

ENFORCEABLE UNDERTAKING

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION ACT 1989 SECTION 93AA

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

1. **Food and Beverage Australia Staff Superannuation Fund Pty Ltd**
(ACN 090 987 223)
2. **Christopher Ian DAY**
3. **Simon Mervyn CROXTON**
4. **Pcter David KERIN**
5. **George John HAVAKIS**

1. BACKGROUND

- 1.1 The first party is Food and Beverage Australia Staff Superannuation Fund Pty Ltd ("the Trustee") which is the trustee and joint custodian of the Food and Beverage Australia Staff Superannuation Fund ("FABAL Superannuation Fund"). Food and Beverage Australia Limited is the other joint custodian of the superannuation fund. The second party is a director and the secretary of the Trustee, the third, fourth and fifth parties are directors of the Trustee.
- 1.2 The FABAL Superannuation Fund is a corporate accumulation fund which presently has nine members. All members of the fund have common business interests and are employed by The Day Corporation Pty Ltd or related companies.
- 1.3 As a result of the National Superannuation Disclosure campaign conducted by ASIC a review was undertaken of disclosure documents provided by the FABAL Superannuation Fund in relation to the financial year ending 30 June 1999. ASIC came to the view that the disclosure documents provided to members of FABAL Superannuation Fund did not comply with the level of disclosure in relation to individual member's entitlements and the overall performance of the fund, which is required under the operating standards prescribed by the regulations made under s33(2) of the Superannuation Industry (Supervision) Act 1993 ("SIS Act"). Failure to comply with the standards is a breach of section 34(1) of the SIS Act.

- 1.4 In particular, ASIC has formed the view that the disclosure documents referred to in paragraph 1.3 were deficient by reason of the failure by the Trustee to disclose the following information required by the Regulations to the SIS Act:

Member Information

- 1.4.1 Regulation 2.23(d) - the amount (if any) of the member's withdrawal benefit at the end of the reporting period that consists of preserved benefits within the meaning of Subdivision 6.1.2.
- 1.4.2 Regulation 2.23(e) - the amount (if any) of the member's withdrawal benefit at the end of the reporting period that consists of restricted non-preserved benefits within the meaning of Subdivision 6.1.3.
- 1.4.3 Regulation 2.23(f) - the amount (if any) of the member's withdrawal benefit at the end of the reporting period that consists of unrestricted non-preserved benefits within the meaning of Subdivision 6.1.4.
- 1.4.4 Regulation 2.24(1)(g) - the rate of any allotment of net earnings during the reporting period.

Fund Information

- 1.4.5 Regulation 2.28(b) - in respect of the relevant sub-plan or, if none, of the fund - a description of:
- (i) the investment strategy of the fund trustee, having regard to the requirements of paragraph 52(2)(f) of the Act; and
 - (ii) the investment objectives.
- 1.4.6 Regulation 2.28(d) - the arrangements (in summary form) that the fund has to deal with inquiries or complaints.
- 1.4.7 Regulation 2.29(1)(b) - in the case of a standard employer-sponsored fund that is not a public offer superannuation fund and does not have a trustee approved under subsection 92(10) of the Act:
- (i) the names of all its directors during the whole or any part of the reporting period and in respect of each of those directors, details of how and by whom they were appointed.
- 1.4.8 Regulation 2.29(1)(d) - whether or not any indemnity insurance has been taken out by the trustee.

- 1.4.9 Regulation 2.29(1)(h) - in respect of the relevant sub-plan or, if none, of the fund:
- (i) the actual or notional rate of net earnings in each of the most recent reporting periods that, in total, constitute a period of at least five years; and
 - (ii) the compound average actual or notional rate of net earnings for the period of five years ending at the end of the reporting period.
- 1.4.10 Regulation 2.29(1)(j) - if the net earnings of the fund are allotted to members' accounts in respect of the relevant sub-plan or, if none, of the fund, the manner in which the allotment is made.
- 1.4.11 Regulation 2.29(1)(l) - in respect of the relevant sub-plan or, if none, of the fund a statement (in outline terms) of inter alia:
- (i) how fees, charges, expenses and administrative or other operational costs are attributed (either directly or indirectly) to members (including details of the points at which, or occasions on which, they are levied or deducted); and
 - (ii) a general statement as to the manner in which the fees, charges, expenses and administrative or other operational costs are determined.
- 1.4.12 Regulation 2.29(o) - the ultimate source (including, for example, the fund's reserves, the members accounts or the employer) from which payments in connection with superannuation contributions surcharges or advance instalments of surcharge will be drawn.
- 1.5 The Trustee's covering letter to the annual fund information states that the "operations of the Fund has been carried out in accordance with the requirements of the SIS Act". The statement is dated 24 December 1999 and is signed in accordance with a resolution of the trustees' directors, by Mr Christopher Ian Day and Mr Peter David Kerin. In view of the matters set out in paragraph 1.4 above, ASIC considers that this statement is misleading or deceptive in breach of s12DA of the ASIC Act, and also false or misleading in breach of s12DB(a) of the ASIC Act.

2. UNDERTAKING

- 2.1 Pursuant to section 93AA of the Australian Securities and Investments Commission Act 1989 the Trustee undertakes that:

- 2.1.1 it will, within 30 days of the acceptance of this undertaking by ASIC, provide to members of the FABAL Superannuation Fund all of the information required by the relevant SIS regulations for the June 1999 reporting period, and which the Trustee failed to provide to members;
- 2.1.2 it will, within 30 days of the acceptance of this undertaking by ASIC, establish and maintain a complaints and enquiries arrangement as required under section 101 of the SIS Act;
- 2.1.3 each of the directors of the Trustee will, within 12 months of the acceptance of this undertaking by ASIC, attend and successfully complete a course of training in relation to the duties and obligations of a trustee of a regulated complying superannuation fund. Further, the course of training will be equivalent in content to the Certificate of Superannuation Trusteeship (known as ASFA200) offered by the Association of Superannuation Funds of Australia ("ASFA").

3. ACKNOWLEDGEMENTS

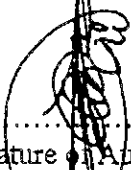
- 3.1 The Trustee acknowledges that the non-disclosures to members referred to in paragraph 1.4 above constitute breaches of the SIS Act. The Trustee also acknowledges that the statement referred to in paragraph 1.5 above was misleading and deceptive in breach of the ASIC Act.
- 3.2 The Trustee acknowledges that ASIC:
 - 3.2.1 may from time to time publicly refer to this undertaking;
 - 3.2.2 may issue a media release on execution of this undertaking referring to its terms and the concerns of ASIC which led to its execution;
 - 3.2.3 will place a copy of the executed undertaking on a Public Register.
- 3.3 Further, the Trustee acknowledges that:
 - 3.3.1 This undertaking in no way derogates from the rights and remedies available to any person arising from any conduct described in this undertaking;
 - 3.3.2 This undertaking has no operative force until accepted by ASIC.

EXECUTED on the 22nd day of September 2000
Signed for and on behalf of
Food and Beverage Australian Staff Superannuation Fund Pty Ltd
(ACN 090 987 223)


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Signature of Authorised Person

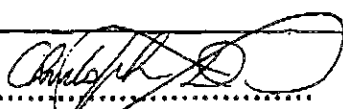
..... DIRECTOR


..... CHRISTOPHER IAN DAY


.....
Signature of Authorised Person

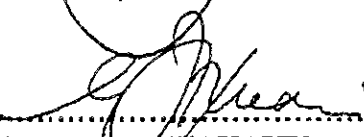
..... DIRECTOR

..... PETER DAVID KERIN

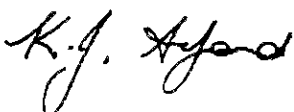

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Christopher Ian DAY
Director and Secretary


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Peter David KERIN
Director


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Simon Mervyn CROXTON
Director


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George John HAVAKIS
Director

ACCEPTANCE BY THE AUSTRALIAN SECURITIES AND INVESTMENTS
COMMISSION PURSUANT TO ASIC ACT S.93AA BY ITS DULY
AUTHORISED DELEGATE:


South Australian Regional Commissioner