

Remediation Action Plan – Terms of Reference



A division of Chubb Insurance Australia Limited

Remediation Action Plan – Terms of Reference

Combined Insurance

Contents

1. Background to these Terms of Reference.....	1
2. Our role and the Independent Expert's role	1
3. Principles that underpin the Remediation Action Plan (RAP).....	1
4. Who is eligible to access the RAP and for how long.....	2
4.1 Eligible customers	2
4.2 RAP Access Period.....	2
4.3 Our discretion to consider non-Eligible Customers.....	2
4.4 Excluded circumstances	2
5. How to lodge a request for a Detriment Assessment Review	2
6. Your rights and remedies under the RAP	2
7. What you can do if you are dissatisfied.....	2
8. Overview of the Detriment Assessment Review Process	3
9. Rules we apply in deciding Detriment Assessment Reviews	4
9.1 Detriment Assessment Review resolution methods	4
9.2 Your obligations in a Detriment Assessment Review	4
9.3 Privacy and confidentiality.....	4
9.4 Access to information	4
9.5 Conflicts of interest management.....	4
9.6 Determinations	4
10. Defined Terms.....	5

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Combined Insurance

1. Background to these Terms of Reference

On 24 February 2016, Chubb Insurance Australia Limited (**we, our, us**) entered into an Enforceable Undertaking (**EU**) with the Australian Securities and Investments Commission (**ASIC**) resulting from an investigation by ASIC into the Combined Insurance Division of Chubb (**Combined Insurance**).

ASIC identified the following conduct by a limited number of our Authorised Representatives (**ARs**) in relation to sickness and accident insurance policies issued by Combined Insurance (**Policy/ies**):

- a) Overselling of Policies. ARs sold Policies to Combined Insurance consumers which duplicated cover already held by the consumer and exceeded the underwriting limits imposed by Combined Insurance;
- b) Twisting/Churning of Policies. ARs encouraged Combined Insurance consumers to cancel their existing policies and take up new Policies which resulted in a change of cover for no benefit and on some occasions, Detriment (i.e. the consumer was worse off and suffered loss as a result of the change).
- c) Selling of Unsuitable Policies. ARs advised Combined Insurance consumers to take up Policies under which they would not be eligible for coverage, as they:
 - i. were ineligible to hold a Policy (such as disability pensioners); or
 - ii. sought coverage for potential injury caused as a result of activities that were specifically excluded under the Policy (such as professional sports and off-road dirt-bike riding).

(collectively defined as the **AR Misconduct**)

The EU requires that we implement a Remediation Action Plan (**RAP**) to enable eligible consumers (See Section 3. Who is eligible to access the RAP and for how long) who are worse off and suffered loss or damage as a result of AR Misconduct from **1 January 2012 to 24 February 2016** to seek remediation (i.e. a remedy) in respect of their loss or damage.

These terms of reference form part of the RAP agreed by us with the Independent Expert Professional Financial Solutions (**IE**) in accordance with the EU and will be applied in the operation of the RAP.

These terms of reference set out:

- our role and the Independent Expert's role;
- the Principles that underpin the RAP;
- who is eligible to access the RAP and for how long;
- your rights and remedies under the RAP;
- how to lodge a request for a Detriment Assessment Review;
- what you can do if you are dissatisfied with our decision or determination;
- overview of the Detriment Assessment Review Process; and
- rules we apply to a Detriment Assessment Review.

We may amend these terms of reference from time to time following consultation and agreement with the IE, who will report to ASIC on the RAP in accordance with the EU.

2. Our role and the Independent Expert's role

The Independent Expert will have oversight of the RAP and we will implement the RAP.

3. Principles that underpin the Remediation Action Plan (RAP)

In implementing the RAP we will:

- a) do what is appropriate in our opinion with a view to resolving your concerns in a cooperative, honest, efficient, timely and fair manner;
- b) be as transparent as possible in accordance with these terms of reference, whilst also acting in accordance with all confidentiality and privacy obligations;
- c) be responsive to you and treat you courteously and with a customer focused approach;
- d) report to the Independent Expert on our actions with respect to the RAP; and
- e) improve the RAP where areas for improvement are identified by us.

4. Who is eligible to access the RAP and for how long

4.1 Eligible customers

You are eligible to access the RAP if:

- a) you are an individual who purchased a Combined Insurance sickness and accident policy (**Policy/ies**) between the period 1 January 2012 to 24 February 2016 (**the Remediation Period**);
- b) your request is in relation to AR Misconduct – as defined in Section 1. above;
- c) you apply for access within the RAP Access Period – as explained in sub section 4.2 below; and
- d) you are not within an Excluded Circumstance – as explained in sub section 4.4 below.

If a person who would otherwise be eligible is deceased, their estate may be eligible to access the RAP.

Persons who act as a trustee, legal personal representative or otherwise on behalf of an individual who is eligible, may apply for access on their behalf.

If you are eligible for the RAP in this document you are referred to as an **Eligible Customer**.

See sub section 4.3 regarding our discretion to consider non-Eligible Customers.

4.2 RAP Access Period

If you are an Eligible Customer, you will be able to access the RAP for the greater of the 12 month period:

- a) starting from 1 month after the RAP terms are finalized; or
- b) following the date a written invitation to seek access to the RAP is first sent by us to you. This is a longer time than we were required to provide under the EU.

4.3 Our discretion to consider non-Eligible Customers

We have discretion to conduct a Detriment Assessment Review of a non-Eligible Customer.

If we do not exercise this discretion, any complaint by such non-Eligible Customers will be handled by us in compliance with our Complaint Handling and Dispute Resolution process and they will be advised of this right.

4.4 Excluded circumstances

We will not undertake a Detriment Assessment Review in the following circumstances:

- a) where a Detriment Assessment Review is considering the same events and facts as were raised by you in a Dispute previously dealt with by the Australian Financial Complaints Authority scheme or a Predecessor External Disputes Resolution (EDR) Scheme and there are insufficient additional events and facts raised in the Detriment Assessment Review to warrant the Detriment Assessment Review; or

- b) any matter that has already been dealt with or is in the process of being dealt with, by a court or dispute resolution tribunal established by legislation, or by another external dispute resolution scheme approved by ASIC.

We will determine if any of the above excluded circumstances apply and if so will tell you and provide reasons for this assessment. If you are unhappy with our decision you can always appeal our decision as explained in Section 7.

5. How to lodge a request for a Detriment Assessment Review

You may request a Detriment Assessment Review by:

- i. telephone: **1300 787 384**; or
- ii. email: **response@combined.com.au**; or
- iii. writing to:
Combined Insurance
Remediation Action Plan
PO Box 403
North Sydney NSW 2059

You will be required to provide information reasonably requested by us to undertake the Detriment Assessment Review and we will provide reasonable assistance to you in helping you request your review.

6. Your rights and remedies under the RAP

Under the RAP you have the right to a Detriment Assessment Review and to seek a remedy in respect of any loss or damage you have suffered as a result of AR Misconduct in accordance with these Terms of Reference.

We may in our discretion provide remedies in respect of loss or damage caused by conduct that is not AR Misconduct.

Remedies that may be applied by us, if we determine you are worse off and have suffered loss or damage, include, but are not limited to:

- a) the refund of some or all premiums paid for the insurance cover;
- b) the meeting of an insurance claim including statutory interest;
- c) reinstating or varying a Policy (usually to pay an insurance claim); and
- d) a negotiated settlement.

7. What you can do if you are dissatisfied

a) If you are dissatisfied with our decision on eligibility or a Detriment Assessment Review Determination

If you are dissatisfied with a decision made by us regarding eligibility or a Detriment Assessment Review Determination, you are welcome to Dispute our decision by asking for our decision to be reviewed by members of our Chubb Internal Dispute Resolution team responsible for the review of Disputes at Stage 2 of the Chubb Complaint Handling and Dispute Resolution procedures (**IDR Service**). The IDR Service is separate to the initial RAP decision making process.

You can contact our IDR Service on:

- i. telephone: **1300 787 384**; or
- ii. email: **response@combined.com.au**; or
- iii. writing to:
Internal Dispute Resolution Service
Combined Insurance
PO Box 403
North Sydney NSW 2059

b) If you are dissatisfied with our IDR Service review Determination

If you are dissatisfied with the review Determination made by our IDR Service, you are entitled to refer the Dispute to the Australian Financial Complaints Authority (AFCA), a free and independent External Dispute Resolution Scheme of which we are a member. We will be bound by any determination it makes, subject to its Rules.

You can contact AFCA on:

- i. telephone: 1800 931 678 (free call)
- ii. email: info@afca.org.au
- iii. writing to:
Australian Financial Complaints Authority
GPO Box 3
Melbourne VIC 3001

You also have the choice to bring an action in the courts or exercise any other rights that may be available to you.

c) If you are dissatisfied in any other way with the RAP

If you are dissatisfied in any other way in relation to the RAP, simply contact our IDR Service on the details provided above and your complaint will be handled in accordance with the Chubb Complaint Handling and Dispute Resolution procedures.

8. Overview of the Detriment Assessment Review Process

The following is an overview of the Detriment Assessment Review process we follow after receiving your request for a Detriment Assessment Review:

a) Step 1 – We will acknowledge your request to access the RAP

Your request to access the RAP will be acknowledged by us within 2 business days of receipt.

b) Step 2 – We will conduct your Detriment Assessment Review

Provided we determine you are eligible (See Section 4: Who is eligible to access the RAP and for how long) we will conduct the Detriment Assessment Review in accordance with these terms of reference (See in particular Section 9. The Rules we apply in deciding Detriment Assessment Reviews). We will always give you a reasonable opportunity to make submissions and provide information about the matters in Dispute.

c) Step 3 – We will make a Determination in relation to your Detriment Assessment Review (where all necessary information has been provided)

- i. **Provided we have all the necessary information and have completed any required investigation to make a Determination** – we will respond to you with our Determination including any proposed remedy/ies within 15 business days of your date of lodgment of your request for a Detriment Assessment Review. (See Section 9. The Rules we apply in deciding Detriment Assessment Reviews – Determinations for more detail).
- ii. **If we cannot respond within the above time frame because all necessary information has not been provided to us or we have not completed our investigation** – we will:
 - let you know as soon as reasonably practical within 15 business days of your date of lodgment of your request for a Detriment Assessment Review and seek to agree with you on a reasonable alternative timetable; and
 - keep you informed about the progress of the response at least every 10 business days, unless you agree otherwise.
- iii. **If we cannot reach agreement on an alternative timetable** – we will advise you of your right to access our Internal Dispute Resolution Service Stage 2 process – See Section 7. What you can do if you are dissatisfied with our decision or determination above.
- iv. In circumstances where you have requested access to the RAP, but cannot be contacted to complete a Detriment Assessment Review (we will at least make 3 phone attempts to contact you) - we will mail out a Customer Questionnaire (CQ) to you for completion.
The accompanying letter will request the return of the CQ within 15 business days and advise you that if you do not do so, the Detriment Assessment Review will be closed. However, you can still re-open your Detriment Assessment Review at any time during the RAP Access Period.

d) Step 4 – You can then agree with our Determination or apply for review to our IDR Service

- i. **If you are happy with our Determination** – we are bound by it.
- ii. **If you are not happy with our Determination** – you can lodge a Dispute with our IDR Service. (IDR - see Section 7. What you can do if you are dissatisfied with our decision or our determination/s above). Our IDR Service is separate to the RAP decision making process and will review the Dispute in accordance with the Stage 2 requirements of the Code.

e) Step 5 – You can then agree with our IDR Service Determination or apply for review to the AFCA EDR Scheme

- i. **If you are happy with our Stage 2 IDR Service Determination** – we will be bound by that Determination.

- ii. **If you are not happy with our Stage 2 IDR Service Determination** – you can seek to lodge a Dispute with the AFCA EDR Scheme - See Section 7. What you can do if you are dissatisfied with our decision or our Determination/s above.

Do any maximum time frames apply?

Our total process for making a Determination described above will not exceed 45 calendar days in total from the time you request access, unless we are unable to provide you with a final decision within that period.

In such a case, we will tell you before the end of that period of the reasons for the delay and your right to take your complaint to AFCA, together with contact details for AFCA. You then have the choice to finish the process with us before referring the matter to AFCA or refer the matter to AFCA.

9. Rules we apply in deciding Detriment Assessment Reviews

9.1 Detriment Assessment Review resolution methods

To resolve a Detriment Assessment Review, we will follow the process set out in Sections 8 and 9 and may also use negotiation, conciliation or mediation, if we decide it is appropriate.

Subject to the above, when deciding a Detriment Assessment Review and whether a remedy should be provided for any identified loss, we will do what in our opinion is fair in all the circumstances, having regard to each of the following:

- a) legal principles;
- b) applicable industry codes or guidance as to practice; and
- c) good industry practice.

We are also not bound by any legal rule of evidence. This can be of benefit to you as we can decide not to require you to meet the same standards a court would in certain cases.

We may obtain expert advice including from a legal expert, industry expert or medical practitioner appointed by us and at our expense.

Any claim of Eligible Customer loss resulting from AR Misconduct will be reviewed and assessed according to the principles of the AFCA EDR scheme and any Remedy, including financial compensation is to be determined in line with the relevant EDR Scheme principles as well.

9.2 Your obligations in a Detriment Assessment Review

We may ask you to provide to, or procure for us, any information that we reasonably consider necessary in order to conduct the Detriment Assessment Review.

You will be deemed to have reasonably complied with our request where you satisfy us that:

- a) to provide information would breach a duty of confidentiality to a third party and, despite best endeavours, the third party's consent to the disclosure of the information has not been able to be obtained;

- b) to provide the information would breach a Court order or prejudice a current investigation by the police or other law enforcement agency; or
- c) the information does not or no longer exists or is not within your reasonable possession or control.

We may also ask you to do anything else that we reasonably consider may assist us in conducting the Detriment Assessment Review. This may include, but is not limited to asking that you attend an interview where this is reasonably possible, at our expense.

If you don't, we may take the steps we consider reasonable in the circumstances. This may include, but not be limited to proceeding with the resolution of the Detriment Assessment Review on the basis that an adverse inference may be drawn from your failure to provide information.

9.3 Privacy and confidentiality

We will abide by the Australian Privacy Principles of the *Privacy Act 1988* when we collect, store, use and disclose personal information about you. We only do so for the purposes of this RAP and incidental purposes.

We must keep confidential all information pertaining to a Detriment Assessment Review that is lodged with us and only use and disclose it for the purposes of the RAP, the EU and incidental purposes or as required or to the extent permitted by, law.

9.4 Access to information

Subject to the following, upon your request and either before or after making a Determination, we will provide you with access to the documentation, information and material upon which we rely or intend to rely, in relation to the Detriment Assessment Review and/or Determination, except where it is protected from disclosure by law, including the *Privacy Act 1988*.

If we decline to provide access to or disclose information to you we will:

- a) not do so unreasonably; and
- b) give you reasons for doing so.

9.5 Conflicts of interest management

Any of our staff members involved in implementing the RAP must identify any conflicts of interest involving customers participating in the RAP to us and we will report these to the IE in accordance with agreed procedures. The IE determines whether a person should be excluded from working on the RAP by reason of the disclosed conflict of interest.

9.6 Determinations

- a) Any Determination we make under the RAP must:
 - i. be in writing;
 - ii. provide our decision;
 - iii. provide reasons for the decision;
 - iv. if the Determination is in your favour, specify the Remedy that we consider fair and appropriate and if the Remedy includes a payment, send this to you; and

- v. include information regarding your right to refer any Dispute to our IDR Service and following this if you remain dissatisfied, the AFCA EDR Scheme. (See Section 7. for our IDR Service and AFCA's contact details).
- b) A Determination is a final decision under the RAP and is binding upon us but will not act as a precedent.

10. Defined Terms

The following words have the following meanings where they appear in these terms of reference:

"AFCA" means the Australian Financial Complaints Authority which is the independent External Disputes Resolution Scheme that Chubb is a member of at the time of publicising these terms of reference.

"AR" means an Authorised Representative of Chubb's Combined Insurance Division.

"AR Misconduct" has the meaning given in Section 1 of these terms of reference.

"ASIC" means the Australian Securities and Investments Commission.

"Chubb" means Chubb Insurance Australia Limited – ABN 23 001 642 020, AFSL Number 239687.

"Code" means the General Insurance Code of Practice 2014 created by the Insurance Council of Australia.

"Combined Insurance" means the Combined Insurance Division of Chubb Insurance Australia Limited.

"Determination" means the decision about a Detriment Assessment Review made in accordance with these terms of reference, in particular under Sections 8 and 9.

"Detriment" means where you are worse off and have suffered loss or damage.

"Detriment Assessment Review" means a review of an Eligible Customer in accordance with these terms of reference and the RAP to determine whether the Customer has suffered Detriment as a result of AR Misconduct or as otherwise permitted by these terms of reference.

"Dispute" means a RAP Determination that has not been resolved to the satisfaction of an Eligible Customer under the RAP.

"Dispute Resolution Procedures" means those processes and procedures as set out in the Chubb Australian Complaint Handling and Dispute Resolution Policy and Framework.

"EDR" means the External Disputes Resolution service offered by AFCA, of whom Chubb is a member. The EDR service is independent of Chubb.

"Eligible Customer" has the meaning given in Section 4.1.

"EU" means the Enforceable Undertaking entered into by Chubb with ASIC on 24th February 2016.

"IDR Service" means the Chubb Internal Dispute Resolution team responsible for the review of Disputes at Stage 2 of the Chubb Complaint Handling and Dispute Resolution procedures. The IDR Service is separate to the initial RAP decision making process.

"Independent Expert" means Professional Financial Solutions, the Independent Expert appointed under the EU to have oversight over the RAP.

"Policy or Policies" means any sickness and accident policy issued through Combined Insurance.

"RAP" means the Combined Insurance Remediation Action Plan agreed with the IE in accordance with the EU.

"RAP Access Period" has the meaning given in Section 4.2 of these terms of Reference.

"Remediation Period" means the period from 1st January 2012 to 24th February 2016.

"Remedy" means a resolution, either monetary or otherwise which we determine is appropriate as a result of a Detriment Assessment Review. Remedies that may be applied by us if we determine you have suffered Detriment include, but are not limited to:

- a) the refund of some or all premiums paid for the insurance cover;
- b) the meeting of an insurance claim including statutory interest;
- c) reinstating or varying a Policy (usually to pay an insurance claim); and
- d) a negotiated settlement.



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