

**Submission
No 17**

DEBT RECOVERY IN NSW

Organisation: Suncorp Group
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Date Received: 16/05/2014



One Company
Many Brands



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16 May 2014

The Committee Manager
Legal Affairs Committee
Parliament House
Macquarie St
SYDNEY NSW 2000

Email: legalaffairs@parliament.nsw.gov.au

Dear Mr Doyle

RE: PARLIAMENTARY INQUIRY INTO NSW DEBT RECOVERY FRAMEWORK

Suncorp welcomes the opportunity to contribute to the Legal Affairs Committee *Debt Recovery in NSW Inquiry (the Inquiry)*. Suncorp provides general insurance cover to more than one million NSW policyholders. The recovery and settlement of debts arising from motor vehicle accidents is an important aspect of our business.

The Suncorp Group

Suncorp Group Limited and its related bodies corporate and subsidiaries (collectively **Suncorp**) offer a range of financial products and services in banking, life insurance, superannuation and general insurance across Australia and New Zealand. Suncorp has more than 15,000 employees and relationships with more than nine million customers.

Suncorp is the second largest general insurance group in NSW with our portfolio of brands including AAMI, GIO, Apia, Vero, JustCar, Bingle, InsureMyRide and Shannons. Suncorp is a significant contributor to the NSW economy paying more than \$1.4 billion in motor, home, commercial, personal injury and compulsory third party claims to NSW residents during 2013. We are also a major employer in the state, with 3,789 employees working from our major offices located in the CBD and network of over 50 branches.

As an insurer, Suncorp's outward debt recovery practices are regulated at the federal level by the Australian Securities and Investment Commission (ASIC). As such, this submission is focussed on issues we encounter related to inward debt recovery claims raised against Suncorp from non-insurer third parties such as recovery agents, credit hire car operators and motor vehicle smash repairers.

Captured Motor Vehicle Repairs

Suncorp handles around 126,000 motor vehicle repairs in NSW each year. A number of these repairs are being "captured" by a pocket of operators within the recovery agent and smash repair industries who exploit not-at-fault consumers. This group of operators is commonly made up of affiliated organisations including repairers, tow truck operators, lawyers, recovery agents and credit hire car companies exploiting the NSW debt recovery framework to seek inflated recovery actions against Suncorp and our customers.

This activity is on the increase in NSW. Over the past six months alone (to April 2014) Suncorp has seen the number of these cases surge more than 260 per cent to over 5000 cases.

Repairs are typically captured through arrangements with tow truck drivers paid on commission, although in NSW there is a significant proportion of operators only targeting inflated hire car costs, such as \$180-a-day for a Toyota Corolla. Where tow trucks and repairers are involved, upon identifying a not-at-fault customer vehicle that has been damaged by an insured vehicle, the driver tows the vehicle directly to the smash repairer circumventing standard insurance assessment and repair processes.

The repairer then usually arranges a costly repair for the not-at-fault customer, on the assurance that any and all costs will be recovered against the at-fault party's insurer. Some of these cases simply involve extremely high storage fees totalling thousands of dollars. Others include a replacement hire car at inflated rates and a pro forma contract that allows the repairer to authorise repairs and other costs – such as hire cars - without the insurer's consent, an activity that is in breach of section 4.1 of the *Motor Vehicle Insurance and Repair Industry Code of Conduct*.¹

In some cases the repair can also be substantially delayed in order to further inflate the storage and hire car costs. This results in an overall repair cost that is much higher than standard market rates. A related solicitor or debt recovery agent then seeks a recovery of these costs against Suncorp on behalf of the not-at-fault consumer.

An example of this practice has been described by NSW-based Smash Repair Lawyers' on its website, which states:

*"Smash Repair Lawyers has a track record of successfully recovering money owed to smash repair shops by people who cause damage to other vehicles. We are successful because the threat of litigation makes it uneconomical for third parties to allege that repair bills presented by our clients are unreasonable."*²

The website goes on to provide an example of what appears to be panel damage to a Toyota Ute that was originally assessed at costing \$1,874. Instead the charges came through at \$5,841 for the insurance company involved. Deducting the lawyer's fee, the repairer was paid \$4,616.

Everyone has a right to obtain legal representation if they consider it necessary. However, Suncorp is concerned about the adverse and unnecessary impact on prices for customers and on the quality of customer outcomes.

These groups target the not-at-fault consumer after an accident because these consumers are third parties to the contract between the insurer and the at-fault consumer. This means these consumers are not governed by the at-fault-consumer's insurance policy processes and terms.

The implications for consumers are significant with repair times doubled on average. Uninsured consumers can be left liable for the demands of associated hire car costs and inflated costs of repairs, having been given no opportunity to mitigate or manage these costs, often through a lack of transparency and fair dealing.

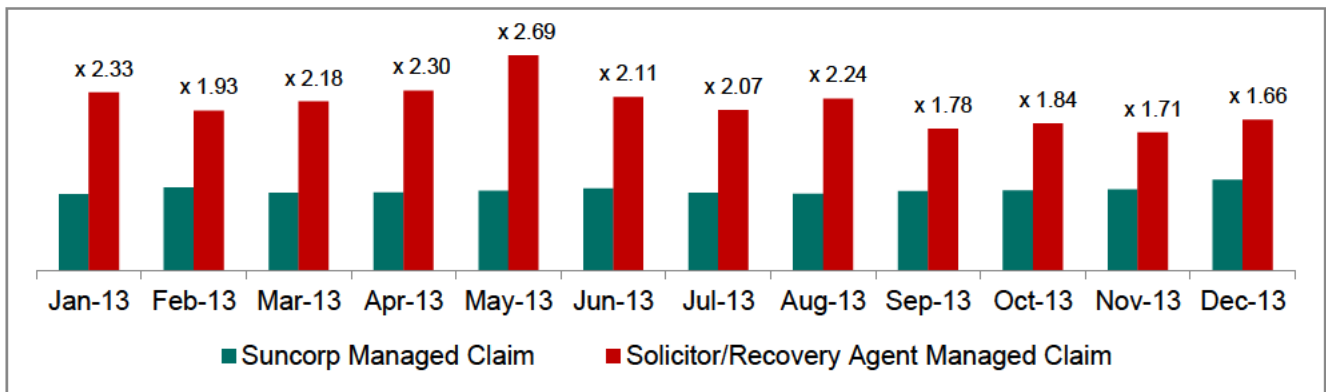
The contracts used by these operators also typically leave the not-at-fault consumer liable for any shortfall between their repairs and hire car demands and the settlement agreed with the insurer. Further, consumers are unable to make use of many of the protections offered under the General Insurers Code of Practice and the FOS, as the work has been completed without insurer knowledge or approval.

Figure 1 shows the difference between what is finally paid to these parties compared to a Suncorp managed process with a repairer acting in accordance with the Code. As noted above, the number cases have increased exponentially over the past six months.

¹ *Motor Vehicle Insurance and Repair Industry Code of Conduct, March 2011*, <http://www.abrcode.com.au/forms/Final%20Code%20of%20Conduct%20March%202011.pdf>, Accessed 14 February 2014

² Accessed at: http://smashrepairlawyers.com.au/what_we_do_2.html

Figure 1 – Costs of solicitor/recovery agent vs Suncorp managed not-at-fault claims in NSW



Examples of poor outcomes from third party claims managed by agents or solicitors

- Suncorp received demands from a solicitor representing a third party repairer for \$5,082. Suncorp was contacted by the customer who was upset that repairs had not yet begun. The consumer was unaware a solicitor had been engaged on behalf of the repairer and complained of the treatment he had received from the repairer. The solicitor continued to attempt to claim payment for repairs that have not taken place while the vehicle was not released to the consumer.
- A third party repairer bill was received for \$11,259. An assessment of the repairs indicate the repair claim was inflated with repairs not undertaken and parts not installed. The repair bill was reduced to \$3,689.
- A credit hire company attempted to recover 18 days of hire car fees when the third party vehicle took 15 days to repair. Claimed rate was \$328 per day, Suncorp accepted \$200 per day, reducing the cost from \$5,915 to \$3,300.
- A third party consumer chose to authorise their own repairs and recover through a solicitor against a Suncorp customer who was at fault. Suncorp offered the consumer the option of proceeding with their claim directly with us, but the consumer chose to continue with the solicitor instead. The third party consumer was unaware they would be required to pay the legal fees, and was left with a bill of \$1,200.

More examples are available on request, as are copies of the third party contracts signed by consumers.

Recommendations

In light of the growing number of captured repairs Suncorp recommends that the NSW Debt Recovery Framework be amended to:

1. Introduce a right of insurer access

NSW is currently the only jurisdiction where a repairer, their solicitor or their debt recovery agent can seek a recovery for the cost of vehicle repair while lawfully refusing the defendant access to the vehicle in question. This significantly limits an insurer’s ability to accurately assess the fairness of demands and contributes to the success of these operators.

Suncorp believes a right of insurer access should be introduced so that claimed vehicle damage and repair work can be substantiated, and the associated costs reviewed in detail. This will ensure both parties have access to the evidence upon which the recovery action is sought.

2. Introduce the concept of a market rate for hire cars

The practice of capturing repairs and seeking inflated recoveries was recently considered in *Carapetis v Lawrie* [2013] SAMC 63. This judgement (attached) outlines concerns with an earlier decision of the Local Court of New South Wales in *Fang v Koumoukelis* [2013] NSWLC 5.

At paragraph 40, Magistrate Milazzo states:

“The decisions of the local Court of New South Wales which have allowed extravagant claims for general damages should in my view be treated with caution.”

Suncorp believes the concept of a market rate for hire car fees should be introduced in NSW in order to adopt the principles set forth in *Carapetis v Lawrie*. This would limit the ability of these smash repairs operators to seek recoveries for inflated hire car rates arranged through an affiliated organisation.

The combined effect of these amendments will reduce the ability of these operators to exploit the NSW debt recovery framework at the expense of consumers, and avoid the situation where consumers could be held liable for these debts through contracts they sign likely without many understanding the liability they are assuming. Over time, this would result in better consumer outcomes and lower insurance premiums.

Suncorp is committed to supporting strong, fair and efficient repair industry in NSW. If you have any questions related to our submission I encourage you to contact me on [REDACTED]
Alternatively please contact Mike Thomas - Manager, Group Government and Stakeholder Relations on 02 [REDACTED]

Yours sincerely

[REDACTED]

Duncan Bone
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