



ASIC

Australian Securities & Investments Commission



S02097549

## INFRINGEMENT NOTICE

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

Day of issue: 19 May 2015

Unique identification code: A4447122

TO: BT Funds Management Ltd  
ACN: 002 916 458  
Westpac Group Secretariat  
'Westpac Place'  
Level 20, 275 Kent Street  
Sydney NSW 2000 Australia

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:

**From 26 June 2014 to 18 September 2014 (the Relevant Period) 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 a false or misleading representation that services had particular performance characteristics or benefits.**

#### Particulars

**During the Relevant Period, you made the following representation in advertisements which were published on search results pages generated via [www.google.com.au](http://www.google.com.au) :**

**“BT Super Has Outperformed Industry Super Funds Over the Last 5 Years\*”**

**ASIC is concerned that the representation was likely to lead ordinary and reasonable consumers to believe that superannuation products issued by BT had generated greater returns than those generated by all industry super funds during the stated period.**

**The representation was false or misleading because BT’s superannuation products had not generated greater returns during the stated period.**

**Despite the asterisk in the representation it was not accompanied by any qualification or supporting information and did not link to any webpage which contained any relevant qualification or supporting information.**

### **Penalty under this notice**

3. The penalty payable under this notice in relation to the alleged contravention is \$10,200.00.

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the penalty stated in this notice within the time for payment mentioned below then (unless this notice is subsequently withdrawn and any penalty paid refunded):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 \$1,700,000.00.

### **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:

**Yon Astar**  
**Australian Securities and Investments Commission**  
**GPO Box 9827**  
**Sydney NSW 2000**  
**or by email: [ACLInfringementNotices@asic.gov.au](mailto:ACLInfringementNotices@asic.gov.au)**



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Peter Kell

as a delegate of the Australian Securities and Investments Commission