



**UNDERTAKING TO THE AUSTRALIAN SECURITIES AND INVESTMENTS
COMMISSION GIVEN UNDER SECTION 93AA OF THE *AUSTRALIAN
SECURITIES AND INVESTMENTS COMMISSION ACT 2001***

BY

**THE HOSPITALS CONTRIBUTION FUND OF AUSTRALIA LTD
(ACN 000 026 746)**

PERSON GIVING UNDERTAKING

- (1) This Undertaking is given to the Australian Securities and Investments Commission ('ASIC') by The Hospitals Contribution Fund of Australia Ltd ('HCF') (ACN 000 026 746) whose registered office is 403 George Street, Sydney in the State of New South Wales under section 93AA of the *Australian Securities and Investments Commission Act 2001* (**the ASIC Act**).

BACKGROUND



- (2) HCF is a not-for-profit public company limited by guarantee and registered in New South Wales. It operates the HCF health fund under the National Health Act 1953. HCF is a trading corporation for the purposes of the ASIC Act.
- (3) Pursuant to section 102 of the ASIC Act, ASIC has delegated to the Chief Executive Officer of the Australian Competition and Consumer Commission (**the ACCC**), Brian Cassidy, and the Executive General Manager, Compliance Division of the ACCC, David Smith or any other person from time to time holding, occupying or performing the duties of Chief Executive Officer of the ACCC or Executive General Manager, Compliance Division of the ACCC (**the ASIC delegates**) 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 all consumer protection aspects of health insurance which ASIC would otherwise have power to regulate.
- (4) Between 3 June 2001 and 26 June 2001, HCF promoted its health insurance cover by a television advertisement titled "Join before June 30/Wall" (**the advertisement**). The advertisement was broadcast on a number of occasions on television stations in NSW and the ACT. The advertisement was of 15 seconds duration. The advertisement showed the statement "Join HCF before June 30th and receive instant cover" in bold large print character. The advertisement also included the audio statement that the 2-month and 6-month waiting periods were waived, and the visual statement in the fine print that "the waiver does not apply to waiting periods of more than 6 months, including those for pregnancy

and related conditions. Pre-existing ailments and conditions are also excluded.”

- (5) The ASIC delegates have concerns that the advertisement may have misled or deceived, or may have been likely to mislead or deceive, members of the public about the benefits, conditions attached to and characteristics of private health insurance cover provided by HCF, in that the advertisement contained a representation that by joining HCF before 30 June 2001, members of the public would be entitled to receive benefits from HCF from the time of joining for all hospital, medical and ancillary services included in their HCF health insurance cover.
- (6) The ASIC delegates consider that the potential to mislead arises from the fact that the qualifications contained in the advertisement, both in audio form and in the “fine print” written form, are not sufficient to dispel the misleading impression given by the words “instant cover” because:
 - (a) The visual statement in the fine print, although containing all the elements required to properly qualify the words “instant cover”, does not remain for a sufficient period of time on the screen to be read by viewers of the advertisement. This is reinforced by the fact that while the fine print remains on the screen, the attention of viewers is also directed towards the voice-over which says ‘If you are not with HCF you have to ask yourself: “are you missing out”?’
 - (b) The audio component of the qualification confirms, rather than qualifies, the offer of instant cover by indicating that the 2-month and 6-month waiting periods are waived. Indeed, potential new members who have never had private health insurance before are not to know that 12-month waiting periods are typical in the industry and, therefore if those are not waived, they must still apply.
- (7) The ASIC delegates consider that the advertisement may contravene sections 12DA, 12DB and 12DF of the ASIC Act
- (8) HCF acknowledges the concerns of the ASIC delegates and has offered the undertaking set out below.

UNDERTAKINGS

- (9) HCF gives the following undertaking to the ASIC delegates pursuant to section 93AA of the ASIC Act:
 - (a) HCF will not cause or permit the advertisement to be broadcast by television or any other electronic means on any occasion after the date of this undertaking;

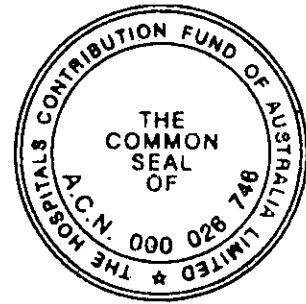
- (b) HCF will, within 14 days of the date of this undertaking, write a letter to all members who joined HCF in the period from 3 June 2001 to 30 June 2001 (inclusive) in the form annexed hereto and marked "Attachment A";
- (c) HCF will, within 28 days of the date of this undertaking, provide the ASIC delegates a copy of the letter referred to in clause 9(b) above together with a list of the names and addresses of the members to whom the letter was sent; 
- (d) HCF will waive the waiting periods for members in accordance with the letter referred to in clause 9(b) above and will meet the claims of those members as if no waiting period was applicable; 
- (e) HCF will not promote by television advertisements containing a waiver offer its private health insurance cover without clearly and prominently specifying any qualification applying to that waiver offer for 3 years from the date of this undertaking;
- (f) HCF will use its best endeavours to confirm that its trade practices compliance program is consistent with AS3806 by 31 August 2001;
- (g) HCF will cause its trade practices compliance program to be independently audited promptly as at 31 August 2002 and 31 August 2003 and will provide copies of the reports of the independent audits to the ASIC delegates within a reasonable time after the completion of each audit.

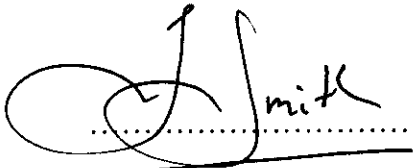
ACKNOWLEDGMENTS

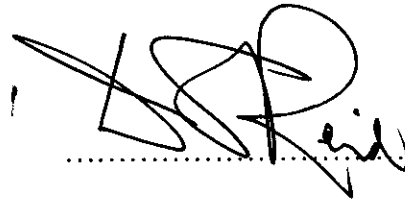
- (10) HCF acknowledges that the ASIC delegates may issue a media release on execution of this undertaking referring to its terms and the concerns of the ASIC delegates which led to its execution.
- (11) HCF acknowledges the ASIC delegates may from time to time publicly refer to this undertaking.
- (12) HCF acknowledges that the ASIC delegates may make a copy of this undertaking available to the public, including by placing it on a register, publishing it and allowing third parties to publish it.
- (13) HCF acknowledges and accepts that this undertaking in no way derogates from the rights and remedies available to any person arising from HCF's conduct.

IN WITNESS TO THESE UNDERTAKINGS

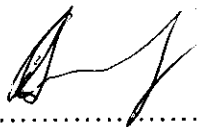
The Common Seal of ^{CONTRIBUTION}
The Hospitals Benefit Fund of Australia Ltd)
(ACN 000 026 746))
was affixed to this Enforceable Undertaking)
in the presence of:)




.....
Director


.....
Secretary:

ACCEPTANCE BY THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION PURSUANT TO SECTION 93AA OF THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT 2001 BY ITS DULY AUTHORISED DELEGATE.


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Brian Cassidy
Chief Executive Officer
Australian Competition and Consumer Commission

This 26 day of August 2001



THE HOSPITALS CONTRIBUTION FUND OF AUSTRALIA LIMITED

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E-mail: service@hcf.com.au Internet: www.hcf.com.au

Dear

Automatic increase in your cover at no additional cost

The ACCC has expressed concern that you may have been misled by an HCF television commercial that appeared in June, and that these commercials may have fallen short of the Trade Practices Act.

This 15-second commercial advertised instant cover and the waiver of all 2 and 6 month waiting periods for members joining before June 30. It included the message "The waiver does not apply to waiting periods of more than 6 months, including those for pregnancy and related conditions. Pre-existing ailments and conditions are also excluded".

HCF policy is to provide clear, plain English descriptions of its products and services. The ACCC concern is that you may not have had time to fully absorb the message in this 15 second commercial on what is excluded in the waiver offer.

We understand your health is important, and in a decision to buy health insurance all factors must be considered. To ensure you have the best possible coverage, HCF will waive the remaining waiting periods, including those for pregnancy and related conditions, and pre-existing ailments and conditions, for the cover you have just taken.

You do not have to do anything to take advantage of this extension to your cover, as HCF will automatically adjust your records.

Yours sincerely

Philip Soden
General Manager Group Business