



ENFORCEABLE UNDERTAKING

AUSTRALIANS SECURITIES & INVESTMENTS COMMISSION

Section 93AA Australian Securities & Investment Commission Act 2001

The commitments in this Enforceable Undertaking are offered to the Australian Securities & Investments Commission ("ASIC") by:

Australian Scholarships Group Friendly Society Limited
ACN 087 648 879
23-35 Hanover Street
OAKLEIGH VIC 3166

1. Background

- 1.1 Australian Scholarships Group Friendly Society Limited ACN 087 648 879 ("ASG") is a friendly society which, on 1 July 1999, became an Australian public company limited by shares and guarantee, pursuant to clause 3, Schedule 4 of the Corporations Law.
- 1.2 ASG is engaged in the business of providing and managing education funds ("**the Funds**"), which it offers to members of the public who have children who may in the future attend secondary school or tertiary education institutions. The funds are mutual funds through which members make regular contributions throughout the life of the particular fund. On the maturity of a fund, the existing members receive their accumulated contributions and their children (subject to certain conditions) receive returns generated by the fund. A feature of the Funds is that if a member withdraws from a fund before it matures, the member receives their accumulated contributions (less any fees deductible), but does not receive any returns generated by the fund from their contributions. Those returns are retained in the fund for the benefit of those members or their nominated children who remain in the fund until maturity.
- 1.3 On 1 July 1999, pursuant to regulation 7.3.13B of the Corporations Regulations 2001, ASG was taken to be a licensee for the purposes of certain provisions of the Corporations Law. On 6 November 2003, ASIC issued ASG with an AFS Licence (Number 236665). The licence includes the following conditions:
 - ◆ Compliance measures to ensure compliance with the law and the licence.
 - ◆ Financial requirements for a body regulated by APRA.
 - ◆ Audit opinion on financial requirement conditions of the licence, regulated by APRA.
 - ◆ External dispute resolution requirements.
 - ◆ Prohibition to operate portfolio services or accounts.
- 1.4 ASG has sought a variation of its licence to permit it to provide financial product advice (AFSL Variation Application number 70577529) ("Licence Variation").
- 1.5 ASG has implemented and maintains a compliance program that is consistent with Australian Standard for Compliance Programs AS-3806 ("Compliance Program") and a program to monitor and supervise its representatives ("Monitoring Program") which ASG submitted to ASIC under its Licence Variation. The Monitoring Program includes the features set out in Annexure 5 to this Enforceable Undertaking.

- 1.6 When conducting presentations on the Funds to prospective new members, some representatives of ASG have made the following statements (“the Statements”):
- ◆ The funds have no exit fees if a member leaves a fund before the maturity date.
 - ◆ One hundred percent of contributions will be refunded to members when exiting the Funds before maturity date.
 - ◆ Annual contributions made by members to the Funds will not increase over time.
 - ◆ ASG is government backed or like a bank.
- 1.7 At the time that the Statements were made, they were not true.
- 1.8 When conducting presentations on the Funds to prospective new members, some ASG representatives have engaged in the following conduct (“the Conduct”):
- ◆ Pressuring a prospective member to join a fund immediately following the conclusion of a presentation and not giving the prospective member sufficient time to read the disclosure document provided to the member and consider the suitability of the product for the member.
 - ◆ Pressuring a prospective member to join more funds than they were capable of maintaining or that was suitable for their children’s future educational needs.
- 1.9 ASG is a member of Financial Industry Complaints Service Limited (FICS”).
- 1.10 ASIC has formed the view, and ASG acknowledges, that the Statements and the Conduct contravened sections 12DA and 12DB of the *Australian Securities & Investments Commission Act 2001* (“the ASIC Act”) in that they were misleading or deceptive, and false or misleading. ASIC has also formed the view that some members may have relied upon the Statements and the Conduct in making a decision to join a fund.
- 1.11 ASIC is responsible for monitoring and promoting consumer protection in relation to financial services, and under section 12GD of the ASIC Act, ASIC may, among other things, seek injunctions preventing a person from engaging in certain conduct, require that person to do any act or thing and/or place corrective advertisements. Under section 12GM of the ASIC Act, ASIC may commence proceedings for or on behalf of the consumers who have suffered damage by reason of any contravention of the Act. Under sections 12GLA of the ASIC Act, ASIC may seek an order requiring publication of an advertisement in relation to conduct in contravention of the Act.
- 1.12 ASIC has agreed to accept this Enforceable Undertaking as an alternative to seeking the relief outlined in clause 1.11 above.

2. Undertakings

Pursuant to section 93AA of the Australian Securities and Investments Commission Act 2001, ASG provides the undertakings set out below:

Future statements and conduct

- 2.1 ASG will not use or permit the use of the Statements or any similar statements in any presentations or promotional material relating to the Funds or any other ASG products, unless they are true.

- 2.2 ASG will not engage in or permit its representatives to engage in the Conduct or any similar conduct during any presentations in relation to the Funds or any other ASG products.

Corrective statement

- 2.3 Upon entering this Enforceable Undertaking, ASG will include a separate notice in the form contained in Annexure 1 ("Notice"), to all Australian members who joined the Funds before 1 January 2004. The Notice will be sent with ASG's next members' newsletter known as "The Scholastic".
- 2.4 ASG will provide reasonable assistance to and answer all reasonable enquiries made by ASG members in relation to potential complaints arising from statements and conduct by ASG representatives or statements contained in documents published by ASG.

Complaints handling procedure

- 2.5 If ASG receives from a member ("complainant") to whom it has sent a notice pursuant to clause 2.3, a complaint, including a compensation claim ("complaint") for loss or damage suffered by reason of:
- (a) One or more of the statements described in clause 1.6, made to the complainant by an ASG representative about the Funds; or
 - (b) One or more of the types of Conduct, described in clause 1.8, made by an ASG representative when conducting a presentation on the Funds,
- ASG will (subject to clause 2.6) accept and pay the complainant, within 28 days of receiving the complaint.
- 2.6 ASG will not be obliged to pay a complainant if a complainant is not able to establish in respect of that complaint, to the satisfaction of ASG, any one or more of the following matters:
- (a) The Conduct or Statements the subject of the complaint occurred and were made to the complainant.
 - (b) The complainant relied upon the Statements or Conduct the subject of the complaint.
 - (c) The complainant suffered loss or damage by reason of the Statements or Conduct the subject of the complaint.
 - (d) The complainant suffered loss or damage to the extent claimed in the complaint.
- 2.7 If ASG rejects a complaint (in whole or in part), ASG will, within 7 days of rejecting the complaint, provide the complainant with:
- (a) Written reasons by ASG as to why the complaint (or part of the claim) was rejected and contact details of the Financial Industry Complaints Service Ltd.
 - (b) If the complaint was rejected on one or more of the grounds contained in clauses 2.6(a) to (c), a written notice in the form contained in Annexure 2.

- (c) If part of the complaint was rejected on the grounds contained in clause 2.6(d), a written notice in the form contained in Annexure 3.
- 2.8 ASG will maintain a register (“the register”) of all complaints received from complainants, recording:
- (a) Membership number
 - (b) The amount of the claim.
 - (c) Whether the claim was accepted by ASG or rejected.
 - (d) The amount (if any) for which the claim was accepted by ASG.
 - (e) The date of payment of the claim.
- 2.9 Within 12 months of entering this Enforceable Undertaking, and thereafter every 3 months for the next 2 years, ASG will provide ASIC with a copy of the register, verified by ASG’s Compliance Officer. In addition, ASG will produce all documents in its possession that ASIC may request from time to time, relating to the procedure established in clauses 2.3 to 2.7 (“the compensation procedure”).
- 2.10 The complaint handling procedure is in addition to and does not derogate from ASG’s obligations as a member FICS. The complaints procedure is to be adopted by ASG in relation to all complaints (as defined in clause 2.5) as a preliminary step before referring the claim to FICS for adjudication, if required. ASG consents to ASIC providing to FICS copies of the register or any other documents relating to the complaints procedure that FICS may request from time to time.
- 2.11 ASG will provide FICS with a copy of this Enforceable Undertaking and will pay the costs of any FICS determinations in accordance with the terms of its membership with FICS. ASG will use its best endeavours to ensure that FICS is able to determine all complaints as expeditiously as possible.

Compliance program

- 2.12 ASG will conduct an internal review of its promotional material and training program to determine whether any of its current or proposed promotional or training material contain statements that are false and misleading, or refer to conduct that is misleading, deceptive or unconscionable or that are, or are likely to be, misleading, deceptive or unconscionable.
- 2.13 Within 35 days of the completion of the review, ASG will provide a report to ASIC signed by a senior officer or officers of ASG who has or have personal knowledge of the matters referred to in clause 2.12 that sets out the results of the internal review (“internal report”).
- 2.14 If the internal report discloses any problems or errors, ASG will use its best endeavours to correct those problems or errors as soon as reasonably possible and to promptly report to ASIC as to the steps taken to correct the problems or errors no later than 6 months from the receipt of the report by ASIC under clause 2.13.
- 2.15 Within 2 months of entering into this Enforceable Undertaking, ASG will include as part of its Compliance Program the features set out in Annexure 4 to this Enforceable Undertaking.

- 2.16 Within 21 of days of the inclusion in and implementation of in the Compliance Program of the features set out in Annexure 4, ASG will engage the services of an independent consultant to be approved by ASIC ("the consultant") to:
- (a) Ensure that the Compliance Program and the Monitoring Program have been properly implemented ("review").
 - (b) Conduct further reviews of the Compliance Program and the Monitoring Program, 12 and 24 months after their implementation.
 - (c) Within 21 days of completion of the review, provide a report to ASG and ASIC on the results of the review.
- 2.17 ASG will take immediate steps to remedy any deficiencies in the implementation and maintenance of the Compliance Program and the Monitoring Program identified by the consultant and shall, within 2 months of each review conducted under clause 2.16, notify ASIC in writing of steps taken to address such remediation.
- 2.18 ASG will provide all documents and information requested by ASIC in relation to action by ASG to address deficiencies identified by the consultant.

Notices

- 2.19 Any notice or other document required to be provided to ASIC pursuant to this Enforceable Undertaking, shall be given in writing and addressed to:

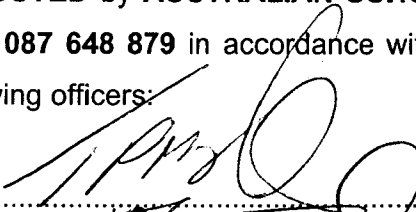
Ms Sharman Grant
Assistant Director
Regulatory Compliance
Australian Securities & Investments Commission
GPO Box 9827
Melbourne VIC 3000

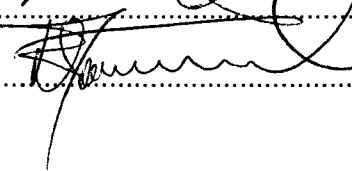
3. Acknowledgments

- 3.1 ASG acknowledges that ASIC:
- (a) May issue a media release on execution of this Enforceable Undertaking referring to its terms and to the concerns of ASIC which led to its execution;
 - (b) May from time to time publicly refer to this Enforceable Undertaking; and
 - (c) Will make this Enforceable Undertaking available for public inspection.
- 3.2 ASG acknowledge that this Enforceable Undertaking in no way derogates from the rights and remedies available to ASIC or any other person or entity arising from any conduct described in this Enforceable Undertaking.
- 3.3 ASG acknowledge that ASIC's acceptance of an Enforceable Undertaking does not affect ASIC's power to investigate a contravention arising from future conduct, or pursue a criminal prosecution, or its power to lay charges or seek a pecuniary civil order.

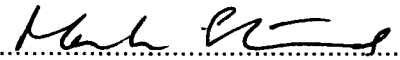
3.4 ASG acknowledge that this Enforceable Undertaking has no operative force until accepted by ASIC.

EXECUTED by **AUSTRALIAN SCHOLARSHIPS GROUP FRIENDLY SOCIETY LIMITED**
ACN 087 648 879 in accordance with the *Corporations Act 2001* by being signed by the following officers:


..... Director


..... Director/Company Secretary

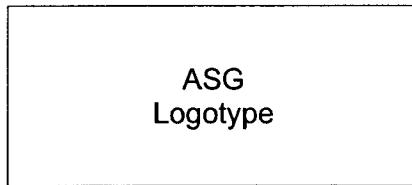
Accepted by the Australian Securities & Investments Commission pursuant to the ASIC Act section 93AA by its duly authorised delegate:


.....

Deputy Executive ~~Deputy~~ Director of Enforcement
Delegate of Australian Securities & Investments Commission

Dated this *27th* day of *August* 2004

Annexure 1



NOTICE TO MEMBERS

The Australian Securities and Investments Commission ("ASIC") regulates financial services providers, including friendly societies, and protects consumers. ASIC has recently brought to our attention that some of our representatives may have made incorrect statements to members about ASG funds either before or at the time they joined a fund.

For example when conducting presentations on the Funds to prospective new members, some representatives of ASG have made the following statements ("the Statements"):

- ◆ The Funds have no exit fees if a member leaves a fund before the maturity date.
- ◆ One hundred percent of contributions will be refunded to members when exiting the Funds before maturity date.
- ◆ Annual contributions made by members to the Funds will not increase over time.
- ◆ ASG is government backed or like a bank.

ASIC has also brought to the attention of ASG that certain actions by some representatives of ASG when they were making presentations about the ASG funds to prospective members, may have misled members about some of the features of the ASG funds. When conducting presentations on the Funds to prospective new members, some ASG representatives have engaged in the following conduct ("the Conduct"):

- ◆ Pressuring a prospective member to join a fund immediately following the conclusion of a presentation and not giving the prospective member sufficient time to read the disclosure document provided to the member and consider the suitability of the product for the member.
- ◆ Pressuring a prospective member to join more funds than they were capable of maintaining or that were suitable for their children's future educational needs.

ASG now wishes to tell you about certain features of the funds that you may or may not have been aware of at the time that you joined the fund (although you may have read about them subsequently in the Product Disclosure Statement of the fund). They are:

- ◆ If you withdraw from the fund before it reaches maturity, you will receive repayment of your contributions to the fund. However you will not receive interest or any other returns earned on your contributions. Those returns are retained in the fund and distributed to the eligible children of those members who remain in the fund until maturity.
- ◆ If you withdraw from a fund before it reaches maturity, you may be charged certain administration and exit fees that are not charged to members who remain in the fund until maturity.

- ◆ Your contributions into the fund increase annually.

ASIC has not expressed any other concerns in relation to the operation and management of the Funds.

In order to meet ASIC's concerns, ASG has agreed, amongst other things, to notify members by this notification of the complaints procedure for anyone who has a potential claim arising from incorrect statements or misleading conduct by ASG representatives. This agreement is called an Enforceable Undertaking. A full copy of the Enforceable Undertaking is available on ASIC's website (www.asic.gov.au).

If the features of the funds outlined above contradicts what you were told by an ASG representative at the time that you joined a fund and you believe that this has caused you to suffer financial loss, then you may wish to lodge a complaint requesting compensation from ASG.

You may also wish to lodge a complaint if you are aware of some other statement made to you by a representative that was incorrect, and if you believe that the statements or conduct have caused you to suffer loss or damage.

If you wish to lodge a complaint requesting compensation for loss or damage in respect of an incorrect statement or misleading conduct (ie actions) on the part of an ASG representative you should submit your complaint to ASG at:

Australian Scholarships Group Friendly Society Limited
23-35 Hanover Street,
Oakleigh, Victoria 3166.

You should support your complaint with a summary which sets out the facts of your complaint, including:

- ◆ The statement that you believe was incorrect or the conduct that was misleading.
- ◆ The circumstances in which the statement was made or the conduct engaged in, including the identity of the ASG representative and the date (if known).
- ◆ The reliance you placed on the statement or conduct.
- ◆ The financial loss or damage you believe you have suffered as a result of the statement or conduct.

If you disagree with the assessment of your complaint, you may refer the matter to the Financial Industry Complaints Service (FICS). FICS is a free and independent complaints handling service which deals with complaints about friendly societies, including ASG. The contact details for FICS are:

Freecall 1300 780808 or (03) 9621 2291
FICS
PO Box 579, Collins Street West
Melbourne, 8007
www.fics.asn.au

Alternatively, you may wish to pursue your own legal action. You should seek your own legal advice if this is the case.

If you have any questions about the above, please contact ASG on 03 9276 7777 and we will endeavour to assist you. You may wish to seek independent legal advice if you are unclear whether you have a complaint.

Annexure 2

NOTICE OF REJECTION OF COMPLAINT

You have made a complaint requesting compensation in relation to your membership in Australian Scholarship Group Friendly Society Limited ("ASG").

Your complaint requests compensation for financial loss or damage that you believe you have suffered as a member of ASG as a result of a statement or statements ("the Statements") made to you or by reason of conduct ("the Conduct") by representatives of ASG.

ASG has now considered your complaint and has concluded that:

- ◆ The Statements were not made to you.
- ◆ You did not rely upon the Statements.
- ◆ You did not suffer any loss or damage by reason of the Statements.
- ◆ The Conduct was not engaged in.
- ◆ You were not affected by the Conduct.
- ◆ You did not suffer any loss or damage by reason of the Conduct,
- ◆ [or insert other reasons]

Accordingly, ASG has rejected your complaint requesting compensation and the reasons for the rejection are attached.

If you disagree with the assessment of your complaint, you may refer the matter to the Financial Industry Complaints Service (FICS). FICS is a free and independent complaints handling service which deals with complaints about friendly societies, including ASG. The contact details for FICS are:

Freecall 1300 780808 or (03) 9621 2291
FICS
PO Box 579, Collins Street West
Melbourne, 8007
www.fics.asn.au

Alternatively, you may wish to pursue your own legal action. You should seek your own legal advice if this is the case.

Please contact us on 03 9276 7777 if you wish to discuss the rejection of your complaint.

Annexure 3

NOTICE OF REJECTION OF PART OF COMPLAINT

You have made a complaint requesting compensation in relation to your membership in Australian Scholarship Group Friendly Society Limited ("ASG").

Your complaint requesting compensation is for financial loss or damage that you believe you have suffered as a member of ASG as a result of a statement or statements ("the Statements") made to you or by reason of conduct ("the Conduct") by representatives of ASG.

ASG has considered your complaint and has concluded that you did not suffer financial loss or damage to the extent claimed in your complaint.

Accordingly, ASG has rejected part of your complaint requesting compensation and the reasons for the rejection are attached.

Payment will be provided to you by ASG within 7 days, for that part of your complaint that has been accepted.

If you disagree with the assessment of your complaint, you may refer the matter to the Financial Industry Complaints Service (FICS). FICS is a free and independent complaints handling service which deals with complaints about friendly societies, including ASG. The contact details for FICS are:

Freecall 1300 780808 or (03) 9621 2291
FICS
PO Box 579, Collins Street West
Melbourne, 8007
www.fics.asn.au

Alternatively, you may wish to pursue your own legal action. You should seek your own legal advice if this is the case.

Please contact us on 03 9276 7777 if you wish to discuss the rejection of your complaint.

Annexure 4

The features to be implemented and maintained by ASG in its Compliance Program according to this Enforceable Undertaking ("the Program") are:

1. The Program must comply with the Australian Standard on Compliance Programs AS-3806, except where that Standard is inconsistent with the other provision in this Annexure, in which case the provisions of this Annexure will prevail.
2. The Program must provide for the appointment of a National Training and Compliance Officer.
3. The Program must require the National Training and Compliance Officer to review all promotional and training material to be used by ASG. The review must be carried out prior to the use, publication, broadcast or display of the promotional material to ensure that the use of the advertising material will not contravene Part 2, Division 1 of the Australian Securities and Investments Commission Act 2001 ("ASIC Act").
4. The Program must require the National Training and Compliance Officer to maintain for at least 3 years a documentary record of the review of all such advertising material. The record must include:
 - (a) a written identification of the promotional and training material that was reviewed;
 - (b) a copy of the promotional and training material; and
 - (c) written confirmation that the promotional and training material was reviewed and approved for use, publication, broadcast or display, stating when and by whom the review was conducted and the approval was given;
5. The Program must provide for:
 - (a) the conducting of annual training sessions in relation to sections 12CA -12CC, 12DA and 12DB of the ASIC Act and section 992A of the Corporations Act for all employees of ASG who are involved from time to time in the design, preparation, distribution or use of advertising material;
 - (b) the making and retention for at least 3 years of written records of the person who conducted, and who attended, each such training session; and
 - (c) the retention for at least 3 years of copies of all material that was used or distributed at each such training session.

Annexure 5

The program for the supervision and monitoring of representatives, to be implemented and maintained by for ASG must contain measures, processes and procedures to properly mentor and supervise its representatives. The program must be documented in Monitoring and Supervision of Representatives Plan, and must include the following features:

- (a) ASG will implement a process to ensure that only appropriate persons are appointed as its representatives. The process will include, but is not limited to:
 - (i) Individual assessments;
 - (ii) background checks;
 - (iii) ASIC register checks;
 - (iv) Independent reference check;
 - (v) Personal good fame and character declaration;
 - (vi) Conflict of interest declaration; and
 - (vii) Representative agreement.
- (b) ASG will ensure that all its representatives comply with the requirements of ASIC Policy Statement 146 ("PS 146") before giving retail financial product advice:
- (c) ASG will train all its representatives on its Compliance Program and its Monitoring and Supervision of Representatives Plan.
- (d) All representatives of ASG will be required to provide a declaration that they have read and understood ASG's Compliance Program and Monitoring and Supervision of Representatives Plan.
- (e) ASG will conduct a personal interview of all new representatives to assess their competency and understanding of ASG's Compliance Program and Monitoring and Supervision of Representatives Plan within 30 days of the expiration of the initial 13 week induction period. The interview will be of approximately 2 hours duration.
- (f) ASG will prepare a script for use by representatives who do not comply with the requirements of PS146. ASG will advise representatives not to divert from the script provided until they are compliant with the requirements of PS 146. The script will be written and approved by a person who meets ASIC's training standards and will include:
 - (i) pre-determined explanatory text
 - (ii) A series of pre-determined questions and answers, and
 - (iii) An information presentation manual.
- (g) ASG will advise its representatives who are not compliant with the requirements of PS 146 to refer clients with questions that cannot be answered by the script to an ASG representative that is compliant with the requirements of PS 146.

- (h) ASG will brief all representatives with limited authorisations and will provide them with:
 - (i) Relevant point of sale situations to explain the distinctions' between personal and general advice and factual information;
 - (ii) Financial Services Guide and Product Disclosure Statements;
 - (iii) Information about the penalties and consequences of failing to follow scripts and procedures; and
 - (iv) Information on the monitoring and supervision activities that ASG will undertake.
- (i) ASG will monitor and supervise the activities of representatives who do comply with the requirements of PS 146 by:
 - (i) Conducting random reviews of clients' files on a monthly basis.
 - (ii) Conducting monthly interviews with the representatives about recent meetings with clients and requesting details of the discussions that occurred during the meetings.
 - (iii) Conducting monthly telephone interviews with new clients to ensure that they are satisfied with the service that they received from ASG and confirm that they were not provided with any information that was beyond the representative's scope of authorisation.
- (j) In total ASG will review at least 40 new client files each month.
- (k) ASG will conduct review sessions with new representatives on a monthly basis. At the review sessions, Training Officers will discuss ASG's policy procedures and products knowledge requirements.
- (l) ASG will review the conduct of each representative on a quarterly basis. The review will assess whether representatives are competent to perform their tasks and that they are acting within the scope of their authority.
- (m) ASG will subject first year representatives and representatives who have demonstrated weaknesses in the previous 12 months to more rigorous quarterly reviews.
- (n) ASG will provide each representative with an annual refresher course.
- (o) ASG will make continuation of a representative's authorisation conditional upon the successful completion of the annual refresher training as well as the annual performance review.
- (p) ASG will undertake the following action when it becomes aware of non-compliance by a representative:
 - (i) feedback and further training will be provided when non serious issues are identified that can be addressed by additional instructions.
 - (ii) specific training will be provided when administrative or procedural issues are identified so as to address recurring or more serious matters.

- (iii) additional Supervision will be applied where issues that have the potential to adversely impact on the business are identified.
- (iv) provide ASIC with a written report on the matter in accordance with section 912D of the Act, if it has breached its general obligations.
- (q) ASG will terminate the representative's agreement in cases where remedial action has not rectified serious or recurring non-compliance concerns.
- (r) ASG will measure the adequacy of the monitoring and supervision program by:
 - (i) reviewing the number of breaches or compliance risks identified during the process of monitoring and supervising its representatives.
 - (ii) reviewing the issues recorded on the company's complaints register.
 - (iii) reviewing the issues recorded on the company's breaches register.

ASG will engage an independent consultant to assess the adequacy of its monitoring and supervision program.