

## **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:

***James Barry Fraser***  
*Cronulla, New South Wales*

### **DEFINITIONS**

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

**Acceptance Date** means the date of acceptance by ASIC of this enforceable undertaking.

**Australian financial services licence** has the meaning given by section 761A of the Corporations Act.

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

**authorised representative** has the meaning given by section 761A of the Corporations Act.

**Client** means retail client and has the meaning given by section 761G of the Corporations Act.

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

**financial product advice** has the meaning given by section 761A of the Corporations Act.

**financial product** has the meaning given by section 761A of the Corporations Act.

**financial services business** has the meaning given by section 761A of the Corporations Act.

**Financial Services Guide** has the meaning given by section 761A of the Corporations Act.

**financial service** has the meaning given by section 761A of the Corporations Act.

**financial services law** has the meaning given by section 761A of the Corporations Act.

**financial services licensee** has the meaning given by section 761A of the Corporations Act.

**MyPlanner Australia** means MyPlanner Australia Pty Ltd ACN 140 520 225.

**MyPlanner Professional** means MyPlanner Professional Services Pty Ltd ACN 159 696 830.

**personal advice** has the meaning given by section 761A of the Corporations Act.

**Relevant Period** means the period from 9 January 2015 to 14 March 2017.

**self-managed superannuation fund** has the meaning given by section 761A of the Corporations Act.

**Statement of Advice** has the meaning given by section 761A of the Corporations Act.

### **ASIC'S ROLE**

1. Under section 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.

### **BACKGROUND**

2. Since 7 June 2010, MyPlanner Australia has held an Australian financial services licence (No: 345905) authorising it to carry on a financial services business to provide financial product advice and to deal in financial products.
3. James Barry Fraser (AR No. 423704) was an authorised representative of MyPlanner Australia from 9 January 2015 until 4 August 2017. Under this authorisation, Mr Fraser had been authorised to provide financial product advice.
4. On 4 August 2017, Mr Fraser became an authorised representative of MyPlanner Professional.

#### *ASIC's surveillance*

5. ASIC carried out a surveillance into Mr Fraser's conduct during the Relevant Period to determine whether he contravened provisions of Chapter 7 of the Corporations Act with respect to financial product advice provided by him as an authorised representative of MyPlanner Australia.
6. As part of the surveillance, ASIC reviewed a sample of Client files (**Client Files**) produced by Mr Fraser in his capacity as an authorised representative of MyPlanner Australia.

### **DETAILS OF CONDUCT**

7. Through its surveillance, ASIC identified a number of concerns in relation to the financial product advice given to Clients in the Client Files. In ASIC's view, Mr Fraser, in respect of a number of Client Files reviewed:

- (a) failed to act in the best interests of Clients when recommending the establishment of a self-managed superannuation fund;
- (b) failed to provide appropriate advice to Clients in relation to superannuation and insurance when recommending the establishment of a self-managed superannuation fund and the transfer of monies in existing superannuation funds into that newly established self-managed superannuation fund;
- (c) failed to prioritise the interests of the Clients above his own when recommending the establishment of a self-managed superannuation fund and the underlying investment strategies;
- (d) failed to disclose information about relationships with external referral sources and the remuneration agreements with those parties that would reasonably be expected to be capable of influencing the financial product advice; and
- (e) failed to provide a Statement of Advice when personal advice was provided to a Client.

#### **ASIC'S CONCERNS**

8. As a result of the surveillance referred to in paragraphs 5 and 6, ASIC is concerned that Mr Fraser:
- (a) in his capacity as an authorised representative of MyPlanner Australia, may have failed to:
    - (i) act in the best interests of Clients in relation to the financial product advice provided (in contravention of section 961B of the Corporations Act);
    - (ii) provide financial product advice that could be reasonably concluded as appropriate to Clients (in contravention of section 961G of the Corporations Act);
    - (iii) give priority to the Client's interests when providing the financial product advice (in contravention of section 961J of the Corporations Act);
    - (iv) disclose information, in Financial Services Guides, about remuneration to other parties that would reasonably be expected to be capable of influencing

- the financial product advice (in contravention of paragraph 942C(2)(f) of the Corporations Act); and
- (v) provide a Statement of Advice, when providing financial product advice to Clients (in contravention of section 946A of the Corporations Act);
- (b) is likely to contravene a financial services law in the future.

## **ACKNOWLEDGMENTS**

9. Mr Fraser acknowledges that ASIC's concerns are reasonably held.
10. Mr Fraser acknowledges that ASIC:
  - (a) may issue a media release on execution of this enforceable undertaking referring to its terms and to ASIC's concerns that led to its execution;
  - (b) may from time to time publicly refer to this enforceable undertaking and whether Mr Fraser has complied with it; and
  - (c) will make this enforceable undertaking available for public inspection.
11. Further, Mr Fraser acknowledges that:
  - (a) ASIC's acceptance of this enforceable undertaking:
    - (i) does not affect ASIC's power to investigate, conduct surveillance or pursue civil or criminal proceedings in relation to any contravention that is the subject of ASIC's concerns in this enforceable undertaking; and
    - (ii) does not affect ASIC's power to investigate, conduct surveillance or pursue administrative, civil or criminal proceedings in relation to any contravention not the subject of ASIC's concerns in this enforceable undertaking or arising from future conduct;
  - (b) 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;
  - (c) this enforceable undertaking has no operative force until accepted by ASIC; and
  - (d) the date of commencement of this enforceable undertaking is the Acceptance Date.

## UNDERTAKINGS

12. Under section 93AA of the ASIC Act, Mr Fraser has offered the undertakings as set out in paragraphs 13 to 16, as an alternative to ASIC considering exercising its power under section 920A of the Corporations Act to make a banning order against Mr Fraser.

### *Cease to provide financial services for a period of 2 years*

13. Mr Fraser undertakes to cease providing financial services in any capacity for a period of 2 years starting from the Acceptance Date.

### *Upon re-entering the financial services industry*

14. If Mr Fraser decides to resume providing financial services after the lapse of the 2 year period referred to in paragraph 13, Mr Fraser undertakes to:
- (a) at least 28 days prior to him being authorised, notify ASIC of his intention to re-enter the financial services industry and provide the details of the financial services licensee he will be authorised or employed by (including the name, licence number and the authorisations that the licensee will be providing to Mr Fraser);
  - (b) before resuming the provision of financial services, complete a training program, to be approved in writing by ASIC prior to enrolment. The training program or programs to be undertaken must cover the following topics:
    - (i) Identify superannuation and retirement planning objectives;
    - (ii) Investigate and assess existing and new alternative products prior to recommendation;
    - (iii) Provide advice to establish a self-managed superannuation fund;
    - (iv) Provide appropriate advice services;
    - (v) Conduct research to support recommendations; and
    - (vi) Invest self-managed superannuation fund assets;

- (c) within 14 days of satisfying the requirements under paragraph 14(b), provide ASIC with written confirmation from the providers of the training that he has attended and successfully completed the program approved by ASIC.
- (d) upon resuming the provision of financial services, prior to providing any financial product advice to Clients:
  - (i) have each piece of advice he intends to provide to Clients audited by the relevant financial services licensee;
  - (ii) record, in writing, any changes required by the licensee; and
  - (iii) implement any changes to the advice or the advice documents required by the licensee; and
- (e) continue to comply with paragraph 14(d) until such time when Mr Fraser has provided financial product advice under the supervision of a single financial services licensee for a continuous period of 12 months.

*Costs*

15. Mr Fraser undertakes to:

- (a) pay all costs of compliance with this enforceable undertaking; and
- (b) not seek reimbursement of, contribution towards or otherwise directly or indirectly pass on his cost of compliance with this enforceable undertaking to any third party (including to Clients).

*Requests for documents by ASIC*

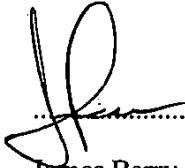
16. Mr Fraser undertakes to provide all documents and information requested by ASIC from time to time, for the purposes of assessing Mr Fraser's compliance with the terms of this enforceable undertaking, within 10 days after receiving a request from ASIC (or such longer period as may be agreed to in writing by ASIC).

**PROVISION OF DOCUMENTS**

17. The address for providing ASIC with any notice or document which this enforceable undertaking requires to be provided to ASIC is:

Australian Securities and Investments Commission

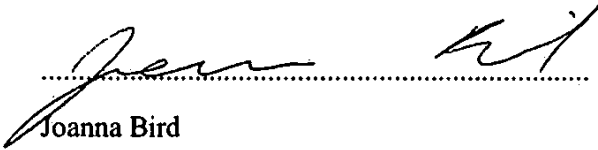
Level 20, 240 Queen Street  
Brisbane QLD 4001  
Attention: Senior Manager – Financial Advisers



James Barry Fraser

Date: 12/12/2017

**Accepted by the Australian Securities and Investments Commission under section 93AA of the ASIC Act by its duly authorised delegate:**



Joanna Bird

Delegate of Australian Securities and Investments Commission

Date accepted by ASIC: 19 December 2017