



017029125

Enforceable Undertaking

Australian Securities and Investments Commission Act 2001

Section 93AA

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

General Reinsurance Australia Ltd (ABN 16 008 427 450)

Level 13, 225 George Street SYDNEY NSW 2000

and

**The Persons whose names are set out in Schedule 1
to this Enforceable Undertaking**

This Enforceable Undertaking was offered and accepted on 22 April 2004. This document was completed on 28 May 2004.

1. Background

1. In the first half of 1998 General & Cologne Re Australia Limited (**GCRA**), now known as General Re Australia Limited (**GRA**), negotiated and completed a series of transactions (the **Relevant Transactions**) with various companies within the FAI Insurance group (together **FAI**).
2. The use to which FAI put those transactions in finalising its accounts as at 30 June 1998 has been investigated both by the HIH Royal Commissioner and ASIC. Relevantly for the purposes of this Enforceable Undertaking, the conduct of GRA and of the Relevant Persons as listed in Schedule 1 was investigated.
3. ASIC has, in the course of its investigations, identified some issues of concern. Those concerns are set out in section 2 below. GRA and the Relevant Persons acknowledge ASIC's concerns. They deny any involvement in any wrongdoing. Without any admissions they have given the undertakings referred to in section 4 below.

2. ASIC's concerns and the Response of GRA and the Relevant Persons

4. ASIC considers that the manner in which the Relevant Transactions were documented was used by the FAI management in the booking of false profits in its accounts.
5. ASIC is concerned that GRA and each of the Relevant Persons might have been "involved" in the alleged contraventions of sections 232(2) and 232(6) of the former Corporations Law (the **Corporations Law**) by each of Daniel Wilkie, Timothy Mainprize and Stephen Burroughs in relation to each of their conduct in committing FAI to the reinsurance transaction effected between 1 and 6 May 1998 and then as renegotiated between 23 and 26 June 1998.
6. ASIC does however acknowledge that:
 - (a) GRA and each of the Relevant Persons has assisted in ASIC's investigations by the provision of statements and documents and that assistance is ongoing;
 - (b) the structure of the transaction was not conceived by any of the Relevant Persons; and
 - (c) the Royal Commissioner noted that officers of GRA were "forthright and helpful" in their evidence.

3. Acknowledgements of Concerns and Resolution

7. While GRA and the Relevant Persons do not agree with ASIC's concerns as set out in this Enforceable Undertaking, they acknowledge those concerns and have given the undertakings set out in section 4 of this Enforceable Undertaking.
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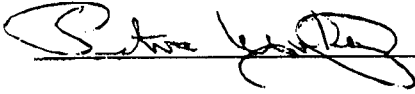
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8. By accepting the undertakings identified in section 4 below offered by GRA and the Relevant Persons in this Enforceable Undertaking, ASIC:
 - (a) concludes its investigation into GRA and the Relevant Persons in relation to the Relevant Transactions; and
 - (b) subject to paragraph 11 below, will not take any other action against the parties to this Enforceable Undertaking (or their past or present officers) or any other related entity (or their past or present officers), which relate to the Relevant Transactions, including, but without limitation, any action against the Relevant Persons or GRA in relation to section 206E of the *Corporations Act 2001* or sections 1317HA or 232 of the *Corporations Law*.
 9. GRA and the Relevant Persons acknowledge that ASIC:
 - (a) may issue a media release referring to the terms of this Enforceable Undertaking and the concerns of ASIC which led to its execution;
 - (b) may from time to time publicly refer to this Enforceable Undertaking; and
 - (c) will make this Enforceable Undertaking available for public inspection.
 10. GRA and the Relevant Persons acknowledge that this Enforceable Undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this Enforceable Undertaking.
 11. GRA and the Relevant Persons acknowledge that ASIC's acceptance of this Enforceable Undertaking does not affect ASIC's power to investigate a contravention arising from future conduct or its rights to enforce any provisions of this Enforceable Undertaking.
 12. ASIC acknowledges that nothing in this Enforceable Undertaking constitutes any admission by GRA or the Relevant Persons.

4. Undertakings

13. Without any admissions, GRA and the Relevant Persons have offered and ASIC have agreed to accept, the undertaking in the terms set out below.
 14. GRA and the Relevant Persons, where appropriate, provide the following undertakings for the purposes of section 93AA of the *ASIC Act 2001*.
 15. Within 12 months of the execution of this undertaking GRA will develop the Compliance Program set out in Schedule 1.
 16. GRA shall, by 2pm on Monday 3 May 2004, make payment of AU\$ 27,241,369.86 including interest to the liquidator of FAI in settlement of contemplated proceedings by ASIC pursuant to section 1317HA of the *Corporations Law* in refund of premiums paid by FAI to GRA under the Relevant Transactions.
 17. Upon agreement between GRA, ASIC and St James Ethics Centre regarding the content of a compliance program, GRA will, within 12 months of such agreement, ensure its resident executive senior officers and departmental managers participate in and complete the Compliance Program.
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18. Within 28 days of completion of the said program GRA will use its best endeavours to ensure that the St James Ethics Centre provide a report to ASIC concerning participation by the resident executive senior officers and departmental managers of GRA in the said program.
19. The Relevant Persons will not be involved in any of the following activities for a period of 12 months from the date of this Enforceable Undertaking or until completion of the requirements contained in the Compliance Program, whichever is later (***the Relevant Period***):
- (a) personally applying for an Australian Financial Services Licence; or
 - (b) the management of a corporation requiring an FSA licence or any listed Australian corporation during the Relevant Period.
20. The Relevant Persons will not apply for or accept authorization from the holder of an Australian Financial Services Licence to provide financial services on behalf of a licensee during the Relevant Period.
21. GRA undertakes that the Board of Governance Committee of GRA (***the Committee***):
- 21.1 will monitor the performance of the Relevant Persons for a period of 3 years from the date of this Enforceable Undertaking (***the Monitoring Period***) to ensure compliance by the Relevant Persons:
- (a) with governance processes established by the Board of GRA including the Risk Management Strategy; and
 - (b) with relevant legal and regulatory requirements including the Corporations Act .
- 21.2 On an annual basis during the Monitoring Period GRA will engage their independent consultant Mr John Phillips AM, or another independent director or consultant agreed to by ASIC, to review the monitoring process undertaken by the Committee and provide a report (***the Compliance Report***) to the Board and to The Executive Director (Enforcement) of ASIC setting out:
- (a) the procedure undertaken to monitor compliance referred to at sub-paragraph 21.1 above;
 - (b) the outcomes of the monitoring process including identifying instances of either non-compliance or inadequate compliance; and
 - (c) details of action taken in response to instances of non-compliance or inadequate compliance.
- The Compliance Report shall be provided to the GRA Board and ASIC on or before 30 April of each year, commencing on 30 April 2005.
22. The Relevant Persons, undertake to comply with the requirements of the Committee referred to in paragraph 21 above.
23. Each Relevant Person shall provide, within 28 days of completion, a statutory declaration to ASIC confirming his compliance with the Compliance Program.
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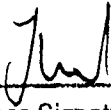
Executed by General Re Australia Limited
(ABN 16 008 427 450) by its duly authorised
representative on 22 April 2004 in the
presence of:





William Edward Thiele

Signed by Geoffrey Campbell Barnum in the
presence of:



Witness Signature

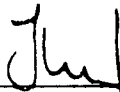


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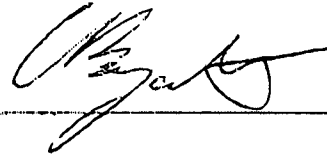
JOHN EDMOND

Print Name

Signed by Christopher Patrick Byatt in the
presence of:



Witness Signature

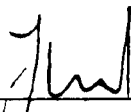


Signature

JOHN EDMOND

Print Name

Signed by John Andrew Smith in the
presence of:



Witness Signature



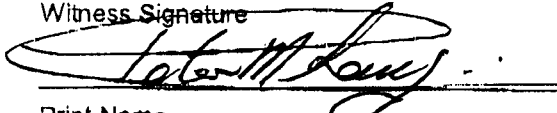
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JOHN EDMOND

Print Name

Signed by John Lindsay Lomas Self in the presence of:

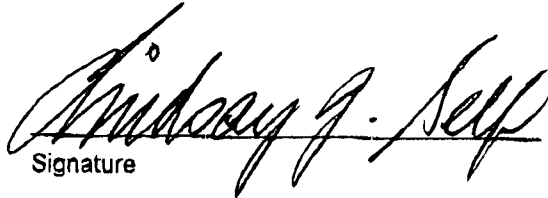
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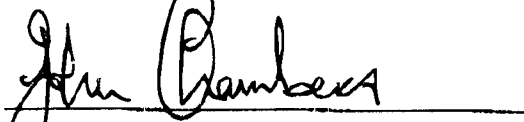
Print Name

Peter M Levey.

Signature



Accepted by the Australian Securities and Investments Commission pursuant to section 93AA of the Australian Securities and Investments Commission Act by its duly authorised officer

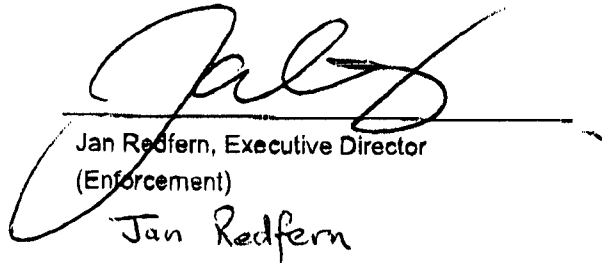


JOHN CHAMBERS

Witness

Jan Redfern, Executive Director
(Enforcement)

Jan Redfern



Schedule 1

1. The Relevant Persons are:
 - (a) Geoffrey Campbell Barnum;
 - (b) Christopher Patrick Byatt;
 - (c) John Lindsay Lomas Self; and
 - (d) John Andrew Smith.
2. The Compliance Program referred to in this Enforceable Undertaking is as follows:
 - (a) GRA shall, in conjunction with St James Ethics Centre and with the approval of ASIC, develop a professional development program encompassing ethical decision-making and leadership (the **Approved Ethics Program**);
 - (b) The Relevant Persons, excluding Lindsay Self, shall participate in the Approved Ethics Program; and
 - (c) The Relevant Persons, excluding Lindsay Self, shall complete the Institute of Company Directors' "Company Directors Course" or an equivalent course approved by ASIC.
3. For the purposes of paragraphs 21.1, 22 and 23 of the Enforceable Undertaking, the Relevant Persons shall exclude Lindsay Self.