

VARIATION OF AN ENFORCEABLE UNDERTAKING

SUB-SECTION 93AA(2) OF THE

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT 1989

1. An enforceable undertaking pursuant to section 93AA of the Australian Securities and Investments Commission Act 1989 (the "Act") was offered to the Australian Securities and Investments Commission ("ASIC") by National Mutual Health Insurance Pty Ltd ("NMHI") (ACN 003 098 655) (the "company") and subsequently accepted by ASIC through its authorised delegate on 16 June 2000. A copy of the duly executed undertaking is annexed and marked "A1" ("the Undertaking").
2. Paragraph 2.3 of the Undertaking provides as follows:

"2.3 NMHI will for the three months from 19 June 2000 display and make available to the general public in all its HBA branches within Victoria, leaflets which reproduce the information contained in Annexure B".
3. Paragraph 2.4 of the Undertaking provides as follows:

"2.4 NMHI will for the three months from 19 June 2000 provide a copy of the leaflet, referred to at clause 2.3, to each person taking out HBA health insurance".
4. Paragraph 2.5 of the Undertaking provides as follows:

"2.5 NMHI will include an article which reproduces the information contained in Annexure C in its next HBA member newsletter, which will be distributed to HBA members in July 2000."
5. The third paragraph of Annexure B to the Undertaking under the heading "Important information regarding private health insurance and road accidents" reads as follows:

"Consequently people may be significantly advantaged by using the TAC scheme, rather than relying simply on private health insurance or the public health system".
6. The third paragraph of Annexure C to the Undertaking under the heading "Important information regarding private health insurance and road accidents" reads as follows:

A1

D00/16736



AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT 1989

Undertaking to the Australian Securities and Investments Commission given for the purposes of section 93AA

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

National Mutual Health insurance Pty Ltd ACN 003 098 655
15th Floor, 447 Collins Street
MELBOURNE VIC 3000

1 BACKGROUND

- 1.1 National Mutual Health Insurance Pty Ltd ("NMHI") is a company registered in New South Wales. NMHI trades in Victoria as HBA Health Insurance.
- 1.2 NMHI promotes and provides a range of private health insurance cover in Victoria.
- 1.3 During the period the week commencing 2 April 2000 and the week concluding 5 May 2000, NMHI promoted its health insurance cover by the multiple television broadcasting of two advertisements (the "advertisements") for HBA hospital cover and health insurance ("HBA insurance"). The advertisements were broadcast in both the Melbourne metropolitan area and regional Victoria. The advertisements depicted the same scenario; one advertisement being of 30 seconds duration and the other of 15 seconds duration. The advertisements depicted a cyclist colliding with the rear of a stationary bus after avoiding the opening door of a stationary motor vehicle. The 30 second advertisement promotes HBA hospital cover. The 15 second advertisement contains no reference to hospital cover but promotes HBA health insurance.
- 1.4 Pursuant to Section 102 of the ASIC Act and Section 109ZD of the Corporations Law, the ASIC has delegated to the Chief Executive Officer of the Australian Competition and Consumer Commission, (the "ACCC"), Hendrick Roelof Spier (the "ASIC delegate"), certain of its powers and functions under Division 2 of Part 2 of the ASIC Act and incidental powers thereto (including under Part 3 of the ASIC Act), for the purposes of the ACCC regulating all consumer protection aspects of health insurance which ASIC would otherwise have power to regulate.
- 1.5 The ASIC delegate has concerns that the advertisements may mislead and deceive members of the public about the benefit and utility, which may be obtained from HBA insurance in most motor traffic incidents. In particular, the ASIC Delegate is concerned that members of the public may be misled to believe that if they suffered injuries in a road traffic incident, HBA insurance would provide significant hospital, medical or other benefits which would not otherwise be available, or not available without some other private health insurance.

- 1.6 The ASIC delegate considers that the potential to mislead arises from the availability of comprehensive hospital, medical and other benefits provided through the Transport Accident Scheme in Victoria (the "TAC Scheme") and the omission of any explanation of those rights in the advertisement. The benefits under the TAC Scheme are available to members of the public involved in a transport accident as defined under Section 3 of the Victorian Transport Accident Act 1996. The TAC Scheme is a no fault compensation scheme and benefits are available regardless of fault and are provided at little or no cost to the claimant. In addition to providing medical and rehabilitation expenses, claimants may be eligible under the TAC Scheme to income and disability payments. Victims in road traffic incidents may have significant rights and benefits available under the TAC Scheme independent of the holding of private health cover. These rights may limit or remove the utility of private health cover in such circumstances.
- 1.7 The ASIC delegate considers that the advertisements may contravene sections 12DA, 12DB and 12DF of the Act.
- 1.8 Pursuant to sections 12GD, 12GE and 12GM of the ASIC Act, the ASIC delegate may, inter alia, seek injunctions preventing a person from engaging in certain conduct and/or requiring that person to do any act or thing, requiring a person to place corrective statements and/or advertisements and obtain orders declaring a contract to be void or varying a contract.
- 1.9 NMHI acknowledges the concerns of the ASIC delegate and has offered the undertakings set out in section 2.

2 UNDERTAKINGS

NMHI gives the following undertakings to the ASIC delegate pursuant to section 93AA of the ASIC Act:

- 2.1 NMHI will permanently refrain from causing to be broadcasted by television or any other electronic means, the advertisements;
- 2.2 NMHI will broadcast by television an advertisement in accordance with Annexure A. Such advertisement will be broadcast in the week commencing 19 June 2000 and further broadcast until at least 30 June 2000 in a manner that will target and potentially reach the same viewing audience of the advertisements.
- 2.3 NMHI will for the three months from 19 June 2000 display and make available to the general public in all its HBA branches within Victoria, leaflets which reproduce the information contained in Annexure B;
- 2.4 NMHI will for the three months from 19 June 2000 provide a copy of the leaflet, referred to at clause 2.3, to each person taking out HBA health insurance.

- 2.5 NMHI will include an article which reproduces the information contained in Annexure C in its next HBA member newsletter, which will be distributed to HBA members in July 2000;
- 2.6 Subject to clause 2.7, NMHI will refund any sum paid to it by a person, who has taken out HBA health insurance between 2 April 2000 and 22 June 2000, where the person requests in writing a cancellation of cover and a refund on the basis of having been misled or deceived by the advertisement, with such refund to be paid within 28 days of receipt of the person's request;
- 2.7 Where a person makes a claim for a refund under clause 2.6, and that person has been paid monies or received benefits as a result of a claim under HBA health insurance, NMHI will only be required to pay a refund where the monies paid have been returned to NMHI or, where benefits were received by the person, their monetary value has been reimbursed to NMHI.
- 2.8 NMHI will, as soon as reasonably practical, inform all its relevant staff members of the specifics of the TAC scheme and how it may interact with the use of health insurance offered by HBA.
- 2.9 NMHI will take appropriate action to ensure HBA staff advise any members, who believe they were misled by the advertisements, of the procedures for cover cancellation and refund as detailed at clause 2.6; and
- 2.10 NMHI will provide a written report to the ACCC on 31 July 2000 detailing each broadcast of the advertisement referred to in clause 2.2 by reference to the date, time and broadcaster's identity.

3 ACKNOWLEDGEMENTS

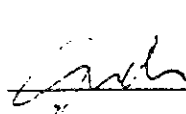
NMHI acknowledges that:

- 3.1 either or both of ASIC and the ACCC may issue a media release on execution of this undertaking referring to its terms and the concerns of the ASIC delegate which led to its execution;
- 3.2 either or both of ASIC and the ACCC may from time to time publicly refer to this Enforceable Undertaking;
- 3.3 either or both of ASIC and the ACCC may make this undertaking available to the public, including by placing it on a register, publishing it and allowing third parties to publish it.
- 3.4 this undertaking in no way derogates from the rights and remedies available to the ASIC delegate or the rights and remedies available to any other person or entity arising from any conduct described in this undertaking;
- 3.5 this undertaking has no operative force until accepted by the ASIC delegate; and

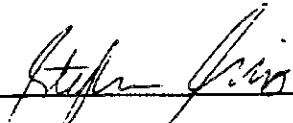
3.6 although by accepting this undertaking the ASIC delegate agrees not to take the action referred to in paragraph 1.8 for so long as the undertaking is complied with, the ASIC delegate's acceptance of an enforceable undertaking does not affect ASIC's or the ASIC delegate's power to pursue a criminal prosecution, or its power to lay charges or seek a pecuniary civil order.

The Common Seal of)
National Mutual Health Insurance Pty Ltd)
ACN 003 098 655)
was affixed to this Enforceable Undertaking)
in the presence of :)





Signature of Director



Signature of Director/Secretary


Richard Boudier

Name of Director (printed)

Stephen Smith

Name of Director/Secretary (printed)

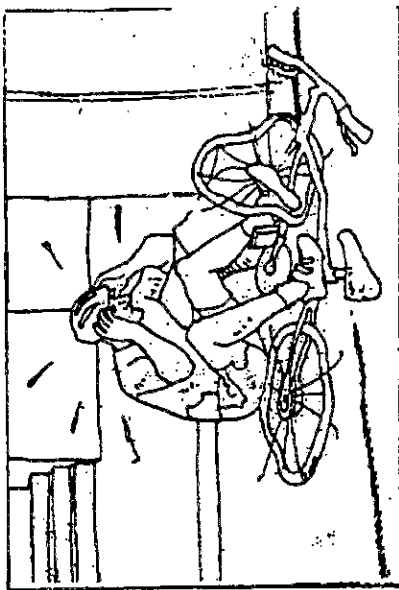
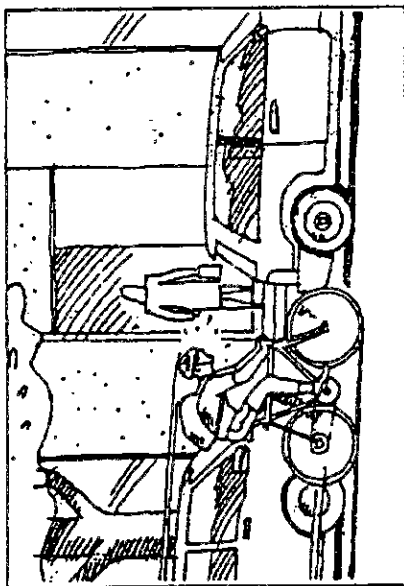
ACCEPTED BY THE AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION
PURSUANT TO ASC LAW S93AA BY ITS DULY AUTHORISED DELEGATE:



Hendrick Roelof Spier
General Manager,
Australian Competition and Consumer Commission

This *16* day of June 2000.

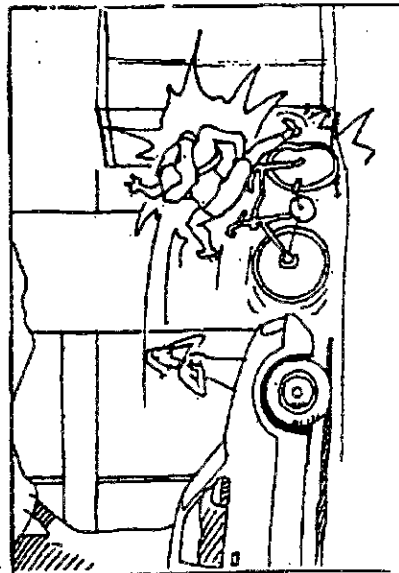
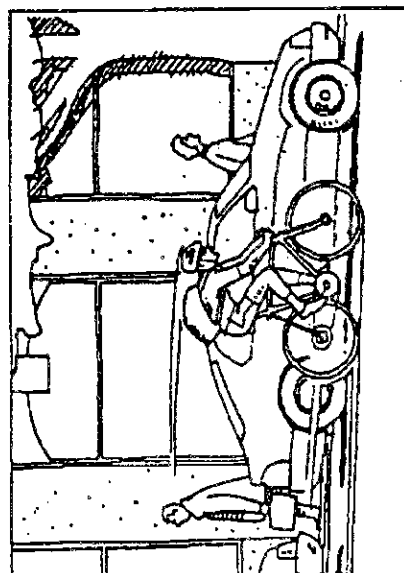
Annexure A



Lifetime Health Cover
hits July 1.

Join HBA and get
Cash Back.

HBA
Health Insurance
131 243





13 | 243

Hospital and medical expenses from most road accidents are covered by the Transport Accident Commission.

Conditions apply. A Registered Health Benefits Organisation.

Member of the **AXA** Australia Group

Annexure B

Important information regarding private health insurance and road accidents

In most road traffic accidents, injured persons can claim hospital and medical costs through the Transport Accident Commission's (TAC) no fault, third party transport accident compensation scheme.

In addition, persons eligible to claim through the TAC scheme in respect of an accident may be entitled to income and impairment payments and other related out-of-pocket expenses.

Consequently people may be significantly advantaged by utilising the TAC scheme, rather than relying simply on private health insurance or the public health system.

Accidents which are covered by the TAC

Briefly, the TAC scheme covers persons injured on the road where a driven or out of control motor vehicle is involved, or where a cyclist collides with an open (or opening) door of a motor vehicle.

For full details of coverage and eligibility under the TAC scheme, members should contact the TAC.

Accidents which are not covered by the TAC

It is important to recognise that the TAC scheme does not cover all road accidents, so that there can be advantages in having additional cover rather than relying solely on the public health system.

A recent HBA television commercial featured a cyclist being distracted by an opening car door and riding into the back of a parked bus. In the situation depicted in this commercial, the cyclist would not be covered by the TAC scheme, as he did not collide with the opening car door and the bus was parked, not driven.

HBA hopes this information is useful in pointing up the relevant considerations in respect of road accident cover.

Annexure C

Important information regarding private health insurance and road accidents

In most road traffic accidents, injured persons can claim hospital and medical costs through the Transport Accident Commission's (TAC) no fault, third party transport accident compensation scheme.

In addition, persons eligible to claim through the TAC scheme in respect of an accident may be entitled to income and impairment payments and other related out-of-pocket expenses.

Consequently members may be significantly advantaged by utilising the TAC scheme, rather than relying simply on private health insurance or the public health system.

Accidents which are covered by the TAC

Briefly, the TAC scheme covers persons injured on the road where a driven or out of control motor vehicle is involved, or where a cyclist collides with an open (or opening) door of a motor vehicle.

For full details of coverage and eligibility under the TAC scheme, members should contact the TAC.

If an HBA member is injured in a road accident, he or she should contact the TAC to determine whether or not they are eligible to claim their expenses and losses through the TAC. They are also welcome to contact HBA.

Accidents which are not covered by the TAC

It is important to recognise that the TAC scheme does not cover all road accidents, so that there can be advantages in having additional cover rather than relying solely on the public health system.

A recent HBA television commercial featured a cyclist being distracted by an opening car door and riding into the back of a parked bus. In the situation depicted in this commercial, the cyclist would not be covered by the TAC scheme, as he did not collide with the opening car door and the bus was parked, not driven.

HBA hopes this information clarifies for members which road traffic accidents are covered by the TAC and which are not. HBA also hopes this clears up any misapprehensions members may have regarding their rights and options in road accidents as a result of the commercial.

If any member was confused by the HBA commercial and consequently took out hospital cover largely because of the belief that in case of road accidents private health insurance was the only alternative to reliance on the public health system, you're invited to contact HBA on 9618 4323 to discuss your options.

Annexure A2

Important information regarding private health insurance and road accidents

In most road traffic accidents, injured persons can claim hospital and medical costs through the Transport Accident Commission's (TAC) no fault, third party transport accident compensation scheme.

People eligible to claim through the TAC scheme may also be entitled to income and impairment payments and other related out-of-pocket expenses.

Accidents which are covered by the TAC

Briefly, the TAC scheme covers persons injured on the road where a driven or out of control motor vehicle is involved, or where a cyclist collides with an open (or opening) door of a motor vehicle.

For full details of coverage and eligibility under the TAC scheme, people should contact the TAC.

Accidents which are not covered by the TAC

It is important to recognise that the TAC scheme does not cover all road accidents, so there can be advantages in having private health insurance.

A recent HBA television commercial featured a cyclist being distracted by an opening car door and riding into the back of a parked bus. In the situation depicted in this commercial, the cyclist would not be covered by the TAC scheme, as he did not collide with the opening car door and the bus was parked, not driven.

HBA hopes this information clarifies what is and isn't covered by the TAC in the event of a road traffic accident.

Annexure A3

Important information regarding private health insurance and road accidents

In most road traffic accidents, injured persons can claim hospital and medical costs through the Transport Accident Commission's (TAC) no fault, third party transport accident compensation scheme.

People eligible to claim through the TAC scheme may also be entitled to income and impairment payments and other related out-of-pocket expenses.

Accidents which are covered by the TAC

Briefly, the TAC scheme covers persons injured on the road where a driven or out of control motor vehicle is involved, or where a cyclist collides with an open (or opening) door of a motor vehicle.

For full details of coverage and eligibility under the TAC scheme, members should contact the TAC.

If an HBA member is injured in a road accident, he or she should contact the TAC to determine whether or not they are eligible to claim their expenses and losses through the TAC. They are also welcome to contact HBA.

Accidents which are not covered by the TAC

It is important to recognise that the TAC scheme does not cover all road accidents, so there can be advantages in having private health insurance.

A recent HBA television commercial featured a cyclist being distracted by an opening car door and riding into the back of a parked bus. In the situation depicted in this commercial, the cyclist would not be covered by the TAC scheme, as he did not collide with the opening car door and the bus was parked, not driven.

HBA hopes this information clarifies what is and isn't covered by the TAC in the event of a road traffic accident.

If any member was confused by the HBA commercial and consequently took out hospital cover largely because of the belief that in case of road accidents private health insurance was the only alternative to reliance on the public health system, you're invited to contact HBA to discuss your options.