

**ENFORCEABLE UNDERTAKING**

*Australian Securities and Investments Commission Act 2001 (Cth)*

**Section 93AA**

The commitments in this undertaking are offered on a voluntary basis to the Australian Securities and Investments Commission ("ASIC") by:

**AMP LIFE LIMITED (A.C.N. 079 300 379)**

and

**AMP SUPERANNUATION LIMITED (A.C.N. 008 414 104)**



**1. BACKGROUND**

**Parties and plans**

- 1.1 AMP Life Limited ("AMP Life") is a public company incorporated in the State of New South Wales and carries on business as a life insurance company.
- 1.2 AMP Superannuation Limited ("AMP Super"), offers and has offered, a range of retail superannuation plans, allocated pension and annuity plans to the public including:

*Retail Superannuation Plans*

- (a) Flexible Lifetime – Super (FLS);
- (b) CustomSuper;
- (c) MultiFund Super Bonds;

*Retail Allocated Pension/Annuity Plans*

- (d) Flexible Lifetime – Allocated Pension (FLAP).

- 1.3 AMP Life also offers and has offered, a range of retail superannuation bonds, annuity plans and wholesale superannuation plans to the public including:

*Retail Plans*

- (a) MultiFund Trustee Bond;

- (b) MultiFund Rollover Investment Linked Deferred Annuity;

***Retail Annuity Plans***

- (c) MultiFund Flexible Income Plan Allocated Annuity;

***Wholesale Superannuation***

- (d) Traditional Corporate Superannuation (Table GE) and Investment only (Table GED).

1.4 The plans referred to in clauses 1.2 and 1.3 are hereinafter referred collectively as "AMP Plans").

1.5 The total funds invested in the AMP Plans amount to approximately \$26 billion.

1.6 AMP Super is the approved trustee of those AMP Plans referred to in clause 1.2.

1.7 AMP Super is a wholly owned subsidiary of AMP Life. In this undertaking, a reference to "AMP" is a reference to AMP Super and to AMP Life.

1.8 AMP Super has entered into superannuation policies with AMP Life. Through those policies and other arrangements, AMP Life provides the administration and investment management for the AMP Super plans referred to in clause 1.2.

1.9 The investment options offered for the AMP Plans are administered by AMP Life and some funds are managed by external fund managers ("Wholesale Investment Options"). Investors in the AMP Plans may select to invest in one or more of the Wholesale Investment Options.

1.10 AMP Life has a formal Fund Administration and Intermediation Services Agreement with BNP Paribas Fund Services Australasia Pty Limited ACN 002 655 674 formerly, Cogent Investments Operation Pty Limited ("Cogent") trading as 'BNP Paribas Securities Services' ("Cogent Agreement") whereby AMP Life's investment administration function is outsourced to Cogent. Cogent was formerly a company within the AMP Group.

1.11 Pursuant to the Cogent Agreement, Cogent performs fund administration services including unit pricing calculations.

**Unit Pricing Tax Adjustment**

1.12 In November 2003, AMP Life submitted its 2002 tax return and received a tax refund of approximately \$75 million from the Australian Taxation Office. AMP Life undertook a tax proof reconciliation between its tax records and unit pricing records of the Wholesale

Investment Options. This reconciliation revealed that, for the December 2002 tax year, AMP Life claimed the tax benefits for imputation credits and tax allowances whereas it did not fully do so in previous years.

- 1.13 The tax proof reconciliation which was completed in late 2003 also revealed that, between 30 September 1998 and 31 December 2003, AMP Life, through Cogent, had not fully incorporated the tax benefit of imputation credits and other tax allowances into the unit prices of 52 Wholesale Investment Options as specified in Groups 1, 2 and 3 of Schedule A of the KPMG Report (see clause 1.25 below) entitled "Investment Pools Affected by Tax Issue" ("**Impacted Investment Options**"). As a result, the unit prices for the Impacted Investment Options were undervalued ("**Unit Pricing Tax Adjustment**").

#### **ASIC's role**

- 1.14 ASIC is the consumer protection regulator of the financial services industry and accordingly is responsible for the monitoring and promoting of market integrity in the Australian financial system.

#### **Early & open disclosure and full co-operation by AMP**

- 1.15 On 19 December 2003, AMP advised ASIC of the Unit Pricing Tax Adjustment.
- 1.16 AMP also reported the Unit Pricing Tax Adjustment to the Australian Prudential Regulation Authority ("**APRA**").
- 1.17 ASIC acknowledges that AMP of its own accord promptly reported the Unit Pricing Tax Adjustment to ASIC.
- 1.18 AMP provided ASIC and APRA with regular formal updates generally on a weekly basis and has been in constant contact with ASIC and APRA in relation to the Unit Pricing Tax Adjustment.
- 1.19 ASIC acknowledges that AMP has fully co-operated with ASIC in its assessment of the Unit Pricing Tax Adjustment and has demonstrated a commitment to dealing with the Unit Pricing Tax Adjustment and compensating impacted investors on a timely basis.
- 1.20 AMP has advised ASIC that the Unit Pricing Tax Adjustment involves a total compensation estimation of \$90 million and that about 287,000 investors are impacted. Of this amount, \$80 million is a tax refund to AMP Life that has been received or is receivable from the Australian Taxation Office. Therefore, the direct financial impact on AMP is approximately \$10 million.

- 1.21 AMP and ASIC are concerned that:
- (a) investors in the AMP Plans received advices and annual statements which contained unit prices which differed from the correct unit prices;
  - (b) investors who have exited the AMP Plans received redemption or withdrawal amounts based on unit prices which differed from the correct unit prices; and
  - (c) investors who have switched from one Wholesale Investment Option to another (but remaining within the same AMP Plan) received redemption or withdrawal amounts based on unit prices which differed from the correct unit prices.

### **Compensation Arrangements**

- 1.22 AMP Life has provided ASIC with AMP Life's Compensation Methodology Report dated 22 April 2004 ("**Compensation Report**").
- 1.23 The Compensation Report describes the Unit Pricing Tax Adjustment issue and sets out the method of identifying and compensating impacted investors. For this purpose, 'impacted investors' are described in the Compensation Report.
- 1.24 AMP has advised ASIC that a more detailed description of the Unit Pricing Tax Adjustment issue and the Compensation Methodology will be available for those investors who contact AMP's call centre and request more details.
- 1.25 KPMG, Accountants and Actuaries, of 10 Shelley Street, Sydney NSW 2000 ("**KPMG**") has provided AMP with reports signing off on the:
- (a) reasonableness of the Compensation Methodology (Part 1) dated 21 April 2004; and
  - (b) accuracy of the design, data extraction and process around the Compensation Methodology (Part 2) dated 22 April 2004,
- together, called the "**KPMG Report**".
- 1.26 ASIC has been provided with a copy of the KPMG Report.
- 1.27 ASIC and APRA have jointly considered the:
- (a) Unit Pricing Tax Adjustment;
  - (b) Compensation Report;

- (c) Compensation Methodology;
- (d) KPMG Report; and
- (e) proposals by AMP Life to implement the process and procedures around the Unit Pricing Tax Adjustment.

1.28 ASIC is satisfied as to the reasonableness of the Compensation Methodology having regard to the KPMG Report.

1.29 AMP does not admit that it has breached any law or any provision of the AMP Plans. AMP has offered, without admission of any liability, and ASIC has accepted this Enforceable Undertaking in relation to AMP's own concerns and ASIC's concerns. By accepting the undertakings in section 2 below offered by AMP to address ASIC's concerns, ASIC will not take any action against AMP in relation to the matters the subject of this Enforceable Undertaking.

## 2. UNDERTAKINGS

Pursuant to section 93AA of the ASIC Act, AMP offers the following undertakings to ASIC:

### **Compensation Systems**

- 2.1 Subject to clause 2.2, AMP will, within 8 weeks from the date of this Enforceable Undertaking, do all acts and things reasonably necessary to implement the Compensation Methodology, including compensating impacted investors.
- 2.2 In the case of any impacted investor for whom AMP does not possess a current address or means to contact the impacted investor, AMP will be taken to have complied with clause 2.1 if it uses its best endeavours in line with industry standards to locate that impacted investor and to compensate the impacted investor.
- 2.3 AMP will engage the services of either KPMG, or an independent actuary as agreed by ASIC in consultation with APRA (the "Independent Expert"), to review the implementation of the Compensation Methodology and to provide a report ("Methodology Review Report") to AMP which:
  - (a) confirms whether or not the Compensation Methodology has been implemented in accordance with its terms; and
  - (b) makes any recommendations if this is not the case.

Nothing in this clause prevents AMP from liaising with ASIC and/or the Independent Expert as to the findings and recommendations contained in the Methodology Review Report.

2.4 AMP will provide ASIC with a copy of the Methodology Review Report within 7 days of receipt of the report by AMP.

2.5 AMP will:

- (a) promptly implement the Independent Expert's recommendations and promptly comply with ASIC's reasonable directions; and
- (b) within 8 weeks from the date of receipt by ASIC of the Methodology Review Report, provide ASIC with a report signed by a senior officer of AMP confirming that AMP has fully complied with those recommendations and any directions. If required, AMP may request ASIC's consent to an extension of the time (such consent not to be unreasonably withheld).

#### **Investor Communications**

2.6 AMP will provide all investors who contact AMP's call centre and request more details with a copy of a more detailed description of the Unit Pricing Tax Adjustment issue (including the Compensation Methodology), in the form acceptable to ASIC.

#### **Identify Impacted Investors**

2.7 To the extent that AMP has not already done so, AMP will within 8 weeks from the date of this Enforceable Undertaking identify details of impacted investors (including but not limited to their names, known contact details and the applicable compensation to be paid to those investors as provided by the Compensation Methodology).

2.8 AMP will engage the services of the Independent Expert to review the procedures and processes implemented to identify impacted investors as referred to in clause 2.7 above and to provide a report to AMP ("**Investors Review Report**") which:

- (a) confirms whether or not AMP's processes and procedures for identifying impacted investors were proper and sufficient to identify all impacted investors; and
- (b) makes any recommendations if this is not the case.

Nothing in this clause prevents AMP from liaising with ASIC and/or the Independent Expert as to the findings and recommendations contained in the Investors Review Report.

- 2.9 AMP will provide ASIC with a copy of the Investors Review Report, within 7 days of receipt of the report by AMP.
- 2.10 AMP will:
- (a) promptly implement the Independent Expert's recommendations and promptly comply with ASIC's reasonable directions; and
  - (b) within 8 weeks from the date of receipt by ASIC of the Investors Review Report, provide ASIC with a report signed by a senior officer of AMP confirming that AMP has fully complied with those recommendations and any directions. If required, AMP may request ASIC's consent to an extension of the time (such consent not to be unreasonably withheld).

### **Compensation**

- 2.11 AMP Life will fund the compensation referred to in clause 2.1 from the tax refunds that have been received or are receivable from the Australian Taxation Office (of approximately \$80 million) and, to the extent that those tax refunds are not sufficient, AMP Life has agreed to fund the compensation payments from its shareholders funds.

### **Notice to Impacted Investors**

- 2.12 AMP Life, on behalf of and with the approval of AMP Super will, within the 8-week period referred to in clause 2.1 but subject to clause 2.2, notify all impacted investors, in the form and manner previously agreed by ASIC, of the Unit Pricing Tax Adjustment. Notification pursuant to this clause will satisfy any notification obligations imposed on AMP Super.

### **Report to ASIC**

- 2.13 AMP will by 30 June 2004 provide a report to ASIC, signed by both a member of the Board of AMP Super and a member of the Board of AMP Life, containing the following information:
- (a) The total number of impacted investors;
  - (b) Of the total number of impacted investors referred to paragraph 2.13(a), the total number of remaining investors and the total amount of exited investors;
  - (c) The total number of investors to whom cheques have been sent;
  - (d) The total compensation paid and the average compensation paid;

- (e) The total number of investors to whom additional units have been issued;
- (f) The total amount below the materiality threshold and returned to the Affected Investment Options; and
- (g) Confirmation that impacted investors have been notified in accordance with clause 2.12 above.

### 3. ACKNOWLEDGEMENTS

#### 3.1 AMP acknowledges that ASIC:

- (a) may from time to time publicly refer to this undertaking;
- (b) may issue a media release on execution of this undertaking referring to its terms and the concerns of ASIC which led to its execution; and
- (c) will place a copy of the executed undertaking on a Public Register.

#### 3.2 Further, AMP acknowledges that:

- (a) ASIC's acceptance of this undertaking does not affect ASIC's power to investigate a contravention arising from future conduct; and
- (b) this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking.



**EXECUTED** on 23 April 2004

**SIGNED by AMP LIFE LIMITED** )  
(A.C.N. 079 300 379) in accordance with )  
section 127 of the Corporations Act 2001: )

Director

Director/Secretary

**SIGNED by AMP SUPERANNUATION** )  
**LIMITED** )  
(A.C.N. 008 414 104) in accordance with )  
section 127 of the Corporations Act 2001: )

Director

Director/Secretary

ACCEPTED BY THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION  
PURSUANT TO SECTION 93AA OF THE ASIC ACT BY ITS DULY AUTHORISED  
DELEGATE:

Jan Redfern  
Executive Director, Enforcement  
ASIC