

UNDERTAKING PURSUANT TO S 126 OF THE *INSURANCE ACT* 1973 (CTH)

This undertaking is given by Mr Geoffrey Vincent Trahair of [REDACTED] Mosman and is accepted by Australian Prudential Regulation Authority ("APRA") under s 126 of the *Insurance Act* 1973 Cth ("Act").

RECITALS

1. On 22 February 2005 a delegate of APRA decided that Mr Trahair:
 - (a) should be disqualified under s 25A of the Act from being or acting as someone referred to in subsections 24(1)(a) – (c) of the Act; and
 - (b) should be disqualified under s 44(1)(b) of the Act from holding any appointment as an actuary of a general insurer.
2. On 2 May 2005, following a request by Mr Trahair for reconsideration, a second delegate of APRA confirmed these decisions.
3. On 26 May 2005 Mr Trahair applied under s 29(1) of the *Administrative Appeals Tribunal Act* 1975 (Cth) to the Administrative Appeals Tribunal ("Tribunal") for review of the decisions.
4. On 22 November 2005 the Tribunal began hearing the proceedings the subject of Mr Trahair's application, but Mr Trahair has agreed to withdraw his application and terminate the proceedings in the Tribunal, forthwith upon execution by the parties of this undertaking.
5. In contemplation of the revocation of the decisions of the delegate of APRA as effected by paragraph 6 and upon the basis of the acknowledgements of APRA as set forth in paragraph 7 of the *Undertaking*, Mr. Trahair has agreed to withdraw his application for review

Geoffrey Vincent Trahair *APRA* *Rushcamp*

as made to the Tribunal, forthwith upon execution by the parties of this undertaking.

6. On the basis of the acknowledgments and undertakings made by Mr Trahair in this undertaking, subject to execution by Mr Trahair of this undertaking and subject to the withdrawal by Mr Trahair of his application to the Tribunal, APRA has decided that it will revoke, forthwith upon such withdrawal:

- (a) Mr Trahair's disqualification under s 25A of the Act; and
- (b) Mr Trahair's disqualification under s 44(1)(b) of the Act.

pursuant to s 25A(3) and s 45(1), respectively, of the Act. Within 48 hours of Mr Trahair's withdrawal of his application to the Tribunal, APRA will cause to be deleted from its Disqualification Register as published on its Home Page, the reference to Mr Trahair (as published at [HTTP://www.apra.gov.au/Disqualification-Register-List.cfm](http://www.apra.gov.au/Disqualification-Register-List.cfm)).

ACKNOWLEDGMENTS

7. Mr Trahair admits and acknowledges that:
- (a) in and around June of 1998, while he was an actuary employed by FAI Insurance Ltd ("FAI") in the Research Department, he was instrumental in knowingly causing false and misleading data to be supplied to his superiors whom he knew were responsible for the supply of data to PWC, who were FAI's external actuaries, which data was to be used for their valuations of FAI liabilities as at 30 June 1998;

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- (b) Mr Trahair was aware that the data was false and misleading because it omitted a substantial amount of relevant case estimate data;
- (c) Mr Trahair was aware that if nothing were done to correct the data, and barring any unexpected management actions, then FAI's accounts would be false for the year ending 30 June 1998;
- (d) Mr Trahair was also instrumental in knowingly causing false and misleading data to be supplied to PWC (FAI's external actuaries) for their valuations as at 31 December 1998, such data being false and misleading by reason of its omitting a substantial amount of relevant case estimate data;
- (e) Mr Trahair was aware by this time that nothing had been done to correct the false and misleading data supplied to PWC in June 1998;
- (f) Mr Trahair was aware that if, as would happen in the ordinary course (although it did not occur in the event), FAI produced accounts for the period ending 31 December 1998, those accounts would be false;
- (g) Mr Trahair acknowledges that this conduct as described in subparagraphs (a) – (f) above:
 - (i) was unacceptable;
 - (ii) involved Mr Trahair knowingly playing a role in a situation in which senior FAI management was able to provide incomplete and misleading information to the external actuaries of FAI, PWC, which conduct by FAI,

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Mr Trahair does not regard as being honest (T105, page 1208, lines 22 to 24).

- (h) Mr Trahair acknowledges that he should have, both as at and around June 1998 and as at around December 1998 insisted that full and proper disclosure be made to the external actuaries and, if that were refused, then, as a professional, he should have resigned.

8. APRA acknowledges that:

- (a) at the time of the conduct in 1998 Mr Trahair, who had been an actuary for four years, was new to working for an insurance company and had commenced employment with FAI in February 1998;
- (b) Mr Trahair did take steps within FAI in and around May and June of 1998 towards procuring disclosure to PWC of the true position
- (c) Mr. Trahair has told APRA that at all material times he had been instructed that such information as was to be communicated to PWC was the responsibility of a more senior officer within FAI and that Mr. Trahair was not responsible for the information in fact communicated to PWC.
- (d) Mr Trahair cooperated with the Royal Commission into the failure of HIH Insurance and has further cooperated with the Australian Securities and Investments Commission;
- (e) Mr Trahair cooperated with and assisted the liquidator of HIH; and

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- (f) apart from the conduct in 1998 referred to above, APRA is unaware of adverse conduct or behaviour by Mr Trahair.
9. Mr Trahair acknowledges that he has agreed voluntarily to give this Undertaking.
10. Mr Trahair acknowledges that he has obtained legal advice before executing the Undertaking.
11. Mr Trahair acknowledges that APRA's acceptance of an enforceable Undertaking does not affect APRA's power to investigate a contravention arising from other conduct, pursue a criminal prosecution in respect of any conduct, or its power to lay charges or seek appropriate orders or exercise its discretion with respect to matters affecting Mr Trahair in the future.
12. Mr Trahair acknowledges that APRA:
- (a) may issue a media release on execution of this *Undertaking*, being a media release which fairly reflects the terms of this *Undertaking* and the concerns of APRA which led to its execution; and
 - (b) may from time to time publicly refer to this *Undertaking*; and
 - (c) may make this *Undertaking* available for public inspection.;
13. Mr Trahair acknowledges that the fact that this Undertaking has been entered into will be a matter for the public record. APRA acknowledges that Mr Trahair in his absolute discretion may, from time to time, publish and publicly refer to this undertaking.
14. Mr Trahair acknowledges that APRA may enforce the undertaking regardless of whatever publicity that this enforcement action may cause.

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15. Mr Trahair acknowledges that the Recitals to this Undertaking form part of the Undertaking.
16. Mr Trahair acknowledges that this Undertaking is given by Mr Trahair and is accepted by APRA pursuant to s 126 of the Act which section also addresses, among other matters, the variation of, breach of, and enforcement of the Undertaking.
17. Mr Trahair acknowledges that APRA may monitor Mr Trahair's compliance with the Undertaking by, inter alia, periodic reviews of relevant public filings, and to data bases at its disposal.
18. Mr Trahair and APRA acknowledge that if any obligation imposed on Mr Trahair by this Undertaking is invalid or unenforceable, it shall be severed but the other obligations shall continue to apply.

UNDERTAKING

19. Mr Trahair undertakes as follows:
 - (a) not to be, become, act as, or seek appointment as, a general insurer's actuary, under s 39(1)(b) of the Act, at any time before 9 February 2008;
 - (b) not to be or act as, at any time before 9 February 2008:
 - a director or senior manager of a general insurer (other than a foreign general insurer) (as those terms are defined in s 3(1) of the Act);
 - a senior manager, or agent in Australia for the purpose of section 118 of the Act, of a foreign

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general insurer (as those terms are defined in s 3(1) of the Act); or

- a director or senior manager of an authorised NOHC (as those terms are defined in s 3(1) of the Act).

- (c) to irrevocably authorise APRA, to obtain such information as may be requested by APRA from time to time about Mr Trahair's compliance with the Undertaking where Mr Trahair's written consent to release that information to APRA is required before APRA can obtain that information;
- (d) to complete the course "Business Ethics for Leaders and Managers" dealing with commercial and professional ethics at the St James Ethics Centre or such other course as is approved by APRA, such attendance to be completed by 9 February 2008.

Geoff Andrew

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DATED 9 February 2006

SIGNED by GEOFFREY)
VINCENT TRAHAIR in the)
presence of :)

Geoff Trahair
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Geoffrey Vincent Trahair

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Witness

SIGNED by me as delegate of the)
Australian Prudential Regulation Authority)
In the presence of :)

Darryl Roberts
.....

(DARRYL ROBERTS
GENERAL MANAGER)

Luther Weate
.....
Witness Luther Weate
Level 26
400 George Street
Sydney.