



NSW Government Response to  
the Report of the Select Committee  
on the Motor Vehicle Repair Industry

**December 2014**





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## Executive Summary

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On 19 November 2013, the NSW Legislative Assembly resolved to establish the Select Committee on the Motor Vehicle Repair Industry (**the Select Committee**) to inquire into and report on the contractual relationships between insurers and motor vehicle repairers, the quality of smash repair work in NSW, consumer choice in the marketplace and whether the industry works competitively. The full terms of reference for the Select Committee are provided at Appendix 1.

The Select Committee published its report in July 2014 with 21 recommendations for action by the NSW Government.

The NSW Government recognises the effort of the members of the Select Committee in inquiring diligently into these matters and thanks the Committee members for their work on this issue.

The NSW Government supports 18 of the recommendations in full or in part. This includes the development of legislation which will:

- establish a licensing scheme for insurance loss assessors,
- provide greater access for repairers to seek assistance from the Office of the Small Business Commissioner (**OSBC**), and
- strengthen the national Motor Vehicle Insurance and Repair Industry Code of Conduct (**the Code**) by ensuring appropriate penalties are available to address breaches of the Code.

The NSW Government is committed to addressing the concerns of industry and the community in relation to motor vehicle repairs. We will continue to work with the Commonwealth, other state and territory governments, regulators, and industry and community stakeholders to achieve positive outcomes for NSW.



## Summary of response to recommendations

Recommendation	NSW Government's Response
Recommendation 1	<b>Supported</b> – legislation will be developed for introduction in 2015
Recommendation 2	<b>Not supported</b> – the NSW Government will encourage voluntary adoption of digital image records of repairs
Recommendation 3	<b>Not supported</b> – the NSW Government will encourage adoption of quality assurance measures by industry
Recommendation 4	<b>Supported</b> – the Minister for Fair Trading has approached the Commonwealth
Recommendation 5	<b>Supported in part</b> – the NSW Government will introduce legislation in 2015 to establish a licensing scheme for assessors.
Recommendation 6	
Recommendation 7	
Recommendation 8	
Recommendation 9	
Recommendation 10	<b>Supported in principle</b> – the Minister for Fair Trading has approached the Commonwealth
Recommendation 11	<b>Supported</b> – legislation will be developed for introduction in 2015
Recommendation 12	<b>Supported</b> – NSW Fair Trading to work with industry and Commonwealth on appropriate consumer information
Recommendation 13	<b>Supported in part</b> – the NSW Government has passed laws to establish a public register of all licensed repairers in NSW
Recommendation 14	<b>Supported in part</b> – the NSW Government supports an industry operated rating system
Recommendation 15	<b>Supported</b> – the Minister for Fair Trading has approached the Commonwealth
Recommendation 16	<b>Supported</b> – the Minister for Fair Trading has approached the Commonwealth
Recommendation 17	<b>Supported</b> – the Minister for Fair Trading has approached the Commonwealth
Recommendation 18	<b>Supported</b> – the Minister for Fair Trading will monitor whether the Code is amended
Recommendation 19	<b>Supported in part</b> – the NSW Government will consider this issue if industry does not act by June 2015
Recommendation 20	<b>Supported</b> – the NSW Government will update references to the Code (subject to reviewing any changes to the Code)
Recommendation 21	<b>Not supported</b> – the NSW Government will not adopt measures that privilege particular commercial products for the calculation of repair times



## Background

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The smash repair industry has significantly changed over the past 10 years with considerable consolidation of the supply chain. It is a major employer and contributor to the economy, supporting over 140,000 persons across the State.

Tensions between insurers and repairers have been apparent for many years in NSW and nationally. In 1994, the Australian Industry Commission conducted an inquiry into the motor vehicle repair and insurance industries and found that there was a high level of interdependence between repairers and insurers, but an uneasy and often highly adversarial relationship.

In 2004, the Productivity Commission undertook a national inquiry into the relationship between the motor vehicle repair industry and the insurance industry. It found that there were serious issues of dispute that were affecting fair trading, transparency and efficiency. The Productivity Commission recommended the development of a national industry-wide code to address these issues.

In response to this recommendation, the insurance and repair industries developed the Code which is administered by the Motor Vehicle Insurance and Repair Industry Code Administration Committee (**CAC**). In NSW, all insurers and repairers are required to comply with the Code under the *Fair Trading Act 1987* (**FT Act**). The Code is voluntary in all other states and territories. The Code is essentially self-regulated by the two industries, and includes a dispute resolution system. If the Code's dispute resolution procedures do not resolve a dispute, or if the insurer or repairer refuses to take part in those procedures, then the FT Act provides for enforcement and remedies under Part 6 of that Act. If it is in the public interest, NSW Fair Trading can take action to enforce compliance with the Code.

Motor vehicle repairers are also regulated by the *Motor Dealers and Repairers Act 2013* (**MDR Act**), which provides consumer protection through a business and an occupational licensing system for motor vehicle repairers. This Act commenced on 1 December 2014, and replaces the former *Motor Vehicle Repairs Act 1980*.

NSW Fair Trading can take action against a repairer if repair work is not completed to the appropriate standard. Consumers and insurers may make a complaint about poor



repair work to NSW Fair Trading which is able to investigate the complaint and take action, including criminal prosecution, if appropriate.

Motor vehicle repairers in dispute with insurers can also approach the OSBC to assist in the resolution of a dispute. The role of the OSBC is to support small businesses throughout NSW by providing dispute resolution services, quality business advice and voicing concerns for small business within government.

The Select Committee has noted a number of perceived failings with the Code and has recommended interventions to address them.

In 2013, the Code was subject to an external review by Executive Counsel Australia (**the 2013 External Review**). The NSW Government understands that the CAC is currently considering the recommendations arising from the 2013 External Review, which include amendments to the Code's dispute resolution arrangements and the inclusion of an arbitration process. On 7 November 2014, the Minister for Fair Trading wrote to the Chair of the CAC to seek advice from the CAC in relation to the Select Committee's recommendations. The CAC subsequently announced on 10 November that substantial progress had been made in its consideration of the 2013 External Review and that it has agreed to clarify the minimum standards for the training and education of 'Code Approved Assessors.' The CAC further stated that it has agreed to engage independent experts to advise on the further investigation of an arbitration scheme and, subject to that advice, will seek to implement an arbitration scheme by 1 July 2015.

The NSW Government also notes that the outcome of the recent Commonwealth Competition Policy Review may have implications for the motor vehicle repair industry. The Competition Policy Review Draft Report includes relevant recommendations such as empowering the proposed Australian Council for Competition Policy to undertake competition studies of markets, seeking views on a specific dispute resolution scheme for small businesses for competition matters and improving provisions for collective bargaining for small businesses.

The Commonwealth Government announced prior to the 2013 election that it would seek to extend the Australian Consumer Law's protections dealing with unfair contract terms to small business. The NSW Government notes the ongoing work by the Commonwealth Government in this regard.



## A. Additional reporting and record keeping requirements for repairers

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**Recommendations: 2, 3, 13, 14**

**Recommendation 2** requires repairers to record digital images of repairs, and for vehicle owners to have access to those images.

The NSW Government does not support a mandatory requirement for digital images, but will work with industry to see if this proposal could be introduced on a voluntary basis as part of a best practice customer service model.

A mandatory requirement is not supported on the basis that:

- The anticipated benefit to consumers is low. Few consumers have a sufficient level of technical knowledge for images of repairs to be meaningful.
- The likely benefit for compliance and enforcement purposes is low. Photos taken by repairers are unlikely to be useful as evidence, particularly given the incentive for the repairer to avoid documenting problematic aspects of the repair work.
- A number of insurers and repairers already utilise digital photography as part of their internal processes and quality assurance requirements. As the industry is in the process of adopting this recommendation on a voluntary basis, further intervention is not required at this time.

**Recommendation 3** calls for repairers to report certain types of repairs to Roads and Maritime Services (**RMS**), and for RMS to conduct random audits of this repair work. The NSW Government does not support this recommendation.

Many insurers already undertake regular quality assurance audits of repair work to ensure that safety standards are being met and repairs are of a high quality. NSW Fair Trading currently visits and inspects repair shops to ensure compliance with relevant NSW laws governing motor vehicle repairs. The NSW Government considers that establishing an additional audit regime would create unnecessary duplication and overlap. Evidence presented to the Committee suggests that only a small fraction of vehicles currently need further rectification following a repair, with safety-related matters being a subset of that amount. Total reported rates of rectifications by insurers



were no more than 4% of repairs, with two major insurers reporting rates well below 1%. Safety-related rectifications were reported to be required for less than 1% of repairs by all insurers that provided data, with rates as low as 0.0001% for safety-related rectifications reported by one major insurer. In this context, the likelihood of random audits identifying a vehicle with a problem is very low. The costs incurred are likely to substantially outweigh any potential increase in safety.

While a mandatory reporting regime is not supported, the Minister for Fair Trading will write to the chair of the CAC and recommend that insurers and repairers look at ways of enhancing current quality assurance programs, including possible voluntarily reporting to NSW Fair Trading regarding structural repairs that require rectification.

**Recommendation 13** calls for NSW Fair Trading to set up a public register listing all motor vehicle repairers found in breach of MDR Act, the *Road Transport Act 2013 (RT Act)* and accompanying regulations. The NSW Government supports this recommendation in part.

The MDR Act, which came into effect on 1 December 2014, provides for the licensing of motor vehicle repairers and for a public register of all licence holders to be published on the NSW Fair Trading website. Details about the register of licences for motor vehicle repairers were included in the draft Motor Dealers and Repairers Regulation (**MDR Regulation**), which was released for public comment in May 2014.

The public register will allow consumers to check if a repairer is licensed and whether they have been penalised for breaches of the MDR Act and MDR Regulation. The information available will include penalty notices issued, disciplinary action taken, and successful prosecutions.

The NSW Government does not support broadening the register to include breaches of road transport laws. However, the NSW Government will review the register's scope periodically and supports voluntary industry systems such as a rating scheme to help inform consumers when choosing a repairer. As was flagged during the Select Committee's inquiry, the NSW Government promotes the provision of better quality, more comprehensive information to consumers, and seeks opportunities to empower consumer decision-making in this and other industries.



**Recommendation 14** calls for NSW Fair Trading to establish a rating scheme for repair businesses.

The NSW Government does not support the proposal for a Government operated rating scheme. However, the NSW Government will work co-operatively with industry members and other stakeholders to facilitate the development of a voluntary rating system for industry participants.

The MDR Act introduces stricter qualification requirements for tradespeople, with a Certificate III as the minimum acceptable qualification for tradespeople entering the industry. Additionally, the MDR Act continues to provide for minimum standards for the quality of vehicle repairs, and disciplinary provisions for breaches, including the power to exclude repairers from the industry.



## B. Licensing of insurance loss assessors

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### **Recommendations: 5, 6, 7, 8, 9**

This group of recommendations calls for the re-introduction of licensing for motor vehicle insurance loss assessors under the Roads and Maritime Services Vehicle Safety Compliance and Certification Scheme (**VSCCS**). The NSW Government supports the re-introduction of loss assessor licensing under the MDR Act.

The VSCCS is not an appropriate mechanism to introduce and manage assessor licensing. The VSCCS is designed as a specialist certification scheme, not a vocational licensing scheme. VSCCS certifiers are classified as public officials who certify that non-standard and modified vehicles comply with relevant vehicle standards on behalf of RMS. Loss assessors are employed and do work on behalf of private insurers to ensure that damaged vehicles are repaired back to original design standards.

The NSW Government proposes a licensing regime under the MDR Act administered by NSW Fair Trading. The NSW Government notes that, following the 2013 External Review, the CAC has committed to clarifying the minimum standards for the training and education of 'Code Approved Assessors.' The NSW Government will continue to work with the CAC to ensure that the licensing regime is informed by the changes to the Code that are under consideration.

The NSW Government will introduce legislation in 2015 to establish the licensing of assessors.



## C. Greater transparency for the insurance market

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**Recommendations: 10, 11, 12, 16**

**Recommendations 10, 11 and 12** deal with the issue of choice of repairer under an insurance contract.

The NSW Government supports the principle that consumers should have access to all relevant information about the products and services they purchase so that they can make informed choices.

The NSW Government supports the intent of **Recommendation 10**, but acknowledges that NSW may have limited ability to take direct action at a state level because insurance is primarily regulated under Commonwealth laws. The Commonwealth regulates insurance contracts and consumer-insurer arrangements through the *Insurance Contracts Act 1984*, the *Corporations Act 2001* and the *Australian Securities and Investments Commission Act 2001*.

The Minister for Fair Trading has written to the Commonwealth Minister for Finance and Acting Assistant Treasurer regarding concerns relating to consumers and insurance contracts.

The NSW Government supports **Recommendation 11**, which calls for penalties to be introduced under the FT Act in respect of practices that prevent consumers exercising their right to a choice of repairer. The FT Act currently mandates the Code. The Code requires insurers to state clearly their terms about choice of repairer in their Product Disclosure Statements, and it prohibits insurers from making misleading and deceptive statements about repairers who are not part of their smash repairer network. Misleading and deceptive conduct may also constitute an offence under the Australian Consumer Law.

The NSW Government will introduce amendments to the FT Act in 2015 to introduce appropriate penalties for failure to comply with the Code. This will include consideration of which specific provisions of the Code are constitutionally appropriate for enforcement by NSW, how best to apply penalties to the Code, and which penalties are appropriate.

**Recommendation 12** calls for NSW Fair Trading to produce specific material to assist consumers to understand their rights under choice of repairer insurance policies. The



NSW Government supports this recommendation. NSW Fair Trading will work with the Commonwealth Government and industry stakeholders to ensure that consumers have access to appropriate information about their rights.

The Code requires that insurers clearly state their policy in relation to choice of repairer, including in their Product Disclosure Statements, telephone enquiries and sales. As indicated under **Recommendation 11**, the NSW Government will seek to amend the FT Act to include appropriate penalties for failure to comply with the Code. NSW Fair Trading will also continue to monitor the information that is provided to consumers by insurers, including through telephone or sales scripts, to ensure that these practices do not breach the Code or constitute misleading or deceptive conduct.

**Recommendation 16** deals with the issue of transparency of brand ownership in the insurance market. The Select Committee recommends that the Minister for Fair Trading monitor the extent to which the motor vehicle insurance industry adopts measures to make umbrella and parent company relationships more transparent, and the impact on consumers of any continuing lack of transparency.

NSW Fair Trading will monitor the extent to which the motor vehicle insurance industry adopts measures to make relationships more transparent. The Minister for Fair Trading has written to the Commonwealth Acting Assistant Treasurer in relation to these issues.



## D. Mediation of disputes

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**Recommendations: 1, 17, 18, 19, 20, 21**

**Recommendation 1** calls for amendments to the MDR Act to provide repairers with access to the dispute resolution services provided by the OSBC. The NSW Government supports this recommendation.

Motor vehicle repairers are currently able to seek assistance from, and access the dispute resolution services of, the OSBC in some circumstances. In the past 12 months the OSBC has dealt with 20 applications for formal mediation between repairers and insurers. However, repairers can only utilise the OSBC's dispute resolution services after all other avenues have been exhausted through the Code's dispute resolution process. This can be an extensive and time consuming dispute resolution process. Currently, a repairer must first lodge a notice of dispute with the insurer and participate in internal dispute resolution. If the repairer disagrees with the outcome of the internal dispute resolution process, the repairer must lodge a further notice of dispute with the CAC and the insurer before being able to commence an external dispute resolution process. Current arrangements between the CAC and the Association of Dispute Resolvers (**LEADR**) mean that parties to a dispute must receive prior approval from LEADR in order to access the OSBC's mediation service, and must have participated in the internal dispute resolution processes set out in the Code.

The NSW Government will strengthen the dispute resolution processes available to repairers by introducing amendments to the MDR Act in 2015 to provide greater access to the OSBC's mediation services. This will provide greater access to OSBC's mediation services, but will not include access to the NSW Civil and Administrative Tribunal (**NCAT**) at this time. The CAC announced on 10 November 2014 that it will seek to implement an arbitration scheme by 1 July 2015, subject to expert advice and industry agreement. Consistent with this announcement and **Recommendation 19**, the NSW Government will provide industry with the opportunity to establish its own arbitration mechanism under the Code by June 2015 before considering a role for the NCAT.

The NSW Government will also consider any other relevant changes to the Code's dispute resolution processes that may be agreed in the meantime by the CAC. The



Minister for Fair Trading has written to the CAC to flag the NSW Government's intent to legislate in this area and will monitor any relevant changes to the Code.

**Recommendations 17 and 18** request the Minister for Fair Trading to consult with the Commonwealth Minister for Small Business on the potential for a national mandatory industry Code of Conduct, and to monitor the extent to which the CAC adopts recommendations 3, 4 and 7 of the 2013 External Review of the Code. The NSW Government supports these recommendations.

The Minister for Fair Trading has written to the Commonwealth Minister for Small Business about the potential to make the Code mandatory at a national level.

The Minister for Fair Trading has also written to the CAC in relation to the progress of the CAC's consideration of the recommendations of the 2013 External Review. NSW Fair Trading will monitor the extent to which recommendations 3, 4 and 7 of the 2013 External Review are adopted. These recommendations relate to:

- the establishment of an arbitration process for disputes managed through the Code's resolution processes (recommendation 3),
- publishing instances of non-compliance with the Code by any signatory and/or requiring the signatory to undertake reasonable rectification steps (recommendation 4), and
- the relevant Commonwealth Minister appointing an independent Industry Ombudsman with the power to act as a "court of industry appeal" with the power to impose penalties for non-compliance with the Code's dispute resolution processes (recommendation 7).

However, should the CAC fail to adopt appropriate amendments to the Code, the NSW Government will consider further measures to address these matters.

**Recommendation 19** calls for the NSW Government to take an active role in enforcing the Code's dispute resolution process if the Code is not mandated nationally or changes are not made to the Code by June 2015. The NSW Government supports this recommendation in part and will further consider these proposals in mid-2015 if the CAC and the industry have not addressed these recommendations.

**Recommendation 19.1** calls for the FT Act to be amended to require NSW Fair Trading to mediate disputes under the Code. This recommendation is not supported. The NSW Government has agreed to amend the MDR Act to specify that repairers will



be able to have their disputes handled through the OSBC's dispute resolution processes in the first instance (see **Recommendation 1**). Requiring NSW Fair Trading to also mediate disputes between repairers and insurers is unnecessary as it would duplicate the dispute resolution process offered by the OSBC.

**Recommendation 19.2** calls for the NSW Minister for Fair Trading to consider making the NCAT the final adjudicator for breaches of the Code. The NSW Government understands that the CAC's discussions about the adoption of an arbitration mechanism are well advanced, and the CAC has announced that it will seek to implement an arbitration scheme by 1 July 2015. However, the NSW Government will consider a role for the NCAT if industry is unable to resolve these matters through the Code.

**Recommendation 19.3** calls for NSW Fair Trading to develop educational materials for insurers and repairers to advise them of the Code and how it operates. In the first instance, the Minister for Fair Trading will write to the CAC requesting that it review the publicly available material relating to the Code. NSW Fair Trading will continue to monitor the information that is available about the Code. If there is no improvement, the NSW Government will consider developing educational materials for insurers and repairers.

**Recommendation 19.4** calls for the NSW Minister for Fair Trading to review penalties available under the FT Act for breaches of the Code. As indicated above, the NSW Government will develop legislation for introduction in 2015 to provide penalties for certain breaches of the Code. The NSW Government will consider extending these penalties where appropriate.

**Recommendation 20** asks the Minister for Fair Trading to arrange for the version of the Code referenced in the Fair Trading Regulation 2012 to be updated. This recommendation is supported, subject to the NSW Government reviewing the changes adopted in the Code. The CAC announced in 10 November 2014 that is likely to ratify changes to various sections of the Code in 2015.

**Recommendation 21** calls for NSW Fair Trading inspectors to use the *eMTA schedule of real times* in mediating disputes between repairers and insurers in relation to the estimation or pricing of repair works until there is a national solution to "funny time, funny money". The NSW Government does not support this recommendation.



NSW Fair Trading inspectors have little to do with mediating commercial disputes between repairers and insurers. Such disputes are dealt with under the Code and may include the previously noted involvement of the OSBC (see **Recommendations 1 and 19.1**).

In 2005, the Productivity Commission found that the practice of “funny time, funny money” should be abandoned. However, the practice is still in use by parts of the industry. This issue was considered in the 2013 External Review of the Code. The 2013 External Review concluded that “the industry appears to have thrown its hands in the air when confronted by the historic anomaly of ‘funny time, funny money’” and recommended that the industry establish a committee to develop a national solution for the issue as a matter of urgency. If the industry was unable to achieve this, the 2013 External Review recommends that the CAC refer the issue to the Productivity Commission for advice and assistance.

The NSW Government recognises that developing a methodology to determine fair repair costs to replace the practice of “funny time, funny money” is very complex. Notwithstanding that the industry has been on notice since 2006 that the practice ought to be phased out, it is still being used by some insurers and repairers. This is an ongoing issue that does not appear to have been addressed adequately by the Code. The Minister for Fair Trading will write to the CAC recommending that the Code be amended to include a concrete commitment to address and eradicate “funny time, funny money”. If the industry is unable to develop a solution, the NSW Government supports the use of an impartial body to progress this issue. The NSW Government recognises that there are several commercial products or in-house solutions that may be adopted by insurers as ‘real time’ alternatives to ‘funny time, funny money’. The NSW Government will not interfere in the market by prescribing one product (the eMTA schedule) as a default standard.



## E. Contact with Commonwealth Government

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### **Recommendations: 4, 15**

The NSW Government supports these recommendations.

**Recommendation 4** requests that the Minister for Fair Trading contact the Commonwealth Government regarding the issue of manufacturers making their vehicle repair specifications readily available to all repairers and assessors. The NSW Government supports this recommendation and the Minister for Fair Trading has written to the Commonwealth Minister for Small Business regarding this matter.

The NSW Government notes that the Federal Chamber of Automotive Industries (**FCAI**) recently released a Voluntary Code of Practice on Access to Service and Repair Information for Motor Vehicles. Its objective is to ensure that the service and repair of motor vehicles is carried out in a manner that best protects the consumer interest in their vehicle. It comes into effect for manufacturers three months after they agree to adopt it, with signatories listed on the FCAI website ([www.fcai.com.au](http://www.fcai.com.au)).

**Recommendation 15** requests that the Minister for Fair Trading advise the Commonwealth Minister for Finance of stakeholder concerns regarding the operation of the Financial Ombudsman's Service. The NSW Government supports this recommendation and the Minister for Fair Trading has written to the Commonwealth Minister for Finance and Acting Assistant Treasurer regarding this matter.



## Appendix 1

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### Select Committee Terms of Reference

- (1) A select committee, to be known as the Select Committee on the Motor Vehicle Repair Industry, be appointed to inquire into and report on the motor vehicle repair industry.
- (2) The committee is to examine and report on:
  - (a) Smash repair work and whether it is being carried out to adequate safety and quality standards;
  - (b) The current Motor Vehicle Insurance and Repair Industry Code of Conduct, its governance structure and dispute resolution mechanisms and whether it is effective at regulating the relationship between repairers and insurers, and in serving consumer interests;
  - (c) Consumer choice, consumer protection and consumer knowledge in respect of contracts and repairs under insurance policies;
  - (d) The business practices of insurers and repairers, including vertical integration in the market, the transparency of those business practices and implications for consumers; and
  - (e) Alternative models of regulation, including in other jurisdictions.
- (3) The committee consist of five members, as follows:
  - (a) Three government members, one of whom shall be Mr John Barilaro
  - (b) One opposition member, and
  - (c) One independent member, being Mr Greg Piper
- (4) Mr John Barilaro shall be the Chair of the committee.
- (5) The members shall be nominated in writing to the Clerk of the Legislative Assembly by the Government Whip and the Opposition Whip by 20 November 2013. Any changes in membership, including the independent member, shall also be so notified.
- (6) The committee have leave to sit during the sitting or any adjournment of the House.
- (7) The committee have leave to make visits of inspection within the State of New South Wales and other states and territories of Australia.
- (8) The committee is to report by 30 May 2014.



## Appendix 2

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### Select Committee Recommendations

#### Recommendation 1

That the Motor Dealers and Repairers Act 2013 be amended to enable motor vehicle repairers to seek assistance from the NSW Small Business Commissioner in relation to unfair contractual terms between repairers and insurance companies.

#### Recommendation 2

That regulations be introduced requiring motor vehicle repairers to record digital images of repairs undertaken on vehicles, and that these digital images be made available for the owners of repaired vehicles to verify the extent and nature of work performed.

#### Recommendation 3

That the Road Transport Act 2013 be amended to require:

1. Assessors to provide Roads and Maritime Services with the details of all vehicles subject to repairs of a structural or safety nature; and
2. Random audits of such vehicles.

#### Recommendation 4

That the NSW Minister for Fair Trading approach the Commonwealth Government to require manufacturers to make their vehicle repair specifications readily available to all repairers and assessors.

#### Recommendation 5

That the Government legislate under the Motor Dealers and Repairers Act 2013 that all motor vehicle assessors operating in NSW be licensed and certified under the Vehicle Safety Compliance and Certification Scheme (VSCCS) administered by Roads and Maritime Services. Such licensing and certification should be implemented within 6 months of the legislation coming into force.

#### Recommendation 6

That fines apply to licences for assessors for breach of licensing conditions and regulations; and licensing cancellation after three strikes.

#### Recommendation 7

That licensing requirements for assessors include a provision that, as part of the process for authorising quotes, licensed motor vehicle assessors must review and approve the proposed method of repair.

#### Recommendation 8

That the licensing arrangements for assessors require the use of realistic time in assessments of vehicles.



**Recommendation 9**

That all licensed motor vehicle assessors be VSCCS certified and hold relevant qualifications as determined by Roads and Maritime Services.

**Recommendation 10**

That the Fair Trading Act 1987 be amended to require insurers to provide the insured with an upfront disclosure regarding choice of repairer and parts used for repair for all motor vehicle insurance policies taken out in NSW. Such disclosure is to occur as follows:

1. When the insured first enters into an insurance policy with the insurer;
2. On each subsequent occasion when the policy is renewed; and
3. Whenever the insured makes a claim under the policy.

**Recommendation 11**

That the Fair Trading Act 1987 be amended to include penalties for practices that prevent a customer exercising his or her choice of repairer under an insurance policy that provides for that right.

**Recommendation 12**

That NSW Fair Trading produce specific material to assist consumers to understand their rights under choice of repairer insurance policies.

**Recommendation 13**

That a public register be established by the NSW Office of Fair Trading, listing all motor vehicle repairers found to be in breach of the Motor Dealers and Repairers Act 2013, the Road Transport Act 2013, and regulations made under each Act.

**Recommendation 14**

That a rating system for repair businesses be introduced following consultation with industry stakeholders to enable consumers and licensed assessors to identify the extent and standard of services provided by repairers.

**Recommendation 15**

That the Minister for Fair Trading advise the Commonwealth Minister for Finance of stakeholder concerns regarding the Financial Ombudsman's Service including in relation to:

1. Timeliness in the resolution of disputes;
2. Expertise of the Service to resolve motor vehicle-related disputes; and
3. Concerns over the ability of the Service to physically engage in NSW disputes because of its Melbourne location.

**Recommendation 16**

That the NSW Minister for Fair Trading monitor the extent to which the motor vehicle insurance industry adopts measures to make umbrella and parent company relationships more transparent, and the impact on consumers of any continuing lack of transparency.

**Recommendation 17**



The NSW Fair Trading Minister consult with the Commonwealth Minister for Small Business about the potential to progress a mandatory Code of Conduct for the Motor Vehicle Insurance and Repair Industry that includes penalties for non-compliance and is subject to oversight and enforcement by the ACCC.

### **Recommendation 18**

The NSW Minister for Fair Trading monitor the extent to which the CAC adopts recommendations 3, 4 and 7 of the external review of the Code conducted by Executive Counsel Australia in December 2013.

### **Recommendation 19**

In the event that a mandatory Code at the national level, subject to oversight and enforcement by the ACCC, or an arbitration system for the Code as recommended by Executive Counsel Australia's External Review of the Code, are not adopted by June 2015, the Committee recommends:

1. The Fair Trading Act 1987 be amended to require Fair Trading to mediate disputes under the Code where a matter is brought to its attention after the Code's dispute resolution processes have been followed to no avail, or the other party has refused to take part in those processes;
2. The NSW Minister for Fair Trading consider making the NSW Civil and Administrative Tribunal the final adjudicator in matters involving alleged breaches of the Code;
3. NSW Fair Trading develop educational materials for insurers and repairers to advise them about the content of the Code, dispute resolution processes and Fair Trading's role in assisting to mediate disputes where dispute resolution processes under the Code have failed, as well as its ability to impose penalties for non-compliance with the Code;
4. The NSW Minister for Fair Trading review penalties available under the Fair Trading Act 1987 for breaches of the Code to increase their deterrent effect, for example, loss or suspension of individuals' trade certificates and licences and business licences and/or the imposition of specific monetary penalties on a sliding scale with insurance companies to receive a substantially larger penalty than individual repairers.

### **Recommendation 20**

Following the Code Administration Committee's decision on whether to accept recommendations for changes to the Code made by Executive Counsel Australia's 2013 external review, the NSW Minister for Fair Trading arrange for the Fair Trading Regulation 2012 to be updated to provide that the most recent version of the Code applying at the national level, also apply in NSW.

### **Recommendation 21**

That (until there is a national solution to the "funny time, funny money" impasse), in mediating disputes between repairers and insurers in relation to the estimation or pricing of repair works, NSW Fair Trading refer to the eMTA schedule of real times developed by the Motor Traders Association of NSW in assisting to resolve them.

