



ENFORCEABLE UNDERTAKING

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

Section 93AA *Australian Securities & Investments Commission Act 2001*

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

Host-Plus Pty Ltd ABN 79 008 634 704 ("HostPlus")
Level 9, 114 William Street
MELBOURNE VIC 3000

BACKGROUND

1. HostPlus is the Trustee of a superannuation fund known as the **HOSTPLUS** Superannuation Fund ("the Fund").
2. ASIC is responsible for monitoring and promoting consumer protection in relation to financial services under Part 2, Division 2 of the *Australian Securities and Investments Commission Act 2001* ("Act").
3. HostPlus issued the following publications between April and June 2005:
 - a. A Record of Contributions sent to each member of the Fund in April 2005 ("the ROC Letter").
 - b. **HOSTPLUS** Member Guide dated 1 March 2005 ("the Member Guide").
 - c. **HOSTPLUS** Employer Guide dated 1 March 2005 ("the Employer Guide").
 - d. **HOSTPLUS** Personal Super Plan dated 29 April 2005 ("the PSP").
 - e. A flyer entitled "Want to make the right Super Choice for your staff" provided to contributing employers on 31 March 2005 ("the Employer Flyer").
4. ASIC is concerned with the following aspects of each of these publications:
 - a. They each stated that a person could be up to \$212,000 better off as a member of **HOSTPLUS** ("the \$212,000 Statement").

This was based upon an unstated assumption that the current difference between the fees paid by members of industry superannuation funds such as the Fund and the average fees paid by members of retail superannuation funds will remain

unchanged for periods of up to 40 years and so represents that the \$212,000 advantage is a prediction of actual retirement outcomes that will be achieved.

- b. They compared the returns per dollar of fees for each of **HOSTPLUS**, average industry funds and average retail superannuation funds ("the Returns Comparison Statement") and imply that **HOSTPLUS**' past investment performance and fees are a guide to its future performance and fees.
 - c. They each implied that the modelling upon which the \$212,000 Statement and the Returns Comparison Statement were based was performed independently by SuperRatings, rather than commissioned by a related company of HostPlus, Industry Fund Services Pty Ltd (the "Independent Research Statement").
5. On 15 June 2005, ASIC informed HostPlus that it considered that the \$212,000 Statement, the Returns Comparison Statement and the Independent Research Statement were misleading or likely to mislead.
 6. HostPlus initiated a review of the statements it had published to its members or contributing employers following enforcement action taken by ASIC against Industry Fund Services Pty Ltd in May and early June 2005.
 7. As a result of its review, HostPlus ceased to distribute the material referred to in paragraph 3 above and published amended versions of those materials that did not contain the statements or implications set out in paragraph 4 above.
 8. HostPlus denies that it breached any statutory obligation. However, HostPlus acknowledges ASIC's concerns and has offered ASIC this Enforceable Undertaking, which ASIC has agreed to accept.

UNDERTAKINGS

9. Pursuant to section 93AA of the ASIC Act, HostPlus provides the undertakings set out below.

Future communications by HostPlus

10. HostPlus will, in any of its communications with members or prospective members of the Fund or contributing employers or in its advertising or other promotional material about the Fund:
 - a. Refrain from using the \$212,000 statement or any similar projection of the dollar value of retirement payouts of future fund balances, unless
 - i. it provides a prominent explanation on the same page that those projections:

- A. are not predictions or estimates of actual retirement payouts.
 - B. would be altered by any changes in the relevant fees or average fees;
- ii. it explains the key assumptions used in arriving at that projection; and
 - iii. the information concerning current or past fees included is the most recent data that is available at the last reasonably practical opportunity to update the material in the verification and publication process and that the relevant fees have not since materially changed.
- b. Refrain from using the Returns Comparison statement or any similar statement, unless it contains a warning on the same page that past investment performance and fees are not guides to its future performance and fees.
 - c. Disclose whether any external research or modelling upon which it is based was commissioned by HostPlus or any related entity.

Corrective Action

- 11. HostPlus will write a letter to each Personal Super Plan member who joined **HOSTPLUS** between 1 April 2005 to the date this Enforceable Undertaking is signed, immediately in the form of Appendix 1.
- 12. HostPlus will publish (in a prominent fashion in font no smaller than its surrounding print) in its Annual Report for 2004/2005 the Notice set out at Appendix 2, and will take steps to draw its members' attention to the Notice as agreed between HostPlus and ASIC.
- 13. HostPlus will, for the period commencing 2 weeks after the acceptance of this Enforceable Undertaking by ASIC until HostPlus' Annual Report is sent to its members, place a prominent Notice on its website in the form of Appendix 2.
- 14. HostPlus will provide a report to ASIC by 31 December 2005 detailing any complaints made in relation to the statements referred to in this Enforceable Undertaking. That report will also contain details of the outcome of any complaints that have been finalised.

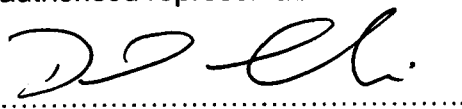
ACKNOWLEDGEMENTS

- 15. HostPlus 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.
16. HostPlus acknowledges that this Enforceable Undertaking in no way derogates from any rights and remedies that may be available to any other person or entity arising from any conduct described in this Enforceable Undertaking.
 17. HostPlus acknowledges 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.
 18. HostPlus acknowledges that this Enforceable Undertaking has no operative force until accepted by ASIC.
 19. ASIC acknowledges that nothing in this Enforceable Undertaking constitutes any admission by HostPlus.
 20. ASIC acknowledges that HostPlus has co-operated with ASIC in addressing ASIC's concerns.
 21. The provisions of this Enforceable Undertaking take effect from the date that it is signed by ASIC and terminate on 30 June 2006.

EXECUTION

Signed on behalf of Host-Plus Pty Limited ACN 008 634 704 by its duly authorised representative:



David Elia
Company Secretary/Chief Executive Officer

Date: 31 August 2005

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



Delegate of the Australian Securities and Investments Commission

Date: ~~31~~ 1 September 2005

Appendix 1 – Personal Super Plan Letter

[addressee]

[date]

Dear [name]

On [date] HostPlus Pty Limited ("HostPlus") entered into an Enforceable Undertaking with the Australian Securities and Investments Commission ("ASIC"). ASIC is a Commonwealth agency responsible for monitoring and promoting consumer protection in relation to financial services, which includes superannuation funds and advertising in relation to superannuation funds.

Enforceable Undertakings are undertakings given to ASIC that are enforceable in a court. They are generally accepted by ASIC as an alternative to civil or administrative action where ASIC believes there has been a contravention of the legislation it administers.

In June 2005 ASIC raised concerns with HostPlus about certain statements made in material it sent or made available to members, including its Personal Super Plan dated 29 April 2005 sent to members between April and June 2005.

ASIC was concerned that the following aspects of the introductory section of the Personal Super Plan were misleading:

1 Projection of the impact of fees

The Personal Super Plan represented that members of an industry fund like HostPlus could be up to \$212,000 better off based on projections using today's fee levels ("the Projection").

ASIC has raised concerns that the Projection was based upon an unstated assumption that the current difference between the average fees paid by members of industry funds like HostPlus and the average fees paid by members of retail superannuation funds will remain unchanged for periods of up to 40 years. ASIC is concerned that this assumption is highly unlikely and that the Projection is unlikely to be achieved, but that this was not explained by HostPlus.

2 "Net benefit to member" graph

The Personal Super Plan contained a graphical representation of the net benefit to member over the 5 years to September 2004 for an average retail master trust, an average industry fund and HostPlus (Net Benefit Graph). Net benefit to member equates to the return that a member will get for every dollar of fees they are charged.

ASIC has raised concerns that this graph may be misleading as it does not warn readers that past investment performance and fees are not a reliable indicator of future investment performance and fees.

3 Independent research

The research on which the Net Benefit Graph and the Projection are based was conducted by SuperRatings Pty Ltd.

ASIC is concerned that HostPlus has not disclosed that the research was commissioned by Industry Fund Services Pty Ltd, a related company of HostPlus.

While HostPlus does not accept that these statements were misleading, HostPlus offered ASIC an Enforceable Undertaking which ASIC accepted and executed on [date].

In that Enforceable Undertaking, HostPlus undertook to write to all Personal Super Plan members who may have joined the Fund on the basis of these statements.

If you consider that you have joined HostPlus, or acted in some other way, in reliance on any statements that were misleading, then it is open to you to lodge a complaint with HostPlus.

If you should have a complaint, please contact **HOSTPLUS** on 1300 363 895 for the cost of a local call or write to us:

HOSTPLUS
Complaints Officer
Locked Bag 999
Carlton South Vic 3053

We aim to resolve all complaints within 90 days of receipt. However, if you are not satisfied with either the way HOSTPLUS handles your complaint, or its resolution, you may contact the Superannuation Complaints Tribunal (SCT) which is an independent body set up to assist in resolving certain types of complaints.

Details of any complaint that you submit will also be provided to ASIC.

If you would like a copy of the Enforceable Undertaking entered into by HostPlus and ASIC, please do not hesitate to contact HostPlus on 1300 363 895.

Full details of the research supporting the statements made in the Record of Contributions letter and the assumptions on which it was based can be found at www.hostplus.com.au.

Yours faithfully

[CEO]

Appendix 2 - Notice

IMPORTANT NOTICE TO MEMBERS AND EMPLOYERS

On [date] HostPlus Pty Limited ("HostPlus") entered into an Enforceable Undertaking with the Australian Securities and Investments Commission ("ASIC"). ASIC is a Commonwealth agency responsible for monitoring and promoting consumer protection in relation to financial services, which includes superannuation funds and advertising in relation to superannuation funds.

Enforceable Undertakings are undertakings given to ASIC that are enforceable in a court. They are generally accepted by ASIC as an alternative to civil or administrative action where ASIC believes there has been a contravention of the legislation it administers.

In June 2005 ASIC raised concerns with HostPlus about certain statements made in material it sent or made available to members and contributing employers, including

- Member Guide dated 1 March 2005;
- Employer Guide dated 1 March 2005;
- Personal Super Plan dated 29 April 2005;
- A flyer entitled "Want to make the right super choice for your staff" sent to contributing employers on 31 March 2005;
- A Record of Contribution letter ("Member ROC") sent to all HostPlus members in April 2005.

ASIC was concerned that a number of aspects of the above documents were misleading:

1 Projection of the impact of fees

The documents represented that members of an industry fund like HostPlus could be up to \$212,000 better off based on projections using today's fee levels ("the Projection").

ASIC has raised concerns that the Projection was based upon an unstated assumption that the current difference between the average fees paid by members of industry funds like HostPlus and the average fees paid by members of retail superannuation funds will remain unchanged for periods of up to 40 years. ASIC is concerned that this assumption is highly unlikely and that the Projection is unlikely to be achieved, but that this was not explained by HostPlus.

2 "Net benefit to member" graph

The documents contained a graphical representation of the net benefit to member over the 5 years to September 2004 for an average retail

master trust, an average industry fund and HostPlus (Net Benefit Graph). Net benefit to member equates to the return that a member will get for every dollar of fees they are charged.

ASIC has raised concerns that this graph may be misleading as it does not warn readers that past investment performance and fees are not a reliable indicator of future investment performance and fees.

3 Independent research

The research on which the Net Benefit Graph and the Projection are based was conducted by SuperRatings Pty Ltd.

ASIC is concerned that HostPlus has not disclosed that the research was commissioned by Industry Fund Services Pty Ltd, a related company of HostPlus.

While HostPlus does not accept that these representations were misleading, HostPlus offered ASIC an Enforceable Undertaking which ASIC accepted and executed on [date].

In that Enforceable Undertaking, HostPlus undertook to place this notice in its Annual Report.

If you consider that you have joined HostPlus, or acted in some other way, in reliance on any statements that were misleading, then it is open to you to lodge a complaint with HostPlus.

If you should have a complaint, please contact **HOSTPLUS** on 1300 363 895 for the cost of a local call or write to us:

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Details of any complaint that you submit will also be provided to ASIC.

If you would like a copy of the Enforceable Undertaking entered into by HostPlus and ASIC, please do not hesitate to contact HostPlus on 1300 363 895.

Full details of the research supporting the statements made in the documents listed above and the assumptions on which it was based can be found at www.hostplus.com.au.

Yours faithfully

[CEO]