

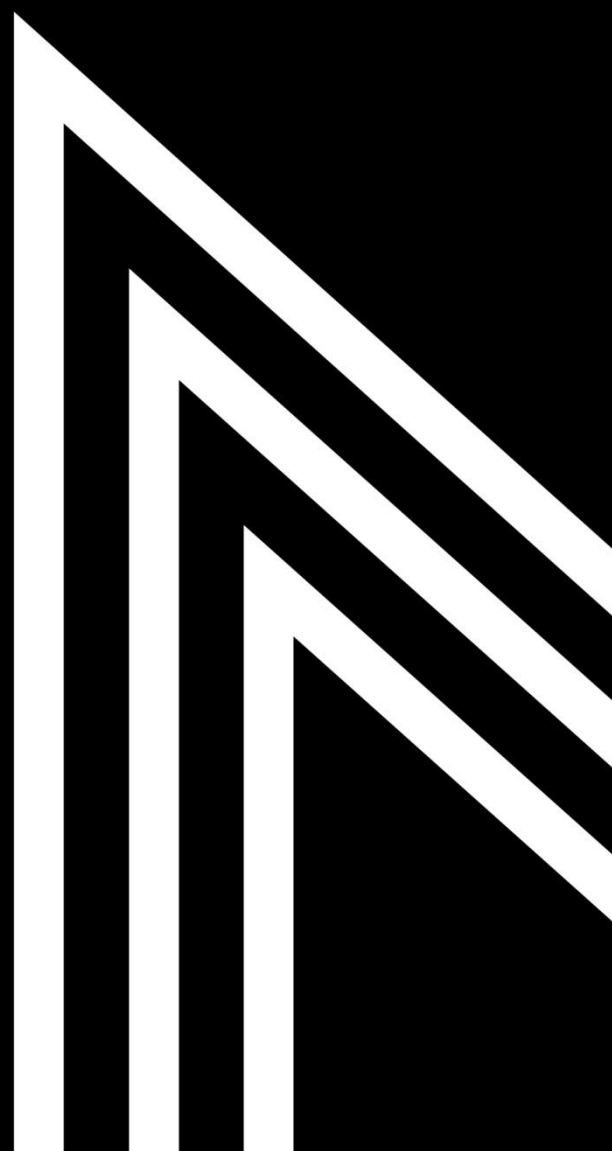
**FAI General Insurance Company Limited**  
**ACN 000 327 855**  
**(In Liquidation and subject to a Scheme of Arrangement)**

**Scheme Administrators' Annual Report to Creditors**

30 June 2019



McGrathNicol



# Contents

|     |   |   |
|-----|---|---|
| 1   | Introduction & Background.....                          | 2 |
| 1.1 | Introduction.....                                       | 2 |
| 1.2 | Background.....   | 2 |
| 2   | Principal Developments To Report During The Period..... | 3 |
| 3   | Current and Projected Scheme Payment Percentages.....   | 3 |
| 3.1 | The Current Scheme Payment Percentages.....             | 3 |
| 3.2 | Estimated ultimate Scheme Payment Percentages.....      | 3 |
| 4   | Financial Position .....                                | 4 |
| 4.1 | Estimated balance sheet at 30 June 2019.....            | 4 |
| 4.2 | Receipts and payments to 30 June 2019.....              | 4 |
| 5   | Closure .....   | 4 |
| 5.1 | Finalisation of the Scheme.....                         | 4 |
| 6   | Responsibilities.....                                   | 4 |
| 6.1 | Scheme Administrators .....                             | 4 |
| 6.2 | Run-off Managers.....                                   | 4 |
| 6.3 | Creditors' Committee.....                               | 5 |
| 7   | Contact Details.....                                    | 5 |
| 7.1 | Creditor Enquiries in Australia.....                    | 5 |
|     | Appendix 1.....   | 6 |
|     | Appendix 2.....   | 7 |



# 1 Introduction & Background

## 1.1 Introduction

This is the thirteenth annual report to the Creditors of FAI General Insurance Company Limited (In Liquidation and subject to a Scheme of Arrangement) (**FAIG**).

The report has been prepared in accordance with clause 43.2 of the Scheme of Arrangement, which became operative in Australia on 30 May 2006. Under the terms of the clause: "Within three months after each anniversary of the date, being either 31 December or 30 June, at the discretion of the Scheme Administrators, after The Australian Scheme becomes effective, the Scheme Administrators shall report to the Scheme Creditors on the progress of The Australian Scheme, including details of remuneration paid to the Office Holders, since the date of the last such report". Accordingly this report has been prepared for the period to 30 June 2019. It also covers any significant events between that date and completion of the report.

## 1.2 Background

HIH Insurance Limited and certain of its major subsidiaries were placed into Provisional Liquidation on 15 March 2001, and subsequently into liquidation on 27 August 2001. In total, eighty-two HIH Group companies in Australia have been placed into liquidation.

Summary details of the history of the group, its failure and background information are available on the HIH website at [www.hih.com.au](http://www.hih.com.au). The HIH Royal Commission established by the Australian Federal Government has also prepared an extensive report on the failure of the group.

Schemes of Arrangement for the eight licensed insurance companies in the HIH Group in Australia, including FAIG, became effective on 30 May 2006, following approval by Creditors and the Court. Schemes of Arrangement for the UK branches of four of these companies, including FAIG, became effective in the UK on 13 June 2006. The FAIG English Scheme terminated with effect from 19 April 2017.

Each of the Schemes has a Record Date (the date at which liabilities are measured) of 27 August 2001 and an estimation date of 31 May 2013 wherein all outstanding claims are valued.

The bar date for submission of Final Claim Forms by Scheme Creditors against the eight licensed insurance companies in the HIH Group was set at midnight British Summer Time on 2 September 2013 (**Bar Date**). Under the terms of the Schemes, no further claims can be accepted after this date.

Five of the eight Schemes have now been finalised and terminated in accordance with clause 63.1. The three remaining Schemes of the HIH Group are in respect of FAIG, HIH Casualty and General Insurance Limited (**HIH C&G**) and CIC Insurance Limited.

The FAIG Australian Scheme remains in the "Estimation" phase. All claims lodged by Scheme Creditors prior to the Bar Date have been agreed and quantified.

In 2016, various groups of shareholders of HIH Insurance Limited (**HIH Insurance**) had their damages claims for purchasing HIH Insurance shares successfully admitted in the Schemes of FAIG and HIH C&G and in the Liquidation of HIH Insurance, subject to certain parameters.

In light of the above, the FAIG and HIH C&G Scheme Administrators and the HIH Insurance Liquidators made an application to Court for directions on the method of dealing with the remaining HIH Insurance shareholders with potential claims (**New Shareholder Creditors**). The Court application was heard by the Supreme Court in December 2017. In December 2018, the NSW Supreme Court granted amongst other orders, a specified extension of time for the Scheme Administrators to determine the damages claims of the remaining shareholders of HIH Insurance, as being Acknowledged Creditor Claims under the FAIG and HIH C&G Schemes (**Shareholder Determination Date**). Following the Shareholder Determination Date, the FAIG and HIH C&G Scheme Administrators are authorised to finalise the Schemes without making provisions for any further claims by HIH Insurance shareholders.

Based on the timeline of events stipulated in the final Orders issued on 14 December 2018, the Shareholder Determination Date was set at 15 June 2019. Further details on the New Shareholder Creditors' claims are set out below.

## 2 Principal Developments To Report During The Period

The principal developments to report during the period were:

- In December 2018, the NSW Supreme Court handed down its judgment on the FAIG and HIH C&G Scheme Administrators' and HIH Insurance Liquidators' application for directions on their proposed method of dealing with the New Shareholder Creditors' claims.
- The judgment granted, amongst other orders, the following in respect of the FAIG and HIH C&G Schemes:
  - A specified extension of time for the Scheme Administrators to determine the New Shareholder Creditors' damages claims as Acknowledged Creditor Claims under the Schemes; and
  - following the specified timeframe i.e. the Shareholder Determination Date, the Scheme Administrators are authorised to finalise the Schemes without making provisions for any further claims by HIH Insurance shareholders.
- On 2 April 2019, the FAIG and HIH C&G Scheme Administrators and HIH Insurance Liquidators wrote to the New Shareholder Creditors regarding the Supreme Court judgment, the status of their claims (if any) and the steps to take if they wished to object to the calculations of their claims.
- Following the communication with the shareholders, the Scheme Administrators dealt with all objections lodged against the Schemes by the HIH Insurance shareholders, and determined the claims of the New Shareholder Creditors as Acknowledged Creditor Claims in the Scheme(s) before 15 June 2019, being the Shareholder Determination Date.
- Prior to the Shareholder Determination Date, a group of HIH Insurance shareholders objected to their claim amounts to be admitted in the HIH Insurance Liquidation and commenced legal proceedings against HIH Insurance in respect of those claims. They have accepted their claim amounts, calculated in accordance with the methodology approved by the Supreme Court, to be admitted in the FAIG and HIH C&G Schemes.
- The New Shareholder Creditors admitted claims against the FAIG and HIH C&G Schemes and HIH Insurance Liquidation calculated in accordance with the Supreme Court methodology, amount to approximately \$18 million.
- The Scheme Administrators and Liquidators have now paid the admitted claims of most of the New Shareholder Creditors.
- With the exception of certain New Shareholder Creditors dividend payments which the Scheme Administrators and Liquidators intend to seek Court directions on and settlement of the cost orders granted in favour of the various groups of shareholders in the previous legal proceedings, all other claims against the FAIG Scheme have been finalised.

## 3 Current and Projected Scheme Payment Percentages

### 3.1 The Current Scheme Payment Percentages

During the period, there has been no change to the current Scheme Payment Percentages. The Scheme Payment Percentages paid to date are 64.78% for creditors with insurance liabilities in Australia and 62.5% for all non-insurance Australian creditors.

### 3.2 Estimated ultimate Scheme Payment Percentages

The quantum and timing of the final Scheme Payment(s) remains wholly dependent on payment of the New Shareholder Creditors dividends and settlement of the costs orders in the previous legal proceedings.

The Scheme Administrators' latest estimate of the ultimate Scheme Payment Percentages for the various FAIG creditor groups is set out below:

|   | <b>As at 30 June 2019</b> |
|---|---------------------------|
| Creditors with insurance liabilities in Australia     | 68.6%                     |
| Creditors eligible to be paid from US Trust Funds     | 68.6%                     |
| Creditors with non-insurance liabilities in Australia | 66.6%                     |

The above estimate remains the same as the low estimate stated in our previous report which assumed that the HIH Insurance shareholders claims are admitted in the Scheme.

Once the shareholders claims and costs orders are fully settled and paid, the Scheme Administrators will review the available funds and reassess the ultimate Scheme Payment Percentages. They hope to be in a position to pay the final Scheme Payment to all classes of creditors with agreed claims by the middle of 2020.

## **4 Financial Position**

### **4.1 Estimated balance sheet at 30 June 2019**

Included as Appendix 3 to the Australian Explanatory Statement section of the Scheme of Arrangement documentation (sent to creditors prior to the creditors' meeting on 29 March 2006), were balance sheets for each of the Scheme companies at 25 September 2005. An updated balance sheet for FAIG as at 30 June 2019 is included as Appendix 1 to this report.

### **4.2 Receipts and payments to 30 June 2019**

A summary of the Scheme Administrators' receipts and payments from 1 July 2018 to 30 June 2019 is set out in Appendix 2 to this report.

Since the last annual report dated 30 June 2018, \$247,878.00 has been approved by the FAIG Scheme Creditors' Committee for payment to the Scheme Administrators in their role as Office Holders covering the period from 28 April 2018 to 25 January 2019.

## **5 Closure**

### **5.1 Finalisation of the Scheme**

The only issue preventing the closure of the FAIG Scheme is payment of the New Shareholder Creditors' dividends and costs orders in the previous legal proceedings.

Once resolved, the Scheme Administrators hope to be in a position to make the final Scheme Payments by the middle of 2020, and terminate the Scheme 12 months after the final Scheme Payments are made.

## **6 Responsibilities**

### **6.1 Scheme Administrators**

The Australian Scheme Administrators are Tony McGrath and Jason Preston, partners of McGrathNicol based in Sydney.

### **6.2 Run-off Managers**

All insurance claims handling and reinsurance recovery activities of FAIG have been finalised.

## 6.3 Creditors' Committee

The interests of the FAIG creditors in the Australian Scheme are represented by a Creditors' Committee. The Committee sanctions significant transactions, is involved in the setting of the Scheme Payment Percentage and approves the Scheme Administrators' fees. It is currently reported to, and meets, on an ad-hoc basis. The constitution of the Committee at 30 June 2019 was as follows:

| Member  | Represented By         |
|---|------------------------|
| ACT Workers Compensation Supplementation Fund       | Mr John Fletcher       |
| Lawcover Pty Limited                                | Mr Peter Candotti      |
| Queensland Motor Accident Insurance Commission      | Ms Lina Lee            |
| HCSL – Australian Government Treasury               | Ms Danielle Jakubowski |
| Avant Insurance Limited                             | Ms Vikki Sellars-Jones |
| WA Workers Compensation & Rehabilitation Commission | Mr Harry Neesham       |
| Hong Kong Solicitors Indemnity Fund                 | Ms Orla McCoy          |
| Motor Traders Association of New South Wales        | Mr Greg Patten         |
| Building Insurers Guarantee Corporation NSW         | Mr Michael Kelly       |
| Motor Accidents Authority of New South Wales        | Ms Mary Maini          |

## 7 Contact Details

Contact details for the Australian Scheme Administrators are set out on the HIH website, [www.hih.com.au](http://www.hih.com.au).

### 7.1 Creditor Enquiries in Australia

Scheme Creditors with claims queries should call the HIH Help Desk on +61 (0) 2 9650 5777. Written claims queries should be directed to HIH at the following address: HIH Group, GP Box 2707, Sydney NSW 2001, Fax +61 (0) 2 8117 9000.

Scheme Creditors with enquiries in relation to the Scheme or Scheme Payments should call the HIH Help Desk on +6 (0) 2 9650 5777. Written scheme queries should be directed to the Scheme Administrators at the following address: McGrathNicol, GPO Box 9986, Sydney, NSW 2001 or to the HIH Help Desk at [enquiries@hih.com.au](mailto:enquiries@hih.com.au).

Yours faithfully

For FAI General Insurance Company Limited (In Liquidation and subject to a Scheme of Arrangement)



Tony McGrath  
Scheme Administrator



Jason Preston  
Scheme Administrator

## Appendix 1

Updated balance sheet at 30 June 2019

### *All values in AUD*

|   | As at<br>30 June 2019<br>\$'000 | As at<br>30 June 2018<br>\$'000 |
|---|---------------------------------|---------------------------------|
| <b>Assets not specifically charged</b>                              |                                 |                                 |
| <b>Cash</b>   |                                 |                                 |
| Cash at bank  | 16,066                          | 15,372                          |
|   | <u>16,066</u>                   | <u>15,372</u>                   |
| <b>Receivables</b>  |                                 |                                 |
| Amounts owing by related bodies corporate                           | 5,393                           | 4,548                           |
|   | <u>5,393</u>                    | <u>4,548</u>                    |
| <b>Investments</b>  |                                 |                                 |
| Short term deposits   | 76,391                          | 76,280                          |
| ADD back: Dividends Paid  | 1,058,368                       | 1,054,407                       |
|   | <u>1,134,758</u>                | <u>1,130,687</u>                |
| <b>Refund to Reinsurance Creditors</b>                              | (988)                           | (938)                           |
| <b>Other</b>  |                                 |                                 |
| Adverse Shareholder Costs   | (1,333)                         | (1,333)                         |
| HIH Shareholders claim  | (11,062)                        | 0                               |
|   | <u>(12,396)</u>                 | <u>(1,333)</u>                  |
| <b>TOTAL ASSETS</b>   | <b><u>1,142,834</u></b>         | <b><u>1,148,336</u></b>         |
| <b>Unsecured creditors</b>  |                                 |                                 |
| <b>Accounts payable</b>   |                                 |                                 |
| Trade Creditors   | (40,791)                        | (40,791)                        |
| Goods and services tax  | (210)                           | (194)                           |
| Sundry creditors  | (489)                           | (489)                           |
|   | <u>(41,490)</u>                 | <u>(41,474)</u>                 |
| ACCs - ESC at Estimation Date                                       | (1,335,750)                     | (1,329,678)                     |
| Commutations - ESC Verified   | (6,108)                         | (6,111)                         |
| Add back: Creditors with Statutory Cut Through & s. 562A (4) claims | 91,369                          | 91,369                          |
| <b>Outstanding claims</b>   | <u>(1,250,489)</u>              | <u>(1,244,419)</u>              |
| <b>Other liabilities</b>  |                                 |                                 |
| Other creditors and accruals (Potential Shareholder Claims)         | 0                               | (21,000)                        |
| Amounts owing to related bodies corporate                           | (356,675)                       | (356,617)                       |
|   | <u>(356,675)</u>                | <u>(377,617)</u>                |
| <b>TOTAL LIABILITIES</b>  | <b><u>(1,648,655)</u></b>       | <b><u>(1,663,511)</u></b>       |
| <b>NET DEFICIT</b>  | <b><u>(505,820)</u></b>         | <b><u>(515,174)</u></b>         |

## Appendix 2

Summary of the Scheme Administrators' receipts and payments from 1 July 2018 to 30 June 2019

|   | \$            | \$                       |
|---|---------------|--------------------------|
| <b>Opening balance at 1 July 2018</b>                                     |               | 91,651,944               |
| <b>Receipts</b>   |               |                          |
| Interest on Cash and Deposits   | 1,817,970     |                          |
| GST Refund  | <u>68,956</u> |                          |
| <b>Total Receipts</b>   |               | 1,886,926                |
| <b>Payments</b>   |               |                          |
| Central Expense reimbursement paid to HIH C&G                             | (1,077,171)   |                          |
| Scheme Administrators' Fees   | (247,878)     |                          |
| Legal and Taxation Fees   | (218,888)     |                          |
| GST Paid  | (52,758)      |                          |
| Insurance   | (32,854)      |                          |
| Other Payments  | (29,462)      |                          |
| Scheme Administrators Disbursements                                       | (4,785)       |                          |
| Liquidators' Fees   | <u>(614)</u>  |                          |
| <b>Total Payments</b>   |               | (1,664,408)              |
| Adjustments for Unrealised Foreign Exchange Gain on Foreign Cash Accounts |               | 582,215                  |
| <b>Balance at 30 June 2019</b>  |               | <b><u>92,456,678</u></b> |