

**Submission  
No 2**

## **MOTOR VEHICLE REPAIR INDUSTRY**

**Organisation:** eCollect.com.au Pty Ltd and E C Legal Pty Ltd  
**Name:** Mr James Woods  
**Date Received:** 9/01/2014



# SUBMISSION

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**TO:** SELECT COMMITTEE ON THE MOTOR VEHICLE REPAIR INDUSTRY

**FROM:** JAMES WOODS  
on behalf of ECOLLECT.COM.AU PTY. LTD. AND E C LEGAL PTY. LTD.

**DATE:** Thursday, 9 January 2014

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## *BACKGROUND AND COMMENTARY*

### **I have a unique perspective from which to view the operations of the smash repair industry and its relationship with the motor vehicle insurers.**

After leaving university in 1983, with a Bachelor of Arts and a Bachelor of Laws I worked for a couple of years as a lawyer before joining the family business, Woods Auto Shops. Woods Auto Shops was, at that stage, the largest smash repair operation in the country with some 25 or so individual branches operating in Victoria, the ACT, and New South Wales. In my first year with the company, I was working effectively as an apprentice panel beater and spray painter and learnt the business in a very hands-on way. I gradually moved to managing a single shop and then a group of shops.

After about eight years with Woods Auto Shops, I commenced a legal practice on my own account undertaking largely third-party recovery work. By "third-party recovery work", I mean representing innocent parties in motor vehicle collisions in attempting to recover their losses from the offending party and/or the offending party's insurance company.

I had been doing some of this work in my last three or four years with Woods Auto Shops and my move to full-time legal practice saw Woods Auto Shops as the major referrer of clients. Since the early 1990s, I have been involved in third-party recovery work and as an adviser to the smash repair industry generally.

I am currently the Managing Director of eCollect.com.au Pty Ltd ("eCollect") and a consultant solicitor with E C Legal Pty Ltd ("E C Legal") which offer a joint third-party recovery service. I believe that eCollect and E C Legal are the largest provider of third-party recovery services in the country. Whilst the majority of our clients come from Victoria, we also work in New South Wales, Queensland and South Australia.

Almost all of the third-party recovery work coming to eCollect/E C Legal is referred by smash repairers. Whilst it is possible for smash repairers to handle third-party claims themselves on behalf of the innocent vehicle owner, the smash repairers find that a company such as eCollect /E C Legal can provide a faster and more efficient service and obtain a better result for the client. The usual financial arrangement is that the smash repairer will pay for the pre-litigation services provided by eCollect/E C Legal so that the service is provided without cost to our mutual client.

**The Committee will need to understand the forces at work when a customer with a damaged vehicle attends at a smash repair shop.**

The first question is whether or not the vehicle is comprehensively insured.

The second question is whether or not the damage to the vehicle was caused as a result of the negligence of some other person other than the driver of the vehicle.

The combination of answers of these two questions provides four scenarios.

1. In cases where the vehicle is not comprehensively insured and there is no question of negligence by anyone else, the owner or his nominee will be footing the bill for the repairs. This type of work is generally not well regarded by smash repair business owners as the cost of repairs often exceeds the capacity of the customer to pay. To make a job of this situation, it is not unusual for repairers to reduce the scope of works in the repair process to keep the cost down. My anecdotal experience is that owners of uninsured vehicles very rarely have the capacity to pay for proper repairs to their vehicles.
2. In cases where the vehicle is not comprehensively insured but is not at fault in the collision, the usual avenue is for a claim to be made on the offending party and/or the insurer. If this is being done by the innocent party themselves, smash repairers are always worried that the innocent party will collect the funds and either not have the vehicle repaired at all or will come back and attempt to negotiate a reduced scope of works at a lower price thus leaving the innocent party with a repair of less than reasonable quality but with some cash in their pocket. Smash repairers prefer to control the third-party recovery process by either doing it themselves or by referring the client to accompany such as eCollect/E C Legal. As a part of our authority from the client, we are instructed to pay the cost of repairs directly to the repairer so the repairer has some reason to believe that the effort they put into assisting the client to recover the money either by the time or by paying eCollect/E C Legal will be rewarded by their undertaking the repair job at the end of the day.
3. In cases where the vehicle is comprehensively insured and is at fault in the collision, the owner will make a claim on their vehicle insurer. The insurers have spent considerable time and effort in the last decade making this process easier and faster for the smash repairers. However, once an insurance claim is made the repairer must deal with the insurer and is at risk of losing the job to another repair shop with closer ties to that insurance company. Further, the insurer (not the insured) controls the decisions about the elements that make up the cost of the repair job. I will discuss these below.
4. In cases where the vehicle is comprehensively insured and is not at fault in the collision, the owner has the option of making a claim on their vehicle insurer or making a third-party recovery claim. Increasingly, repairers are recommending their clients towards the third-party recovery option.

**The Committee will need learn about the decisions and processes involved in the repair of damaged vehicles and see these elements in practice.**

The elements that make up the cost of the repair job are:

- **Scope of Works.** This is the greatest determinant of the cost. It involves issues such as whether to repair or replace panels, the method of repair of panels, whether to remove and refit various parts of the vehicle in order to gain full and complete access to damaged areas, whether to use new or second hand parts, the extent of necessary repainting; etc;
- **Quality of Works.** Like most projects involving physical works, it is possible to do work of a greater or lesser quality. Some tradesman are simply better at what they do and cost more to employ. But even assuming similar abilities applying to all tradesmen, obtaining a high quality result both in terms of longevity and appearance requires considerable extra time to be spent by the smash repairer. I make the point that most smash repairs jobs do not require an unbelievably high level of quality. However, the time allowed by the insurer does play a direct role in the ability of the smash repairer to perform works to a level suitable for the damaged vehicle bearing in mind its original purchase price and its pre-collision state;
- **Profit Margin for the Smash Repairer.**

**Insured owners are not generally aware that their policy does not allow them to choose their own repairer until they make a claim.**

I am seeing smash repairers increasingly steer their clients away from making a claim on their insurance policy. The reasons for this are:

- the ability of insurers to direct the repair work to a repairer of their choice including repair shops owned predominantly by the insurers themselves. There has been significant consolidation in the motor vehicle insurance market over the last five years. The Committee will need to research this consolidation and will, I think, find that the majority of the market is controlled by Suncorp and IAG. Both of these companies operate a number of insurance brands in the motor vehicle insurance market. The current insurance contract (for these insurers at least) gives the insurer the right to organise the repair of the insured vehicle without regard to the wishes of the insured vehicle owner.

This has had a devastating impact on small family owned repair businesses whose customer base are being taken away from them and directed to large, insurance company owned repair facilities.

During June – October 2013, eCollect/E C Legal undertook a marketing program for referrals from new motor vehicle repairers. I personally visited in excess of 100 smash repairers in New South Wales during that time. There were quite upsetting tales from many repairers of the loss of business that had occurred as a result of the practice of both Suncorp and IAG in moving vehicles to their preferred repair facilities. People who had been customers forward decades were forced against their wishes to take their vehicles away from the trusted repairers.

For reasons set out above, this creates an opportunity for eCollect/E C Legal

but I do not believe that it is fair or in the consumer's best interest for them to have a lack of choice of repairer;

- equalisation of the bargaining positions of repairers and insurers. In a situation where a repairer is dealing with an insurer on the basis of a claim made by the insured, the insurer is in a much stronger bargaining position due to the fact that it can ultimately take the job away from the repairer but, even if the job remains with the repairer, the insurer has the ultimate decision on the scope of works and the time allowed to affect those works. In the third-party recovery situation, the ultimate decision can be taken to the courts by way of a claim by the innocent party against the offending party. The usual process here is for the innocent party to obtain an independent assessment of the cost of repairs and this is then measured against an assessment by an assessor employed or engaged by the offending party's insurance company. The test applied by the courts is what work is reasonably necessary to restore the vehicle to its pre-accident condition.

The Committee should note that ECollect/E C Legal have experienced a significant increase in the number of claims for rectification against smash repairers. It is my belief that the rectification claims are well founded and we have settled several favourably. The overall numbers have gone from zero 12 months ago to about three or four a month at present which is not a great number but I believe is the beginning of a growing trend.

The Committee will find that the bulk of consumers of motor vehicle repair services have no idea on whether their vehicle has been repaired to a reasonable standard or not. In my time with Woods Auto Shops, I quickly learned that when presenting a repaired car back to a client, very few clients had the ability or inclination to look closely at what had been done. There is a great deal of trust placed by clients in the smash repairer. In many cases, smash repairers have an association with clients and their families that spans decades. The smash repairers have a direct financial interest in maintaining that client relationship by repairing vehicles to a proper standard.

The loyalty of the smash repairer is to the client whereas, when repairs are carried out by an insurance company owned repair facility, there must be a temptation to carry out the work at a lesser price.

There is a natural tension between the interests of smash repairers and the interests of insurance companies. Smash repairers want to look after their clients and obtain the maximum price for the job. Insurance companies want to keep the cost down which requires a reduction in the scope or quality of work or both.

This natural tension is a good thing. Having an independent smash repairer representing the insured client's interests provides an informed view as to what is required to repair the vehicle properly and is an effective counter to the natural desire of the insurance company to keep the costs down. This should be preserved.

### *SUBMISSION*

The terms of reference of the Committee require a report on the following issues.

My submissions are in bold.

- (a) Smash repair work and whether it is being carried out to adequate safety and quality standards;

**There are cases where the work commissioned by the insurers has not sufficient to affect proper repairs. This has occasioned claims for rectification which are likely to continue and increase.**

**The Committee should recommend that contracts of motor vehicle insurance must allow insured owner to decide where the vehicle is repaired. The effect of this will be that independent smash repairers will have a commercial imperative to repair vehicles to a proper standard whereas the insurance company owned repairers may attempt to reduce the scope and quality of works to a minimum and then deal with any claims for rectification on a case by case basis. If this occurs, many improperly repaired vehicles will not come to the notice of owners thus saving the insurers money on the repair process.**

**The insurers will maintain their current ability to inspect and negotiate both the scope and cost of works so that their financial interest is protected.**

- (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;

**I make no submission in this area.**

- (c) Consumer choice, consumer protection and consumer knowledge in respect of contracts and repairs under insurance policies;

**In the majority of motor vehicle insurance contracts, the consumer does not have a choice of repairer. This is not in the consumer's interests.**

**The bulk of consumers are not aware of this restriction and, even if they were aware of this restriction, would not understand the ramifications of the restriction until they were required to make a claim under their insurance policy.**

**It should be illegal for contracts of motor vehicle insurance to allow the insurer control over where the vehicle is repaired. The insured should be able to choose their own repairer. There should be no restriction on insurance companies owning and operating repair businesses but these businesses need to compete on an even footing with other repair businesses. At present, they are provided with a captive clientele and have no commercial imperative to provide a high level of quality or service.**

- (d) The business practices of insurers and repairers, including vertical integration in the market, the transparency of those business practices and implications

for consumers;

**For reasons detailed above, there has been an increase in innocent parties in motor vehicle collisions making a claim on the offending party rather than using their own insurance. The response by the insurers is to delay settlement of the claims.**

**Insurers should be required to respond promptly to third party claims.**

(e) Alternative models of regulation, including in other jurisdictions.

**I make no submission in this area.**

#### *CONTACT DETAILS*

I am available to elaborate on these submissions either in person or in writing.

James Woods B.A. LL.B.

Managing Director

eCollect.com.au Pty. Ltd. [REDACTED]

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