



ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001

Section 93AA

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

Jason Churchill

*Suite 31009 Southport Central Tower 3
Level 10, 9 Lawson Street
Southport QLD 4215*

Churchill Consulting Services Pty Ltd

*ACN 105 819 341
PG&A Accountants + Advisers Pty Ltd
Emerald Lakes Town Centre
Suite 3, Level 3, 3027 The Boulevard
Carrara QLD 4211*

Definitions

1. In addition to terms defined elsewhere in this Enforceable Undertaking, the following definitions are used:

Act means the *Corporations Act 2001*.

AFSL means Australian financial services licence.

ASIC Act means the *Australian Securities and Investments Commission Act 2001*.

authorised representative has the meaning given by s761A of the Act.

authorising licensee means the financial services licensee that has authorised Mr Churchill and Churchill Consulting Services to provide financial product advice on behalf of the licensee.

Churchill Consulting Services means Churchill Consulting Services Pty Ltd (ACN 105 819 341).

ClearView means ClearView Financial Advice Pty Ltd (ACN 133 592 012 and AFSL 331367).

date of commencement, in relation to this enforceable undertaking, means the date this enforceable undertaking is accepted by ASIC.

financial product advice has the meaning given by s766B of the Act.

financial services has the meaning given by s766A of the Act.

financial services licensee has the meaning given by s761A of the Act.

relevant period means the period from 6 September 2013 to 29 October 2014.

retail client has the meaning given by s761G and 761GA of the Act.

Statement of Advice has the meaning given by s761A of the Act.

terms of appointment means the terms of appointment of the authorising licensee in the form attached as Annexure A to this enforceable undertaking.

ASIC's role

2. Under s1 of the ASIC Act, ASIC is charged with a statutory responsibility to perform its functions and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system.
3. ASIC conducted a surveillance of the financial services provided by Mr Churchill and Churchill Consulting Services during the relevant period.

Relevant law

4. The purpose of Chapter 7 of the Act includes to promote fairness, honesty and professionalism by those who provide financial services. The provisions of Chapter 7 that apply to Mr Churchill and Churchill Consulting Services include the following obligations (the **financial services obligations**).
 - 4.1. Section 947C of the Act requires an authorised representative to provide a Statement of Advice in the terms provided by that section.
 - 4.2. Section 947D of the Act requires an authorised representative to provide additional information in a Statement of Advice where the advice is or includes a recommendation to replace one financial product with another in the terms provided by that section.
 - 4.3. Section 961B of the Act requires a provider of financial services to identify a client's relevant circumstances (the client's objectives, financial situation and needs) and to take any other step that would reasonably be regarded as being in the best interests of the client.
 - 4.4. Section 961G of the Act requires that a provider must only provide advice to a client where the advice is appropriate to the client and the provider has satisfied the duty in section 961B to act in the best interests of the client.
 - 4.5. Section 961J of the Act requires that a provider must prioritise the interests of the client if the advice provider knows, or ought to know, when they give the advice there is a conflict between the interests of the client and the interests of the advice provider or the advice provider's authorising licensee.

- 4.6. Section 961Q of the Act provides that a contravention of sections 961B and 961G by an authorised representative is a contravention of a civil penalty provision.

Background

5. Mr Churchill is the sole director of the financial services business carried on by Churchill Consulting Services which throughout the relevant period has operated from Suite 31009 Southport Central Tower 3, Level 10, 9 Lawson Street, Southport Queensland.
6. During the relevant period, Mr Churchill and Churchill Consulting Services were acting as authorised representatives of ClearView.
7. Under those authorisations, Mr Churchill and Churchill Consulting Services were, and continue to be, authorised to advise on the following product areas on behalf of ClearView:
- 7.1. Deposit and Payment Products;
 - 7.1.1. Deposit and Payment Products - Non-basic Deposit Products;
 - 7.2. Derivatives;
 - 7.3. Foreign Exchange Contracts;
 - 7.4. Government Debentures, Stocks or Bonds;
 - 7.5. Life Products;
 - 7.5.1. Investment Life Insurance Products; and
 - 7.5.2. Life Risk Insurance Products;
 - 7.6. Managed Investment Schemes;
 - 7.6.1. Managed Investment Schemes, including IDPS;
 - 7.7. Retirement Savings Account Products; and
 - 7.8. Superannuation.
8. The conduct that is the subject of this enforceable undertaking occurred during the relevant period and in the course of Mr Churchill's and Churchill Consulting Service's roles in providing financial services on behalf of ClearView.

ASIC's concerns

9. Based on matters identified in the course of the ASIC surveillance including a review of the client files of Mr Churchill and Churchill Consulting Services and communicated to Mr Churchill and Churchill Consulting Services, ASIC is concerned that during the relevant period Mr Churchill and Churchill Consulting Services may in some instances have contravened the financial services obligations by:
- 9.1. failing to undertake adequate enquiries into the relevant personal circumstances of some clients to whom they made recommendations such as:
 - 9.1.1. inadequate investigation of the client's insurance needs with a lack of supporting evidence that the client actually self-directed levels of cover; and
 - 9.1.2. inadequate investigation of the client's expenses and capacity to service the recommended insurance premiums;

- 9.2. failing in some instances to provide adequate replacement product advice to the client in the Statement of Advice, preventing the client from making an informed decision to switch insurance cover, such as:
 - 9.2.1. failing to investigate if existing products would be more suitable than ClearView products in meeting the client's needs, or failing to assess existing products at all; and
 - 9.2.2. failing to investigate other alternative products in the market;
 - 9.3. inadequate demonstration in some cases of the benefits of a stepped or level premium;
 - 9.4. failing in some cases to consider the competing priorities of adequate insurance versus affordability, including the longer term impact of placing insurances within superannuation;
 - 9.5. limiting the advice in some cases to exclude issues which cannot reasonably be excluded from the scope of advice.
10. The conduct mentioned in paragraph 9 may each amount to contraventions of sections 947C, 947D, 961B, 961G and 961J of the Act (and which are referred to together as the ASIC Concerns).

Acknowledgement of the ASIC concerns

11. Mr Churchill and Churchill Consulting Services acknowledge:
- 11.1. the ASIC Concerns as set out in paragraphs 9 and 10;
 - 11.2. that the ASIC Concerns are reasonably held;
 - 11.3. that each of them must comply with the terms of this enforceable undertaking in order to address the ASIC Concerns;
 - 11.4. that if ASIC forms the view that either or both of them have failed to comply with this enforceable undertaking then ASIC may take additional action such as seeking court orders under s93AA of the ASIC Act requiring Mr Churchill and/or Churchill Consulting Services to comply with the terms of this enforceable undertaking (including without limitation the terms of paragraphs 19, 24 and 26.4).

General undertakings

12. Under s93AA of the ASIC Act, Mr Churchill and, where indicated, Churchill Consulting Services have offered, and ASIC has agreed to accept, the undertakings as set out in paragraphs 15 to 26 inclusive as an alternative to ASIC taking administrative action or civil proceedings against Mr Churchill and Churchill Consulting Services.
13. Mr Churchill and Churchill Consulting Services undertake that they will pay all costs of compliance with this enforceable undertaking or seek and obtain a written undertaking from the Authorising Licensee to pay all reasonable and

direct costs of compliance with this enforceable undertaking. If such an undertaking is obtained from the Authorising Licensee and there are costs of compliance with this enforceable undertaking not considered reasonable or direct by the Authorising Licensee then Mr Churchill and Churchill Consulting Services undertake they will pay those costs.

14. Mr Churchill and Churchill Consulting Services will provide all documents and information requested by ASIC from time to time for the purposes of assessing their compliance with the terms of this enforceable undertaking within 5 days after receiving a request from ASIC or such other period as may be agreed to in writing by ASIC.

Specific undertakings

Completion of training

15. Mr Churchill must, and must procure all staff of Churchill Consulting Services authorised to provide financial product advice to, commence the training (**Training**) described in paragraph 16 within 1 month of the date of commencement of this enforceable undertaking.
16. The Training required to be undertaken is as follows:
 - 16.1. insurance needs analysis and incorporating this into the provision of advice;
 - 16.2. investigating and assessing existing and new alternative products prior to recommending a product to the client;
 - 16.3. providing practical replacement product advice comparisons in the Statement of Advice so the clients can make informed decisions about replacing existing insurance policies; and
 - 16.4. demonstrating how insurance premiums diminish superannuation balances over the long-term in order to illustrate the 'real cost' of paying for insurance superannuation.
17. Mr Churchill undertakes to obtain written confirmation (**Training Confirmation**) from the providers of the Training that he and staff of Churchill Consulting Services who are authorised to provide financial product advice have attended and successfully completed each part of the Training.
18. Mr Churchill undertakes that within 14 days after successfully completing the Training, he will provide ASIC with a statutory declaration signed by him and attaching certified copies of the Training Confirmation and stating that the requirements of paragraph 16 have been complied with.

19. Mr Churchill and Churchill Consulting Services undertake that if Mr Churchill or staff of Churchill Consulting Services who are authorised to provide financial product advice fail to successfully complete the Training within 3 months of the date of commencement of this enforceable undertaking, he and Churchill Consulting Services will immediately cease providing financial services of any kind.

Pre-vetting review

20. Mr Churchill undertakes that he will abide by and take such steps as are necessary to arrange and implement the review requirements described in paragraphs 21 to 26 for the period of 12 months immediately following the date of commencement of this enforceable undertaking.
21. Mr Churchill undertakes:
 - 21.1. that within 14 days of the date of commencement of this enforceable undertaking he will obtain the agreement of his authorising licensee to:
 - 21.1.1. carry out a review of all proposed financial product advice provided by Mr Churchill and Churchill Consulting Services to retail clients in accordance with the terms of appointment prior to providing that advice to retail clients; and
 - 21.1.2. report to ASIC as provided by the terms of appointment (the **ASIC Reporting Obligations**);
22. Mr Churchill agrees that ASIC will, acting reasonably, have 10 days from the date of receipt of the proposed terms of appointment to advise Mr Churchill whether it consents to the proposed terms of appointment.
23. Mr Churchill undertakes that if, for any reason, his existing authorising licensee provides notice of discontinuance as provided for in the terms of appointment then Mr Churchill will:
 - 23.1. within 10 days of receiving such notice of discontinuance, provide ASIC with details in writing of a financial services licensee (the **new authorising licensee**) he then proposes will comply with the ASIC Reporting Obligations; and
 - 23.2. within 5 days of receiving ASIC's written consent (which will not be unreasonably withheld) to the appointment of a new authorising licensee procure the appointment of the new authorising licensee.

24. Mr Churchill and Churchill Consulting Services agree and undertake that if at any time within the duration of this enforceable undertaking either an authorising licensee is not or has not been appointed in accordance with paragraphs 21 and 22 or a new authorising licensee has not been appointed in accordance with paragraph 23 then Mr Churchill and Churchill Consulting Services will immediately cease providing financial services of any kind.
25. Mr Churchill undertakes to provide all reasonable assistance to the authorising licensee or new authorising licensee in fulfilling the obligations set out in paragraphs 21 to 24 and the terms of appointment.
26. Mr Churchill and Churchill Consulting Services, where indicated, undertake that if an authorising licensee's compliance statement (within the meaning of the terms of appointment) identifies non-compliance with any of the financial services obligations then:
 - 26.1. Mr Churchill will consider the reasons for the identified non-compliance in the authorising licensee's compliance statement and then provide to ASIC a written plan (**Remedial Action Plan**), after further consultation with the authorising licensee, setting out the action he proposes to take to address such issues of non-compliance and specifying the timeframe within which such action will be taken;
 - 26.2. Mr Churchill will provide such Remedial Action Plan to ASIC and the authorising licensee within 14 days of the date of a relevant authorising licensee's compliance statement;
 - 26.3. Mr Churchill will implement any Remedial Action Plan within the timeframe specified in such Remedial Action Plan and if ASIC requests any reasonable modifications to a Remedial Action Plan that Mr Churchill will implement the Remedial Action Plan as so modified;
 - 26.4. Mr Churchill and Churchill Consulting Services will, if the authorising licensee provides a further compliance statement that states Mr Churchill and Churchill Consulting Services have not addressed the non-compliance concerns identified in the Remedial Action Plan, not provide financial services of any kind until:
 - 26.4.1. the authorising licensee confirms that the said non-compliance has been rectified in accordance with paragraph 5 of the terms of appointment; and
 - 26.4.2. ASIC, acting reasonably, confirms that Mr Churchill and Churchill Consulting Services may continue to provide financial services.

Further acknowledgements

27. Mr Churchill and Churchill Consulting Services acknowledge that ASIC:
 - 27.1. may issue a media release on the execution of this enforceable undertaking referring to its terms and to the ASIC Concerns;
 - 27.2. may from time to time publicly refer to this enforceable undertaking; and
 - 27.3. will make this enforceable undertaking available for public inspection.

28. Mr Churchill and Churchill Consulting Services acknowledge that in relation to the authorising licensee's compliance statements ASIC:
 - 28.1. may issue a media release referring to their contents and otherwise publicly refer to them; and
 - 28.2. may make available for public inspection a copy of each of them.

29. Mr Churchill and Churchill Consulting Services acknowledge that:
 - 29.1. to address the ASIC Concerns, Mr Churchill and Churchill Consulting Services must comply with all of the requirements contained in this enforceable undertaking;
 - 29.2. in the event that Mr Churchill or Churchill Consulting Services does not fully comply with the requirements of this enforceable undertaking, ASIC may take further action in respect of the conduct which is the subject of this enforceable undertaking including exercising its powers to investigate and to take administrative, civil or criminal action in relation to any contravention including contraventions arising from the ASIC Concerns;
 - 29.3. ASIC's acceptance of this enforceable undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges or seek a pecuniary civil order in relation to any contravention not the subject of the ASIC concerns or which arise from future conduct;
 - 29.4. this enforceable undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this enforceable undertaking or arising from future conduct.

30. Mr Churchill acknowledges that this enforceable undertaking has no operative force until accepted by ASIC.

Notices

31. The addresses for providing notices and documents are as follows:

31.1. The address for providing ASIC with any notice or document in connection with this enforceable undertaking is:

Senior Manager, Financial Advisers
GPO Box 9827
PERTH WA 6001

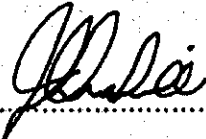
31.2. The address for providing Mr Churchill or Churchill Consulting Services with any notice or document in connection with this enforceable undertaking is:

CCS Insurance Solutions
C/- Mr Jason Churchill
PO Box 2185
Southport BC, QLD 4215



.....
Jason Churchill

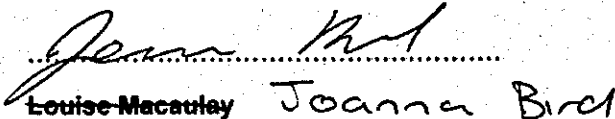
Dated: *23.12.15*



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Churchill Consulting Services Pty Ltd ACN 105 819 341

Dated: *23.12.15*

Accepted by the Australian Securities and Investments Commission under s93AA of the ASIC Act by its duly authorised delegate:



.....
~~Louise Macaulay~~ **Joanna Bird**

Delegate of Australian Securities and Investments Commission

The *6th* of *January* ~~2015~~ *2016*