

Infringement notice

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

Day of issue: 4 July 2014

Unique identification code: B774081

TO: Esuperfund Pty Ltd
ACN 120 328 770
HWT Tower
Level 23 40 City Road
SOUTHBANK VIC 3006

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 Esuperfund Pty Ltd (**Esuper**) has contravened an infringement notice provision as follows:

Between 31 January 2014 and 8 May 2014, Esuper contravened section 12DB(1)(g) 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 a false or misleading representation (in the same form or substantially the same form as **Annexure A - Headline Advertisement**) on its website <http://esuperfund.com.au> with respect to the price of services offered by Esuper being establishment fees for self-managed superannuation funds (SMSFs).

Particulars

The Headline Advertisement contained a representation that potential clients of Esuper would not incur a fee to establish an SMSF, nor would clients be required to pay a fee towards the running of their SMSF (described in the Headline Advertisement as "Free 2014 Fee") in 2014. The Headline Advertisement sought to qualify the representation with the words:

"Fees include the Audit and ALL other SMSF Compliance Requirements" (**qualifying statement**).

The representation contained in the Headline Advertisement, and the qualifying statement itself, were false or misleading because they suggested or implied that a client would not incur any costs upon establishing an SMSF with Esuper in 2014, when the fees quoted by Esuper in the Headline Advertisement and qualifying statement failed to take into account other fees that a client would necessarily incur by setting up an SMSF, and in respect of which Esuper did not have the power to waive including:

- (a) the SMSF supervisory levy charged by the Australian Taxation Office (ATO);

- (b) fees associated with the establishment of a corporate trustee for the SMSF; and
- (c) fees associated with investment options taken up by the SMSF.

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 beginning on the day 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 beginning on the day 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:

contact: Alana Giles

by mail: Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3000

or by facsimile: 03 9280 3444

or by email: ACLInfringementNotices@asic.gov.au



Signature of delegate issuing the notice

Peter Kell

as a delegate of the Australian Securities and Investments Commission

ANNEXURE A
Headline Advertisement



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Self Managed Superannuation Highlights

How we keep our Fees low: [Tonic for the Sceptics](#)
 Minimum SMSF Fund Balance: [The \\$200,000 SMSF Myth](#)
 Examining percentage fees in Super: [The Great % Rort](#)

Setup a SMSF

A Self Managed Super Fund gives you total control over how your superannuation is invested. Watch our [video](#) to see how it works

SMSF Fees

SMSF Setup Fee : FREE
 SMSF Annual Fee : \$599 p a
 Fees include the Audit and ALL other SMSF Compliance Requirements.

Annual Compliance

ESUPERFUND attends to all your fund's annual compliance requirements. Watch our [video](#) to see how it works

Pensions

ESUPERFUND offers clients a FREE pension setup and FREE annual pension compliance. Watch our [video](#) to see how it works

Property

ESUPERFUND provides a property loan service to assist you in buying a property in your SMSF. Watch our [video](#) to see how it works

Learning Modules

ESUPERFUND has condensed its entire website content into easy to follow PDF Learning Modules.

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 ESUPERFUND Pty Ltd as Trustee for ESUPERFUND Trust ABN 37 842 535 715

General Advice Warning

The contents of this website are of a general nature only and have not been prepared to take into account any particular investor's objectives, financial situation or particular needs. ESUPERFUND does not provide financial product advice or recommend any financial products. This applies equally to those financial products which are established for your SMSF when you become a client of ESUPERFUND. Where this publication refers to a particular financial product then you should obtain a Product Disclosure Statement (PDS) relating to that product and consider the PDS before making any decision about whether to acquire the product. We also recommend that you should seek professional advice from a financial adviser before making any decision to purchase any financial product referred to on this website. While the sources for the material are considered reliable, responsibility is not accepted for any inaccuracies, errors or omissions.