



**ENFORCEABLE UNDERTAKING
AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT**

Section 93AA

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

**QBE Insurance (Australia) Limited
Transport Industries Insurance Company Limited**

1. Background

1.1 QBE Insurance (Australia) Limited and Transport Industries Insurance Company Limited (collectively 'QBE') are general insurers whose business includes the marketing and sale of general insurance policies, including travel insurance policies.

1.2 In September 2001 the terms of the QBE travel insurance policies were set out in various standard form policy booklets, including the following:

- (a) Domestic Travel Insurance Policy;
- (b) International Travel Insurance Policy;
- (c) "Cover More" Travel Insurance Policies;
- (d) Domestic Advance Booking Insurance Policy;
- (e) Australian Travel Insurance Policy; and
- (f) Ansett Australia Traveller Insurance Policy.

(together, the 'QBE travel insurance policies').

1.3 The QBE travel insurance policies included a term that excluded coverage for loss suffered as a result of circumstances that were foreseeable to the insured.

1.4 On 12 September 2001 a voluntary administrator was appointed to Ansett Airlines Australia Ltd ('Ansett') and, on 14 September 2001, all Ansett flights were grounded. As a result, Ansett failed to meet its obligations to most consumers who held Ansett airline tickets as at that date.

1.5 On or about 10 September 2001, QBE formed the view based on media information about the likely financial collapse of Ansett that such collapse was foreseeable and that the QBE travel insurance policies issued on or after that date would not cover the cost of any flights cancelled due to Ansett's failure or inability to meet its obligations to consumers. On or about 10 September 2001 QBE issued a notice in accordance with its internal distribution processes to agents who sell QBE travel insurance policies informing them of this view.

- 1.6 Between 10 September 2001 and 14 September 2001, QBE continued to market and sell primarily through its agency network QBE travel insurance policies to consumers who had purchased, or were intending to purchase, an airline ticket from Ansett. However, QBE's agents may not have informed all such consumers that QBE held the view that the financial collapse of Ansett was foreseeable and that the QBE travel insurance policies would not cover the cost of any flights cancelled due to Ansett's failure or inability to meet its obligations to consumers.
- 1.7 On and from 14 September 2001 QBE rejected certain claims made on QBE travel insurance policies issued between 10 and 14 September 2001 due to the financial collapse of Ansett.
- 1.8 ASIC has concerns that QBE's conduct referred to in paragraphs 1.6 to 1.7 above may have:
- (a) misled or deceived or been likely to mislead or deceive consumers into believing that the QBE travel insurance policies would cover loss arising from the financial collapse of Ansett; and
 - (b) been a contravention of QBE's duty to act with the utmost good faith.
- 1.9 Whilst QBE acknowledges ASIC's concerns, it does not believe that it has misled or deceived consumers or contravened its duty of utmost good faith but has agreed to offer this Enforceable Undertaking to resolve the matter.
- 1.10 ASIC is responsible for monitoring and promoting consumer protection in relation to financial services, and under section 12GD of the Australian Securities and Investments Commission Act 2001 ('ASIC Act'), ASIC may, inter alia, seek injunctions preventing a person from engaging in certain conduct, require that person to do any act or thing and/or place corrective advertisements. Under sections 12GM and 50 of the ASIC Act, ASIC may commence proceedings for or on behalf of the consumers who have suffered damage by reason of any breach of the ASIC Act.
- 1.11 QBE has co-operated with ASIC's enquiries.
- 1.12 ASIC has agreed to accept this Enforceable Undertaking as an alternative to seeking the relief outlined in paragraph 1.10.

2. Undertakings

Pursuant to section 93AA of the ASIC Act, QBE offers the following undertakings to ASIC:

- 2.1 QBE will, by 7 June 2002, send a letter in the form that is annexed to this Enforceable Undertaking and marked 'A' to all consumers who:
- (a) purchased a QBE travel insurance policy between 10 and 14 September 2001;
 - (b) lodged a claim under such policy; and
 - (c) whose claim was refused on the grounds that:

- (i) the claim related to the failure of Ansett to meet its obligations to the consumer; and
 - (ii) QBE considered such failure to be foreseeable and that any resultant loss was therefore not within the terms of the policy.
- 2.2 QBE will, by 1 July 2002, send to all consumers the identity and address of whom is known to QBE at the date of this Undertaking who purchased a QBE travel insurance policy for travel with Ansett between 10 and 14 September 2001, other than those consumers referred to in paragraph 2.1 above, a letter in the form that is annexed to this Enforceable Undertaking and marked 'B'.
- 2.3 In the case of those consumers referred to in paragraph 2.2 whose identity and address is not known to QBE at the date of this Undertaking, QBE will use its best endeavours (by enquiries to the administrators of Ansett and Traveland) to ascertain their identity and address and will send a letter to them in the form of annexure 'B' within 14 days after obtaining such information.
- 2.4 QBE will, within 14 days of receiving a claim form from consumers referred to in paragraphs 2.2 or 2.3, send a letter in the form that is annexed hereto and marked 'C'.
- 2.5 QBE will:
 - (a) not reject claims made by consumers on QBE travel insurance policies issued between 10 and 14 September 2001 on the basis that a failure of Ansett to meet its obligations to consumers was foreseeable or was not an unforeseen circumstance;
 - (b) in the case of claims falling under (a) where flights were booked with Ansett using frequent flyer points, assess such claims in accordance with the determination of Insurance Enquiries and Complaints Limited ('IEC') in relation to similar claims;
 - (c) assess within 28 days of receipt of all relevant information, any claim on a QBE travel insurance policy in relation to travel with Ansett, whether lodged in response to the letters sent out by QBE pursuant to paragraphs 2.1, 2.2, or 2.3 above or otherwise; and
 - (d) subject to (b), pay such claims provided they otherwise fall within the terms of the policy of insurance, within 14 days of assessment.
- 2.4 On or by 1 June 2002, 1 August 2002 and 1 October 2002, QBE will provide reports to ASIC containing the following information concerning the status of claims made on QBE travel insurance policies relating to the financial collapse of Ansett:
 - (a) the number of claims previously rejected which are being assessed;
 - (b) the number of claims previously rejected which have been paid in full;
 - (c) the number of claims previously rejected which have been rejected on different grounds, and the reasons for those rejections;

- (d) the number of new claims received;
- (e) the number of new claims paid in full; and
- (f) the number of new claims rejected, and the grounds for those rejections.

2.7 QBE will, as soon as it becomes available provide ASIC with a copy of the report of the IEC's audit of QBE's compliance with the provisions of General Insurance Code of Practice relating to claims handling ('the IEC Review').

2.8 QBE will implement, or agree with ASIC a timetable to implement, any recommendations made by or as a result of the IEC Review.

3. **Acknowledgments**


3.1 QBE acknowledges that ASIC:

- (a) may issue a media release on execution of this Enforceable Undertaking referring to the terms of the Enforceable Undertaking and the concerns of ASIC which led to its execution;
- (b) may from time to time refer publicly to this Enforceable Undertaking; and
- (c) will make a copy of the executed Enforceable Undertaking available on a Public Register.

3.2 Further, QBE acknowledges that:

- (a) this Enforceable Undertaking in no way derogates from the rights and remedies available to any other person arising from any conduct described in this Enforceable Undertaking;
- (b) ASIC's acceptance of this Enforceable Undertaking does not affect ASIC's powers to investigate a contravention arising from future conduct;
- (c) the Enforceable Undertaking has no operative force until accepted by ASIC.

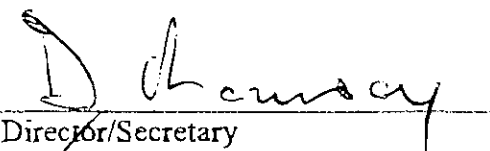
Executed by
 QBE Insurance (Australia) Limited
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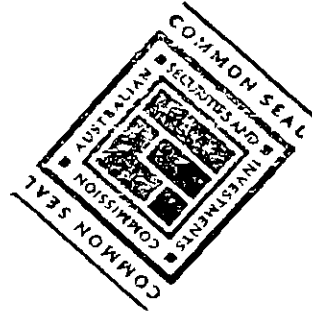
A. Hansey

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

Jan Redfern

Jan Redfern
Deputy Executive Director,
Enforcement



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Dated: 17 May 2002

'A'

DRAFT LETTER FROM QBE TO EXISTING CLAIMANTS

Dear

RE: Travel Insurance Claim

We are writing to you to inform you of a change in our approach to travel insurance claims arising from the collapse of Ansett Airlines of Australia Ltd ('Ansett').

From 10 September 2001, based on media reports we held the view that the financial collapse of Ansett was foreseeable and, accordingly, our travel insurance policies would not cover this circumstance. The Australian Securities and Investments Commission expressed concern that consumers may have been misled about our policy coverage.

We do not agree that we have misled any consumers. However, in the interests of our policy holders, and following discussions with ASIC, we have reviewed our position and we have decided that we will:

1. not reject claims made by consumers on QBE travel insurance policies purchased on and from 10 September 2001 on the basis that the financial collapse of Ansett was foreseeable;
2. assess within 28 days of receipt of the further information referred to below any claim on a QBE travel insurance policy in relation to travel with Ansett; and
3. pay such claims provided they otherwise fall within the terms of the policy of insurance within 14 days of assessment (subject to the IEC determination referred to below, if applicable).

We will not pay claims to the extent that you have received a refund from your credit card issuer or the Travel Compensation Fund.

Frequent Flyer Points

QBE's position is that your policy does not cover the cancellation of flights booked with Ansett using Frequent Flyer Points, but this is an issue presently under review by the independent claims tribunal, Insurance Enquiries and Complaints Limited. The issue of whether we will pay claims arising from the cancellation of such flights will depend on the outcome of the IEC determinations. QBE intends to deal with claims in relation to Ansett flights booked using Frequent Flyer Points in accordance with the IEC determination.

According to our records you lodged a claim on a travel insurance policy you purchased from us on or after 10 September 2001 and we refused your claim on the ground that the collapse of Ansett was foreseeable at the time you purchased your travel insurance. In these circumstances we will now reassess your claim, and we ask that you complete and return the attached request for further information.

We apologise for any inconvenience caused.

Yours sincerely

'B'

DRAFT LETTER FROM QBE TO POSSIBLE CLAIMANTS

Dear

RE: Possible Travel Insurance Claim for Ansett Flights

According to our records you purchased Travel Insurance between 10 and 14 September 2001.

If the insurance was to cover a trip which involved flight bookings with Ansett and you were unable to utilise the booking due to Ansett's financial collapse, you may be able to claim for some or all of the cancellation costs under your Travel Insurance policy.

You will not be able to claim:

1. if you paid by credit card and you have received a refund from the credit card company or credit provider;
2. to the extent that you have been reimbursed by the Travel Compensation Fund.

If you have not received compensation as outlined in 1 and 2 above would you please complete the enclosed claim form. We will assess the claim within 28 days of receipt and pay the claims provided it falls within the terms of the policy within 14 days of assessment (subject to the IEC determination referred to below, if applicable).

Frequent Flyer Points

If you had a Global Rewards ticket you should also submit a claim and attach the tickets/s or 'E' ticket confirmation letter to the claim form.

However, depending on the outcome of claims presently before the independent claims tribunal, Insurance Enquiries and Complaints Limited, we may not pay claims for flights booked with Ansett using Frequent Flyer Points. QBE's position is that your policy does not cover the cancellation of such flights, but this is an issue presently under review by IEC. QBE intends to deal with claims in relation to Ansett flights booked using Frequent Flyer Points in accordance with the IEC determination.

Please disregard this letter if your travel arrangements did not involve a flight booked with Ansett or you have already lodged a claim or have been fully compensated.

Yours faithfully

'C'

DRAFT LETTER FROM QBE TO NEW CLAIMANTS

Dear

RE: Travel Insurance Claim

We are writing in response to your travel insurance claim arising from the financial collapse of Ansett Airlines of Australia Ltd ('Ansett').

From 10 September 2001, based on media reports we held the view that the financial collapse of Ansett was foreseeable and, accordingly, our travel insurance policies would not cover this circumstance. The Australian Securities and Investments Commission expressed concern that consumers may have been misled about our policy coverage.

We do not agree that we have misled consumers. However, in the interests of our policy holders, and following discussions with ASIC, we have reviewed our position and have decided that we will not reject claims on our travel insurance policies purchased on and from 10 September 2001 on the basis of the financial collapse of Ansett.

[On receipt of further information referred to below,]* we will assess your claim and, provided it otherwise falls within the terms of your policy, we will pay your claim as indicated in our previous letter.

As advised in our previous letter, we will not pay claims to the extent that you have received a refund from your credit card issuer or the Travel Compensation Fund, and, depending on the outcome of claims presently before the independent claim tribunal, Insurance Enquiries and Complaints Limited, we may not pay claims for flights booked with Ansett using Frequent Flyer points.

[We ask you to complete and return the attached request for further information.]*

Yours faithfully

* Delete if inapplicable