

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:

*ACE INSURANCE LIMITED
ACN 001 642 020
28 O'Connell Street
SYDNEY NSW 2000*

Definitions

In addition to terms defined elsewhere in this undertaking, the following definitions are used:

ACE means ACE Insurance Limited (ACN 001 642 020).

APRA means the Australian Prudential Regulation Authority.

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

Combined means the Combined Insurance division of ACE.

Commencement Date means the date this undertaking is accepted by ASIC.

Corporations Act means the *Corporations Act 2001* (Cth).

Insurance Act means the *Insurance Act 1973* (Cth).

Except so far as the contrary intention appears in this Enforceable Undertaking, the interpretation provisions in Part 1.2 and Part 7.1 of the Corporations Act, and Part 1 Division 4 and Part 2 Division 2 of the ASIC Act apply for the purposes of this Enforceable Undertaking as if those provisions were provisions of this Enforceable Undertaking.

1. ASIC's Role

- 1.1 Under s 1 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.

2. Background

- 2.1 ACE is authorised by APRA to carry on insurance business under the Insurance Act and operates a financial services business within the meaning of Chapter 7 of the Corporations Act.
- 2.2 Since 19 January 2004, ACE has held an Australian financial services licence, number 239687 (AFSL) and is licensed to provide financial product advice in relation to, and deal in, amongst other things, general insurance products to retail and wholesale clients.
- 2.3 On 1 October 2010, the insurance business of the Australian branch of the Combined Insurance Company of America was transferred to ACE. Since that date, Combined has operated under the AFSL as a division of ACE.
- 2.4 From 1 October 2010, Combined has operated a business which includes the sale of sickness and accident insurance policies (**Policies**) to individual consumers.
- 2.5 The Policies are financial products within the meaning of s 12BAA(1)(b), (5) and (7)(d) of the ASIC Act and s 763A(b), 763C and 764A(1)(d) of the Corporations Act.
- 2.6 The Combined business is a financial services business within the meaning of Chapter 7 of the Corporations Act.
- 2.7 As at 30 June 2014, approximately 368 persons in Combined were authorised to provide financial services on behalf of ACE pursuant to s 916A of the Corporations Act (**Authorised Representatives**). Their responsibilities included providing financial advice and/or selling Policies to individual consumers.

3. Details of Conduct

3.1 From January 2014 to 1 April 2014, ASIC conducted a surveillance of Combined. On 1 April 2014, ASIC commenced an investigation under s 13 of the ASIC Act in relation to suspected contraventions of the ASIC Act and the Corporations Act.

3.2 As a result of its investigation, ASIC identified the following conduct in relation to Combined.

Authorised Representatives

3.3 From 1 January 2012 to 30 June 2014 (**Relevant Period**), a limited number of Authorised Representatives engaged in some of the following conduct:

3.3.1 Overselling of Policies – Authorised Representatives sold Policies to consumers which duplicated coverage already held by the consumer and exceeded the underwriting limits imposed by Combined;

3.3.2 Twisting/Churning of Policies – Authorised Representatives encouraged consumers to cancel their existing policies and take up new Policies which resulted in a change of coverage for no benefit, and on some occasions a detriment;

3.3.3 Selling of Unsuitable Policies – Authorised Representatives advised consumers to take up Policies under which they would not be eligible for coverage, as they:

- a) were ineligible to hold a Combined policy (such as disability pensioners); or
- b) sought coverage for potential injury caused as a result of activities that were specifically excluded under the Policy (such as professional sports and off-road dirt-bike riding),

(together, the **Authorised Representative Misconduct**).

3.4 In addition during the Relevant Period, the Authorised Representatives failed to provide additional information, required by the Corporations Act,

in statements of advice when replacing insurance coverage.

Compliance and Risk Management

3.5 During the Relevant Period:

- 3.5.1 In certain respects ACE did not have adequate or sufficiently documented compliance and risk management policies and systems in place having regard to the nature, size and complexity of Combined; and
- 3.5.2 In certain cases in relation to compliance risks that were identified by ACE regarding Combined, ACE took insufficient action to respond to a number of those risks.

Investigation and response to compliance incidents

3.6 During the Relevant Period:

- 3.6.1 ACE failed to have appropriate systems in place for investigating and addressing certain compliance incidents involving Authorised Representatives;
- 3.6.2 The system in place for investigating those compliance incidents required Regional Managers, being line managers of the Authorised Representatives, to interview Authorised Representatives regarding the incident and recommend and implement an appropriate response. Certain Regional Managers frequently failed to perform these duties in a timely, efficient or adequate manner. The ACE Compliance Department was insufficiently involved in the investigation of those Combined compliance incidents;
- 3.6.3 Those Authorised Representatives who had a high number of complaints and/or compliance incidents were referred to ACE's Agent Review Panel, a four member panel whose role was to review the conduct of Authorised Representatives and make determinations. In certain instances, the Agent Review Panel did not make appropriate

determinations in relation to certain Authorised Representatives referred to it for review; and

- 3.6.4 As a consequence, certain Authorised Representatives in respect of whom there had been multiple registered (and in some cases verified) complaints and incidents continued to sell Policies in circumstances where there was an unacceptably high risk that the Authorised Representative would fail to comply with financial services laws.

General Processes

- 3.7 The following deficiencies existed in ACE's general processes in certain respects in relation to Combined as at 30 June 2014:

- 3.7.1 Inadequate sales policies, procedures and controls in relation to the "Enhanced Sales Model", which had been implemented across Australia by no later than January 2013;
- 3.7.2 Inadequate and insufficiently documented policies in relation to the underwriting rules applied by Combined to determine whether or not a risk would be insured;
- 3.7.3 Inadequate processes to deal with errors, inconsistencies and omissions in documentation recording Combined consumers' objectives, financial situation and needs;
- 3.7.4 Inadequate processes in relation to ensuring the appropriateness of financial advice provided to Combined consumers;
- 3.7.5 Inadequate procedures in place to ensure that Authorised Representatives were provided with sufficient information regarding then existing Combined consumers, including policies held and claims history, to enable appropriate financial advice to be given to those consumers; and
- 3.7.6 Inadequate processes in place to ensure that appropriate advice was given to Combined consumers in circumstances where an Authorised Representative recommended to a Combined consumer that a Policy be

issued in replacement of another financial product, as required by s 947D of the Corporations Act.

Compliance Culture and Framework

3.8 During the Relevant Period:

3.8.1 ACE failed, in certain respects, to effectively implement a framework to foster and consistently maintain a culture of compliance within Combined, demonstrated by:

- a) Failure to prepare adequate compliance policies and procedures;
- b) Failure to take action to address identified compliance risks;
- c) Failure to have adequate systems in place to be able to investigate and supervise compliance by Authorised Representatives with financial services laws; and
- d) Failure to have adequate procedures in place to ensure that Combined's consumers were given appropriate financial advice.

4. ASIC's concerns

4.1 The Authorised Representative Misconduct involved the making of a number of misleading statements to consumers regarding the benefits and coverage of the policies in contravention of s 12DB(1)(e) of the ASIC Act.

4.2 From 1 July 2013 to 30 June 2014, Authorised Representatives who engaged in the Authorised Representative Misconduct:

4.2.1 Failed to act in the best interests of consumers in contravention of s 961B of the Corporations Act; and

4.2.2 Failed to provide appropriate advice to consumers, in contravention of s 961G of the Corporations Act.

4.3 From 1 July 2013 to 30 June 2014, ACE failed to take reasonable steps to ensure compliance by the Authorised Representatives with ss 961B and 961G of the Corporations Act, by reason of the conduct outlined in

paragraphs 3.3 to 3.8 above, in contravention of s 961L of the Corporations Act.

- 4.4 During the Relevant Period, a certain number of Authorised Representatives failed to provide the additional information required by s 947D of the Corporations Act in statements of advice for replacing insurance coverage.
- 4.5 During the Relevant Period, ACE failed to take reasonable steps to ensure compliance by the Authorised Representatives with s 947D of the Corporations Act, in contravention of s 952H of the Corporations Act.

5. Acknowledgement of ASIC's concerns

- 5.1 ACE acknowledges and admits the conduct identified in paragraphs 3.3 to 3.8 above and the contraventions identified in paragraph 4 above and notes that the concerns regarding the Authorised Representative Misconduct relate to a limited number of Authorised Representatives.
- 5.2 ACE acknowledges that it is responsible for taking reasonable steps to ensure that all of its employees and Authorised Representatives comply with financial services law and regulations.
- 5.3 Due to the conduct outlined in paragraphs 3.3 to 3.8 above, ACE regrets that this responsibility was not met in a number of instances.
- 5.4 ASIC notes that ACE has co-operated with ASIC in its investigation and acknowledges that a number of changes have been implemented by ACE since the Relevant Period, with respect to ASIC's concerns as identified in paragraph 4 above.

6. Undertakings

- 6.1 Under s 93AA of the ASIC Act, ACE has offered, and ASIC has agreed to accept as an alternative to commencing civil penalty proceedings or pursuing administrative action against ACE and the directors or officers of ACE (other than Authorised Representatives or employees of ACE who sold Policies to consumers) the following undertakings as outlined in paragraphs 7 to 10 below.

7. Change to Business Model

7.1 ACE undertakes that it will introduce the following changes to the Combined business model:

7.1.1 ACE will not issue Combined products to new consumers;

7.1.2 ACE will no longer authorise its representatives to provide personal advice in relation to the Combined products; and

7.1.3 ACE will limit any financial services authorised to be provided by its representatives in relation to Combined products to providing general advice and/or dealing,

(the **New Combined Business Model**).

7.2 The New Combined Business Model will commence on a date not later than 3 months after the Commencement Date to be advised by ACE to ASIC (**Start Date**).

8. Appointment of Independent Expert

8.1 Within 2 weeks of the Start Date of the New Combined Business Model, ACE must retain Professional Financial Solutions as an Independent Expert (**Independent Expert**) to undertake the following:

8.1.1 The **Licensee Review** (see paragraphs 8.2 to 8.4 below) – consisting of a review of the following aspects of ACE's financial services business as they apply to the New Combined Business Model in order to assess compliance with applicable provisions of the Corporations Act and the ASIC Act:

a) Its compliance policies and procedures;

b) The adequacy of compliance resources dedicated to Combined, having regard to the nature, size and complexity of ACE; and

c) The adequacy of controls and resources relating to compliance and risk management of Combined, including senior management and board involvement and oversight, having regard to the nature, size

and complexity of ACE,
(together, the **Areas of Review**);

and thereafter

8.1.2 The **Implementation Review** (see paragraphs 8.12 to 8.15 below) – consisting of a review of the effectiveness of ACE’s implementation of changes to address deficiencies in respect of the Areas of Review, if any, identified as a result in the Licensee Review.

The Licensee Review

- 8.2 The Independent Expert will undertake the Licensee Review and provide a written report (**Expert Report**) which includes an assessment of ACE’s compliance with its obligations under the Corporations Act and ASIC Act in respect of the Areas of Review and sets out any deficiencies in the Areas of Review identified by the Independent Expert in conducting the Licensee Review (**Deficiencies**), together with reasons for each conclusion and supporting evidence, and recommendations as to how any such Deficiencies may be rectified in accordance with the current Australian general insurance industry best practice (**Recommendations**).
- 8.3 ACE will have the opportunity, prior to the finalisation of the Expert Report, to provide comments on any matters which are identified by the Independent Expert as likely to be identified in the Expert Report as Deficiencies.
- 8.4 The Expert Report must be delivered to ACE and ASIC within 6 months of the appointment of the Independent Expert, or such later date as agreed between ACE and ASIC.

The Implementation Plan

- 8.5 Within 1 month following receipt of the Expert Report, ACE will submit to the Independent Expert and ASIC a draft plan for rectification of the Deficiencies drawing on the Recommendations, including timeframes for implementation (**Implementation Plan**).
- 8.6 If ACE considers that a Recommendation could not be implemented for a

reasonable cost for an organisation of the nature, size and complexity of ACE, then ACE must include in the Implementation Plan a statement as to why the cost is not reasonable and provide an alternative solution to rectify the Deficiency identified in the Expert Report to which the Recommendation was directed.

- 8.7 The Independent Expert must consider the information provided by ACE and determine:
 - 8.7.1 Whether, in the Independent Expert's view, ACE's concerns are valid;
 - 8.7.2 If the Independent Expert considers the concerns are valid, whether the alternative steps detailed by ACE are an appropriate alternative for an organisation of the nature, size and complexity of ACE, and if the Independent Expert does not consider them appropriate, provide a further alternative; and
 - 8.7.3 If the Independent Expert does not consider the concerns are valid, provide reasons to ACE for that view for ACE to consider and respond to.
- 8.8 The terms of the Implementation Plan are to be approved by the Independent Expert and ASIC. Where the Independent Expert or ASIC does not approve a particular term, they must provide a reason for the disapproval and an alternative term (if required) for consideration by ACE. ASIC's approval of the terms must not be unreasonably withheld.
- 8.9 The terms of the Implementation Plan must be finalised within 1 month following receipt by ASIC and the Independent Expert.
- 8.10 Where requested by ACE, the Independent Expert will provide guidance to ACE regarding the content of the Implementation Plan.
- 8.11 ACE will commence execution of the Implementation Plan within 1 month following its finalisation or such later date as agreed between ACE and ASIC.

The Implementation Review

- 8.12 The Independent Expert will undertake the Implementation Review and produce a written report (**Implementation Report**) assessing the extent to which ACE has executed the Implementation Plan, the effectiveness of the action taken by ACE under the Implementation Plan in rectifying the Deficiencies, identifying any remaining Deficiencies and making further recommendations as to how any remaining Deficiencies are to be rectified in accordance with then current Australian general insurance industry best practice (**Further Recommendations**).
- 8.13 ACE will have the opportunity to provide comments on any identified remaining Deficiencies prior to the finalisation of the Implementation Report.
- 8.14 The Implementation Report must be delivered to ACE and ASIC within 12 months of the commencement of the Implementation Plan or such later date as agreed between ACE and ASIC.
- 8.15 ACE agrees to address any remaining Deficiencies, with regard to the Further Recommendations, within a timeframe agreed upon by the Independent Expert and ASIC.

Terms of the Engagement

- 8.16 The Independent Expert's terms of engagement will be agreed in writing between the Independent Expert and ACE, prior to the commencement of the Licensee Review, and will include the following terms:
- 8.16.1 A requirement that the Independent Expert is to perform the tasks necessary to give effect to paragraphs 8 and 9 of this Enforceable Undertaking.
- 8.16.2 An agreement by ACE that it will use all reasonable efforts to provide, subject to any applicable confidentiality, legal privilege or other non-disclosure restrictions, the Independent Expert with access to its books, officers, employees, advisors, agents and independent contractors as may be requested by the Independent Expert in the course of and for

the purpose of undertaking the Licensee Review and Implementation Review.

8.16.3 A requirement that ACE use all reasonable efforts to provide the Independent Expert with any information or explanation requested by the Independent Expert in the course of and for the purpose of undertaking the Licensee Review and Implementation Review.

8.16.4 A requirement that the Expert Report and Implementation Report will identify:

- a) The ACE personnel who have assisted the Independent Expert and the nature of the assistance provided;
- b) The ACE personnel that have been interviewed;
- c) The documents that have been reviewed and assessed by the Independent Expert; and
- d) The documents necessary for a proper understanding of the report.

8.16.5 Agreement that the work of the Independent Expert is being carried out for ACE and ASIC and that ASIC will rely on the work of the Independent Expert.

8.16.6 Agreement that ASIC is entitled to be informed of, provided with, or be copied into all communications between ACE and the Independent Expert, including but not limited to negotiations about fees.

8.16.7 Agreement that in relation to the reports provided to ASIC by the Independent Expert, including but not limited to the Expert Report, Implementation Report and the RAP Reports (see paragraph 9.2.9 below), ASIC:

- a) May issue a media release referring to the content of the report;
- b) May from time to time publicly refer to the content of the

report; and

- c) Will make available for public inspection a summary of the content of the report, or a statement that refers to the content of the report.

8.16.8 Any such other terms as agreed by ASIC, such agreement not to be unreasonably withheld.

9. Remediation Action Plan

9.1 Within 2 months of the engagement of the Independent Expert, ACE is to prepare a draft Remediation Action Plan (**RAP**), to enable those consumers of Combined as set out in paragraph 9.2.2 below who have suffered detriment as a result of Authorised Representative Misconduct from 1 January 2012 to the Commencement Date (**Remediation Period**) to seek remediation in respect of such detriment.

9.2 The final terms of the RAP will be agreed in writing between the Independent Expert and ACE and will include, but not be limited to, the following:

9.2.1 The Independent Expert is to have oversight of the RAP, with ACE to implement the RAP.

9.2.2 Combined consumers who are eligible to participate in the RAP are all consumers who purchased a Policy during the Remediation Period.

9.2.3 Eligible consumers will be entitled to access the RAP during the 12 month period starting from the date which is 1 month after the date of finalisation of the terms of the RAP (**RAP Access Period**).

9.2.4 A system for the identification of potentially affected consumers including a general notification to all consumers who purchased a Policy within the Remediation Period to be included in their annual renewal statement, with more targeted notification to consumers who fall into the following categories:

- a) Individual consumers, as identified by ASIC, as having been subject to misconduct of Authorised Representatives during the Remediation Period;
- b) Categories of consumers, as identified by ASIC, as having been subject to misconduct of Authorised Representatives during the Remediation Period; and
- c) Consumers of Authorised Representatives identified by ACE that have at least 2 incidents or breaches recorded against them in the Remediation Period.

9.2.5 If a consumer who purchased a policy in the Remediation Period does not receive an annual renewal statement within the RAP Access Period, ACE will send the consumer a general notification by post.

9.2.6 The wording of notifications to be sent to consumers are to be approved by the Independent Expert prior to being sent.

9.2.7 Consumer claims of detriment resulting from the Authorised Representative Misconduct are to be reviewed and assessed by ACE according to the principles of the external dispute resolution (EDR) scheme of which ACE is a member as at the Commencement Date. Remediation, including financial compensation, is to be determined in line with the relevant EDR scheme principles.

9.2.8 ACE is to require any ACE staff member involved in implementing the RAP to identify any conflicts of interest involving consumers participating in the RAP to ACE. In turn, ACE is to report those conflicts of interest to the Independent Expert who will determine whether the staff member should be excluded from working on the RAP.

9.2.9 The Independent Expert is to report to ASIC on a 6 monthly basis for a period of 2 years from the commencement of the RAP (**RAP Reports**), on the following:

- a) The effectiveness of the implementation by ACE of the RAP;
- b) Progress and outcomes of the RAP; and
- c) Any other matter the Independent Expert deems relevant to the RAP.

9.2.10 Agreement that the work of the Independent Expert in relation to the RAP is being carried out for ACE and ASIC and that ASIC will rely on the work of the Independent Expert.

9.2.11 Agreement that ASIC is entitled to be informed of, provided with, or be copied into all communications between ACE and the Independent Expert, including but not limited to negotiations about fees.

9.2.12 Any such other terms as agreed by ASIC, such agreement not to be unreasonably withheld.

10. Voluntary contribution

10.1 ACE will make a voluntary contribution of AUD500,000 to Financial Counselling Australia and AUD500,000 to the Smith Family for the purposes of its financial literacy initiatives in the Learning for Life Program within 1 month of the Commencement Date.

11. Costs

11.1 ACE undertakes to pay for the costs of the compliance with paragraphs 7 to 10 above.

11.2 ACE undertakes that it will not seek reimbursement of, contribution towards or otherwise directly or indirectly pass on its cost of compliance with this Enforceable Undertaking to any third party (including its clients or Authorised Representatives).

11.3 Where paragraphs 7 to 10 provide that ACE must perform a certain act within a specified timeframe, ACE will perform the act within the specified timeframe or such longer timeframe agreed to by ASIC prior to the expiry of the specified timeframe, where ACE can demonstrate an extension is

reasonable in the circumstances.

12. Documents

12.1 ACE will, within a reasonable period of receiving a request from ASIC, provide all documents and information requested by ASIC from time to time for the purposes of assessing ACE's compliance with the terms of this Enforceable Undertaking subject to legal professional privilege.

13. Acknowledgements

13.1 ACE acknowledges that ASIC:

13.1.1 May issue a media release on execution of this undertaking referring to its terms and to the concerns of ASIC which led to its execution;

13.1.2 May from time to time publicly refer to this undertaking; and

13.1.3 Will make this undertaking available for public inspection.

13.2 Further ACE acknowledges that:

13.2.1 ASIC's acceptance of this 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 ASIC's concerns in this enforceable undertaking or arising from future conduct; and

13.2.2 This undertaking in no way derogates from ACE's obligation to report significant breaches in accordance with s 912D of the Corporations Act and its AFSL as it becomes aware of any such breach, whether or not they are identified by the Independent Expert and whether or not such breach occurred prior to the Commencement Date.

13.3 ACE acknowledges that this undertaking has no operative force until accepted by ASIC, and ACE and ASIC acknowledge that the date of the enforceable undertaking is the date on which it is accepted by ASIC.

13.4 The address for providing ASIC with any document, which this

undertaking requires to be provided is:

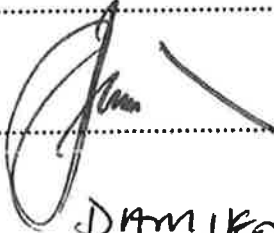
Jennifer Braw
Senior Manager, Deposit Takers, Credit & Insurers
ASIC
GPO Box 9827
Sydney NSW 2001
Jennifer.Braw@asic.gov.au

13.5 Nothing contained in this undertaking constitutes an admission by ACE (or Combined), its related bodies corporate, its present or former directors, officers, employees, Authorised Representatives, or any other person, except to the limited extent expressly set out in paragraph 5 of this undertaking.

Executed on behalf of ACE Insurance)
Limited (ABN 23 001 642 020) by its duly)
authorised officers in accordance with s 127)
Corporations Act

JOHN FRENCH

..... Name of Director



..... Signature of Director

DAMIAN SULLIVAN

..... Name of Director/Secretary



..... Signature of Director/Secretary

23/2/16

..... Date

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



Tim Mullaly, Senior Executive Leader, Financial Services Enforcement
Delegate of Australian Securities and Investments Commission

Dated: 24/2/16