC on behalf of the Commonwealth.

This penalty can be paid using one of the methods detailed in the enclosed invoice.

Consequences of complying with this notice

4. If you pay the penalty stated in this notice within the time for payment mentioned below then (unless this notice is subsequently withdrawn and any penalty paid refunded):
- (a) no proceedings (whether criminal or civil) will be brought against you by the Commonwealth or ASIC for the alleged contravention of the infringement notice provision or an offence constituted by the same conduct; and
 - (b) you will not be regarded as having contravened the infringement notice provision or having been convicted of an offence constituted by the same conduct.

Consequences of failing to comply with this notice

5. If you do not pay the penalty specified in this notice within the time for payment mentioned below, and the notice is not withdrawn, the Commonwealth or ASIC may

bring proceedings under Subdivision G of Division 2 of Part 2 the consumer protection provisions of the ASIC Act (whether criminal or civil) against you for the alleged contravention of the infringement notice provision or offence constituted by the same conduct.

6. The maximum pecuniary penalty that a court may order you to pay for the alleged contravention is \$1.7 million.

Time for payment

7. The time for payment is:
 - (a) within 28 days after the day on which the notice is issued to you; or
 - (b) if ASIC extends, by notice in writing the compliance period for this notice, within that further period allowed.

Applying for more time to pay the penalty under this notice

8. ASIC may extend the compliance period for this infringement notice if ASIC is satisfied that it is appropriate to do so. The extension must not be for longer than 28 days.
9. If you wish to apply for an extension of time to pay the penalty specified in this notice, you should do so in writing within 28 days after the day the notice is issued to you (see paragraph 15).

Applying to have this notice withdrawn

10. Within 28 days after the day on which this notice is issued, you may apply to ASIC in writing to have this notice withdrawn.
11. Evidence or information that you or your representative gives to ASIC in the course of applying for this notice to be withdrawn is not admissible in evidence against you or your representative in any proceedings (other than proceedings for an offence based on the evidence or information being false or misleading).

Withdrawal of this notice

12. ASIC may, by written notice given to you, withdraw this infringement notice if ASIC is satisfied that it is appropriate to do so, whether or not you have applied to have this notice withdrawn.
13. A withdrawal notice must be given to you within the time for payment of this infringement notice to be effective.
14. If the withdrawal notice is given after you have paid the penalty specified in this infringement notice, ASIC will refund to you the amount paid under the infringement notice.

Requirements for applications

15. An application to have this notice withdrawn, or for more time to pay the penalty under this notice:
- (a) must be in writing; and
 - (b) must include the unique identification code set out at the top of this notice; and
 - (c) must include your reasons for making the application; and
 - (d) may be made by forwarding your application to ASIC at the address in paragraph 16.
16. You may contact ASIC in relation to this notice by contacting:

Nathan Gray

**Australian Securities and Investments Commission
GPO Box 9827
Sydney NSW 2001**

or by facsimile: (02) 9911 2414

or by email: ACLInfringementNotices@asic.gov.au



Peter Kell
as a delegate of the Australian Securities and Investments Commission