



ENFORCEABLE UNDERTAKING

SECTION 93AA

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION ACT

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

Neil Colin Pethers and/or Neil Colin Pethers
Trading as Neil Pethers Insurance Brokers
57A Summerland Way
KYOGLÉ NSW 2474
("Mr Pethers")

1. BACKGROUND

- 1.1. Mr Pethers is registered under the *Insurance (Agents and Brokers) Act* - ("IABA") as an Insurance Broker in relation to general insurance business and holds registration number 20739. Mr Pethers is the sole owner of the business name "Neil Pethers Insurance Brokers" a business name registered in Queensland on 6 January 1992.
- 1.2. Mr Pethers maintains an Insurance Broking Account ("IBA") within the meaning of the IABA.
- 1.3. Mr Pethers has produced accounts audited by an approved auditor for the financial year ending 30 June 2000. The auditor of these accounts reported, *inter alia*, that:

The assets of the trust account are insufficient to meet the trust liabilities in the amount of \$17,855.46
- 1.4. As at 28 February 2001 the IBA had a deficiency of approximately \$23,000.
- 1.5. For the purposes of this Enforceable Undertaking, "deficiency" means that the sum of the balance of the IBA maintained under section 26(1) of IABA together with monies withdrawn from the IBA and invested in accordance with section 26(4) of IABA, is less than any amounts that an insurer is entitled to receive from the account and any amounts that an insured or intending insured is entitled to receive from the account.
- 1.6. The ASIC has undertaken an investigation into the activities of Mr Pethers in relation to suspected contraventions of section 26(3) of IABA.
- 1.7. As a result of its investigation, ASIC has formed the view that since approximately October 1998 and prior to 28 February 2001, Mr Pethers repeatedly contravened section 26(3) of IABA.

- 1.8. ASIC has power under Section 25(1A) of IABA, subject to a hearing, to suspend or cancel the registration of Mr Pethers as a general insurance broker.
- 1.9. Mr Pethers acknowledges the concerns of ASIC and accordingly offers the undertakings set out in this enforceable undertaking.
- 1.10. ASIC has agreed to accept the commitments in this enforceable undertaking as an alternative to the exercise of the power referred to in paragraph 1.8 above.

2. Concerns of ASIC

2.1. ASIC has the following concerns:

- a) That Mr Pethers has been operating the IBA with a deficiency in contravention of 26(3) of IABA.
- b) That there is a risk to insurers with whom Mr Pethers places insurance business that Mr Pethers will be unable to pay the amounts due to them from the IBA.
- c) That there is a risk to the insureds who have placed insurance business through Mr Pethers that:-
 - i. Mr Pethers may be unable to pay any amount due to them from the IBA; and
 - ii. if Mr Pethers is unable to pay the amounts due to the insurers with whom Mr Pethers places business, the insurers may take steps to recover those amounts from the insured.
- d) Mr Pethers has admitted that by operating the IBA with a deficiency, he has repeatedly contravened section 26(3) of IABA.

3. Undertakings

Mr Pethers gives the following enforceable undertakings to the ASIC pursuant to Section 93AA of the *Australian Securities and Investments Commission Act*:

- 3.1 Mr Pethers undertakes that he will deposit \$19,000 into the IBA on or before 13 April 2001.
- 3.2 Mr Pethers undertakes that he will deposit a further \$2,000 into the IBA on or before 30 June 2001;
- 3.3 Mr Pethers undertakes that he will repay the entire balance of the deficiency outstanding in the IBA on or before 30 September 2001;

- 3.4 Mr Pethers undertakes that he will not make any payment from the IBA to himself or on behalf of himself in excess of the commission or brokerage fees on insurance business placed by him to which he is entitled.
- 3.5 Mr Pethers undertakes that from 30 September 2001 there will at no time be a deficiency in the IBA.
- 3.5 Mr Pethers undertakes:-
- a) by 10 April 2001 to engage a registered auditor ("the Auditor"), at the expense of Mr Pethers, for the purpose of conducting audits of the IBA as stipulated herein in addition to the audit of accounts required by the IABA;
 - b) that the auditor shall not be appointed by Mr Pethers until:
 - (i) Mr Pethers has notified ASIC, in writing, of the name and address of the auditor; and
 - (ii) ASIC has consented, in writing, to the appointment of the auditor;
 - c) That he will instruct the Auditor to conduct an audit of the IBA for the periods ending 30 April 2001; 30 June 2001; 31st December 2001; 30th June 2002 and 31st December 2002.
 - d) That the Auditor will be instructed to provide ASIC with audited accounts and an audit report within 1 month of each audit period stipulated in 3.5(c) hereof.
- 3.6 Mr Pethers undertakes that if any audit report provided to ASIC reports that Mr Pethers has at any time since 13 April 2001 increased the deficiency in the IBA or since 30 September 2001 operated the IBA with a deficiency or in contravention of a provision of IABA, Mr Pethers:
- a) will make an application to ASIC seeking the cancellation of his registration as an insurance broker;
 - b) will not apply to be registered as an insurance broker under IABA or any other subsequent relevant legislation;
 - c) will not act as an insurance intermediary within the meaning of IABA or any other subsequent relevant legislation;
 - d) will not act as an officer of any company which is an insurance intermediary within the meaning of IABA or any other subsequent relevant legislation.
- 3.7 Mr Pethers undertakes to provide ASIC with all information and assistance that it requests in connection with or arising out of any actions taken in connection with this undertaking.

4. Acknowledgements

- 4.1 The parties acknowledge that they have had the opportunity to obtain legal advice in relation to the content and effect of this Enforceable Undertaking.
- 4.2 Mr Pethers acknowledges that the ASIC:-
- a) will make this enforceable undertaking available for public inspection;
 - b) may issue a media release on the execution of this enforceable undertaking referring to its terms and the concerns of ASIC which led to its execution; and
 - c) may from time to time publicly refer to this enforceable undertaking.
- 4.3 Mr Pethers acknowledges that entering into this enforceable undertaking in no way derogates from the rights and remedies available to ASIC or any other person or entity arising from any conduct described in the undertaking.
- 4.4 Mr Pethers acknowledges that ASIC's acceptance of an enforceable undertaking does not affect ASIC's power to investigate a contravention arising from the conduct in question or any future conduct, or pursue a criminal prosecution, or its power to lay charges or seek a pecuniary civil order.
- 4.5 Mr Pethers acknowledges that this enforceable undertaking has no operative force until accepted by ASIC.

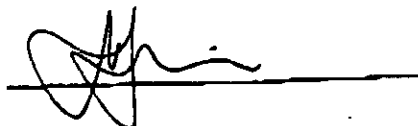
Signed by NEIL COLIN PETHERS)
in the presence of:)




Justice of the Peace/Solicitor/Commissioner for Declarations

William John Booth. J.P.
Name (Print)

ACCEPTED BY THE AUSTRALIAN SECURITIES AND INVESTMENTS
COMMISSION PURSUANT TO SECTION 93AA OF THE AUSTRALIAN
SECURITIES AND INVESTMENTS COMMISSION ACT BY ITS DULY
AUTHORISED DELEGATE.

A handwritten signature in black ink, appearing to read 'Jan Louise Speirs', is written over a solid horizontal line.

Name: Jan Louise Speirs

Position: Director Regulatory Projects
Queensland Regional Office

This 4th day of April 2001.