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Royal Commission Terms of Reference

The following is a consolidated version of the Commission's terms of reference, as found in the Letters Patent issued on 29 August 2001 and amended by Letters Patent issued on 6 February 2002, 2 May 2002 and 23 January 2003.

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

TO the Honourable Justice Neville John Owen

WHEREAS it is desired to have an inquiry into certain matters relating to the failure of HIH Insurance Group ('HIH'):

BY these Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and pursuant to the Constitution of the Commonwealth of Australia and the *Royal Commissions Act 1902* and other enabling powers, We appoint you to be a Commissioner to inquire into the reasons for and the circumstances surrounding the failure of HIH prior to the appointment of the provisional liquidators on 15 March 2001.

IN particular, We direct that you inquire into:

- (a) whether, and if so the extent to which, decisions or actions of HIH, or of any of its directors, officers, employees, auditors, actuaries, advisers, agents, or of any other person:
 - (i) contributed to the failure of HIH; or
 - (ii) involved or contributed to undesirable corporate governance practices, including any failure to make desirable disclosures regarding the financial position of HIH;
- (b) whether those decisions or actions might have constituted a breach of any law of the Commonwealth, a State or a Territory and, if so, whether the question of criminal or other legal proceedings should be referred to the relevant Commonwealth, State or Territory agency;
- (c) the appropriateness of the manner in which powers were exercised and responsibilities and obligations were discharged under Commonwealth laws;
- (d) the appropriateness of the manner in which powers were exercised and responsibilities and obligations were discharged under State or Territory laws; and
- (e) the adequacy and appropriateness of arrangements for the regulation and prudential supervision of general insurance at Commonwealth, State and Territory levels, taking into account your findings in relation to the matters referred to in the preceding paragraphs and other relevant matters, including:
 - (i) Commonwealth arrangements before and after the Financial System Inquiry reforms; and
 - (ii) different State and Territory statutory insurance and tax regimes.

AND We declare that, in these Letters Patent:

‘HIH Insurance Group’ means HIH Insurance Ltd and related bodies corporate and related entities, within the meaning of the *Corporations Act 2001*;

A reference to a director, officer, employee, auditor, actuary, adviser or agent includes a reference to a former director, officer, employee, auditor, actuary, adviser or agent;

A reference to a decision or action includes a failure to make a decision or take an action;

A reference to the exercise of a power includes a failure to exercise a power;

A reference to the discharge of a responsibility or obligation includes a failure to discharge a responsibility or obligation;

A reference to related bodies corporate and related entities includes such bodies irrespective of whether they were so related at the time of the matters being inquired into.

AND, noting that the Australian Securities and Investments Commission (ASIC) is also investigating certain matters relating to the failure of HIH, and without limiting in any way the scope of your inquiry, We declare that you should, to the extent practicable, co-operate with ASIC and conduct your inquiry with a view to avoiding:

- (a) any duplication of ASIC’s investigation; and
- (b) any adverse impact on any civil or criminal proceeding arising out of ASIC’s investigation.

AND you may choose not to inquire into certain matters otherwise within the scope of these Letters Patent, but any such decision must be yours alone.

AND We declare that you are authorised to conduct your inquiry under these Letters Patent in combination with any inquiry into matters referred to in these Letters Patent that you are directed or authorised to make by any Commission issued, or pursuant to any order or appointment made, by any of the Governors of the States.

AND We declare that the Commission established by these Letters Patent:

- (a) is a relevant Commission for the purposes of sections 4 and 5 of the *Royal Commissions Act 1902*; and
- (b) is a Commission to which paragraph 16 (4) (k) of the *Income Tax Assessment Act 1936* applies.

AND We require you to begin your inquiry as soon as practicable, to conduct your inquiry as expeditiously as possible and, not later than 4 April 2003, to furnish to Our Governor-General of the Commonwealth of Australia the report of the results of your inquiry and such recommendations as you consider appropriate.

WITNESS the Right Reverend Dr Peter John Hollingworth, Companion of the Order of Australia, Officer of the Most Excellent Order of the British Empire, Governor-General of the Commonwealth of Australia.