



**Fair
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Mr John Barilaro MP
Chair
Legislative Assembly Select Committee
on the Motor Vehicle Repair Industry
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

15 MAY 2014

Dear Mr Barilaro

Thank you for your correspondence seeking clarification of NSW Fair Trading's role in resolving disputes between motor vehicle repairers and insurers. The following responses are provided in answer to your questions:

- (a) When the dispute resolution process outlined in the *Motor Vehicle Insurance and Repair Industry Code of Conduct* (the Code) is exhausted with no resolution or if a party has refused to participate in the process, and the matter is referred to Fair Trading, then Fair Trading's role is to determine whether to take action under Part 6 of the *Fair Trading Act 1987* in relation to any contravention of the Code.
- (b) Fair Trading has expertise in providing mediation services, for example, in strata matters and building disputes under a contract for residential building work. It would be possible to adapt these services, with appropriate resourcing, to also cover the mediation of disputes between motor vehicle repairers and insurers. However, further information as to the parameters for the mediation service that Fair Trading would provide for insurers and repairers is needed before the required level of resources can be determined. The type of information needed includes the number of matters, timeframes for resolution, whether mediation is to be conducted face to face and if so, location of matters, and the qualifications and expertise for officers conducting the mediation.
- (c) The public interest factors considered under section 54(4) of the Fair Trading Act include: significance of the breach; likelihood of a breach resulting in consumer detriment; whether the breach results in safety issues; number and type of previous complaints about a particular insurer or repairer; whether broader industry compliance with the Code will be promoted should Fair Trading take action; whether the conduct has been designed to defeat the purpose and intent of the Code; the quality of evidence provided to Fair Trading regarding an alleged breach of the Code; and the likelihood of success if court action is to be taken.

Yours sincerely



Robert Vellar
Acting Commissioner