



ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001 (Cth)

Section 93AA

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

TOWER AUSTRALIA LIMITED (A.C.N. 050 109 450)

1. DEFINITIONS

- 1.1. "ASIC" means the Australian Securities and Investments Commission.
- 1.2. "ASIC Act" means the *Australian Securities and Investments Commission Act 2001 (Cth)*.
- 1.3. "Account Balance" means the amount (if any) recorded as standing to the credit of the Eligible Person in respect of a Blue Ribbon Product policy having regard to certain credits and debits including but not limited to the following:
 - (a) premiums paid by or in respect of the Eligible Person;
 - (b) fees (including any (and all) Termination Penalty) and charges (including charges in respect of risk insurance provided under the relevant policy);
 - (c) net earnings credited or debited to the account balance; and
 - (d) taxes (including but not limited to contributions tax, surcharge, stamp duties).
- 1.4. "Actual Redemption or Withdrawal Amount" means the redemption or withdrawal benefits paid to an Eligible Person.
- 1.5. "Actuarial Standard" means the actuarial standard of the Life Insurance Actuarial Standards Board by virtue of the *Life Insurance Act 1995*.
- 1.6. "Annual Statement" means the document provided by Tower or a related body corporate to the Eligible Person once every year, in relation to its provision of the services connected with the Blue Ribbon Products.
- 1.7. "Blue Ribbon Products" means the products issued by Tower as set out in schedule 1 of the Court Orders and paragraph 2.2 below.

- 1.8. **"Correct Account Balance"** means the Account Balance net of the Correct Termination Penalty, if any.
- 1.9. **"Correct Redemption or Withdrawal Amount"** means the redemption or withdrawal benefits payable to an Eligible Person in accordance with the proper application of the terms of the policy constituting the relevant Blue Ribbon Product.
- 1.10. **"Correct Termination Penalty"** means the Termination Penalty to be applied in accordance with the proper application of the policy in the event of full or partial redemption or withdrawal of Blue Ribbon Product benefits prior to the maturity date of the relevant policy.
- 1.11. **"Court Orders"** means the Consent Orders in the Federal Court proceedings No 3025/2003 agreed by the parties to those proceedings and annexed to this Enforceable Undertaking.
- 1.12. **"Eligible Person"** means a person who:
 - (a) is or was a policyholder of a Blue Ribbon Product (other than a related body corporate of Tower); or
 - (b) is or was a life insured under a Blue Ribbon Product policy issued to a related body corporate of Tower.
- 1.13. **"Enforceable Undertaking"** means this Enforceable Undertaking.
- 1.14. **"Fully Redeemed or Totally Withdrawn Eligible Persons"** means the Eligible Persons who have fully redeemed or totally withdrawn their benefits in respect of any of the Blue Ribbon Products.
- 1.15. **"Interest"** means interest calculated on the basis outlined in Schedule 1.
- 1.16. **"KPMG"** means KPMG Actuaries Pty Limited.
- 1.17. **"KPMG Report"** means the report prepared by KPMG dated 12 May 2003 in respect to the Blue Ribbon Surrender Value Review.
- 1.18. **"Partially Redeemed or Partially Withdrawn Eligible Persons"** means the current Eligible Persons who have partially redeemed or partially withdrawn (but not fully redeemed or withdrawn) their benefits in respect of any of the Blue Ribbon Products.
- 1.19. **"Redemption Advices"** means the advices referred to in paragraph 2.11 below.
- 1.20. **"Senior Officer"** means an appointed officer of Tower with management capacity or above.

- 1.21 "Surrender Value" means the amount payable on redemption or withdrawal of benefits in respect of Blue Ribbon Products.
- 1.22 "System Error" means an error as a result of which the Tower Computer System or Tower fails to calculate the Correct Redemption or Withdrawal Amount.
- 1.23 "Solution" means the means by which Tower rectify the System Error.
- 1.24 "Termination Penalty" means the fee or charge applied by Tower in consequence of full or partial redemption or withdrawal of Blue Ribbon Product benefits, which in the case of a full redemption or withdrawal is the excess of the Account Balance over the Surrender Value.
- 1.25 "Tower" means Tower Australia Limited.
- 1.26 "Tower Computer System" means the computer system which holds the records of Tower in relation to the Blue Ribbon Products.
- 1.27 "Unlocated Member" means an Eligible Person who is not listed in Schedule 3 to the Court Orders and to whom:
- (a) one or more Annual Statements were issued on or after January 1993; and/or
 - (b) any redemption or withdrawal amount was paid on or after January 1993;
- in respect of a Blue Ribbon Product.
- 1.28 "Withdrawal Amount Representations" means the representations referred to in paragraph 2.9 below.

2. BACKGROUND

- 2.1 Tower provides and has provided superannuation, savings and investment, retirement income stream and risk products to the general public.
- 2.2 Tower offers and has offered directly or indirectly through a related body corporate, since about 1993, amongst others, interests in the following life insurance policies to the general public:
- (a) Blue Ribbon Series (Executive) Personal Savings;
 - (b) Blue Ribbon Series (Executive) Personal Superannuation;
 - (c) Blue Ribbon Plus Savings Plan;

(d) Blue Ribbon Plus Superannuation Plan

2.3 Each of the Blue Ribbon Products is and was a regular premium investment policy available as either a superannuation plan or a savings plan.

2.4 Eligible Persons had the following options in relation to the Blue Ribbon Products:

- (a) to index regular premiums in line with the Consumer Price Index; or
- (b) to make additional increases (or decreases) in their regular premium contributions; or
- (c) make non-regular premium contributions.

2.5 The Blue Ribbon Products are long-term contracts and are subject to a Termination Penalty in the event of full redemption or withdrawal prior to the maturity date of the Policy. In the event of a partial redemption or withdrawal prior to the maturity date, a proportionate of the Termination Penalty is deducted from the relevant Eligible Person's Account Balance.

2.6 The Blue Ribbon Products are administered on the Tower Computer System, which maintains the relevant transaction records for the Blue Ribbon Products and also calculates the Surrender Value in respect of the Blue Ribbon Products for the purpose of providing:

- (a) the Surrender Value for inclusion in Annual Statement or Withdrawal Amount Representations to the extent required by law; and/or
- (b) quotations for Surrender Value; and/or
- (c) payment of the Surrender Value

to the Eligible Person.

2.7 A number of persons within Australia have acquired an interest in one or more of the Blue Ribbon Products since about 1993.

2.8 Since about 1993 Tower has provided directly or indirectly through a related body corporate to every Eligible Person once every year, in relation to its provision of the services connected with the Blue Ribbon Products, an Annual Statement to the extent required by law.

2.9 The Annual Statement showed:

- (a) the amount payable on withdrawal at the commencement of the relevant annual period;
- (b) the amount payable on withdrawal at the conclusion of the relevant annual period

to the extent required by law.

- 2.10 The Withdrawal Amount Representations made to some but not all Eligible Persons and referred to in paragraph 2.9 above, since about 1993, contained statements as to the amounts of the Surrender Value, which amounts differed from the Correct Redemption or Withdrawal Amount.
- 2.11 Since about 1993 Tower has, upon full redemption of a Blue Ribbon Product policy issued in respect of an Eligible Person, delivered directly or indirectly through a related body corporate to each such Eligible Person a letter (either attaching a cheque or confirming a direct deposit into a nominated account), stating in substance that the cheque or deposit represents the Correct Redemption or Withdrawal Amount.
- 2.12 The Redemption Advices provided to some but not all Eligible Persons and as referred to in paragraph 2.11 above, since about 1993, contained representations as to the amounts of the Surrender Value which amounts differed from the Correct Redemption or Withdrawal Amount.
- 2.13 Since about 1993, Tower has, upon receipt of a request, provided quotation of the Surrender Value to the relevant Eligible Person.
- 2.14 The amount of the Surrender Value quotation in respect of some but not all Eligible Persons differed from the Correct Redemption or Withdrawal Amount.
- 2.15 The Actual Redemption or Withdrawal Amount paid to or in respect of some but not all Eligible Persons differed from the Correct Redemption or Withdrawal Amount.
- 2.16 The Termination Penalty deducted from the Account Balance of some but not all Eligible Persons in the event of partial redemption or withdrawal was incorrect.
- 2.17 Tower have undertaken investigations in relation to the problems referred to in paragraphs 2.10, 2.12, 2.14 and 2.15 and asserts that to the extent there was an incorrect Surrender Value, the System Error, as far as Tower is aware, caused the said problems.
- 2.18 Further, Tower confirms that as far as it is aware the System Error is only limited to the Blue Ribbon Products or financial products in the nature of the Blue Ribbon Products.
- 2.19 ASIC is the consumer protection regulator of the financial services industry and accordingly is responsible for the monitoring and promoting of consumer and market integrity in the Australian financial system.

2.20 ASIC is concerned that:

- (a) the Redemption Advices and Annual Statements delivered to some Eligible Persons contained a Surrender Value which differed from the Correct Redemption or Withdrawal Amount;
- (b) the Actual Redemption or Withdrawal Amount paid to some Eligible Persons differed from the Correct Redemption or Withdrawal Amount;
- (c) the Surrender Value quotation provided to some Eligible Persons differed from the Correct Redemption or Withdrawal Amount

and accordingly may have misled or deceived the relevant Eligible Person of one or more of the Blue Ribbon Products.

2.21 In the circumstances, referred to in paragraph 2.20, ASIC is of the view that Tower breached provisions of the ASIC Act including section 12DA.

2.22 ASIC is also concerned that the Systems Error may not be limited to calculation of the Surrender Value for the Blue Ribbon Products.

2.23 Tower is currently identifying the appropriate Solution.

2.24 Since February 2001, Tower instituted a manual process to calculate the Correct Redemption or Withdrawal Amount in respect of full redemptions or total withdrawals from the Blue Ribbon Products.

2.25 At Tower's suggestion, Tower commissioned an independent actuary KPMG to assess the issues pertaining to the Blue Ribbon Products and to review the manual calculation algorithm and procedures used by Tower and as referred to in paragraph 2.24 above to calculate the Surrender Value.

2.26 KPMG has verified that the manual Blue Ribbon Surrender Value Calculation process materially and accurately reflect the Correct Redemption or Withdrawal Amount and the requirements of the Actuarial Standard 4.01 or 4.02.

2.27 On 15 May 2001, ASIC commenced proceedings against Tower in the Federal Court of Australia.

2.28 Tower and ASIC have agreed to settle the Federal Court proceedings No 3025/2003 by :

- (a) Tower giving and ASIC accepting this Enforceable Undertaking in the terms and

conditions contained herein; and

- (b) the parties consenting to the annexed Court Orders.

3. UNDERTAKINGS

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

Repayment to Eligible Person

- 3.1 Tower will use its reasonable endeavours to pay by 31 August 2003 all Fully Redeemed or Totally Withdrawn Eligible Persons any amount by which the Correct Redemption or Withdrawal Amount exceeds the Actual Redemption or Withdrawal Amount ("**the repayments**"), together with Interest on the repayments from the date of redemption or withdrawal and where this is not possible, Tower will pay the repayments to:
 - (a) the relevant eligible rollover fund in respect of persons who come within the meaning of paragraph (b) of the definition of Eligible Person where permitted by law; or
 - (b) where not permitted by law or, in the case of all other Eligible Persons, in accordance with the relevant legislative unclaimed monies provision (if any).
- 3.2 Tower will correct the records in respect of any Partially Redeemed or Partially Withdrawn Eligible Persons to show the Correct Account Balance(s) as at the date of any partial redemptions or withdrawals. The difference between the Correct Account Balance and the Account Balance as at the date of any partial redemptions or withdrawals being referred to as the "adjustments".
- 3.3 For the purpose of paragraph 3.2 above, Tower will credit or debit as the case may be investment earnings to the adjustments in accordance with the applicable investment selection which applied to the Eligible Person between the date of the relevant partial redemption or withdrawal and the date of the adjustment thereby putting the Eligible Person in the position they would have been in had the System Error not occurred.
- 3.4 On or by 30 September 2003 Tower will provide to ASIC a report signed by a Senior Officer or Senior Officers of Tower who has or have personal knowledge of the matters referred to in paragraphs 3.1 to 3.3 containing the following information concerning the status of the repayments and adjustments of all persons listed in Schedule 3 of the Court Orders:
 - (a) the number of persons to whom a repayment has been made;
 - (b) the total amount of the repayments;

- (c) the number of accounts in respect of which an adjustment has been made; and
- (d) the total amount of the adjustments.

Waiver of Rights

- 3.5 Tower will not sue any Eligible Person in respect of an overpayment made as a result of the System Error.

Tower Computer System

- 3.6 Tower will use its best endeavours to identify and implement the Solution as soon as possible.
- 3.7 For the purpose of paragraph 3.6, Tower will retain the services of CSC Australia Pty Limited or an alternative company that provides similar services to promptly carry out a program change which rectify the System Error.
- 3.8 Tower will provide monthly reports to ASIC signed by a Senior Officer or Senior Officers of Tower who has or have personal knowledge of the matters referred to in paragraphs 3.6 and 3.7 that sets out the steps taken to comply with its obligations referred to in paragraphs 3.6 and 3.7.

Funding

- 3.9 The cost of the work that is required to be done in accordance with the Court Orders and the Enforceable Undertaking will be met in such a way that the benefits or entitlements of policyholders of one or more of the financial products offered by Tower will not be affected.

Internal Review

- 3.10 Tower will forthwith conduct an internal review of its computer system and processes to determine if a surrender value miscalculation is occurring in respect of other financial products in the nature of the Blue Ribbon Products, namely the products known as the FAI Personal Superannuation Plan and Tower Assurety Products.
- 3.11 Within 35 days of the completion of the internal review, Tower will provide a report to ASIC signed by a Senior officer or Senior officers of Tower who has or have personal knowledge of the matter referred to in paragraph 3.10 that sets out the results of the internal review ("**Internal Report**").
- 3.12 If the Internal Report referred to in paragraph 3.11 above discloses any problems or errors, Tower will use its best endeavours to correct those problems or errors as soon as reasonably

possible and to promptly report to ASIC as to the steps taken to correct the problems or errors.

Future Actual Redemption or Withdrawal Amount or Redemption Advices

3.13 Tower shall take all reasonable steps to ensure that:

- (a) all Redemption Advices; and/or
- (b) all Actual Redemption or Withdrawal Amount;

in respect of one or more Blue Ribbon Products are based on the Correct Redemption or Withdrawal Amount.

Future Annual Statement or Withdrawal Amount Representations

3.14 Tower shall take all reasonable steps to ensure that, once implementation of the Solution is completed, all Annual Statement and/or Withdrawal Amount Representations delivered to any Eligible Person are based on the Correct Redemption or Withdrawal Amount.

3.15 Until implementation of the Solution is completed, Tower shall arrange for:

- (a) each Annual Statement to contain the following note:

"The amount payable on Withdrawal shown on this statement may not be correct. Tower is implementing a correction to ensure that future Statements of Account will contain the correct Redemption/Withdrawal value. Once this correction has been made we will forward a revised Statement of Account."; and

- (b) each written Surrender Value quotation to contain the following note:

"The amount of the surrender value quoted (ie the amount payable on withdrawal) shown on this statement may not be correct. Tower has discovered that a computer system calculation error has meant that some Blue Ribbon surrender values are wrong. We are implementing a correction to ensure Surrender/Withdrawal values are correctly calculated in future. Any payment will be based on the correct surrender value and, where you are invested in unit linked investment options, will also reflect unit prices at that time."

Notification of Actual Effect

- 3.16 Tower shall take all reasonable steps to deliver, in the manner described and to the persons referred to in paragraphs 2 and 3 of the Court Orders who have been located, notices informing them of the actual effect (if any) on that person's redemption or withdrawal benefit as a result of the System Error.
- 3.17 Tower will provide to ASIC in a form of a letter, signed by a Senior Officer or Senior Officers of Tower with knowledge of the matter referred to in paragraph 3.16 above, confirmation of its compliance of its obligations referred to in paragraph 3.16.

Compliance with Recommendations in KPMG Report

- 3.18 Tower shall implement procedures to ensure that:
- (a) the checking process reviewed by KPMG and referred to in the KPMG Report in the "Recommendations" in the "Executive Summary" will be completed for all manual Blue Ribbon Surrender Value calculations; and
 - (b) complete records are retained by Tower recording the final manual Blue Ribbon Surrender Value calculation where more than one attempt is made to complete the calculation or where the calculation has not been checked against Actuarial Standards 4.01 or 4.02.
- 3.19 On or before 20 July 2003, Tower will provide a report to ASIC signed by a Senior Officer or Senior Officers of Tower who has or have personal knowledge of the matters referred to in paragraph 3.18 that sets out the steps taken by Tower to comply with its obligations referred to in paragraph 3.18.

Audit of Solution

- 3.20 Within 21 days of the implementation of the Solution being completed, Tower shall engage the services of KPMG or an alternative independent actuarial firm that provides similar services to:
- (a) ascertain whether the Solution rectified the System Error ("the review"); and
 - (b) within 21 days of the completion of the review, provide a report to ASIC on the results of the review.

Confirmation of Compliance of Enforceable Undertaking

3.21 Tower, through its Chief Executive Officer, will provide a written report to ASIC certifying that, having made reasonable inquiries, he is satisfied as to the veracity of the reports provided in accordance with paragraphs 3.4, 3.11, and 3.19.

4. Acknowledgements

4.1 Tower acknowledges that ASIC:

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

4.2 Further, Tower acknowledges that:

- (a) ASIC's acceptance of this undertaking does not affect ASIC's power to investigate a contravention arising from future conduct.
- (b) Tower acknowledges that this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking.
- (c) Tower acknowledges that this undertaking has no operative force until accepted by ASIC.

EXECUTED on *19 JUNE* 2003

The Common Seal of)
TOWER AUSTRALIA LIMITED)
 (A.C.N. 050 109 450) was duly affixed to this)
 undertaking on *June 2003* in the presence of:)



Director

Director/Secretary

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

.....
Delegate's name and title *Jaleg*
Deputy Executive
Director, Superannuation

Schedule 1

Basis of calculation of interest on shortfall payments

The method which will be used for the calculation of the interest rate is as follows:

1. Calculate the average of the Commonwealth Government 5 year bond rates from 1 April 1998 to 31 March 2003.
2. Add 3% to this average interest rate.
3. Apply a tax rate of 34% for Ordinary policies (average of pre 2000 and post 2000 tax rates) and 15% for Superannuation policies.
4. Round the interest rate down to the lower $\frac{1}{4}\%$.
5. This interest rate will then be applied from the date of the Actual Redemption or Withdrawal Amount payment to the date of the repayment.