

RULES OF THE Motor Vehicle Insurance and Repair Industry Code of Conduct

APPROVED DETERMINATION SCHEME RULES

The Motor Vehicle Insurance and Repair Industry Code of Conduct (**Code**) Approved Determination Scheme Rules (**Rules**) have been introduced by the Motor Vehicle Insurance and Repair Industry Code of Conduct Administration Committee (**CAC**) to provide fair, quick and cost-effective resolution of claims in those matters involving signatories.

The Rules complement existing modes of dispute resolution, including internal dispute resolution (where matters are resolved without recourse to assistance from a third party) and mediation (where a mediator is appointed by the parties through the CAC to assist the parties to reach a negotiated outcome to the dispute).

Determination is a process whereby an independent third party is appointed to issue a final and binding order on the parties, resolving the dispute in the form of a written decision.

The Code requires that parties in dispute first attempt to resolve their differences informally, and by way of the Code's internal dispute resolution and mediation schemes, before entering into determination.

The CAC may withdraw, amend or review the Rules as required.

PRELIMINARY

- 1.1. The Rules apply only to disputes between signatories relating to matters referred to in the Code, and is restricted to those matters that can be disputed under the Code.
- 1.2. To the extent that the Rules and the Code conflict, the Code shall take precedence.
- 1.3. The parties may agree to any alternative or amendment to the Rules prior or during the dispute resolution process.
- 1.4. The parties may agree to any third party acting as the determination provider (Agreed Determination Provider). If the parties are unable to agree on an Agreed Determination Provider, the applicant shall nominate an approved determination provider as set out in Schedule 1 of the Code (Approved Determination Provider) (collectively Determination Provider).
- 1.5. For the purposes of the Rules, a Determination Provider may include an entity that nominates a determiner to act in that capacity (Determination Nominator). The Determination Nominator shall determine, taking into account the circumstances of the dispute and the preferences of the parties, whether to appoint a single determiner or a panel of determiners and the level of skills and industry knowledge required of the determiner or determiners.
- 1.6. Participation and compliance with the Code and the Rules is mandatory for all signatories of the Code until 31 December 2018 or the CAC determines otherwise.

- 1.7. In referring their dispute for resolution under the Rules, the parties to the dispute agree that the CAC and the Determination Provider, including its agents, employees, officers and any person or persons appointed as Determination Provider, are not liable to any party for or in respect of any act or omission arising out of or in connection with the Rules unless such act or omission is shown to have been fraudulent or corrupt.

APPLICATION FOR DETERMINATION

- 2.1. If the parties have not resolved their dispute after mediation, a party has twenty-eight (28) days from the date of mediation to apply on the CAC website for the dispute to proceed to determination.
- 2.2. After receipt of an application through the CAC website, either:
 - a. Where the parties use an Agreed Determination Provider, the applicant shall forward its application to the Agreed Determination Provider within two (2) business days; or
 - b. Where the parties use an Approved Determination Provider, the applicant shall forward its application to the Approved Determination Provider within two (2) business days.
- 2.3. The parties may advise the CAC if the Determination Provider is unwilling or unable to act in accordance with the Code and the Rules. If the CAC agrees, it shall appoint an alternative Determination Provider as soon as reasonably practicable, and will advise the parties and the Determination Provider accordingly.

MEDIATION

- 3.1. The documents previously submitted to the mediator shall on agreement of the parties be passed on to the Determination Provider, together with any report provided by the mediator on the facts, issues and claims. The mediator must not communicate to the Determination Provider any suggestions for settlement of the dispute nor any information given in confidence by either party nor any views expressed.
- 3.2. The mediator involved in the mediation phase of the dispute must not act as an advocate, adviser or witness for a party during the determination phase, act as a Determination Provider or be required to disclose any information about any matter arising during the mediation phase unless otherwise agreed by the parties.

COSTS

- 4.1. Each party shall bear its own costs for the determination regardless of the outcome.
- 4.2. The Determination Provider's fees and expenses, including but not limited to the cost of providing a venue for the determination, shall be initially borne by the applicant.
- 4.3. The costs set out in Rule 4.2 shall in principle be borne by the unsuccessful party as part of the Determination Provider's decision. However, the Determination Provider may apportion those costs between the parties in the decision if the Determination Provider considers that apportionment is reasonable, taking into account the circumstances of the dispute.

4.4. The CAC may set a maximum hourly rate an Approved Determination Provider may charge.

DETERMINATION PROCEDURE

5.1. The Determination Provider shall:

- a. Adopt procedures suitable for quick, cost-effective and fair determination of the dispute, minimising formality as far as possible;
- b. Be independent of, and act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting its case and dealing with that of any opposing party;
- c. Apply the Code and the Rules in managing determination procedures and making decisions under this scheme; and
- d. Only seek information related specifically to the matter under dispute.

5.2. The parties shall:

- a. Do all things reasonably necessary for the quick, cost-effective and fair determination of the dispute; and
- b. Comply without unreasonable delay with any direction or ruling by the Determination Provider.

5.3. Unless amended by the Determination Provider or as agreed by the parties, the dispute resolution process shall proceed in the manner set out below.

- a. The applicant shall, within twenty-eight (28) days of the date on which the application for determination is submitted in accordance with Rules 2.1 and 2.2, provide to the other party or parties and to the Determination Provider a document specifying the nature and basis of the claim, the amount claimed (and how it has been calculated) and any other remedy sought, and shall enclose copies of all documents and any witness statements or expert reports relied upon in support of the claim.
- b. Within twenty-eight (28) days of the applicant submitting its claim, the respondent or respondents shall submit its response to the applicant's claim, setting out what it says as to the nature and basis of the claim, and shall enclose copies of all documents and any witness statements or expert reports relied upon by the respondent in response to the claim.
- c. The Determination Provider may make further directions or rulings as he or she considers reasonably appropriate in the circumstances. The Determination Provider may seek further information from either or both parties to assist in making a decision.
- d. The Determination Provider shall determine the matter on the written material served or produced under this Rule unless:

- i. Otherwise agreed by the parties; or
 - ii. The Determination Provider or all parties consider that an oral hearing is necessary to explain or resolve conflicts in the written material in relation to any one or more of the issues in dispute.
- e. If an oral hearing is held on any one or more of the issues in dispute, then such oral hearing shall be conducted as soon as practicable at a time and in the manner directed by the Determination Provider, including any reasonable time limits on oral evidence and the provision of written opening addresses and final submissions.
- f. Any times set out under this Rule may be varied only by agreement of the parties. In the absence of such agreement and where a party shows proper cause, the Determination Provider may vary the times as he or she considers reasonable in the circumstances.
- g. Subject to Rule 5.3(f) and without the express, written approval of the Determination Provider, if any party fails to deliver anything required under the Rules within the dates specified, then:
 - i. Where a response to a claim is not delivered, it shall be deemed not to be contested;
 - ii. Where a claim is not delivered, it shall deem to be abandoned;
 - iii. Where a claim is abandoned, the determination shall not proceed; and
 - iv. Otherwise, the determination shall proceed as the Determination Provider considers appropriate in the circumstances.

5.4. The law to be applied shall be the law of the State or Territory where the original dispute arose.

DECISION

- 6.1. As soon as reasonably practicable after receiving all submissions and evidence, the Determination Provider shall make a final and binding written decision with reasons. The decision shall not include the names or any identifying information of the parties to the dispute or any customers associated with the dispute.
- 6.2. The decision made in accordance with Rule 6.1 shall be provided to the parties and the CAC within ten (10) business days. These decisions will then be published on the CAC website.
- 6.3. Unless otherwise directed, any amount or direction shall be paid to the party entitled to receive or acted upon, within twenty-one (21) days of the Determination Provider sending the decision to the parties, subject to the applicable law in the State or Territory.
- 6.4. For the elimination of doubt, a decision may include, but is not limited to, a requirement for the Insurer to discipline the relevant assessor, revise assessing practices or require additional training for that assessor.