

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT 1989****Undertaking to the Australian Securities and Investments Commission ("ASIC")  
given for the purposes of section 93AA**

The commitments in the undertaking are offered by:

**FAI GENERAL INSURANCE COMPANY LIMITED ABN 15 000 327 855**  
**50 Bridge Street**  
**SYDNEY NSW 2000**

**1. BACKGROUND**

- 1.1 Pursuant to section 102 of the ASIC Act and section 109ZD of the Corporations Law, ASIC has delegated to Brian Cassidy and John Grant and any other person from time to time holding, occupying or performing the duties of Chief Executive Officer of the Australian Competition and Consumer Commission ("ACCC") or Executive General Manager, GST Operations of the ACCC (each or any of whom are referred to as "the ASIC delegate"), certain of its powers and functions under Division 2 of Part 2 of the ASIC Act and incidental powers thereto (including under Part 3 of the ASIC Act) for the purposes of the ACCC regulating certain conduct including conduct that would comprise:
- (a) misleading or deceptive conduct within the meaning of section 12DA of the ASIC Act; and
  - (b) false or misleading representations within the meaning of section 12DB of the ASIC Act;
- in relation to the Goods and Services Tax ("GST") in relation to financial services.
- 1.2 FAI General Insurance Company Limited ("FAI") is a New South Wales based company that sells a range of insurance products throughout Australia.
- 1.3 In conducting its business FAI issues insurance policy, renewal notices to policyholders. These notices are usually generated automatically by FAI's computer system and state, among other information, the total premium and the components of that premium relating to taxes and charges.
- 1.4 FAI advises that during the period of approximately 2 months between 30 April 2000 and 30 June 2000, it was necessary for FAI to perform a number of manual apportionments of the combined GST and stamp duty liability, working backwards from the correct computer generated total premium.

- 1.5 In October 1999, FAI issued a number of Compulsory Third Party ("CTP") certificates to policyholders that stated a GST liability for some insurance premiums when such a liability did not exist. FAI advises that the figure attributed as a GST liability represented the net New Tax System premium adjustment payable.
- 1.6 On 19 October 1999, the ACCC wrote to FAI as it was concerned that the GST representation in the policy renewal notices was misleading or deceptive or likely to mislead or deceive. The ACCC stated that it was concerned that the notices may have the effect of misleading consumers into believing that amounts paid were for a particular purpose when in fact they related to something else.
- 1.7 On 27 October 1999, FAI advised the ACCC that it had conducted a thorough review of its invoicing procedures. FAI undertook to write to all affected FAI CTP policyholders apologising for the error and, as a goodwill gesture, it rebated the full amount incorrectly attributed to the GST. FAI also stated that its general processing and financial systems would be amended to prevent this error from occurring in future invoices.
- 1.8 On 16 June 2000, the ACCC wrote to FAI expressing its concern that an error may have occurred in the representation of the GST component in a renewal notice issued by FAI in May 2000. The ACCC sought that FAI review the matter and advise as to whether the GST component was calculated correctly.
- 1.9 On 22 June 2000, FAI advised the ACCC that, for the period between May and June 2000, in some manually adjusted renewal notices, while the total premium charged to the policyholder was correct, the apportionment of the components of the total premium, being the base premium, GST and Stamp Duty components, was incorrect. FAI advised that it had reviewed its public liability, professional indemnity and workers' compensation database as at 31 May 2000, and would again review a data extract as at 30 June 2000. From its May review, FAI identified a total of 77 renewal offers made in May 2000 as having an incorrect apportionment between the base premium, GST and Stamp Duty.
- 1.10 On 20 July 2000, FAI advised the ASIC delegate that from its review of its database at 30 June 2000 it had identified a further 108 renewal offers made in June 2000 which incorrectly stated the GST liability. Of the total of 185 incorrect offers made in May and June 2000, 114 of the respective policies had been renewed to date.
- 1.11 FAI advises the ASIC delegate that in no case has a policyholder suffered a loss as a result of the incorrect calculation of GST liability as the total premium on policy renewal notices was in all cases correct.
- 1.12 The ASIC delegate considers that the conduct of FAI may have contravened sections 12DA and 12DB of the ASIC Act.
- 1.13 Pursuant to sections 12GD, 12GE and 12GM of the ASIC Act, the ASIC delegate may, inter alia, seek injunctions preventing a person from engaging in certain conduct and/or requiring that person to do any act or

thing, requiring a person to place corrective statements and/or advertisements and obtain orders declaring a contract to be void or varying a contract.

- 1.14 FAI acknowledges the concerns of the ASIC delegate and acknowledges that its conduct may have contravened sections 12DA and 12DB of the ASIC Act.
- 1.15 FAI also advises that it has implemented processes to address those concerns. FAI advises that it has contacted each of the 185 affected policyholders that FAI has already detected to apologise for the errors and to advise of actions taken to remedy the situation. FAI further advises that it has initiated, at its own expense, an audit of its processing and financial systems responsible for the calculation and statement of GST liability on insurance premiums.
- 1.16 FAI has offered the undertakings in section 2 below.

## 2. UNDERTAKINGS

FAI gives the following undertakings to the ASIC delegate pursuant to section 93AA of the ASIC Act:

- 2.1 FAI will, within 14 days of the acceptance of this undertaking and at its own expense, commission a suitably qualified accounting professional ("the auditor") who meets the criteria provided in **Annexure A** and whose appointment is approved in writing by the ASIC delegate, to continue, and complete within 90 days of his or her appointment, the audit referred to in paragraph 1.15 above. The approval by the ASIC delegate may not be unreasonably withheld or delayed. The auditor will within 7 days of completion of the audit submit his or her audit report to FAI. The audit report will address:
  - (a) why the incorrectly stated GST liability on certain FAI insurance documentation occurred;
  - (b) the number and the identity of any additional affected policyholders; and
  - (c) what remedial action is required to be taken by FAI to ensure that FAI insurance documentation will in the future correctly state the GST liability where such liability exists.

A copy of the audit report will be submitted to the ASIC delegate no later than 7 days after the submission of the report to FAI.

- 2.2 FAI will, within 7 days of the submission of the audit report to FAI, write to any additional affected policyholders apologising for the error in the stated GST liability and informing them that action is being taken to remedy the cause of the error. The wording of the letter will be as provided at **Annexure B**.

- 2.3 FAI will, within 14 days of acceptance of this undertaking and at its own expense, commission a suitably qualified compliance professional who meets the criteria provided in **Annexure C** and whose appointment is approved in writing by the ASIC delegate, to conduct a review of FAI's corporate trade practices compliance program. The approval by the ASIC delegate may not be unreasonably withheld or delayed. The purpose of the review is to ensure that the program:
- (a) addresses and provides compliance procedures in relation to the consumer protection provisions of the Trade Practices Act and ASIC Act (as applicable); and
  - (b) complies with the Australian Standard on Compliance Programs AS3806.

FAI will commission the compliance professional to complete the review and to submit his or her report on the findings of the review to FAI within 90 days of his or her appointment. FAI will submit a copy of the report to the ASIC delegate no later than 7 days after the submission of the report to FAI.

- 2.4 If FAI's compliance procedures are found inadequate by the approved compliance professional FAI will at its own expense implement such changes as are necessary to accord with AS3806. .

### **3. ACKNOWLEDGEMENTS**

- 3.1 FAI acknowledges that either or both of ASIC and the ACCC may issue a media release on execution of this undertaking referring to its terms and the concerns of the ASIC delegate which led to its execution.
- 3.2 FAI acknowledges that either or both of ASIC or the ACCC may, from time to time, publicly refer to this undertaking.
- 3.3 FAI acknowledges that either or both of ASIC or the ACCC may make this undertaking available to the public, including by placing it on a register, publishing it and allowing third parties to publish it.
- 3.4 FAI acknowledges and accepts that this undertaking in no way derogates from the rights and remedies available to the ASIC delegate or the rights and remedies available to any other person arising from any conduct described in this undertaking.
- 3.5 FAI acknowledges that this undertaking has no operative force and effect until accepted by the ASIC delegate.

The COMMON SEAL of  
FAI General Insurance Company Limited )  
was affixed hereunto by authority of )  
the Board of Directors )  
in the presence of: )



Signature of Director

Signature of Director / Secretary

T K Cassidy

Name of Director (printed)

F Lo

Name of Director / Secretary (printed)

**ACCEPTED BY THE AUSTRALIAN SECURITIES AND INVESTMENTS  
COMMISSION PURSUANT TO SECTION 93AA OF THE ASC LAW BY ITS  
DULY AUTHORISED DELEGATE:**

John Grant  
Executive General Manager  
GST Operations  
ACCC

This *18th* day of *August* 2000

**NOTE:**

This undertaking was made and accepted pursuant to section 93AA of the Australian Securities and Investment Commission Act 1989 (the ASIC Act) as opposed to section 87B of the Trade Practices Act 1974. The ACCC administers the prohibition on price exploitation in relation to the New Tax System, as well as such matters as unconscionable conduct and false or misleading statements in relation to the GST. Such of the latter conduct where it relates to financial services is governed by the provisions of the ASIC Act. ASIC has since November 1999 formally delegated consumer protection aspects of GST to the ACCC, through use of nominated ACCC officers as delegates.

*Annexure A*

*Criteria for the appointment of suitably qualified accounting professional*

The audit shall be carried out by a suitably qualified accounting professional who has a demonstrated capacity for auditing electronic financial systems and who is entirely independent of FAI. Such a professional will qualify as independent on the basis that he or she:

- is not a present or past staff member or director of FAI and;
- has no substantial shareholding or other interest in FAI.

***Annexure B***  
***Letter to affected FAI policyholders***

Dear Policyholder

I am writing to you to inform you that the GST liability on your insurance policy schedule has been incorrectly stated, and to apologise for the confusion that this error has caused.

After being alerted to this error by the Australian Competition and Consumer Commission ('ACCC') FAI has undertaken to thoroughly review this matter and to initiate an independent audit of the systems responsible for this error.

Although the GST liability has been incorrectly stated the total premium payable is correct. FAI will be issuing statements to all policyholders that correctly state the GST component of the premium. If you would like discuss this matter further please do not hesitate to contact FAI on 13 1000.



*Annexure C*

*Criteria for the appointment of suitably qualified compliance professional*

The review shall be carried out by a suitably qualified compliance professional who has extensive experience in the development and implementation of corporate consumer protection compliance programs and who is entirely independent of FAI. Such a professional will qualify as independent on the basis that he or she:

- is not a present or past staff member or director of FAI ; and
- has no substantial shareholding or other interest in FAI.