

ANNEXURE B

COMPETITION AND CONSUMER ACT 2010

Undertaking to the Australian Competition and Consumer Commission given for the purposes of section 87B of the *Competition and Consumer Act 2010*

by

Medibank Private Limited ABN 47 080 890 259

1. Person giving the Undertaking

- 1.1 This Undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Medibank Private Limited ABN 47 080 890 259 (**Medibank**), for the purposes of section 87B of the Competition and Consumer Act 2010 (**CCA**).

2. Background

- 2.1 Medibank carries on the business of marketing and supplying private health insurance to consumers in Australia under two different brands, Medibank Private and ahm Health Insurance (**ahm**).
- 2.2 The ACCC issued proceedings against Medibank on 2 September 2019 in the Federal Court of Australia in the matter of VID 942/2019 (**Proceedings**).
- 2.3 The Proceedings relate to representations made in the course of ahm's business in responding to:
- (a) claims made by, or on behalf of, ahm members with "Lite" policies; and
 - (b) eligibility enquiries made by, or on behalf of, ahm members with "Lite" and "Boost" policies (**Policies**),

for procedures or treatments associated with certain Medicare Benefit Schedule (MBS) codes for medical services which constitute joint investigations and reconstructions (**Joint Procedures**) (**Affected Members**) that Affected Members were not entitled to the payment of benefits under their Policies for those medical services when in fact the Affected Members were entitled to benefits under their Policies for such services.

- 2.4 Medibank voluntarily notified the ACCC of the relevant conduct and has cooperated with, and assisted, the ACCC during its subsequent investigation.
- 2.5 The ACCC and Medibank have agreed to resolve the Proceedings by way of consent orders, including a declaration that Medibank's conduct contravened sections 18 and 29(1)(m) of the Australian Consumer Law (**ACL**). In addition, Medibank has agreed to give, and the ACCC has agreed to accept, this Undertaking.
- #### 3. *Reminder of remediation program to remaining Affected Members*
- 3.1 Medibank voluntarily implemented a comprehensive remediation program to address the harm its conduct caused to Affected Members.
- 3.2 That program included:
- (a) contacting all current and past Lite and Boost policyholders (being around 130,000 members) and notifying them that Medibank had discovered an issue in identifying eligibility when responding to consumer enquiries and paying claims for Joint Procedures, and inviting them to contact Medibank if they believed they had been impacted and to seek compensation;

- (b) including a prominent message on ahm's website that explains the issue and how to claim compensation, and providing a link to a claim form; and
 - (c) providing compensation to Affected Members who have suffered loss.
- 3.3 As at 5 March 2020, Medibank has paid approximately \$750,000 to 174 members who made claims pursuant to the remediation program. Around 670 additional members potentially affected by the relevant conduct did not submit a claim or receive compensation pursuant to the remediation program. Medibank has offered to send a further communication to those members on the terms set out in this Undertaking.

Rating and escalation of compliance incidents

- 3.4 The ACCC has also expressed a concern that the incident, at the time it was initially identified by Medibank, was given a 'moderate' priority rating when it was submitted into Medibank's compliance register.
- 3.5 To address the ACCC's stated concern, Medibank has offered to review its approach to the reporting and rating classifications of ACL compliance incidents, on the terms set out in this Undertaking.

4. Commencement and term of this Undertaking

- 4.1 This Undertaking comes into effect when:
- (a) this Undertaking is executed by Medibank, and
 - (b) this Undertaking so executed is accepted by the ACCC (the **Commencement Date**).
- 4.2 This Undertaking has effect for three years after the Commencement Date.
- 4.3 Upon the commencement of this Undertaking, Medibank undertakes to assume the obligations set out in paragraphs 5.1 to 5.3 below for the purposes of section 87B of the CCA.

5. Undertakings

Remediation program

- 5.1 Medibank undertakes that it will, within 30 days of the Commencement Date, in respect to those Affected Members who have (i) not made a claim for compensation; or (ii) not been paid compensation as part of Medibank's remediation program send a further communication by letter or email in the form attached.
- 5.2 Medibank further undertakes that:
- (a) it will allow any Affected Members to submit a claim at any time within 6 months of the date the communication referred to in paragraph 5.1 is sent to that Affected Member; and
 - (b) it will report to the ACCC within 12 months of the latest date on which the communication referred to in paragraph 5.1 is sent to relevant Affected Members (**Communication**) on the following matters:
 - (i) confirmation that the Communication has been sent;
 - (ii) the number of claims that were received by Medibank from the relevant Affected Members following the Communication;
 - (iii) of the claims referred to in paragraph (ii), the total number of claims that were accepted, the total number of claims that were rejected and, for those claims that were rejected, a brief reason for the rejection.

Review of ACL compliance incident process

5.3 Medibank undertakes that it will:

- (a) within 60 days of the Commencement Date, conduct a review of its procedures for the risk rating and escalation of Australian Consumer Law related compliance incidents (**ACL Compliance Incidents**); and
- (b) within 90 days of the Commencement Date, make such amendments to its incident management procedures as are reasonably necessary to ensure that, for a period of at least three years from the Commencement Date, any ACL Compliance Incidents that may involve a breach of the ACL are given a provisional rating of 'high' and are reported to the Senior Executive, Compliance & Regulatory Affairs (or equivalent role), when Medibank considers that any one (or more) of the following elements are satisfied:
 - (i) the incident could involve an average financial loss of \$500 or more for 500 or more members;
 - (ii) the incident could involve an aggregate member financial loss of \$250,000 or more; or
 - (iii) the incident is likely to be viewed by a regulator as a serious breach.

6. Acknowledgments

6.1 Medibank acknowledges that:

- (a) the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website;
- (b) the ACCC may, from time to time, make public reference to this Undertaking including in news media statements and in ACCC publications; and
- (c) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

Executed as an undertaking

Executed by Medibank Private Limited ABN 47 080 890 259 pursuant to section 127(1) of the *Corporations Act 2001* by:



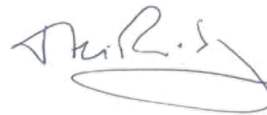
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Signature of director

Craig Drummond

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Name of director (print)

14 July 2020

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Date



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Signature of a director/company secretary (delete as appropriate, or entire column if sole director company)

Carolyn Mei Ramsay

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Name of director / company secretary (print)

14 July 2020

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Date

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010 (Cth)* on:

16 July 2020

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Date

and signed on behalf of the Commission:



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Chairman

16 July 2020

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Date