



Select Committee on the Motor Vehicle Repair Industry

REPORT 1/55 – JULY 2014

MOTOR VEHICLE REPAIR INDUSTRY

REPORTS
COMMITTEES

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LEGISLATIVE
ASSEMBLY



LEGISLATIVE ASSEMBLY

SELECT COMMITTEE ON THE MOTOR VEHICLE REPAIR
INDUSTRY

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The motto of the coat of arms for the state of New South Wales is “Orta recens quam pura nites”. It is written in Latin and means “newly risen, how brightly you shine”.

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SELECT COMMITTEE ON THE MOTOR VEHICLE REPAIR INDUSTRY

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Membership

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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.

Chair's Foreword

The motor vehicle repair industry is a significant player in the NSW economy and motor vehicle insurers wield a great deal of influence in this market supplying the majority of its work.

The inquiry by the NSW Legislative Assembly Select Committee on the Motor Vehicle Repair Industry has provided an opportunity to examine the relationship between motor vehicle repairers and insurers in NSW with a focus on the safety and quality of repair work, business practices of insurers and repairers, and the impact on consumers.

The Committee heard from a variety of stakeholders in the course of its inquiry including repairers, insurers, peak bodies, government agencies and consumers; poring over a large body of evidence in that time. I would like to thank everyone who made a submission and gave evidence to the inquiry, your efforts have been invaluable in informing the Committee's deliberations.

Overall, the Committee found that a significant number of damaged vehicles are subject to poor quality repair work in NSW before being returned to the State's roads, potentially increasing safety risks to road users. This is of great concern to the Committee.

The Committee has tailored its findings and recommendations to address these concerns by increasing the accountability of motor vehicle loss assessors employed by insurance companies, and that of repairers; increasing the transparency of the repair process and insurer practices for consumers; and better balancing the power relationship between insurers and repairers including through increasing the enforceability and effectiveness of the Motor Vehicle Insurance and Repair Industry Code of Conduct.

I would like to take this opportunity to thank my Committee colleagues Bryan Doyle MP, Ray Williams MP, Greg Piper MP and Tania Mihailuk MP for their exceptional work and commitment throughout the inquiry process. Their assistance was vital to distil the most important aspects of the large volume of evidence supplied to the Committee and in formulating findings and recommendations to deliver genuine solutions to identified issues.

I believe these recommendations are an essential step to improve the operation of the motor vehicle repair industry in NSW and the safety of the State's roads.

John Barilaro MP
Chair

Executive Summary

The smash repair industry is a significant player in the NSW economy employing over 140,000 people including over 12,000 licensed repairers. A large proportion of its work, approximately 90 per cent, is supplied by motor vehicle insurers, giving insurance companies a powerful influence in the market. The fact that the two largest players in the motor vehicle insurance market control over 60 per cent of it, serves to further concentrate this power.

In this context, concerns have been raised by a large number of key stakeholders that insurers may put profit ahead of safety, pressuring repairers to repair to a price, not a standard. Therefore, on 19 November 2013, the Legislative Assembly established the Select Committee on the Motor Vehicle Repair Industry to inquire into the relationship between repairers and insurers with a focus on the safety and quality of repair work, the business practices of insurers and repairers, and impact on consumers.

INQUIRY OUTCOMES

Overall, the Committee found that a significant number of vehicles are subject to poor quality repair work and are being returned to NSW roads, potentially increasing safety risks to road users. To address these concerns the Committee has made recommendations to increase the accountability of motor vehicle loss assessors and repairers; better balance the power relationship between insurers and repairers; increase the transparency of the repair process for consumers; increase the transparency of insurer practices for consumers; and increase the enforceability and effectiveness of the Motor Vehicle Insurance and Repair Industry Code of Conduct.

Background to the Motor Vehicle Insurance and Repair Industry in NSW

Chapter 2 of the report provides background to the motor vehicle insurance and repair industry in NSW – its scope and scale, the regulatory framework around it, market structure and pricing, and emerging trends in the industry.

As above, chapter 2 notes that the smash repair industry is a significant player in the NSW economy. It also discusses the role of the *Motor Dealers and Repairers Act 2013* in protecting consumers through a business and occupational licensing system for motor vehicle repairers; the role of the Office of the Small Business Commissioner in assisting repairers in dispute with insurers; and various Commonwealth legislation regulating insurance contracts and arrangements between consumers and insurers.

Further, the chapter notes the market for motor vehicle insurance in NSW is very concentrated with its four largest players accounting for 73 per cent of revenue. It further names insurance companies operating in the market, including the big ‘umbrella companies’ and the brands that sit under them; and notes that motor vehicle insurance premiums have risen on average by 2.8 per cent in NSW in the last decade.

Finally, the chapter explores emerging trends in the industry such as technological change in vehicles and reduced smash repair work, and the extent to which these changes account for consolidation in the smash repair market, versus the extent to which insurer business practices (such as steering to preferred repairers and vertical integration, discussed in more detail later in the report) have led to such consolidation.

Quality and Safety of Smash Repair Work

Chapter 3 of the report considers recent trends in the quality of smash repair work in NSW drawing on rectification figures supplied to the Committee by the Motor Traders Association of NSW and major insurers. Rectification occurs where a vehicle is not assessed or repaired correctly following an accident, necessitating subsequent repairs.

The rectification figures indicated to the Committee that many vehicles are subject to poor quality repair and are being returned to the road, potentially increasing safety risks to road users. Therefore the Committee recommended the licensing of all motor vehicle assessors under Roads and Maritime Services' Vehicle Safety Compliance and Certification Scheme (VSCCS) and that all licensed motor vehicle assessors be required to provide all details of structural or safety-related repairs to NSW Roads and Maritime Services (RMS) for inclusion on a database, and for such vehicles to be subject to random audit to assess repair quality and safety.

Chapter 3 also explores the extent to which insurer business models, such as preferred repairer schemes and vertical integration (that is, insurer-owned repair shops) contribute to poor quality repairs. The Committee is concerned with the potential conflict of interest that arises out of the fact that insurance companies own up to 60% of certain repair shops. The conflict of interest becomes more evident in the rate of rectifications from the insurer owned repair shops, which is above that of non-insurer owned repair shops. However, the Committee decided it is not necessary to ban insurer-owned repair shops to deal with quality issues, finding that other recommendations contained throughout the report would adequately deal with these issues.

Notwithstanding this, the Committee found that certain practices, such as fixed price contracts (under which insurers supply a guaranteed volume of work to preferred repairers who agree to repair the vehicles at a pre-determined price) indicate insurers are able to use their market dominance to exert price pressure on repairers which has flow-on effects for the quality of repairs. In this regard, it recommended allowing repairers to approach the Small Business Commissioner for assistance in negotiating contract terms with insurers, under similar arrangements to those already available to motor vehicle *dealers* in NSW when negotiating with manufacturers.

Finally, Chapter 3 of the report explores poor repairer practices acknowledging concerns raised by insurers in relation to fraud. To improve transparency in the repair process, the Committee recommended a requirement for repairers to record digital images of repairs undertaken on vehicles, and that these digital images be made available to the owners of repaired vehicles.

Technological Changes and their Impact on Safety

Chapter 4 discusses the evolving nature of motor vehicle technology and corresponding increased complexity in many repair processes. Given this complexity, the Committee found that it is important for repairers and licensed assessors to have ready access to vehicle manufacturers' technical specifications to carry out their work. As this does not always occur, and as this is a matter of national importance, the Committee recommended the Minister for Fair Trading approach the Commonwealth to require manufacturers to supply these specifications to repairers and assessors as a matter of urgency.

In addition, chapter 4 discusses concerns that use of non-genuine parts in repair processes, which do not meet manufacturer specifications, can compromise the standard of repair and void manufacturers' warranties. The Committee found that only genuine parts should be used for vehicles that are under the manufacturer's warranty and that consumers should be notified by their insurer when a non-genuine part is used on their vehicle if the vehicle is still under warranty, in which case it is the licensed motor vehicle assessor's job to ensure the part is fit for purpose and applies with Australian Standards.

The Role of Motor Vehicle Assessors in Ensuring Quality Repairs

Chapter 5 of the report discusses the crucial role of motor vehicle assessors in the motor vehicle repair industry, giving consideration to how assessors can assist to bring increased accountability and transparency to the industry to ensure public and consumer safety.

Under current arrangements, most assessors are employed by insurance companies, and they assess accident damage and negotiate repair estimates between insurers and repairers. The Committee heard that the overriding responsibility of an assessor is to ensure that a damaged vehicle is reinstated to its pre-accident condition at an appropriate cost.

The Committee heard a number of calls for assessors to be divorced from insurance companies, rather than employed by them, because of a perception that insurer-employed assessors may be more concerned with cost of repairs for the insurer, than about quality of the repair. The Committee has not received any assessor-based complaints from any of the 40% of consumers insured by insurers other than the two major insurance companies. There appears therefore to be a structure in place where these other insurance companies use independent assessors to assess damaged motor vehicles.

While the Committee acknowledged difficulties in establishing a system of independent assessors, they found other measures, such as licensing assessors under a VSCCS Scheme should be implemented to provide the desired accountability for assessors, ensuring repairs and repair methods are authorised appropriately. The Committee recommended therefore that all motor vehicle assessors be licensed under the VSCCS Scheme, which is currently administered by RMS; that fines apply to such licences for breach of licensing conditions and regulations, and licence cancellation be introduced following three strikes; and that (given ever-changing technology in modern vehicles) all licensed assessors be required to hold relevant qualifications the same as VSCCS certifiers as determined by RMS. In addition, in

acknowledging that the role of an assessor is to sign off on a repair method, not just the cost of a quote, the Committee recommended that the new licensing arrangements include a formal requirement for licensed motor vehicle assessors to approve the appropriate method of repair as part of the process for authorising a quote.

Finally, chapter 5 discusses the outmoded quoting practice of “funny time, funny money” in the motor vehicle insurance and repair industry, under which fictitious times are quoted for repair works. The Committee was concerned about the lack of transparency in this process and recommended that assessor licensing arrangements require use of a realistic time quoting method, rather than “funny time, funny money”, in assessment of motor vehicles.

Consumer Issues

Chapter 6 of the report considers consumer issues as they relate to the motor vehicle insurance and repair industry, in particular, steering practices and their impact on a consumer’s choice of repairer; consumer knowledge of repairs; and content of insurance policies.

‘Steering’ refers to an alleged practice where insurance companies direct customers who have made an insurance claim following an accident to an insurer-preferred or insurer-owned repair shop even though the customer has asked to have his or her car repaired at a repair shop of his or her choice and he or she has that right under his or her insurance policy. It may also involve insurers requiring repairers to use particular parts and/or parts suppliers in undertaking repairs to reduce costs.

The Committee heard that insurers may offer inducements, such as a free car wash or quicker repair times if a customer uses an insurer-appointed repairer; and may offer incentives to their staff to steer customers to such repairers. The Committee also heard that consumers are often unaware of their rights in relation to choice of repairer and parts under their policy until they have an accident as this information is often buried in lengthy product disclosure statements. Such practices are anti-competitive and impact on genuine consumer choice.

While the Committee considered anti-steering legislation that bans preferred repairer schemes and vertical integration, it ultimately found that such models have various benefits for consumers and that banning them is not necessary to restore genuine consumer choice. Rather, the Committee recommended new requirements for consumers to be provided with upfront disclosure concerning choice of repairer and parts under a policy; and penalties for practices that prevent a customer exercising his or her choice of repairer under an insurance policy that provides for that right.

Chapter 6 also discusses the Committee’s finding that the ability of the average consumer to assess the quality of repairs to their vehicle is limited and that increased transparency and accountability for repairers is necessary to assist consumers. Therefore, the Committee recommended a public ‘name and shame’ register for repairers and motor vehicle assessors who breach relevant legislation. A rating system should also be applied to repair shops outlining their ability to repair different degrees of damage to a motor vehicle which would

enable licensed assessors to determine the ability of a particular repair shop to undertake the required work to a damaged vehicle and also allow consumers to identify the extent and standard of services provided by a particular repair shop.

Finally, the chapter discusses the insurer-consumer relationship, acknowledging concerns about recourse for insured consumers through the Commonwealth's Financial Ombudsman's Service. The Committee also recommends insurance companies declare their umbrella/parent company relationships to consumers which should be clearly visible and/or advised to customers in the first instance of seeking a premium.

Motor Vehicle Insurance and Repair Industry Code of Conduct

Chapter 7 explores the current Motor Vehicle Insurance and Repair Industry Code of Conduct, whether it is effective at regulating the relationship between repairers and insurers, and its governance structure and dispute resolution mechanisms.

The Committee found that, while the Code provides a mechanism to deal with disputes there is evidence of continued, significant tension between insurers and repairers and frequent breaches of the Code. Further, the Committee found valid concerns exist regarding the Code's enforceability (a lack of penalties for breaches and non-binding dispute resolution outcomes) and a reluctance of repairers to initiate disputes under the Code, partly because of this lack of enforceability.

The Committee therefore recommends enforceability of the Code by imposing fines and penalties for breaches of the mandatory NSW Code of Conduct and recommends the NSW Minister for Fair Trading apply to the Commonwealth Government to mandate the Code at the national level including increased oversight and compliance activity, binding dispute resolution outcomes, and penalties for breaches of the Code. Chapter 7 also supports changes to the makeup of the body that administers the Code, the Code Administration Committee, to better facilitate amendments to Code where they are needed.

In addition, Chapter 7 re-visits the "funny time, funny money" quoting method, acknowledging that the need for realistic times is an issue of national importance and supporting the establishment of a Code sub-committee representative of all sides of the industry to advance a national solution to the problem with the possible assistance of the Productivity Commission.

List of Findings and Recommendations

Recommendation 1	27
That the <i>Motor Dealers and Repairers Act 2013</i> 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	31
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	33
That the <i>Road Transport Act 2013</i> 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.	
FINDING 1	38
It is important for vehicle manufacturer specifications to be provided to repairers and assessors and for repairers and assessors to follow these specifications in assessing, quoting and repairing damaged vehicles.	
Recommendation 4	38
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	47
That the Government legislate under the <i>Motor Dealers and Repairers Act 2013</i> 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	47
That fines apply to licences for assessors for breach of licensing conditions and regulations; and licensing cancellation after three strikes.	
Recommendation 7	48
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	51

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

Recommendation 9 _____ 54

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

Recommendation 10 _____ 73

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 _____ 73

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 _____ 73

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

Recommendation 13 _____ 77

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 _____ 79

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 _____ 82

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.

FINDING 2 _____ 83

The Committee considers that the Motor Vehicle Insurance and Repair Industry Code of Conduct should be amended to include a new Clause 9.6 that requires insurers to declare their umbrella and parent companies. This information should be clearly visible, upfront in the product disclosure statement and/or advised to customers at the time they enter into the insurance policy.

Recommendation 16 _____ 84

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.

FINDING 3 _____ 97

The Committee supports the introduction of a mandatory Code of Conduct for the Motor Vehicle Insurance and Repair Industry, which would include penalties for non-compliance and be subject to oversight and enforcement by the Australian Competition and Consumer Commission (ACCC). The Committee notes that such a Code would need to be established under the *Competition and Consumer Act 2010 (Cth)*, the administration of which is a Commonwealth responsibility.

Recommendation 17 _____ 97

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.

FINDING 4 _____ 97

The Committee supports possible extension of the jurisdiction of the Australian Competition Tribunal to hear appeals from repairers and insurers disputing decisions and penalties handed down by the ACCC for non-compliance with a mandatory Code of Conduct. The Committee notes that such a decision would be a Commonwealth responsibility.

FINDING 5 _____ 98

If and when the ACCC's new Code oversight and enforcement role is embedded under the *Competition and Consumer Act 2010 (Cth)*, the Committee supports the ACCC developing educational materials for insurers and repairers to advise them about the content of the Code, dispute resolution, and the ACCC's new oversight and enforcement role.

FINDING 6 _____ 98

Failing the adoption of a mandatory Code by the Commonwealth Government with oversight and enforcement by the ACCC, the Committee instead supports the following recommendations made as a result of the external review of the Code by Executive Counsel Australia in December 2013:

1. The Code Administration Committee (CAC) establish an arbitration process for disputes under the Code as per recommendation 3 of the external review of the Code;
2. The Commonwealth Government appoint an independent Industry Ombudsman with powers defined by the CAC to act as a court of industry appeal with particular reference to the Code dispute resolution process; as per recommendation 7 of the external review of the Code;

3. The CAC identify instances of non-compliance with the Code by any signatory and publicise it/require the signatory to undertake reasonable rectification steps, as per recommendation 4 of the external review of the Code.

Recommendation 18 _____ 99

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 _____ 100

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.

FINDING 7 _____ 102

The Committee supports insertion of an additional sub-clause into clause 12.1 of the Code to provide that where matters remain in significant disagreement, the CAC may utilise the services of a mediator to assist resolution, as per recommendation 16 of the external review of the Code published by Executive Counsel Australia in December 2013.

FINDING 8 _____ 102

The Committee supports the appointment of an additional three, more independent, non-industry members to the CAC – one to be from the mediation industry and two from the motor vehicle manufacturing industry – as per recommendation 17 of the external review of the Code published by Executive Counsel Australia in December 2013.

FINDING 9 _____ 103

The Committee supports guidelines to cover assessor "training" courses with specific reference to such courses when they occur overseas noting that such guidelines are to make clear that there is to be no linkage between participation in such courses and cost/price based assessor

performance. In addition, such guidelines are to be made available to all industry players upon request with guidelines and industry adherence to same to be monitored by the CAC or by an industry ombudsman if so appointed; as per recommendation 18 of the external review of the Code published by Executive Counsel Australia in December 2013.

FINDING 10 _____ 104

The Committee supports a CAC inquiry into the role of assessors under its revised nine member configuration with a view to making any changes to the Code that might restore good faith on the part of repairers and insurers in the aforementioned role; as per recommendation 20 of the external review of the Code published by Executive Counsel Australia in December 2013.

Recommendation 20 _____ 105

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.

FINDING 11 _____ 106

The Committee supports the delivery of a compulsory industry Code education campaign targeting insurers and repairers with reference to the Code dispute resolution processes as per recommendation 13 of the external review of the Code published by Executive Counsel Australia in December 2013.

FINDING 12 _____ 110

The Committee supports the establishment of a Code sub-committee representative of all sides of the industry to advance a national solution to the “funny time, funny money” impasse as a matter of urgency, with the possible assistance of the Productivity Commission; as per recommendation 30 of the external review of the Code published by Executive Counsel Australia in December 2013.

Recommendation 21 _____ 110

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.

Chapter One – Introduction

TERMS OF REFERENCE

- 1.1 On 19 November 2013, the House resolved to establish the Select Committee on the Motor Vehicle Repair Industry 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 can be found on page iv.

CONDUCT OF THE INQUIRY

Submissions

- 1.2 The Committee called for public submissions by advertising in the *Sydney Morning Herald* and the *Daily Telegraph* on 4 December 2013 and by writing to key stakeholders inviting them to make a submission. The closing date for submissions was 14 February 2014.
- 1.3 The Committee received 77 submissions from individuals and stakeholders who are key players in the motor vehicle repair industry. These stakeholders included the major insurance companies in the marketplace, the NSW Government, Members of Parliament, peak bodies, smash repairers, a community legal centre, and consumers. A complete list of submission providers may be found in Appendix One. The submissions which the Committee has published may be found on the Committee's website:
<http://www.parliament.nsw.gov.au/motorvehiclerepairindustry>.

Public Hearings

- 1.4 The Committee held hearings on 17 March 2014 and 21 March 2014. Twenty-four witnesses provided evidence to the Committee. These included representatives from peak bodies, insurance companies, NSW Fair Trading, a community legal centre, smash repairers, and consumers. Smash repairer and consumer witnesses were heard *in camera*. A full list of the witnesses who appeared publicly before the Committee may be found at Appendix Two.
- 1.5 The transcript of evidence from the public hearings may be found at the Committee's website:
<http://www.parliament.nsw.gov.au/motorvehiclerepairindustry>.
- 1.6 The Committee wishes to thank all the organisations and individuals who participated in the Inquiry.

Chapter Two – Background to the Motor Vehicle Insurance and Repair Industry in NSW

- 2.1 This chapter outlines the scale of the motor vehicle repair industry in NSW and the regulatory framework that underpins both the motor vehicle repair and insurance industries in NSW. It also details the government agencies that have a role in maintaining this regulatory framework.
- 2.2 In addition the chapter sets out the market structure of the motor vehicle insurance industry, highlighting its key and smaller players, and discusses pricing. Finally, it highlights emerging trends in the motor vehicle insurance and repair industry and explores how these trends may impact the future development of the industry in NSW.

SCOPE AND SCALE OF THE MOTOR VEHICLE REPAIR INDUSTRY

- 2.3 The motor vehicle repair industry is a large and significant player in the NSW economy, encompassing nearly 6 million registered motor vehicles.¹ The smash repairs and automotive services and maintenance sectors in NSW alone are estimated to be valued at more than \$5.5 billion, and in 2012-2013 more than \$30 billion worth of vehicles were sold consisting of more than 380,000 new vehicles and more than 1.4 million used vehicles.² In addition, it is estimated that the industry employs more than 140,000 people with over 12,000 licensed repairers and almost 4,000 motor dealers in NSW. A majority of smash repair businesses are in NSW, with 31.9 per cent of smash repairers located in NSW in 2012.³

REGULATORY FRAMEWORK

- 2.4 In 2003, the Australian Competition and Consumer Commission undertook an examination of the smash repair industry. Following this examination, in 2004 – 2005, the Productivity Commission inquired into the commercial relationship between repairers and insurance companies. As a result of this Inquiry, in 2006 the Motor Vehicle Insurance and Repair Industry Code of Conduct was established to govern aspects of the commercial relationship between insurers and repairers.⁴
- 2.5 The Code is a national voluntary code and was intended to promote transparent, effective and co-operative relationships between smash repairers and insurance companies.⁵ However, in NSW, the *Fair Trading Act 1987* provides that the Code

¹ Second Reading Speech, Motor Dealers and Repairs Bill 2013, Hon Anthony Roberts MP, *Legislative Assembly Parliamentary Debates*, 24 October 2013, p24744.

² Second Reading Speech, Motor Dealers and Repairs Bill 2013, Hon Anthony Roberts.

³ IBISWorld, 'Smash Repairing in Australia', *IBISWorld Industry Report G5323*, September 2012, p3.

⁴ Submission 69, NSW Government, p2.

⁵ Submission 69, NSW Government, p2.

is *mandatory* for all insurers and repairers, and all vehicles repaired under an insurance contract.⁶ Thus, all insurers and repairers are required to comply with the Code. If a party fails to do so, and a dispute cannot be resolved using the dispute resolution processes under the Code, the other party can take court action. Fair Trading can also take action, if necessary, to enforce the Code.⁷ The Code is discussed in more detail in Chapter 7 of this report.

- 2.6 While the Code regulates the relationship between licensed motor vehicle repairers and insurance companies, it operates alongside various legislation and other measures instituted for regulation and oversight of the motor vehicle insurance and repair industry more broadly. These include the *Motor Dealers Act 1974*, the *Motor Vehicle Repairs Act 1980*, various Commonwealth legislation that regulates insurance products, and the NSW Office of the Small Business Commissioner. These are discussed below.

Motor Dealers and Repairers Act 2013

- 2.7 The *Motor Dealers and Repairers Act 2013*, which will come into force in mid-2014 when the regulations are implemented will simplify and consolidate the current licensing system and require repair work to be done to consumer guarantee standards under the Australian Consumer Law.⁸ Certain provisions of this new Act relating to unfair contracts affecting motor dealers have already commenced.⁹
- 2.8 The Act replaces the *Motor Vehicle Repairs Act 1980* and the *Motor Dealers Act 1974*. The *Motor Vehicle Repairs Act 1980* provides consumer protection through a business and occupational licensing system for motor vehicle repairers. Probity standards must be met before a licence is issued¹⁰ and the Act sets minimum technical skills standards for industry tradespeople.¹¹
- 2.9 NSW Fair Trading can take disciplinary action against a repairer for improper conduct or for repair work that is not completed to an appropriate standard.¹² Consumers can also complain about poor repair work to NSW Fair Trading which can assist with dispute resolution¹³, after which consumers can seek resolution in the NSW Civil and Administrative Tribunal (NCAT)¹⁴. In addition, NSW Fair Trading can investigate complaints about poor repair work made by consumers and insurers and take action including prosecutions, if necessary.¹⁵

⁶ Submission 69, NSW Government, p1.

⁷ Submission 69, NSW Government, p5.

⁸ Submission 69, NSW Government, pp1&6.

⁹ See Part 6 and clause 11 of Schedule 2 of the *Motor Dealers and Repairers Act 2013*.

¹⁰ Section 18, *Motor Vehicle Repairs Act 1980*.

¹¹ Section 24, *Motor Vehicle Repairs Act 1980*.

¹² Section 42, *Motor Vehicle Repairs Act 1980*.

¹³ Sections 52 and 53, *Motor Vehicle Repairs Act 1980*.

¹⁴ Submission 69, NSW Government, p6.

¹⁵ See sections 54 and 87, *Motor Vehicle Repairs Act 1980* and Submission 69, NSW Government, p1.

Regulation of Insurance Products

- 2.10 Insurance contracts and arrangements between customers and insurers are regulated by the Commonwealth through the *Insurance Contracts Act 1984*, the *Corporations Act 2001*, and the *Australian Securities and Investments Commission Act 2001*.¹⁶
- 2.11 NSW Fair Trading does not govern insurance contracts between insurers and consumers, the primary regulators being the Australian Prudential Regulation Authority and the Australian Securities and Investments Commission. NSW Fair Trading directs consumers with a complaint about their car insurance contract to the Financial Ombudsman Service (FOS), a national dispute resolution service that handles complaints about general insurance, including car insurance, where the value of the claim is less than \$500,000.¹⁷ If FOS finds in favour of a consumer, the decision is binding. However, if the FOS finds in favour of the insurer, the consumer can still take the insurer to court.¹⁸

Office of the Small Business Commissioner

- 2.12 In addition to proceeding under the Code, motor vehicle repairers in dispute with an insurer can approach the NSW Office of the Small Business Commissioner regarding disputes with insurers.¹⁹ The Office of the Small Business Commissioner provides dispute resolution services, delivers strategic business advice to small businesses and speaks up for small business within Government.²⁰

MOTOR VEHICLE INSURANCE MARKET STRUCTURE AND PRICING

- 2.13 Currently, the market for motor vehicle insurance is very concentrated and has increasingly consolidated with joint-ventures and acquisitions undertaken by key players in the industry. The four largest companies and their market shares by revenue in NSW are Insurance Australia Group (IAG) (32.6%)²¹, Suncorp (29.6%)²², Allianz Australia (5.6%)²³, and QBE (5.2%)²⁴. The four largest players account for 73% of revenue, while the two largest players alone account for 62% of market share.²⁵
- 2.14 Suncorp is divided into two strands: major brands and specialist brands. Their major brands include Suncorp Insurance, AAMI, GIO, and Apia.²⁶ Their specialist

¹⁶ Submission 69, NSW Government, p7.

¹⁷ Submission 69, NSW Government, p7.

¹⁸ Insurance Law Service Website, <http://www.insurancelaw.org.au/fact-sheet/problems-with-the-quality-of-repairs-arranged-by-the-insurer/>, viewed 9 April 2014.

¹⁹ Submission 69, NSW Government, p7.

²⁰ Small Business Commissioner Website, <http://www.smallbusiness.nsw.gov.au/about>, viewed 9 April 2014.

²¹ Submission 46, Suncorp Group Limited, p7.

²² Deloitte Access Economics, February 2014, appendix to Submission 48, Insurance Council of Australia, p33.

²³ Deloitte Access Economics, February 2014, appendix to Submission 48, Insurance Council of Australia, p33.

²⁴ Deloitte Access Economics, February 2014, appendix to Submission 48, Insurance Council of Australia, p33.

²⁵ Deloitte Access Economics, February 2014, appendix to Submission 48, Insurance Council of Australia, p33.

²⁶ Submission 46, Suncorp Group Limited, 'Roadmap to a shared future', p3.

brands include Vero, JustCar, Bingle, InsureMyRide, Shannons, CIL Insurance (Caravans and RVs), and Resilium.²⁷

- 2.15 IAG operates some of Australia's largest general insurance brands. IAG brands include NRMA Insurance, SGIO (Western Australia focussed), SGIC (South Australia based), CGU, and Swann Insurance.²⁸ IAG has also received multiple takeover bids from a range of insurers.²⁹
- 2.16 Allianz Australia Limited is one of Australia's largest general insurers (No.4).³⁰ Allianz Australia is part of the Allianz Group, which is one of the world's largest corporations.
- 2.17 QBE Australia is a division of the QBE Insurance Group, one of the world's top 20 general insurance and reinsurance companies, with operations in all key insurance markets. QBE Insurance Group operates in 43 countries and is headquartered in Sydney.³¹ It also owns Elders Insurance.³²
- 2.18 In addition to the insurance companies mentioned above, other insurers operating in NSW include Auto and General Insurance Company which provides car insurance as well as underwriting and claims services for a number of insurance companies.³³ In addition, Coles, Kmart Tyre and Auto Insurance, Zurich, Woolworths, Coles, Ozicare, Youi, CommInsure, Westpac, Budget Direct, People's Choice Credit Union, Bendigo Bank, COTA, Australia Post, RAA Insurance, Ozicare, Real Insurance, ibuyeco, and IMB provide car insurance.³⁴
- 2.19 Despite the consolidation of the market, as shown above, non-traditional players in the motor vehicle insurance industry, such as Coles and Woolworths, have also entered the market. It should however be noted that Coles Insurance has recently been purchased by NRMA IAG.³⁵ According to Deloitte Access Economics, online motor vehicle insurance comparison websites have increased market competition, thereby providing new entrants with an online platform from which they can launch their brand more easily.³⁶
- 2.20 Equally, it has been argued that barriers to entering the motor vehicle insurance market have declined over time.³⁷ This is due in part to the emergence of aggregators, such as InfoChoice and ComparetheMarket.com.au, allowing

²⁷ Submission 46, Suncorp Group Limited, 'Roadmap to a shared future', p3.

²⁸ IAG Australia website, <http://www.iag.com.au/business/australia.shtml>, viewed 26 May 2014.

²⁹ Deloitte Access Economics, February 2014, appendix to Submission 48, Insurance Council of Australia, p33.

³⁰ Allianz Australia website, <http://www.allianz.com.au/about-us/allianz-australia>, viewed 26 May 2014.

³¹ QBE Europe website, 'About: QBE European Operations', <http://www.qbeeurope.com/about/index.asp>, viewed 26 May 2014.

³² QBE Australia website, 'Our business', <http://www.qbe.com.au/Australia/About-QBE/Our-Business/Elders-Insurance>, viewed 26 May 2014.

³³ Auto and General website, 'About us', http://www.agic.com.au/about_us.html, viewed 26 May 2014.

³⁴ See respective websites.

³⁵ Sue Mitchell and Max Mason, 'IAG Buys Wesfarmers underwriting business for \$1.85 billion' Sydney Morning Herald Website, <http://www.smh.com.au/business/banking-and-finance/iag>, viewed 27 June 2014.

³⁶ Deloitte Access Economics, February 2014, appendix to Submission 48, Insurance Council of Australia, p33.

³⁷ Deloitte Access Economics, February 2014, appendix to Submission 48, Insurance Council of Australia, p34.

consumers to directly compare products, and also due to digital technological advances allowing insurers to operate low-cost, online distribution networks.³⁸

- 2.21 Motor vehicle insurance prices in NSW have risen at a slower pace than in other states. Premiums in NSW have risen on average by 2.8% over the last decade, at an average annual rate of 1.7 % and below inflation.³⁹ However, as at September 2013, NSW has the highest average claim size (\$3,190) and equal highest frequency of claims (12.79 % of costs per policy).⁴⁰

EMERGING TRENDS IN THE MOTOR VEHICLE REPAIR INDUSTRY

- 2.22 During its Inquiry, the Committee heard that the motor vehicle repair industry is facing major structural challenges, placing increasing pressure on traditional smash repairers.
- 2.23 Such challenges include technological developments of motor vehicles, and the increasing growth of minor repairs versus major repairs. According to leading insurance companies, these pressures are changing the landscape of smash repair businesses.⁴¹
- 2.24 In contrast, smash repairers have argued that the market consolidation that is putting such pressure on them (discussed above) is not a result of technological developments of motor vehicles but the business practices of major insurance companies.
- 2.25 Both arguments have been considered throughout the Inquiry and are discussed below.

Technological developments versus insurers' business practices

- 2.26 The Committee received evidence suggesting that developments such as increasingly technologically advanced and technically complex motor vehicles, skills shortages, improvements in road safety, and rising consumer expectations are driving and reshaping the industry for motor vehicle repairers.⁴² This has resulted in market consolidation, pushing the traditional, smaller motor vehicle repairer out of the industry, with an increasing trend towards larger, technologically advanced and more capital intensive businesses.
- 2.27 While this argument has generally been presented by insurers, there is no doubt that technological advances in vehicles represent a key challenge for repairers. There have been improvements in construction and significant changes in the material used to construct cars. Cars are now safer as a result of technology designed to prevent crashes – high-strength steel, anti-locking braking systems, electronic stability control, parking sensors and automatic braking systems. These systems have reduced the severity of low-speed collisions and the likelihood of

³⁸ Deloitte Access Economics, February 2014, appendix to Submission 48, Insurance Council of Australia, p34.

³⁹ Deloitte Access Economics, February 2014, appendix to Submission 48, Insurance Council of Australia, p29.

⁴⁰ Deloitte Access Economics, February 2014, appendix to Submission 48, Insurance Council of Australia, p31.

⁴¹ See for example Submission 46, Suncorp Group Limited pp26-31, and Submission 45, NRMA Insurance, pp.10-11.

⁴² Submission 46, Suncorp Group Limited, p26.

collisions. As a result, the demand for minor repairs is considered to be falling.⁴³ Equally, data shows that the rate of fatal crashes has decreased by 50% or more in recent decades.⁴⁴ Both these factors have implications for the smash repair industry in Australia.

- 2.28 Other additional factors which have been argued to be impacting on driving down demand for smash repairers include new materials such as aluminium bodies and plastic components. These materials are less practical or sometimes less economical to repair.⁴⁵ As a result of these additional technological trends, an increasing number of cars are simply being written off following a major collision. This, coupled with the fact that modular construction allows for some parts to be replaced completely rather than repaired, and the fact that the cost of new cars has declined, is all also impacting on the declining number of repairs being undertaken.⁴⁶
- 2.29 In addition, the Committee has received evidence suggesting that modern cars can be more complex to repair. This requires repairers to have an in-depth knowledge of the vehicle and its systems, necessitating better training on skills and equipment to repair the range of electronic systems now available with modern cars.⁴⁷
- 2.30 The Committee also received evidence that with the continued development of hybrid/electric vehicles expected to make-up 10% of the road fleet in Australia in 10 years, and the additional challenge of gaining access to manufacturers' specifications, the existing business model of smash repairers is threatened by the establishment of large, specialist smash repair businesses.⁴⁸
- 2.31 However, according to the Australian Automotive Repairers Group, consolidation of the industry has not been caused by developments such as changing technology and increasingly complex motor vehicles, but is a result of insurance companies actively pushing for consolidation and rationalisation of the industry.⁴⁹
- 2.32 According to this view, insurance companies have been systematically steering consumers away from their repairer of choice, to the insurance companies' preferred repairer.⁵⁰ As a result, repairers who are not part of the insurance companies' preferred repairer network, are losing business.⁵¹ This issue was raised by a number of stakeholders throughout the Inquiry process.⁵²
- 2.33 In addition, the Australian Automotive Repairers Group argues that as a result of the insurance companies' preferred network system, network repairers are

⁴³ Deloitte Access Economics, February 2014, appendix to Submission 48, Insurance Council of Australia, p16.

⁴⁴ Deloitte Access Economics, February 2014, appendix to Submission 48, Insurance Council of Australia, p16.

⁴⁵ Submission 46, Suncorp Group Limited, p26.

⁴⁶ Deloitte Access Economics, February 2014, appendix to Submission 48, Insurance Council of Australia, p16.

⁴⁷ Submission 46, Suncorp Group Limited, p26.

⁴⁸ Submission 46, Suncorp Group Limited, p26.

⁴⁹ Submission 77, Australian Automotive Repairers Group, p6.

⁵⁰ Submission 77, Australian Automotive Repairers Group, p6.

⁵¹ Submission 77, Australian Automotive Repairers Group, p6.

⁵² For a general discussion of steering, see Mr Graham Judge, Acting Body Repair Division Manager, Motor Traders' Association of New South Wales, Transcript of Evidence, 17 March 2014, pp2-3.

provided work and are not motivated to repair motor vehicles to a standard and quality consistent with the Motor Vehicle Insurance and Repair Industry Code of Conduct. They are solely motivated by a need to comply with insurance companies' demands.⁵³

- 2.34 These arguments are also discussed in chapter 6 of the report. Technological changes in motor vehicles and their impact on safety is also discussed in chapter 4.

Minor repairs and high volume low impact facilities

- 2.35 As mentioned above, the smash repair industry is moving away from smash repair businesses that are holistic in their ability to undertake repairs on most vehicles, and is moving towards an industry with large, specialised repairers.⁵⁴
- 2.36 As a result, the industry is increasingly dividing into two tranches: the factory-style business which conducts a high volume of low value repairs, and the specialist shop businesses which focus on high structural or marquee repairs.⁵⁵
- 2.37 According to Deloitte Access Economics, approximately 25 per cent of all car accidents occur in car parks, resulting in minor damage and thus minor repairs.⁵⁶ This minor damage represents 80 per cent of car accidents.⁵⁷ These repairs are undertaken by high volume low impact facilities – facilities which are growing nationally, and which do not require capital or labour intensive repairs.⁵⁸
- 2.38 The Committee received evidence demonstrating that a number of these high volume low impact facilities also form part of insurance company business models through their preferred repairer network. Suncorp, for example, co-owns 7 Capital SMART Repair shops across NSW which specifically undertake small to medium non-structural repairs.⁵⁹

Major repairs

- 2.39 Approximately 15 per cent of accidents account for major structural damage.⁶⁰ According to Deloitte Access Economics, as a result of high-strength steel now used in motor vehicles, structural repairs require capital-intensive equipment as regular welding weakens high-strength steel and compromises its properties.⁶¹
- 2.40 This is creating further demand for specialist shops that have the appropriate capital and labour to specifically undertake such major repairs jobs.⁶² Nevertheless, the Committee has also received evidence suggesting that some

⁵³ Submission 77, Australian Automotive Repairers Group, p6.

⁵⁴ Deloitte Access Economics, February 2014, appendix to Submission 48, Insurance Council of Australia, p17.

⁵⁵ Deloitte Access Economics, February 2014, appendix to Submission 48, Insurance Council of Australia, p17.

⁵⁶ Deloitte Access Economics, February 2014, appendix to Submission 48, Insurance Council of Australia, p17.

⁵⁷ Deloitte Access Economics, February 2014, appendix to Submission 48, Insurance Council of Australia, p17.

⁵⁸ Deloitte Access Economics, February 2014, appendix to Submission 48, Insurance Council of Australia, p17.

⁵⁹ Submission 46, Suncorp Group Limited, p7.

⁶⁰ Deloitte Access Economics, February 2014, appendix to Submission 48, Insurance Council of Australia, p18.

⁶¹ Deloitte Access Economics, February 2014, appendix to Submission 48, Insurance Council of Australia, p18.

⁶² Deloitte Access Economics, February 2014, appendix to Submission 48, Insurance Council of Australia, p18.

major insurance companies are capitalising on this demand. For example, as part of its preferred network of repairers, Suncorp also co-owns QPlus, which only undertakes larger structural repairs.⁶³

2.41 These two trends are also discussed in chapter 6 of this report.

⁶³ See submission 46, Suncorp Group Limited, p7; and Mr Sean Dempsey, Executive General Manager Shared Insurance Ventures, Suncorp Group Limited, Transcript of Evidence, 21 March 2014, p34.

Chapter Three – Quality and safety of smash repair work

- 3.1 The quality of smash repair work has been raised as a serious issue during this Inquiry. This Chapter considers recent trends in the quality of smash repair work and the impact that certain business practices of insurers, and repairer practices, have on the quality of smash repair work. The Committee is particularly concerned about the impact that quality has on the safety of vehicles returned to the road following repairs and it therefore also specifically considers ways to ensure that smash repair work of a structural or safety nature is done to a quality and safe standard.

QUALITY AND SAFETY OF MOTOR VEHICLE REPAIRS

Concerns over Trends in Quality of Motor Vehicle Repairs in NSW

- 3.2 The Committee heard evidence from a variety of stakeholders in relation to trends in the quality of repairs to motor vehicles in NSW and potential safety issues that could arise from repairs that are not completed adequately.
- 3.3 Serious quality and safety issues can occur when vehicles are inadequately repaired, or when the repairs conducted on a vehicle are of a poor quality. Evidence provided to the Committee indicates that serious concerns exist regarding trends in repair quality in NSW.
- 3.4 The Motor Traders' Association of NSW (the MTA) indicated to the Committee that consumers in NSW are affected by low quality motor vehicle repair works and lowered value of vehicles as a result of poor quality repairs. The MTA argued that low quality repairs generally result from a lack of transparency in the motor vehicle repair process, and the preference of insurance companies to encourage repairers to repair vehicles to a specific price, rather than a quality standard.⁶⁴
- 3.5 In its submission to the Inquiry the Insurance Law Service (ILS) of the Consumer Credit Legal Centre (CCLC) informed the Committee that its service had received a number of complaints from the public regarding the quality of motor vehicle repairs:
- Overall, complaints to the ILS about quality of car repairs is an ongoing issue. The process for getting poor repairs fixed is difficult and may involve the cost to the consumer of getting independent assessors. Consumers often indicate they have little trust or confidence in the repair industry.⁶⁵
- 3.6 It was noted by Ms Alexandra Kelly, Principal Solicitor at the ILS that in 2012 her service dealt with 40 to 50 calls from members of the public requesting advice in

⁶⁴ Submission 51, Motor Traders' Association of NSW, p3.

⁶⁵ Submission 57, Insurance Law Service, Consumer Credit Legal Centre, p 5.

relation to poor quality vehicle repairs in NSW.⁶⁶ Ms Kelly noted that, in her view, this number of calls under-represented the number of consumers with complaints about quality and that:

...the quality of motor vehicle repair is an issue, not just in NSW but nationally.⁶⁷

- 3.7 The Committee also heard from other stakeholders with concerns regarding trends in motor vehicle repair quality. Mr Garry Maher, a motor vehicle repairer by occupation, submitted that:

The number of poor previous repairs has increased dramatically to the extent some vehicles are no longer safe and would fail if involved in a major collision which would result in loss of life.⁶⁸

- 3.8 The Committee also received submissions directly from a number of consumers who outlined their experiences with motor vehicle repair work in NSW. A substantial portion of these consumers indicated to the Committee that their vehicles had been subject to poor quality repair work and that these poor quality repairs had, in some cases, been conducted at a repairer which was a member of an insurer's preferred repairer scheme or workshops part-owned by insurance companies.

Case Study 1

- 3.9 One consumer advised the Committee of her experience with a motor vehicle repairer and an insurer. The consumer indicated to the Committee that the quality of repairs that were conducted on her vehicle by the insurer's repairer were extremely poor quality, and that her vehicle was required to be returned to a repairer on eight occasions before the vehicle was finally written off by the insurer.⁶⁹

- 3.10 Despite these concerns the Insurance Council of Australia considers that the overall quality of motor vehicle smash repair work conducted in NSW is of a satisfactory standard. In this vein, the Insurance Council of Australia submitted:

The standard of smash repair work in Australia is generally of a high standard... Should systemic quality issues exist we submit that records of significant levels of customer complaint would be readily available through a variety of sources, however this is not the case.⁷⁰

Rectification rates

- 3.11 In assessing the extent of any issues with motor vehicle repair quality in NSW, it is necessary to examine motor vehicle repair rectification rates.

⁶⁶ Ms Alexandra Kelly, Insurance Law Service, Consumer Credit Legal Centre, Transcript of Evidence, 17 March 2014, p48.

⁶⁷ Ms Alexandra Kelly, Insurance Law Service, Consumer Credit Legal Centre, Transcript of Evidence, 17 March 2014, p 49.

⁶⁸ Submission 1, Mr Garry Maher, p1.

⁶⁹ Submission 11, name suppressed, p1.

⁷⁰ Submission 48, Insurance Council of Australia, p5.

3.12 A motor vehicle repair rectification can be defined as a repair procedure that is required to correct an issue with a vehicle that was not identified and fixed during the vehicle's initial repair, or an issue which was caused by an incorrect or poor quality repair technique during the vehicle's initial repair. The MTA explained the possible causes of rectification issues as follows:

If everyone does their job properly, then we do not have rectifications. So there is a breakdown in between someone did not follow the recommended procedure or someone has cut a corner or someone working on the car is not competent... or they have not got the technical information to do the job properly.⁷¹

3.13 The Committee has identified two general types of poor repairs requiring rectification work which can be of concern to consumers and to the public:

- (a) Poor repair work that has affected the subject vehicle in an adverse manner, and which itself may cause an accident; and
- (b) Poor repair work that, should an accident occur to the subject vehicle, may cause greater damage to the vehicle and possibly the safety of the vehicle's occupants.

3.14 Where poor quality work of either of the above categories occurs, consumers may not have the skills to detect it⁷² and this can lead to poor quality vehicles being returned to the road.

3.15 Indeed, while consumers may not have the expertise and training to identify potential poor repair quality issues, the Committee also heard evidence that it can even be difficult for trained motor vehicle assessors to identify flaws in repair work, due to the complex nature of vehicle damage and repairs. The fact that some repairs within a vehicle's mechanical interior can be difficult to view and assess after the vehicle has been reassembled also contributes to difficulties in assessment and repair review.⁷³

Recent Rates of Rectification

3.16 During the Inquiry the Committee was provided with figures regarding rectification rates in NSW.

3.17 The MTA provided the Committee with a detailed list of over 130 individual instances where consumers had approached the MTA for assistance regarding vehicles that required rectification works following an initial repair.

3.18 Following receipt of the list, the Committee asked the MTA's representatives at a public hearing whether, in their view, the list indicated the total number of vehicles that required repair rectifications in NSW. Mr Graham Judge, Acting Body Repair Division Manager at the MTA, responded:

⁷¹ Mr Graham Judge, Motor Traders' Association of NSW, Transcript of Evidence, 17 March 2014, p6.

⁷² See for example the comments of Mr Greg Patten, Chief Executive Officer, Motor Traders' Association of NSW, on this point, Transcript of Evidence, 17 March 2014, p4.

⁷³ Mr Graham Judge, Motor Traders' Association of NSW, Transcript of Evidence, 17 March 2014, p4.

No, I tend to think it would be the tip of the iceberg... We do not look for these sorts of problems but it is difficult when you have a mother of six kids ringing to say I do not think my car is safe, there is a wobble in the steering.⁷⁴

- 3.19 A number of insurance companies also provided information and statistics to the Committee regarding rates of rectification involving vehicles insured by their companies.
- 3.20 The three insurance companies who assisted the Committee in this regard were Suncorp, NRMA Insurance and Allianz Australia Insurance which together, in 2013, owned 67.8% of the motor vehicle insurance market in NSW. As discussed in chapters 2 and 6 of this report, in 2013, Suncorp and the Insurance Australia Group (IAG) (which owns NRMA Insurance), held market shares of the motor vehicle insurance market of 29.6 per cent and 32.6 per cent respectively,⁷⁵ while Allianz had a market share of approximately 5.6 per cent. It is clear that Allianz is involved in the repair of a lower number of vehicles than either Suncorp or IAG.⁷⁶
- 3.21 Suncorp provided information in their submission to the Inquiry about the rate of rectification for vehicles they insured for the period July 2012 to June 2013:
- The results of the analysis of Suncorp repairs in NSW are as follows:
- Issues requiring rectification across all methods – 4.0 per cent
- Minor issues– single minor scratch or detailing – 1.8 per cent
- Medium issues – multiple minor scratches/detail, minor panel alignment, window or mirror issues, minor cracks or suspension issues – 1.4 per cent
- Major issues (potential safety issues) – damage to engine, steering issues, possible safety issues, radiator or other leaks, vehicle vibration/shakes – 0.8 per cent.⁷⁷
- 3.22 Suncorp also indicated that the rate of rectifications for the Capital SMART and Q Plus repair facilities, (which are part owned by Suncorp) were 1.7 per cent and 2.8 per cent respectively.⁷⁸
- 3.23 Considering Suncorp’s advice to the Committee that in a 12 month period (2013) a total of 126,000 repairs to Suncorp insured vehicles were conducted and that 0.8 per cent of vehicles repaired in the 2012-13 financial year had major potential safety issues, it could be estimated that over 1000 vehicles required rectification work for major issues with potential safety implications.
- 3.24 Allianz Insurance also contributed information regarding their rectification rates to the Committee, although in less detail than Suncorp or NRMA Insurance. During a public hearing, representatives from Allianz stated the following in relation to the rate of Allianz insured rectifications:

⁷⁴ Mr Graham Judge, Motor Traders’ Association of NSW, Transcript of Evidence, 17 March 2014, p5.

⁷⁵ Deloitte Access Economics, February 2014, appendix to Submission 48, Insurance Council of Australia, p33.

⁷⁶ Deloitte Access Economics, February 2014, appendix to Submission 48, Insurance Council of Australia, p33.

⁷⁷ Submission 46, Suncorp Group Limited, p13.

⁷⁸ Submission 46, Suncorp Group Limited, p 13.

The rectification rate is also a good measure of repair quality and our rate is below 0.5 per cent of all repairs.⁷⁹

3.25 Mr David Krawitz, Chief Operating Officer at Allianz Insurance, clarified later during the public hearing that this rate was based on information obtained from a manual review of all Allianz insured repairs from 1 January 2014 to 21 March 2014.⁸⁰ The Committee notes this rate encompasses a variety of levels of rectification, from minor paint issues to major structural and safety problems.

3.26 Representatives from NRMA Insurance also provided information to the Committee in relation to the rate of rectifications for vehicles insured by their company. NRMA Insurance indicated that approximately 500,000 repairs had been conducted in the past three years, with approximately 1,200 rectifications having been required in that period.⁸¹ This would result in a rectification rate of approximately 0.24 per cent. Mr Roy Briggs, Executive General Manager Marketing, Reputation and CTP of NRMA Insurance, also explained to the Committee that the rectification rate would include a wide range of repair quality issues:

Our rectification rate includes, for example, everything from difficult structural repair right down to a speck of paint, so it is a broad range.⁸²

3.27 In response to a question taken on notice by NRMA Insurance during a public hearing on 21 March 2014, Mr Steve Bubulj, Acting Head of Supply Chain for NRMA Insurance clarified the 1,200 quality issues identified within the past three years covered a variety of issues from aesthetic matters to serious potential safety issues.⁸³ Mr Bubulj stated:

Potential safety issues, while being the most serious given they pose a risk to NSW motorists, are in the minority overall but particularly in our Partner Repairer Network.

Human error does occur irrespective of whether repairs were conducted in our partner network or not, and in the information provided to the committee over three years, potential safety issues represented 0.0001% of repairs conducted. Almost 70 per cent of potential safety issues occurred outside of our Partner Network.⁸⁴

3.28 Similarly, in its submission to the Inquiry, the Insurance Council of Australia emphasised that the majority of quality issues involving its members are relatively minor:

Repairing collision damaged vehicles is a complex operation and smash repairers and insurance companies work together to ensure vehicles are repaired properly and in the vast majority of cases do this to the highest standard. In our members' experience where quality issues are identified the majority of these are of a

⁷⁹ Mr David Krawitz, Allianz Australia Insurance, Transcript of Evidence, 21 March 2014, p2.

⁸⁰ Mr David Krawitz, Allianz Australia Insurance, Transcript of Evidence, 21 March 2014, p6.

⁸¹ Mr Steve Bubulj, NRMA Insurance, Transcript of Evidence, 21 March 2014, p18.

⁸² Mr Roy Briggs, NRMA Insurance, Transcript of Evidence, 21 March 2014, p18.

⁸³ Mr Steve Bubulj, NRMA Insurance, Answers to questions on notice, 4 April 2014, p1.

⁸⁴ Mr Steve Bubulj, NRMA Insurance, Answers to questions on notice, 4 April 2014, p1.

relatively minor, cosmetic nature, and do not demonstrate an industry wide issue with the safety and quality of repairs.⁸⁵

3.29 With regard to a possible increase in the number of repair rectifications being identified in recent times, the Committee heard evidence from the Institute of Automotive Mechanical Engineers that the issue of repair rectifications had always been present in vehicles, but that it was being identified by assessors and consumers to a greater degree in recent years.⁸⁶

3.30 Suncorp also emphasised that vehicle complexity is a factor in rectification rates:

Increasing vehicle complexity is also one of the points not only driving the rectifications that are occasionally necessary following a motor vehicle repair, but also continual recalls of cars to rectify manufacturing issues.⁸⁷

3.31 It should be noted that the Committee has not attempted to compare the figures provided by Suncorp, NRMA Insurance and Allianz Insurance and is aware that the figures provided may include different components making any comparison inappropriate. In relation to this, the Committee note the comments by Suncorp:

Without a standard definition of the term, common collection processes or reporting systems, rectification rates cannot be compared between insurers or independent repairers.⁸⁸

3.32 The Committee also acknowledges that it has not actively sought out rectification rates from the smaller players in the insurance industry. However, the Committee considers that given the publicity the Inquiry has generated in the smash repair industry that any significant issues regarding rectification of these smaller players would have been drawn to the Committee's attention.

Rectification Tolerance Rates - what levels of rectifications are acceptable to insurers?

3.33 During the Inquiry Mr Judge of the MTA also expressed concerns to the Committee regarding the rate of insurer tolerance of rectifications. In particular, concerns were raised about insurance companies referring smash repair work to repairers who have already been identified as having produced poor repair work, yet because they are in a relationship with an insurer which entails a low cost of repair for the insurer to bear the repairer is continued to be given work.⁸⁹

3.34 The Committee was concerned about this evidence and accordingly sought information from insurers about what is considered to be an acceptable rectification rate.

3.35 Representatives from NRMA Insurance were questioned about the conditions under which their organisation would end a partner agreement with a repairer.

⁸⁵ Submission 48, Insurance Council of Australia, p5.

⁸⁶ Mr Peter Blanshard, Chief Executive Officer, Institute of Automotive Mechanical Engineers, Transcript of Evidence, 17 March 2014, p27.

⁸⁷ Submission 46, Suncorp Group Limited, p13.

⁸⁸ Submission 46, Suncorp Group Limited, p13.

⁸⁹ Transcript of Evidence, 17 March 2014, p11.

Mr Bubulj indicated that, along with other performance measurers, the repairer's rectification rate would be considered:

Mr BUBULJ: Of course, the rectification rate, because we do not want our partners exceeding any rectification rate which is unreasonable and, of course, the cost which is negotiated and agreed with the repairer.

Ms TANIA MIHAILUK: What is your measure of "unreasonable"?

Mr BUBULJ: Our contracts state no more than 3 per cent. I want to add, we know that repairers will not always get it right. We are not there to hang people out to dry. We want to make sure we work with the industry. We are not going to go to this much effort to set up these relationships only to make our partners fail. It is not in our interests, it is not in our partners' interest because what we were hearing loud and clear five years ago is we wanted some certainty in the industry and that is what we had to work towards.

Ms TANIA MIHAILUK: You have approximately 90 partner agreements at any given time. How many would you end in a year?

Mr BUBULJ: There would be a number in a year. There have been four which are not in the partner network now. Remember, we started close to 18 months ago.

Ms TANIA MIHAILUK: Did you end those arrangements?

Mr BUBULJ: We ended those arrangements, yes.

Ms TANIA MIHAILUK: For what reason did you end them?

Mr BUBULJ: The majority, I would have to check, but I think for not meeting their commercial benchmarks.⁹⁰

3.36 Mr Bubulj's evidence indicates that NRMA Insurance would only consider a rectification rate of 3 per cent or more as being an unreasonable amount of poor quality repairs.

3.37 Suncorp indicated in its submission that under the Suncorp panel repairer agreement which came into effect in April 2014 that repairers are required to have less than 5 per cent re-work required.⁹¹

Committee Comment

3.38 The Committee is concerned by the rectification rates of leading insurers who gave evidence to the Inquiry. The Committee considers these rates indicate that many vehicles are subject to poor repair work and are being returned to the road potentially increasing safety risks to road users, including drivers and pedestrians.

3.39 Of particular concern is the fact that these rates represent repair quality issues that *have* been picked up by industry professionals and consumers – given a lack of consumer ability to identify issues, there may well be numerous other instances that have gone undetected.

⁹⁰ Mr Steve Bubulj, NRMA Insurance, Transcript of Evidence, 21 March 2014, p20.

⁹¹ Submission 46, Suncorp Group Limited, p22.

- 3.40 The Committee is also concerned at the rectification tolerance rates of insurers. Given the number of repairs a repairer may complete annually and, again, the distinct possibility consumers will not detect all poor quality repair issues, NRMA and Suncorp’s tolerance rates of 3 and 5% respectively, are substantial.
- 3.41 While the Committee does acknowledge NRMA’s advice that less than 0.0001% of its repairs have rectification issues involving potential safety issues; and the comments of leading insurers and other stakeholders that vehicle complexity is a factor in a possible increase in rectification rates; the Committee cannot discount the possibility of an increasing trend towards poor quality repairs and potential safety issues.
- 3.42 Given these concerns over the quality of motor vehicle repairs in NSW, the Committee also heard evidence about what may be contributing to these problems, namely industry business models and poor repairer practices. These are discussed in what follows as are the Committee’s recommendations to resolve these issues. The chapter then ends with some more general recommendations to improve repairs that are of the most concern to the Committee – that is, repairs of a structural or safety nature.

THE IMPACT OF INDUSTRY BUSINESS MODELS ON THE QUALITY OF REPAIRS

- 3.43 As discussed in chapter 2 of this report, there are a number of insurance companies that operate in the NSW motor vehicle insurance market. These insurers can support a number of insurance brands and business models. Insurance companies play an extremely influential role in the motor vehicle repair industry in NSW, as approximately 90% of all motor vehicle repairs in NSW are referred to repairers by insurers.⁹²
- 3.44 During the Inquiry, the Committee received evidence that insurance companies are able to use this strong market position to influence smash repairers to manipulate or adjust scopes of repair works for cost reasons (which may have a flow-on effect for the quality of this work).
- 3.45 Mr Rob Stokes, Member for Pittwater, made the following comments to the Committee in a submission to the Inquiry:

I have been informed, however, that the existence of effective competition in the industry is facing significant challenges, and that the interests of motorists are being forgotten in a drive for efficiency by major players that is undermining transparency and repair quality.

I understand that insurance companies of all sizes have sought to establish networked smash repairer schemes and preferred smash repairer agreements to control and manage costs in order to increase their market share within the industry.⁹³

⁹² Submission 51, Motor Traders’ Association of NSW, p3.

⁹³ Submission 73, Mr Rob Stokes MP, p1.

- 3.46 Some of the business models used within the industry by insurers include the 'two-quote' tendering system, preferred repairer schemes, and ownership or part ownership of repair businesses also known as 'vertical integration'. These models and the impact they may have on the quality and safety of repair work are given consideration below.

Quoting and tendering systems used by insurers

- 3.47 The 'two-quote' system used by a number of insurers has been raised as a contributing factor in regards to the quality of repairs. It has been submitted that this system encourages repairers to submit unrealistic quotes which in turn leads to sub-standard repair work. The MTA commented:

Insurance companies are known to adopt what is commonly referred to as a 'two-quote model' in selecting a repairer for each job. A two-quote model (also referred to as a multiple-quote model) is the method of an insurer procuring more than one quote for a particular repair job and choosing the repairer who prepared the cheapest quote.

The use of the two-quote model is extremely disadvantageous to consumers as it encourages repairers to provide unrealistic quotes to vehicles that have not been dismantled which result in works not being done to a quality standard.⁹⁴

- 3.48 A number of repairers have referred to insurance company practices regarding quoting for repairs and the impact this can have on the quality of the repair work undertaken. For example, Mr Garry Maher of L&M Smash Repairs considers that fixed price repairs and/or tendering where the repair is offered to the cheapest repairer is a contributing factor for the increase in rectification rates on repaired vehicles.⁹⁵

- 3.49 Other concerns raised by repairers about quoting systems included those about the tendering done by particular insurers. One repairer considered the tendering processes used by certain insurers resulted in vehicles being repaired to a price rather than a standard:

Damaged vehicle is driven/towed to a repair link centre where the customer's vehicle is left in a shed and repairers are invited to tender for the repair of the damaged vehicle. Regardless of the customer's preference for a repairer [the insurer] also invite contracted repairers that must win a minimum of 50% of their tender's or their repair contracts can be terminated, repairers are also invited to tender for work if additional costs for repair are submitted once the vehicle is disassembled for repair. The winning tender is also adjusted for price by line item, [the insurer] say they let the market set the price yet adjust the winning tender. It is my opinion this system causes repairers to lower their costs to a dangerous level where they must meet a contractual agreement of a 50% win loss ratio, and if further damages are found once the vehicle is fully disassembled for repair the repairer's opportunity for work is diminished.⁹⁶

- 3.50 Another repairer commented that some insurers:

⁹⁴ Submission 51, Motor Traders' Association of NSW, p4

⁹⁵ Submission 1, Mr Garry Maher, p1.

⁹⁶ Submission 50, confidential, p1 (quoted with permission).

...work mostly on a two quote “tendering” system whereby the customer or the insurer obtain two quotes for each job and obviously the cheaper of the two wins the job. Sounds fair.....ummm maybe, but the insurer is then allowed to further reduce the winning quote if the assessor deems it still to be too high.⁹⁷

3.51 A third repairer commented:

... a high volume of insurance work is being directed for the cheapest cost to repair and not to a shop working to a quality standard. The car owner who is steered away generally receives a low quality “get by” and in many cases a sub-standard repair.

Rectification work on cars poorly repaired is at its highest level, mostly coming from the insurance controlled network of workshops.⁹⁸

3.52 These concerns raised by repairers about tendering processes and particularly the two quote system affecting the quality of repairs, have also been raised by consumers.

3.53 One consumer, who had been the victim of poor repairs undertaken by a repairer chosen by her insurer, submitted:

Their system seems to encourage poor quality work by choosing the quote with the lowest final price even if it means awarding jobs without preference to operators whose work they know to be of superior quality. In doing so they are encouraging operators to underquote and underperform in order to keep work coming in.⁹⁹

3.54 A further issue regarding the quoting process was raised by a repairer who indicated that it is a usual practice for insurers to insist on a quote for a repair from a first inspection of a vehicle following an accident. This is problematic because not all damage to a vehicle is visible at the first inspection. The repairer considered that it is not until a vehicle is dismantled and repairs commenced that all the repair work required can be identified. This in turn compromises the repair process as the quote is inaccurate.¹⁰⁰

Committee Comment

3.55 The Committee considers quotes should not be prepared before all damage to a vehicle has been inspected. The Committee also acknowledges the difficulties that repairers face in relation to preparing quotes on vehicles they are unable to dismantle without approval from the insurer as this is prohibited by clause 4.1(b) of the Motor Vehicle Insurance and Repair Industry Code of Conduct.

3.56 The Committee does not consider that there should be a blanket ban on insurers seeking out more than one quote for a repair job. However, the Committee does consider that the quotes prepared for smash repair work should be accurate in terms of the repairs required to be undertaken and the time to undertake such repairs. The Committee gives further consideration to the issue of preparing

⁹⁷ Submission 67, confidential, p4 (quoted with permission).

⁹⁸ Submission 40, name suppressed, p2.

⁹⁹ Submission 61, name suppressed, p.3.

¹⁰⁰ Submission 13, name suppressed, p2.

accurate quotes and the need for quotes to be done in realistic times in Chapters 5 and 7.

Preferred repairer schemes

- 3.57 Preferred repairer schemes have also been raised as a contributing factor to poor quality repairs.
- 3.58 A number of companies providing motor vehicle insurance products in NSW have recommended or preferred repairer programs. These programs involve situations in which an insurer has identified a number of repairers with whom the insurer would prefer to do business, and where a business relationship has developed between the insurer and the repairer.
- 3.59 In the NRMA's case, it has partnering arrangements with 96 'partner repairers' in NSW – 5 year agreements that aim to provide partner repairers with a suitable volume and type of work in return for them meeting the NRMA's performance measures including customer satisfaction levels and the speed with which vehicles are returned to the road.¹⁰¹
- 3.60 In Suncorp's case, its submission to the Inquiry indicated that it has established a network of long term partnerships with recommended repairers who carry out more than 50 per cent of Suncorp's repair work in NSW.¹⁰² For example, Suncorp advised the Committee they have over 150 aligned repairers in metropolitan Sydney under one single agreement:

MR SUMMERS: ...We have aligned repairers and our joint ventures in NSW.

MS TANIA MIHAILUK: For example, the NRMA has 90 partner agreements. How many agreements do you have?

MR SUMMERS: Rob might be able to give the exact number, but it is over 150 in NSW.

MS TANIA MIHAILUK: What is their duration?

MR DEMPSEY: There is a single agreement with a series of repairers. We do not have variations of an agreement. We have one agreement with independent smash repairers in NSW. Rob can comment on the number and duration of those agreements.

MR BARTLETT: As Craig said, we have approximately 150 across NSW. Over 100 of those are directly signed to what we call our Suncorp panel repairer agreement, which is referred to as SPIRA. The new version of that agreement comes into force on 1 April. That is a three-year plus two-year agreement. Both parties have the option to extend it for a further two years. I am fully expecting that to be close to a five-year agreement.¹⁰³

¹⁰¹ See discussion of NRMA's Partner Repairer arrangements, Transcript of Evidence, 21 March 2014, pp19-20.

¹⁰² Submission 46, Suncorp Group Limited, p1.

¹⁰³ Mr Craig Summers, Executive Manager NSW Motor Claims, Suncorp Group Limited, Transcript of Evidence, 21 March 2014, p36.

- 3.61 In the case of Allianz Insurance, the Committee heard that (unlike the NRMA and Suncorp), it does not have contractual arrangements with preferred repairers and instead has a list of ‘select repairers’. Mr David Krawitz, Chief Operating Officer stated:

We have no arrangements or contracts with any repairers in NSW...We have a list of what we call select repairers that any eligible repairers can be on. There are no contracts for being on that list. We derive that list and it changes based on quality, value and customer experience.¹⁰⁴

Concerns About Preferred Repairer Schemes

- 3.62 As can be seen, there are a variety of preferred repairer relationships, but the main quality-related concern from repairers around these schemes related to those that involve agreements for insurers to pay a fixed price for repairs in return for supplying the preferred repairer with a guaranteed number of vehicles to repair. Concerns around preferred repairer schemes as they relate to consumer choice are discussed chapter 6 of this report.

- 3.63 While it has been submitted to the Committee that some preferred repairer programs may assist customers, some programs are ‘so contractually in favour of the insurance company that the temptation to repair a car with an eye to keeping an insurer happy takes precedence over the primary outcome [a high quality repair] being for the insured.’¹⁰⁵

- 3.64 Another repairer commented:

Preferred repairer schemes in our industry, not only create an unlevel playing field amongst repairers, but also provides insurers with increased power over those repairers they have in their schemes. These schemes can result in repairers becoming lazy in marketing their businesses, providing good customer service and quality work. Instead they become reliant on insurers referring them work and processing it as quick as possible to meet the insurers expectations and still remain within their allowed cost as per their contract with the insurer. Some...preferred repairers are on “fixed rate” contracts, which means that no matter the size of the job (up to \$8,000), they only get paid an ‘agreed’ price per job maybe \$2,650 for example. 40...jobs that month = 40 x \$2,650 = \$106,000 no matter what the damage. Logic says that those repairers will try to repair as many things as possible and use as many s/hand parts knowing that they will not be getting paid anything extra – most repairers believe this system is a disaster waiting to happen.¹⁰⁶

- 3.65 The MTA commented on the use of ‘fixed price contracts’ which they argue often form part of the contractual arrangements between insurers and their preferred repairers:

The major insurance companies have fixed price contracts with repairers to fix smaller accident damaged vehicles at a fixed price. The principal of this business model is to supply a large number of vehicles with a set criteria to repair the damage in the fastest and most cost effective manner. More often than not, the repairer would not repair the damage that would not be seen by the consumer due to

¹⁰⁴ Mr David Krawitz, Transcript of Evidence, 21 March 2014, p8.

¹⁰⁵ Submission 28, name suppressed, p3.

¹⁰⁶ Submission 67, confidential, p4 (quoted with permission).

inadequate amount of money. This model is not in the consumer's interest and promotes poor repairs.¹⁰⁷

- 3.66 In its submission to the Inquiry, NRMA Insurance indicated that it does not use 'fixed cost' contracts for repairs:

The commercial arrangements subsequently formed with our Partner Repairers are no different to those arrangements that any business would form with its preferred suppliers. We have no knowledge of any insurer-repairer relationship which is based on a "fixed cost" for repairs model, and we do not operate such a model. NRMA Insurance and its Partner Repairers mutually agreed a variety of commercial contracts tailored to each repairer on terms proposed by the repairers themselves.¹⁰⁸

- 3.67 When questioned by the Committee on this point, i.e. the use of 'fixed cost' contracts Mr Briggs of NRMA Insurance commented:

...it is a commercial model that we have in place with a very small select group of repairers that enables them to predict their revenue and provide certainty. So we contract with them the volume of repairs that we provide and they contract with us the price. Let me be really clear about this: each job is quoted and priced on the work that is required. So, for example, a \$7,000 repair is quoted and paid for as \$7,000, and indeed a \$500 repair is quoted in the same way. What happens when a large volume of repairs takes place is that you move back very close to the average. So what you are talking about are adjustments at the absolute margin. What that enables the repairer to do is to be very efficient and quick in repairing – and not spend hours and hours negotiating prices with us – because they have certainty about the volume and they have certainty about the price. Let me say that we have not imposed that process on anyone, and the repairers who are using it like it because it drives profitability and the future of their business.¹⁰⁹

- 3.68 In further discussion with the Committee NRMA Insurance advised that these commercial models do not apply to safety-related repairs:

If any collision claims involve high structural/complex/safety related repairs, these are quoted line-by-line. In all circumstances all repairers, irrespective of relationship, prepare a line-by-line quote.¹¹⁰

- 3.69 Related to the issue of fixed price repairs is the issue of 'oneies'. The Committee heard that the practice of 'oneies' was essentially compensation for repairers who were on fixed contracts to make money on a 'not-at-fault' repair. A witness before the Committee explained the practice:

MR RAY WILLIAMS: Explain to us what a oneie is?

WITNESS: You have your at faults and your not at faults. If the insured is at fault in an incident, the insurance company is therefore liable to pay for the repair of their car and the subsequent other properties that they damage, being cars or anything else. A oneie is a not at fault where the insurer fixes the car for their insured. Their

¹⁰⁷ Submission 51, Motor Traders' Association of NSW, p5.

¹⁰⁸ Submission 45, NRMA Insurance pp13-14.

¹⁰⁹ Transcript of Evidence, 21 March 2014, p26.

¹¹⁰ Correspondence from NRMA Insurance dated 11 June 2014, p1 (emphasis in original).

insured comes in and says I have had an accident, someone hit me, I am not at fault. They say no problem. We will authorise repairs, we will fix it, you are our customer, but they then seek recovery from the at fault party, usually being another insured, for those costs of repairs.

I have got extensive examples where they are fixing their own client's cars or third party customers claiming on them where they have to cover the cost, they cut it to the bone and they will get the cheapest repair they can. When they can recover, they take it up; the sky is the limit. We are not paying for it, we do not care.

CHAIR: That is the insurer that pockets the difference, it is not the repairer getting paid extra money for doing the work?

WITNESS: No, the repairer gets paid but it is a deal.

CHAIR: A bit of compensation for the repairer.

WITNESS: You repair this \$5,000 job for us for \$3,500 and next we will give you a oneie and that is a five grand job and we will give you seven grand for it.¹¹¹

3.70 NRMA Insurance also commented on the practice noting that they could result in lower repair costs overall for insurers involved in the practice, but that the practice also has the potential to raise the costs of insurance premiums:

Essentially the practice is unethically structured around a competing insurer using repairs NRMA Insurance is liable to pay as insurer of the at-fault party for as either a revenue stream, or to subsidise the repairs this competitor ultimately pays for where their customer is at fault.

An example of this behaviour, which is detrimental to the consumer, is demonstrated in the following scenario.

'Party A' is liable to pay the cost of repairs to 'Party B' following an accident where the liability rests with Party A (eg a NRMA Insurance insured vehicle is at fault in an accident with a competitor's insured vehicle).

Party B (competitor) obtains a repair quote for which Party A (NRMA Insurance) is liable, and the insurer of Party B (competitor), through a pre-arranged agreement with the repairer, authorises a repair cost which is likely to be higher than if Party B (competitor) was liable. The insurer for Party A may not be in a position to challenge the amount or the work undertaken, particularly where the work has commenced or there is no evidence supporting the final amount for which Party A is liable.

If, on a regular basis, multiple 'Party B' type quotes are inflated (relative to other quotes normally obtained by the same repairer) this may serve as an inducement to lower the cost of repairs that the insurer of Party B is liable for, benefiting Party B's insurer with a lower cost of repairs overall.

Such practice is not endorsed by NRMA Insurance and can ultimately affect the price that NRMA Insurance customers pay for their insurance.¹¹²

¹¹¹ Name suppressed, *in camera* Transcript of Evidence 17 March 2014, p14 (quoted by resolution of the Committee).

¹¹² Submission 45, NRMA Insurance, pp41-2.

3.71 The Committee notes the comments made by leading insurers that they do not participate in the practice of 'oneies' or have different quoting methodology for third-party recoveries of not-at-fault drivers. Representatives from Allianz commented in response to a question as to whether they used 'oneies' or other methods of balancing accounts in relation to repairs:

In terms of the quote on a vehicle, we do not have different practices for third-party vehicles and Allianz-insured vehicles; we use the identical practices for both.¹¹³

3.72 Mr Briggs of NRMA Insurance also maintained that NRMA's quoting methodology is consistent regardless of which insurance company is paying the bill.¹¹⁴ In a similar vein, Suncorp advised that they 'absolutely and categorically' do not use that method.¹¹⁵

Reported Benefits of Preferred Repairer Schemes

3.73 The Committee notes that it received evidence in relation to the benefits of preferred repairer arrangements. For example, NRMA Insurance listed the following benefits for those repairers who are part of their partner network:

- Growth opportunities through networking and knowledge sharing;
- Powerful marketing through their ability to link their business with a nationally recognised and trusted brand;
- Tangible contracts that can potentially be used to secure finance from institutions;
- A state-of-the-art workshop booking system;
- Support through technical data gathered by our Research Centre via our relationships with manufacturers;
- Dedicated Relationship Managers and Customer Relations specialists to assist with business issues that they encounter each day;
- Transport options for customers, including taxi and hire cars to and from their repair shops; and
- Modern workshop management practices to help repairers work out ways to best utilise their premises and make them more profitable.¹¹⁶

3.74 Indeed, NRMA Insurance submitted that recommending preferred repairers to its customers 'is the most effective way to control quality of repairs...'.¹¹⁷

3.75 The Committee also received evidence in favour of preferred repairer schemes from both repairers and consumers. It was commented by one smash repair

¹¹³ Mr David Krawitz, Transcript of Evidence, 21 March 2014, p8.

¹¹⁴ Mr Roy Briggs, NRMA Insurance, Transcript of Evidence, 21 March 2014, p21.

¹¹⁵ Mr Craig Summers, Transcript of Evidence, 21 March 2014, p32.

¹¹⁶ Submission 45, NRMA Insurance, p4.

¹¹⁷ Submission 45, NRMA Insurance, p4.

business, that having contracts with insurance companies creates stability for their business and enables them to make investments to ensure they are equipped with the facilities required to repair modern motor vehicles:

...volume based contractual arrangements...create stability upon which we can plan and resource for the longer term...

The assurance provided by these agreements allows SmashCare to invest in state-of-the-art facilities, the latest repair equipment, methods and procedures that improve safety for the driver and for our workshop staff, and workforce training and development. It would be impossible to achieve these objectives if the industry were to revert to the way things were when repairers would compete for every single job and the organisation's future was as far reaching as the next job.¹¹⁸

3.76 The Committee also received five submissions from consumers which relayed the positive experience they had with a preferred repairer. Consumers have commented on the professionalism of preferred repairers and their ability to repair their vehicles in a timely manner to a high quality.¹¹⁹

3.77 The Insurance Council of Australia also commented on the benefits of insurers recommending repairers to their policy holders. When giving evidence before the Committee, Mr Rob Whelan, Executive Director of the Insurance Council commented:

...Over time insurers develop long term relationships with quality repairers under certain repairer codes. Smash repair services are characterised by information asymmetry. A majority of consumers do not have the experience and expertise to compare smash repairers and their quotations. For these consumers there are benefits to relying on insurer recommendations.

Having the insurer organise and manage the entire repair process improves convenience. Repeated interactions allow insurers to assess the quality of repairers. Administrative and scale savings can result in overall lower cost of repair. This in turn can be passed onto consumers in the form of affordable premiums.¹²⁰

Committee Comment

3.78 The Committee acknowledges that preferred repairer schemes can assist customers in having their vehicles repaired in a timely and efficient manner. The Committee also acknowledges that many consumers do not have the knowledge to choose a repairer when involved in an accident and are greatly assisted by insurers recommending a repairer.

3.79 While the Committee has received anecdotal evidence from repairers about contractual arrangements of preferred repairer schemes potentially resulting in poor quality repairs the Committee does not consider preferred repairer schemes in themselves to be the cause of poor quality repairs. In relation to this, the Committee specifically acknowledges NRMA's submission referred to above that

¹¹⁸ Submission 18, SmashCare, p1.

¹¹⁹ See submissions 21, Ms Amanda Grounds; submission 22, Ms Mary Nosworthy; submission 24, Mr Brian Hade; submission 64, Mr Vassilios Kriketos; and submission 65, Mr Leslie Wilson.

¹²⁰ Transcript of Evidence, 17 March 2014, p32.

recommending 'preferred repairers' to their customers 'is the most effective way to control quality of repairs...'¹²¹.

- 3.80 However, the Committee is concerned that insurers are able to use their market dominance in the repair industry to exert pressure on repairers including through contracts with repairers that may involve elements of fixed price repair approaches. Where this occurs, it may have flow on effects for the quality of repairs completed.
- 3.81 In addition, the Committee notes comments made by a number of stakeholders about questionable practices which may be in use throughout the industry to compensate repairers subject to fixed price contracts such as 'oneies'.
- 3.82 While the Committee notes it is important for insurance and repair businesses to have the necessary freedom to appropriately structure their commercial arrangements, fixed price contracts have the potential to include what are commonly known as unfair contract provisions. This is particularly the case if fixed costs result in repairers cutting corners in their repair work to ensure that their business remains profitable.
- 3.83 The Committee further notes that NSW law already provides recourse for motor vehicle *dealers* who are in dispute over unfair contract provisions, or unjust conduct with a vehicle manufacturer. Under the *Motor Dealers and Repairers Act 2013* such dealers can first approach the Small Business Commissioner for assistance in dealing with a dispute and if formal mediation fails the parties to the dispute are able to go to the NSW Civil and Administrative Tribunal (NCAT) to have the matter determined.¹²²
- 3.84 The NSW Small Business Commissioner's role is to support small businesses in a number of ways, including providing dispute resolution services and delivering business advice.¹²³ The NSW Government indicated to the Committee in its submission to the Inquiry that the Small Business Commissioner provides a central point of contact for small businesses to make complaints about their commercial dealings with other businesses.¹²⁴
- 3.85 The Committee considers that motor vehicle *repairers* should be able to raise issues they face in relation to potential unfair contracts with insurers with the Small Business Commissioner under a similar arrangement to that available to motor vehicle dealers. This view was also presented by Mr Rob Stokes, Member for Pittwater who commented in his submission to the Inquiry:

There is merit in the idea that vehicle repair operators should be able to seek assistance with contractual issues they face with insurers under an arrangement similar to that being put in place by NSW Fair Trading between motor vehicle dealers

¹²¹ Submission 45, NRMA Insurance, p4.

¹²² Second Reading Speech, Hon Anthony Roberts MP, *Legislative Assembly Parliamentary Debates*, 24 October 2013, p24744; and Part 6 and Clause 11 of Schedule 2 of the *Motor Dealers and Repairers Act 2013*.

¹²³ NSW Small Business Commissioner website, <http://www.smallbusiness.nsw.gov.au/about/how-can-the-small-business-commissioner-help>, viewed 3 June 2014.

¹²⁴ Submission 69, NSW Government, p7.

and manufacturers – in consultation with the newly established NSW Small Business Commissioner.¹²⁵

- 3.86 The Committee notes that at the time of drafting this report the Commonwealth Government has announced that new legislation will be enacted which will make unfair terms in standard form contracts with small businesses void. This will provide smash repair businesses nationwide with a mechanism to negotiate on, and vary the terms of contracts with insurers if they are deemed to be unfair where previously they have been in the situation of either accepting a contract or not.
- 3.87 Despite these proposed legislative provisions, the Committee still considers that motor vehicle repair operators in NSW should be able to seek assistance from the NSW Small Business Commissioner in regards to any contractual issues encountered during negotiations with insurance companies.

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.

Vertical integration

- 3.88 Concerns have also been raised during the Inquiry that vertical integration impacts on the quality of motor vehicle repairs by creating a conflict of interest. Concerns about the impact of vertical integration on consumer choice are discussed in chapter 6 of this report.
- 3.89 In short, Suncorp has vertically integrated its business, that is, it has ownership interests in repair shops at the same time as selling motor vehicle insurance. Suncorp's 'joint venture' repair shops carry out 21 per cent of all Suncorp repair work.¹²⁶
- 3.90 The first of its joint venture repair businesses is Capital SMART Repairs which Suncorp co-owns with smash repairer Mr Jim Vais. There are 7 Capital SMART Repair shops across NSW and they are designed to undertake small to medium non-structural repairs with an average repair time of 10 hours.¹²⁷
- 3.91 The second of its joint venture repair businesses is QPlus which Suncorp co-owns with smash repairer Mr Daniel Zammit. QPlus only undertakes structural repairs. There is one QPlus facility in NSW, located at Riverwood, and Suncorp has a 60% ownership interest in it while Mr Zammit owns the remaining 40%.¹²⁸
- 3.92 Repairers have raised concerns about the effect that this business model may have on the quality of repairs. For example, one repairer commented:

¹²⁵ Submission 73, Mr Rob Stokes MP, p3.

¹²⁶ Submission 46, Suncorp Group Limited, p7.

¹²⁷ Submission 46, Suncorp Group Limited, p7.

¹²⁸ See submission 46, Suncorp Group Limited, p7; and Mr Sean Dempsey, Executive General Manager Shared Insurance Ventures, Suncorp Group Limited, Transcript of Evidence, 21 March 2014, p34.

By owning and operating their own repair shops...Suncorp has created a huge conflict of interest within itself. In these shops, Suncorp now writes the quote, repairs the car and pays the bill. This creates major concerns for all parties concerned. Who checks the quote is fair and reasonable especially for the at fault party who is paying the bill? Who checks the car has been repaired correctly? These are all done in-house and I believe can easily be compromised, which I think should be a major concern for authorities and other insurers.¹²⁹

3.93 Another repairer commented:

Suncorp own smash repair shops and repair their own policy holders damaged vehicles....There are no checks and balances, no assessments by a 2nd party, and generally it is open slather for the insurer to repair the vehicle in any way shape or form they desire.¹³⁰

3.94 The Committee notes that Suncorp has argued that its joint venture initiatives are innovative and have resulted in repair facilities that are equipped with the technology and skills necessary to repair technologically advanced, modern vehicles. In its submission to the Inquiry Suncorp submitted:

Suncorp considers that its most effective investment in repair industry innovation has been that with our joint venture repairers. These businesses have created industry-leading repair facilities which are redefining quality standards, governance and customer satisfaction. We have remained open and transparent about this investment, regularly communicating with our repairers ahead of the establishment of both ventures opening and throughout their operational milestones.

These repairers have been carefully selected as joint venture partners based on their industry experience and innovative approach to addressing the numerous challenges facing the repair industry.¹³¹

3.95 In addition, the Committee notes that five submissions to the Inquiry providing very positive feedback about having vehicles fixed at a preferred repairer (referred to above) related to a vertically integrated preferred repairer – Suncorp’s Capital SMART Repairs.¹³²

Committee Comment

3.96 The Committee is concerned with the potential conflict of interest that arises out of the fact that insurance companies own 60% of certain repair shops. The conflict of interest becomes more evident in the rate of rectifications from the insurer owned repair shops, which is above that of non-insurer owned repair shops.

3.97 However, as above, the Committee believes that it is important that businesses be given freedom to appropriately structure their commercial arrangements and that Government intervention in this process should be limited to that necessary to avoid demonstrable problems. The Committee is of the view that

¹²⁹ Submission 67, confidential, p6 (quoted with permission).

¹³⁰ Submission 52, confidential, p2 (quoted with permission).

¹³¹ Submission 46, Suncorp Group Limited, pp22-23.

¹³² See submission 21, Ms Amanda Grounds, p1; submission 22, Ms Mary Nosworthy, p1; submission 24, Mr Brian Hade, p1; submission 64, Mr Vassilios Kriketos p1; and submission 65, Mr Leslie C. Wilson, p1.

recommendations made throughout this report, but particularly in this chapter and chapter 5 (which relates to motor vehicle assessors), will address concerns in relation to the quality of motor vehicle repairs without the need for Government to become so interventionist that it bans specific insurer business models.

- 3.98 As above, the Committee deals with concerns about the impact vertical integration is having on consumer choice in chapter 6 of the report and it comes to its conclusions regarding this aspect in that chapter.

POOR REPAIRER PRACTICES AND IMPROVING TRANSPARENCY IN THE REPAIR PROCESS

- 3.99 Leading insurers have commented on poor repairer practices in relation to third-party recovery claims and alleged fraud but did not comment generally on poor practices regarding quality.

- 3.100 Concerns have been raised by leading insurers in relation to the practices of some repairers in relation to not-at-fault consumers after an accident. Suncorp commented:

Unfortunately, there is a pocket of operators within the industry who exploit consumers by “capturing” repair jobs of not-at-fault customers, typically through arrangements with tow truck drivers paid on commission. Some of these cases simply involve extremely high storage fees totalling thousands of dollars. Others, supported by recovery agents and solicitors, include these parties or repairers having consumers sign a contract that allows the repairer to authorise repairs without the insurer’s consent, an activity that is in breach of section 4.1 of the Code.¹³³

- 3.101 In relation to third-party recoveries, repairers claim that insurers are critical of the process because the real cost of the repairs is actually paid. For example, in its submission to the Inquiry the Australian Automotive Repairers Group (AARGI) submit:

Consumers have a common law right to claim damages against a 3rd party, where the 3rd party is at fault. This right gives the consumer the unfettered discretion to have the vehicle repaired at the repairer of their choice. The repairer in this instance can repair the vehicle pursuant to the Code and the Act and not to a cost which is impressed and imposed upon them by the insurance companies. This repair process is immediate and neither the consumer or the repairer is held hostage to threats imposed upon them by the insurance companies. This process is vehemently opposed by insurance companies. To delay the payment process, insurance companies will generally engage a solicitor which adds thousands of dollars to each claim.¹³⁴

- 3.102 NRMA Insurance has submitted that there should be more transparency in the repair process to ensure that quality repairs have been conducted and alleviate fraud:

Since [March 2011] we have uncovered 304 cases of alleged fraud, totalling \$205,915.84. In one repair example alone, we identified alleged fraud totalling

¹³³ Submission 46, Suncorp Group Limited, p17.

¹³⁴ Submission 77, Australian Automotive Repairers Group (AARGI), p12.

\$10,120.07. It was also found, during the course of an audit process that a number of repairers will quote an insurer for a new original equipment manufacturer (OEM)/ Vehicle manufacturer (VM) part, order that part from the Dealership and be invoiced for it. However upon receipt of the part, it would be returned to the Dealership, a credit received and the repairer would repair the damaged part at a significantly reduced cost, whilst continuing to invoice the insurer for the new OEM/VM part. Upon request by the insurer for proof of the new OEM/VM was procured and fitted, the repairer provides a copy of the relevant dealership invoice and claims that it was fitted, when in a number of cases it has not.¹³⁵

3.103 In relation to improving the transparency of the repair process, the Committee heard evidence during the Inquiry in regards to the benefits of using digital image technology during the motor vehicle repair process.

3.104 The Committee heard from NRMA Insurance that IAG Research Centre has conducted substantial work in regards to accurately recording repair processes with digital cameras. The video recordings collated by the research centre serve to assist the insurance company by helping to resolve potential disputes between repairers and insurers.¹³⁶

3.105 The MTA submitted to the Committee that the Government should consider encouraging the use of digital recording of repair processes within the industry in order to ensure accountability and transparency:

Repairers should also be required to document all repairs by keeping file notes, tax invoices, and progress digital imagery. This will ensure greater consistency within the industry and will improve the overall quality of repairs.¹³⁷

3.106 The MTA also commented later in their submission that repairs that require structural work or welded panel replacement should be recorded through the use of digital images in order to assist in verifying the quality of the relevant repair process.¹³⁸

Committee comment

3.107 The Committee acknowledges the concerns raised by insurers about fraud within the industry. To improve transparency in the repair process, the Committee considers that the wider use of digital camera technology across the motor vehicle repair industry would substantially benefit all parties involved in a vehicle's repair, including the consumer, repairer and insurer. The Committee notes that the IAG Research Centre has set a positive example by using digital video recording technology to assist in the repair process and to greater clarify the times involved in the completion of vehicle repair procedures.

3.108 A requirement for repairers to use a digital camera to record the process of a motor vehicle's repair would be encourage repairers to complete repair works to a high quality, especially as the digital record of the repair process would be

¹³⁵ Submission 45, NRMA Insurance, p27.

¹³⁶ Submission 45, NRMA Insurance, p16.

¹³⁷ Submission 51, Motor Traders' Association of NSW, p6.

¹³⁸ Submission 51, Motor Traders' Association of NSW, p12.

required to be available to the consumer and Roads and Maritime Services (RMS) for inspection.

- 3.109 The use of digital images, along with the requirement for vehicles subject to serious structural repair to be certified and for details of these vehicles to be provided to RMS (recommended later in this chapter), are positive approaches to improve accountability throughout the industry and to assist consumers. A requirement for motor vehicle assessors to use realistic time in the assessment of vehicles, as recommended in chapter 5 of this report will also assist in this regard.

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.

GENERAL RECOMMENDATIONS TO IMPROVE THE QUALITY OF STRUCTURAL AND SAFETY-RELATED REPAIRS

- 3.110 As foreshadowed earlier in the chapter, the Committee wishes to end this chapter with some recommendations to improve repairs that are of the most concern to it – those of a structural or safety nature.
- 3.111 While the Committee acknowledges that poor repair work of any nature will have an adverse effect on the value of a vehicle, the Committee considers repairs of a structural or safety nature to be of the greatest concern. Indeed, it has focused on issues surrounding the quality of repairs of a structural or safety nature throughout the Inquiry process.
- 3.112 As above, evidence provided to the Committee regarding rectification rates indicate that many vehicles are subject to poor quality repair work raising real issues about potential safety risks for road users. Again, the Committee is particularly concerned that these figures may under-represent the full extent of vehicles returned to the road with quality issues including safety-related issues given a consumer lack of knowledge to detect problems.
- 3.113 Having regard to the potential consequences for public safety, the Committee believes this is a clear area for Government intervention and has identified a Government audit process as the appropriate action in this area.
- 3.114 In this regard, the Committee acknowledges the NRMA Quality Program, which commenced in March 2011. The program is essentially an audit to ensure that vehicles have been repaired to a quality standard and if poor quality repairs are identified repairers may be placed on a warning or in serious cases contacts with the repairer may be terminated. NRMA Insurance advised that:

The National Repair Quality Framework was launched by NRMA Insurance in March 2011 and is unmatched in the industry. We now inspect on average almost 4,000 vehicles per month and report on quality, safety and alleged fraudulent repairs, as well as conducting audits on smash repair premises and equipment.

.....

Quality inspections are performed on at least 10 per cent of all repairs we authorise, regardless of whether a repairer is a partner or non-partner repairer. In our Partner network we are currently inspecting on average 30 per cent of the repairs completed.

.....

When poor quality repairs are identified, these issues are validated, discussed with the repairer, and our performance management criteria is applied. In serious cases we may issue warnings, or even cease authorising repairs with a particular repairer or termination.¹³⁹

3.115 The Committee also notes that audits are also undertaken by other insurers. For example, in its submission Suncorp advised:

Suncorp's team of specialised assessors who undertake audits targeting complex structural repairs across NSW to ensure Suncorp's repair standards are being met and repairs are high quality. Where issues are discovered, a coaching element is used to assist repairers to overcome them. If the issue is viewed as systemic or negligent, the issue will be performance managed, with final warnings or further action to be taken.¹⁴⁰

3.116 The Committee commends the audits of repair quality undertaken by insurers and believes they should be continued. However, the Committee also believes that Government regulation should be introduced to apply a random auditing process to *all* repairs of a structural nature. Currently, once a vehicle has been repaired, there is no requirement for a record of the repair to be kept by any Government agency and there is no legislated requirement for subsequent checks on the quality of that repair. The Committee considers such audits would encourage quality repairs.

3.117 Structural repairs are often the most complex and difficult repairs and they can have serious consequences for consumer and public safety if they are not completed to an appropriate standard. There is a need for vehicles subject to structural repairs to be tracked and monitored over time, to enable the quality of repair to be checked thereby increasing repairer accountability.

3.118 In its submission to the Inquiry the Australian Automotive Repairers Group (AARGI) submitted:

AARGI supports an independent body to be set up by the government to have the authority to randomly inspect motor vehicle repairs and assessments at any time during the repair process and after repairs are completed. This can be instigated by an increase in annual licensing fees.¹⁴¹

3.119 Under the process proposed by the Committee, motor vehicle assessors would need to provide the details of all vehicles subject to structural repairs to RMS for inclusion on a register. This reporting obligation would be a condition of each motor vehicle assessor's licence (see chapter 5 for more detail regarding

¹³⁹ Submission 45, NRMA Insurance, p31.

¹⁴⁰ Submission 46, Suncorp Group Limited, p15.

¹⁴¹ Submission 77, Australian Automotive Repairers Group, p11.

licensing) and any failure to report would result in disciplinary action. The details would not be made public by RMS, but would be used by RMS to identify structurally repaired vehicles to randomly audit to assess repair quality and safety.

- 3.120 The Committee acknowledges the concerns of leading insurers that more regulation has the potential to increase the cost of repairs which in turn will lead to an increase in car insurance premiums.¹⁴² However, the scheme proposed by the Committee involves a minimal reporting exercise and greater regulation to ensure quality repairs could potentially result in lower rectification rates and a *reduction* in the overall cost of repairs. In any case, given the link between structural repairs and potential safety issues, the Committee is of the view that there is a strong justification for increased regulation in this area.

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.**

- 3.121 As noted earlier in the chapter, the Committee considers other measures to improve the quality of repairs in Chapter 5 of this report, which relates to motor vehicle assessors.

¹⁴² See for example, submission 46, Suncorp Group Limited, p33.

Chapter Four – Technological changes and their impact on safety

- 4.1 During the Inquiry, comment was made by a number of stakeholders in relation to technological changes in motor vehicles and the effect of these changes on the repair industry. For example, Mr Peter Blanshard, CEO of the Institute of Automotive Mechanical Engineers commented:

I look at some of the repairs that are required today and some of the technologies that are involved...Looking at the thickness of paint on sensors; we have a lot of vehicles that can avoid accidents and try and reduce this but there is certain criteria that is needed for the thickness of paint on bumper bars. Vehicles have to be re-engineered for their next accident, not just pulled straight and colour matched.¹⁴³

- 4.2 Leading insurers also see vehicle technology as a key challenge for repairers. In its submission to the Inquiry Suncorp commented:

A key challenge for repairers is the evolving nature of vehicle technology. Modern cars are increasingly complex with new materials introduced to improve fuel efficiency. New electronics improve road safety. Today's new car can have up to 11 different types/grades of steel and 5-0-70 electronic systems, such as adaptive cruise control, side airbags, and automated reverse parking.

These technologies result in challenging repair jobs requiring in-depth knowledge of the vehicle and its systems, along with new equipment and better training. Consider the skills and equipment associated with diagnosing and repairing damage to any number of the 70 different electronic systems in a modern car. In many cases, even the original manufacturer is unfamiliar with many of these components due to outsourcing arrangements, and many car repairs now require electronics and internet expertise.¹⁴⁴

- 4.3 The MTA also commented that increased technology in vehicles results in more complexity with repairs but that these complex repairs are a small percentage of all repairs undertaken to motor vehicles following accidents:

MR GREG PIPER: Can I say insurers seem to be saying, because of the complexity of the modern motor vehicle, that there is a requirement for a higher standard training, the equipment that is required is much more expensive, smaller repairers cannot compete with the needs or perform with the needs they have. Have you found that that is the case?

MR JUDGE: I would agree with that completely, it is getting harder but it is more so with your high end vehicles, Mercedes, Audi, BMW, Porsche, that sort of thing. Your average Holden, Ford, Toyota, Mazda, not every claim is to replace a chassis rail or section a major member of the under body. We are talking about cars that are

¹⁴³ Mr Peter Blanshard, Transcript of Evidence, 17 March 2014, p19.

¹⁴⁴ Submission 46, Suncorp Group Limited, p26.

having front guards replaced and bumper bars and bonnets; bolt on, bolt off, clip on, pretty straight forward stuff. If something is made of plastic that cannot be welded or repaired, you throw it in the bin and you put a new one on. It is not difficult to replace four bolts. It is not difficult to replace some welded panels. It becomes more difficult when you start talking high strength metals.

MR GREG PIPER: Complex welding?

MR JUDGE: Yeah, that sort of thing. I would figure that 10 per cent of vehicles that are subject to claims are towed. You have still got 90 per cent that are driving around that just need a bolt on panel to be taken off. There might be a repair on the inner hinge pillar or something like that but we are not talking major complexity.¹⁴⁵

THE NEED FOR MANUFACTURERS' SPECIFICATIONS TO BE READILY AVAILABLE

4.4 A key issue raised with the Committee in regards to repair technology was the importance of vehicle manufacturer specifications being provided to repairers, and repairers following these specifications when repairs are conducted on vehicles.

4.5 The Federal Chamber of Automotive Industries (FCAI) submitted to the Committee that, in the interests of attaining high levels of safety and quality, smash repair work should be conducted in line with the relevant vehicle manufacturer's procedures and specifications.

It is essential that smash repair work is carried out with reference to the original design specifications and manufacturers recommended procedure to ensure that any vehicle is safe when repaired and still compliant with the applicable Australian Design Rules and manufacturer's specifications. Applying these principles to repair work will ensure that the interests of the consumer in the motor vehicle.¹⁴⁶

4.6 In fact, the Committee notes this is a requirement of the Motor Vehicle Insurance and Repair Industry Code of Conduct, which provides:

Insurers will not require Repairers to carry out repairs that are not in accordance with 'the documented manufacturer's technical specifications including those supplied by other industry recognised agencies or authorities.'¹⁴⁷

4.7 The MTA advised the Committee that, to accompany technological advancements in vehicles, some vehicle manufacturers have started to provide repairers and consumers with guidelines and procedures for repairing their motor vehicles, including Toyota. The MTA also advised the Committee that repairers and insurance companies should be required to follow the specific guidelines provided by manufacturers when repairs are attempted.¹⁴⁸

4.8 The Committee heard from a number of motor vehicle repairers during the Inquiry about their ability to access manufacturer specifications for the purpose

¹⁴⁵ Transcript of Evidence, 17 March 2014, p9.

¹⁴⁶ Submission 68, Federal Chamber of Automotive Industries, p2.

¹⁴⁷ Sub-clause 1.2 Motor Vehicle Insurance and Repair Industry Code of Conduct.

¹⁴⁸ Submission 51, Motor Traders' Association of NSW, p6.

of repairing a vehicle. The Committee heard that it is not easy for repairers to obtain access to specification information, and that access to specifications via the internet often required payment of an access fee. The Committee was informed that repairers are generally not compensated for costs in time and fees that are incurred by repairers when they attempt to obtain vehicle specifications. Generally, it appears that manufacturer specifications are difficult to acquire for every vehicle type, and often involve costs in terms of time and money for repairers.¹⁴⁹

4.9 The need for vehicle manufacturers to provide vehicle specifications to assessors and repairers was highlighted by Mr Blanshard of the Institute of Automotive Mechanical Engineers:

Mr RAY WILLIAMS: Which then comes back to that every repair should be as per the vehicle manufacturer's specifications?

Mr BLANSHARD: As best as can be followed, yes.¹⁵⁰

Mr GREG PIPER: Would you support vehicle manufacturers having to provide all the repair specifications to all assessors and all repairers because my understanding is that does not happen now?

Mr BLANSHARD: One hundred per cent. You are just guesstimating otherwise—100 per cent. If they have prepared a car, if they have built it, they know how to re-engineer it; they need to share it.¹⁵¹

4.10 Leading insurers have also commented on the difficulty repairers face in obtaining specifications from manufacturers when repairing vehicles. Suncorp commented:

An additional technical challenge is gaining access to manufacturers' specifications in the market, with some of the 62 brands in the domestic market providing limited access to manufacturers' specifications. Best practice, as outlined in the Motor Vehicle Insurance and Repair Code of Conduct, requires all repairs to be undertaken to manufacturer specifications. The Commonwealth Consumer Affairs Advisory Council (CCAAC) examined this issue in 2012, and found:

*"In the absence of an effective, industry-led outcome in a reasonable period of time, there may be a case for government intervention. CCAC is of the view that the accessibility of repair information could become a barrier to competition in the automotive repair industry. CCAAC urges the automotive industry to expedite current processes to develop, within a reasonable period of time, an outcome (such as a voluntary industry code of conduct) that ensures there is a process for independent repairers to access repair information."*¹⁵²

¹⁴⁹ Comments made by motor vehicle repairers during *in camera* hearings.

¹⁵⁰ Transcript of Evidence, 17 March 2014, pp20-21.

¹⁵¹ Transcript of Evidence, 17 March 2014, p25.

¹⁵² Commonwealth Consumer Affairs Advisory Council, 'Final Report on Sharing of Information in the Automotive Industry' 27 November 2012, Commonwealth Consumer Affairs Advisory Council website, <http://ccaac.gov.au/files/2011/07/Final-report-on-sharing-of-repair-information-in-the-automotive-industry.pdf>, viewed 2 June 2014, Executive Summary pv, as quoted in Submission 46, Suncorp Group Limited, p26.

- 4.11 Suncorp has advocated for manufacturers' specifications to be readily available. In its submission to the Inquiry Suncorp recommend:

Support the ongoing efforts of the Commonwealth Consumer Affairs Advisory Council to require manufacturers who sell cars in Australia to make their vehicle repair specifications readily available to all smash repairers.¹⁵³

- 4.12 The Committee notes that some leading insurers have been able to invest in software to provide its network of repairers access to manufacturers' specifications. For example, in its submission to the Inquiry Suncorp stated:

Suncorp has directly invested in bringing [escribe] international program to the Australian repair industry. Thatcham escribe provides better access to come of the manufacturer's specifications, which are currently unavailable to the general insurer and repairer industries (an issue highlighted by the Commonwealth Consumer Affairs Advisory Council).¹⁵⁴

- 4.13 The NRMA have also indicated that their partner repairers have access to manufacturer specifications and technical data through its Research Centre.¹⁵⁵

- 4.14 The Committee is of the opinion that it would be optimal for vehicle manufacturer specifications to be provided to all repairers and assessors, in order to assist in the accurate assessment, quoting, and repair of damaged vehicles. Requiring that manufacturer specifications are provided to repairers and assessors would be a constructive move towards ensuring that professionals in the motor vehicle repair industry are fully equipped with adequate knowledge to approach the repair of vehicles.

- 4.15 The Committee, when considering the implementation of a requirement for the provision of specifications by manufacturers, recognises that there is likely to be issues with regard to the intellectual property rights that manufacturers hold over the specifications of their vehicles. The Committee also notes the lack of evidence received from representatives of manufacturers with regard to the importance of manufacturer specifications in repairs to motor vehicles, particularly new and advanced models.

- 4.16 In addition, the Committee acknowledges that matters with regard to vehicle manufacturers are of national importance, given the wide distribution of makes of vehicle across Australia. Similarly, the Committee considers that any requirements with reference to vehicle manufacturer specifications would be need to be regulated through the Australian Consumer Law.

- 4.17 The Committee is of the view that the NSW Government should approach the Commonwealth Government seeking amendments to the Australian Consumer Law to require all manufacturers that sell vehicles in Australia to make their vehicle repair specifications readily available to all repairers and assessors.

¹⁵³ Submission 46, Suncorp Group Limited, p3.

¹⁵⁴ Submission 46, Suncorp Group Limited, p16.

¹⁵⁵ Submission 45, NRMA Insurance, p14.

FINDING 1

It is important for vehicle manufacturer specifications to be provided to repairers and assessors and for repairers and assessors to follow these specifications in assessing, quoting and repairing damaged 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.

THE USE OF GENUINE PARTS AND NON-GENUINE PARTS IN REPAIRS

- 4.18 Related to the issue of ensuring that all vehicles are repaired in accordance with manufacturers' specifications, is the use of non-genuine and parallel parts in the repair process.
- 4.19 Concerns have been raised by a number of repairers about the quality of parts insurers are forcing repairers to use. One repairer claimed that many aftermarket parts do not comply nor meet manufacturers' standards or specifications, which will compromise the standard of repairs to the consumer.¹⁵⁶ The Committee also heard that where parts used are non-genuine, they can void a manufacturer's warranty.¹⁵⁷
- 4.20 Leading insurers have indicated they utilise non-genuine parts for reasons such as 'reducing waste', turnaround times for repairs and cost issues. For example, Suncorp submitted:

With around 600,000 vehicles reaching the end of their life each year, and parts making up to half the cost of repairs commissioned for Suncorp customers, Suncorp sees an opportunity to reduce waste for the community by increasing the use of green parts in Australia.

Other markets, such as Europe and the US, have been driving competition and higher usage of alternative parts for years through legislative, voluntary and regulatory reforms. A high Australian dollar and multi-layered supply chain has resulted in consumers paying more for parts than they should, while parts supply issues account for regular delays to returning cars to the road.

The total cost of parts in Australia for a \$21,000 medium-sized hatch may be \$114,081 – or 543 per cent of the car's purchase price. This cost is reflected in repair costs, and therefore consumers' premiums. In addition, many of the statements of quality made by these parts importers do not appear to be supported by verifiable evidence on the standard measures of form, fit or function. Some OE parts are produced by outsourced providers, and again there is no independent verification of the statements in respect to the OE part's fit, form and function made by these importers.

Increasingly the international standard is independent certification of new replacement parts, regardless of origin. Adopting such an approach in Australia

¹⁵⁶ Submission 4, confidential, p1 (quoted with permission).

¹⁵⁷ Submission 67, confidential, p8 (quoted with permission).

would significantly improve consumer safety outcomes, while ensuring a fairer competitive base for all imported repair replacement parts.¹⁵⁸

4.21 Some insurers specify in their product disclosure statements that new original or genuine parts will be used if the vehicle is under the manufacturer’s standard new car warranty period.¹⁵⁹

4.22 NRMA Insurance advised the Committee that it generally recommends genuine Original Equipment Manufacturer (OEM) parts for vehicles under three years old but may use ‘replacement or re-useable parts for non-mechanical repairs:

When it comes to parts, NRMA Insurance’s parts criteria predominantly recommends genuine OEM parts for vehicles less than three years old. This policy is based on our commitment to quality and safety.

Replacement parts typically include items such as grilles, radiators, head lamps, tail lamps, impact (bumper) beams, panels, doors, fascias, spoilers, mouldings, trim and wheels.

.....
..

In relation to replacement parts our policies currently state that repairs will take place using new (OEM or genuine parts or quality non-mechanical re-useable parts.

As of February 2014 the policy states non-mechanical re-useable parts or non-genuine parts should only be used when this:

- Is consistent with the age and condition of the vehicle;
- Does not affect the safety and structural integrity of the vehicle;
- Complies with the vehicle manufacturer’s specifications and applicable Australian Design rules;
- Does not adversely affect the post repair appearance of the vehicle; and
- Does not void or affect the warranty provided by the vehicle manufacturer.¹⁶⁰

4.23 The Committee received evidence from a number of repairers that despite the disclosures made by insurers regarding the use of genuine parts on vehicles under manufacturers’ warranties that there have been instances when non-genuine parts have been authorised for use by assessors.¹⁶¹

4.24 The Committee heard that the use of non-genuine parts in itself is not an issue but rather that the sensors or other technology is reset when the vehicle is

¹⁵⁸ Submission 46, Suncorp Group Limited, pp24-25.

¹⁵⁹ See for example, ‘AAMI Comprehensive Car Insurance PDS’, 1 October 2013, AAMI website, <http://www.aami.com.au/sites/default/files/fm/pdf/comprehensive-car-pds.pdf>, p37.

¹⁶⁰ Submission 45, NRMA Insurance, pp17-18.

¹⁶¹ Confidential correspondence received from a repairer, 22 May 2014, pp1-2 (quoted by resolution of the Committee).

repaired and that the parts are fit for purpose. In response to a question about the use of genuine parts, Mr Blanshard, CEO of the Institute of Automotive Mechanical Engineers commented:

I do not know if genuine parts are ultimately required on a motor vehicle repair. The reason why I say that is you do have the situation with parallel parts. The same factory produces the same glass. I have got no problems with any glass that may go into a motor vehicle providing the advice to the consumer and providing the job is done right. You can put any glass in the front of that car as long as you use the correct urethane but you need to reset the sensors when it goes on.

The same applies if you are looking at brake pads. You can get any brake pads and in fact ADT or ADD or whatever in Germany, they produce brake pads for Volvo and BMW, but they also produce a non-genuine set. The specifications are exactly the same. It comes out of the production line exactly the same. One is in the box, one is in the other. Proton have a place in Asia that produces bonnets and it is one that goes to the after-market and one goes to themselves. It is exactly the same bonnet each time.

You cannot say that you must every time reach for a genuine part. If the part is certified and the part is fit for purpose.¹⁶²

Committee Comment

- 4.25 The Committee considers that only genuine parts should be used for vehicles that are under the manufacturer's warranty as it is recognised that the use of non-genuine parts would invariably void vehicle warranties.
- 4.26 The Committee acknowledges that the product disclosure statements of many motor vehicle insurance policies specifies that only genuine parts will be used for vehicles under manufacturer's warranties except in relation to specified parts.
- 4.27 The Committee is of the view that consumers should be notified by their insurer when a non-genuine part is used on their vehicle, if the vehicle is under a manufacturer's warranty as this would be considered a change in the contract agreed to by the respective parties. The Committee considers that it is the role of the assessor to ensure that the non-genuine part is fit for purpose and complies with Australian Standards.

¹⁶² Transcript of Evidence, 17 March 2014, p21.

Chapter Five – The role of motor vehicle assessors in ensuring quality repairs

- 5.1 During the Inquiry the role of the motor vehicle assessor in the motor vehicle repair industry was highlighted by a number of stakeholders. The Committee considers that assessors play a crucial role within the industry as they act as a link between consumer, repairer and insurer, and often they are responsible for approving decisions regarding costs of repair and repair approaches. The role of assessors is detailed in this chapter. The Committee gives consideration to how assessors can assist in bringing increased accountability and transparency to the industry, in the interests of ensuring public and consumer safety.

THE ROLE OF MOTOR VEHICLE ASSESSORS

- 5.2 The Motor Vehicle Insurance and Repair Industry Code of Conduct defines an assessor as ‘an employee, assessing contractor or agent of an Insurer, who is engaged to assess Motor Vehicle accident damage and/or negotiate Repair Estimates between Insurers and Repairers.’¹⁶³
- 5.3 The Committee heard from a range of stakeholders about the role of an assessor. Suncorp Insurance indicated that, in their organisation’s view, ‘an assessor’s job is so much more than looking at the repair. It is ensuring that the customers’ needs are taken into account after an accident.’¹⁶⁴
- 5.4 More importantly, the Committee heard about the importance of assessors in ensuring that vehicles are repaired to a quality standard. In a submission to the Inquiry, Innovation Group, a nationwide independent assessing group commented:

The overriding responsibility of an assessor is to ensure that a damaged vehicle is correctly reinstated to a pre-accident condition at an appropriate cost. In other words, to eliminate any risk with the integrity and ongoing safety of a motor vehicle, in a cost effective way.¹⁶⁵

- 5.5 Innovation Group advised that the functions of an assessor can be separated into four key areas as follows:
- (i) Confirming the validity of a motor accident claim – including incurred damage matches the incident description and identification of potential fraudulent activity;
 - (ii) Ensuring a high quality outcome – including that the repair method is appropriate both in terms of being cost effective and ensuring vehicle safety;

¹⁶³ Clause 3, Motor Vehicle Insurance and Repair Industry Code of Conduct.

¹⁶⁴ Mr Sean Dempsey, Suncorp Group Limited, Transcript of Evidence, 21 March 2014, p38.

¹⁶⁵ Submission 78, Innovation Group, p1.

(iii) Repair/claim cost control – is the repairer’s estimate fair and reasonable to facilitate the repairs?

(iv) Customer Service – including timeliness and location of repairs and liaison with policy holders/ third parties/ intermediaries.¹⁶⁶

5.6 The role that assessors play in approving appropriate repairs and the repair method was also commented on by Mr Peter Blanshard, Chief Executive Officer of the Institute of Automotive Mechanical Engineers:

MR DOYLE: At the end of the process, Mr Blanshard, what does the assessor say? Does he state this vehicle needs X, Y and Z repairs or it costs this amount of money or will take this amount of time? Does the assessor give that much detail?

MR BLANSHARD: If the assessor was doing it right and he was working with a well educated qualified estimator, they should talk through the repair plan. They should both have a very good idea of the methodology of returning that vehicle back to its pre-accident condition and they would probably have discussions about it. Then they would look at the times, the parts that were listed and they would then go through their normal monetary checks of it.¹⁶⁷

INDEPENDENCE OF ASSESSORS

5.7 The issue of whether assessors should be independent was raised throughout the Inquiry. Under current arrangements the majority of assessors are employed by insurance companies. Concerns were raised by stakeholders that the arrangement resulted in a conflict of interest, with assessors more concerned about ensuring a better cost for the insurance company than about the quality of the repair.

5.8 The Motor Traders’ Association of NSW (MTA) commented on the potential conflict of interest that can arise when assessors are directly employed by insurers:

There is a clear conflict of interest because assessors have a duty to their employer to act in the best interest of the insurance company and simultaneously to ensure the damaged vehicle is repaired to a quality standard. Through its members, the MTA are aware that the interests of the insurance company prevails [the] majority of the time.¹⁶⁸

5.9 In verbal evidence to the Committee, Mr Greg Patten, Chief Executive Officer of the MTA stated:

The assessors, which are the link between the insurance company, the repairer and the consumer, should all be independent. We make that recommendation because if they are licensed and independent of the repairer, independent of the insurance company, they can have a look at the job and if the job takes 20 hours to fix and needs a chassis rail to be replaced and needs other things to be replaced, they make a decision on the proper time and quality and say, yes that is a fair price, on proper

¹⁶⁶ Submission 78, Innovation Group, pp1-2.

¹⁶⁷ Transcript of evidence, 17 March 2014, p24.

¹⁶⁸ Submission 51, Motor Traders’ Association of NSW, p5.

time and quality or no, it is not. If the repairer wants to take advantage they can knock it back, but quality and proper time are the basis of it rather than just this cost reduction.¹⁶⁹

- 5.10 Support for independent assessors was also found in a number of repairers. For example, Mr Garry Maher, a motor vehicle repairer, submitted to the Committee that a requirement for all assessors to be independent would allow for greater checks on the quality of motor vehicle repair work and would contribute to a higher quality of overall repair:

Assessing should be carried out by Independent Qualified and Certified assessors. One standard should be followed and the assessors should be able to carry out inspections of work in progress and final quality inspections as part of their job.¹⁷⁰

- 5.11 Another repairer commented that requiring assessors to be independent would remove any perceived conflict of interest:

An alternate way to handle insurance assessments and authorisations could be to have them carried out by independent loss assessing companies. This would divorce the Insurance Company from an internal process and require qualified licensed Assessors working on behalf of independent assessing firms being responsible for both the appropriate repair method and fair and reasonable cost being independently adjudicated.¹⁷¹

- 5.12 Innovation Group commented that the benefits of an independent assessor included increased accountability; improved impartiality as an assessor would be less likely to be influenced by commercial arrangements that exist between the repairer and insurer; and improving quality and safety standards as independent assessors would be able to perform a quality control or audit function.¹⁷²

- 5.13 Insurance companies did not support calls for assessors to be independent. Allianz Australia Insurance indicated it would be opposed to the introduction of independent assessors, due to uncertainties around the payment of independent assessors and whether the insurer or repairer would pay for the services of an assessor.¹⁷³

- 5.14 The Insurance Council of Australia submitted that insurers having responsibility for assessments resulted in repairs being assessed appropriately. The Council's submission explained the insurer perspective with regard to the use of assessors employed by insurers:

Under an insurer recommendation model, insurers have more incentive to assess a repair correctly. Incorrect assessments could lead to unexpected increases in costs in the short term, as – if an insurer accepts the repairer's contention – they may be required to pay the repairer an additional amount to fix the undiagnosed damage.

¹⁶⁹ Mr Greg Patten, Transcript of Evidence, 17 March 2014, p7.

¹⁷⁰ Submission 1, Mr Garry Maher, p1.

¹⁷¹ Submission 28, name suppressed, p2.

¹⁷² Submission 78, Innovation Group, pp4-5.

¹⁷³ Mr Nicholas Scofield, General Manager Corporate Affairs, Allianz Australia Insurance Limited, Transcript of Evidence, 21 March 2014, p4.

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THE ROLE OF MOTOR VEHICLE ASSESSORS IN ENSURING QUALITY REPAIRS

There are long-term consequences if insurers do not adjust incorrect assessments as necessary.¹⁷⁴

- 5.15 Concerns were also raised with the Committee that a system of independent assessors would not be immune from corruption. The Committee heard instances of where independent assessors inflated quotes for the benefit of repairers. For example, in evidence before the Committee Mr Graham Judge, Acting Body Repair Division Manager of the MTA commented:

...I am aware that you have submissions from consumers where one consumer in particular ran into the back of a taxi. The taxi driver stopped on the Harbour Bridge for no good reason, the consumer ran into the back of the taxi and she received a bill for \$12,000. An independent assessor decided that was a fair and reasonable price. When we investigated, the car was off the road for two shifts and the pricing of the repair could not be justified.¹⁷⁵

- 5.16 In addition, questions were raised about how the independence of assessors would be regulated given 90% of repair work comes from insurance claims and accordingly assessors would still be influenced by insurance companies.¹⁷⁶

Committee comment

- 5.17 The Committee acknowledges there is a potential conflict of interest for insurance companies to be the assessors authorising the repairs and authorising the cost of repairs.
- 5.18 The Committee considers there is merit in the idea of divorcing assessors from insurance companies. However, it acknowledges that there are difficulties with establishing a system of independent assessors, including the need to implement measures to ensure assessors are not beholden to one particular insurance company.
- 5.19 The Committee is of the view that other measures, such as licensing arrangements for assessors, can be implemented to provide for greater accountability of assessors, which will ensure that repairs and the repair method are authorised appropriately. Further consideration is given to this below.

LICENSING OF ASSESSORS

- 5.20 The issue of whether assessors should be licensed was a recurring theme throughout the Inquiry. Motor vehicle loss assessors were licensed in New South Wales until 1996 when the licensing type was deregulated.¹⁷⁷

¹⁷⁴ Deloitte Access Economics, Feb 2014, appendix to submission 48, Insurance Council of Australia, p12.

¹⁷⁵ Transcript of evidence, 17 March 2014, p12.

¹⁷⁶ Comments made during *in camera* hearing.

¹⁷⁷ NSW Fair Trading, 'Regulatory Impact Statement: Motor Dealers and Repairers Regulation 2014', May 2014, NSW Fair Trading website, http://www.fairtrading.nsw.gov.au/biz_res/ftweb/pdfs/About_us/Have_your_say/Motor_dealers_and_repariers_regulation_2014_RIS.pdf, p12.

- 5.21 A number of stakeholders called for the reintroduction of a licensing requirement for assessors. At the public hearing held on 17 March 2014 Mr Patten of the MTA commented:

...it is a goal of the organisation for probably some years now to have assessors licensed. They were licensed, we believe, around 15 years or so ago, there was a licence category under the Motor Vehicle Repair Act as it was then. That seems to have disappeared and since that time there has been a change in the insurance world and assessors have not been required to have any individual certification so that they can keep performing their work in this industry.¹⁷⁸

- 5.22 In its written submission, the MTA recommended the following to the Committee:

A new licensing category created called "independent motor vehicle loss assessor" which must be independent of the insurance companies and the repairers. The independent loss assessor to be responsible for assessing damages and approving costs of repairs.¹⁷⁹

- 5.23 Repairers agreed that a licensing arrangement should be put in place for all assessors. For example, the Australian Automotive Repairers Group considered requiring assessors to be licensed would ensure accountability in the assessment process:

Loss assessors, whose primary source of income is received by the insurance companies are also encouraging repairers to adopt methods which compromise quality but save costs. This conduct is in breach of the Code and therefore assessors must also be deterred from such conduct. We suggest a licensing regime where assessor's licences can be suspended and they can be fined.¹⁸⁰

- 5.24 Leading insurers did not oppose the reintroduction of a licensing scheme for assessors. During a public hearing, Mr Sean Dempsey, Executive General Manager, Shared Insurance Ventures, also commented that Suncorp Insurance would be supportive of any efforts made towards ensuring the quality of assessors in New South Wales, including the possibility of a licensing system.¹⁸¹

- 5.25 With regard to the licensing of tradespeople involved in motor vehicle repair work, NRMA Insurance made the following comments to the Committee:

Licensing is valuable in that it provides a consumer protection framework which affords the general public the opportunity to deal with someone who has appropriate qualifications for the service delivered, as well as providing a mechanism for regulators to enforce compliance and remove unfit persons from the licensing system.¹⁸²

- 5.26 The Committee did not receive any evidence in relation to how a licensing scheme would be administered. Accordingly, the Committee considered licensing

¹⁷⁸ Mr Greg Patten, Transcript of Evidence, 17 March 2014, p12.

¹⁷⁹ Submission 51, Motor Traders' Association of NSW, p5.

¹⁸⁰ Submission 77, Australian Automotive Repairers Group, p6. See also submission 28, name suppressed, p2.

¹⁸¹ Mr Sean Dempsey, Suncorp Group Limited, Transcript of Evidence, 21 March 2014, p38.

¹⁸² Submission 45, NRMA Insurance, p42.

arrangements for other schemes that could be provide a model for the licensing of motor vehicle assessors.

- 5.27 Of note is the Vehicle Safety Compliance Certification Scheme (VSCCS). Under the VSCCS, modified vehicles and non-standard vehicles may be assessed to check if they comply with legislated vehicle standards. Vehicles that comply with the standards and do not pose a safety risk are issued with a VSCCS compliance certificate.¹⁸³
- 5.28 Under the scheme certifiers are licensed to inspect non-standard vehicles and certify compliance with the relevant vehicle safety standards. To obtain a license a certifier must be an individual with relevant qualifications and it is a condition of the licence that the certifier holds \$20 million public liability insurance and \$5 million professional indemnity insurance.¹⁸⁴

Committee comment

- 5.29 The Committee considers that a licensing scheme for assessors should be re-established. Assessors, in approving quotes for repairs, are responsible for ensuring that the appropriate repairs are undertaken on a vehicle, that the repair method is suitable and that the repairer has the necessary expertise and equipment to undertake the repairs.
- 5.30 The Committee notes comments made in the regulatory impact statement for the Motor Dealers and Repairers Regulation 2014 that reintroducing licensing for assessors would impose another layer of regulation on assessors and 'would require both individual assessors and insurance companies to obtain a motor vehicle repair licence.'¹⁸⁵
- 5.31 However, this statement is premised around the licensing requirement for assessors falling within the Motor Dealers and Repairers Regulation 2014 and being administered by the NSW Fair Trading because the assessor's licence will be separate from the repairer's licensing scheme.
- 5.32 The Committee considers that Roads and Maritime Services (RMS) is the appropriate agency to administer the licensing scheme for assessors, given that it is the agency with overall responsibility for checking the road worthiness of vehicles under current certification schemes such as the VSCCS.
- 5.33 In addition, the Committee has recommended in Chapter 3 of this report for assessors to advise RMS of vehicles subject to structural repairs and for such vehicles to be recorded on a register and subject to random audit. Accordingly, it is appropriate that the licensing for assessors be administered by RMS.

¹⁸³ See information on the Vehicle Safety Compliance Certification Scheme at Roads and Maritime Services website, <http://www.rms.nsw.gov.au/registration/authorisedinspectors/vscs/>, viewed 3 June 2014.

¹⁸⁴ Roads and Maritime Services, 'Becoming a VSCCS licensed certifier: a guide to applying for a certifier's licence', September 2013, Roads and Maritime Services website, http://www.rms.nsw.gov.au/registration/downloads/vscs_eoi_dl1.html, viewed 3 June 2014.

¹⁸⁵ NSW Fair Trading, 'Regulatory Impact Statement: Motor Dealers and Repairers Regulation 2014', May 2014, NSW Fair Trading website, http://www.fairtrading.nsw.gov.au/biz_res/ftweb/pdfs/About_us/Have_your_say/Motor_dealers_and_repairers_regulation_2014_RIS.pdf, p13.

- 5.34 The Committee considers that the licensing arrangements for the VSCCS could provide a model on which to base the licensing scheme for assessors.
- 5.35 While the licensing for assessors would be administered by RMS, the Committee considers it would be appropriate for regulations to be in place enabling Fair Trading to issue penalties notices for breaches of licensing conditions in the same way that RMS can issue penalty notices for offences under the proposed *Motor Dealers and Repairers Regulation 2014*.
- 5.36 In relation to penalties, the Committee considers that the licensing arrangements for assessors should include applicable fines for breach of licensing conditions and regulations and licence cancellation following three strikes.

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.

Licensing conditions – approving repair methods

- 5.37 The Committee gave consideration to a number of issues that should be covered by the licensing arrangements for assessors including requiring the assessor to approve the repair method when authorising quotes and approving the quote in realistic time.
- 5.38 As previously mentioned the role of an assessor is to authorise not only the cost of repairs but the repair method. This could be formalised through the licensing arrangement. Under current arrangements assessors are required to authorise the cost of repairs on behalf of an insurance company but they do not formally sign off on the repair method. The Committee heard that under the current arrangements in situations where two quotes have been obtained for repairs the assessor signs off on the lower quote regardless of the work the repair entails or the methodology required to undertake the repairs.¹⁸⁶

Committee comment

- 5.39 The Committee notes that most assessors are employed by insurance companies and that this may influence the decisions they make regarding approval for repairs. While the Committee has not recommended that assessors should be independent of insurers, it considers that assessors, as the crucial link between the repairer and insurer, should be required to sign off on repair methods in addition to the cost of a quote.

¹⁸⁶ Comments made by a repairer at *in camera* hearing.

- 5.40 The Committee considers that this requirement may assist in addressing the problem of insurers repairing to a price rather than a standard as the assessor, in signing off on the repair method, will be accountable for ensuring that repairs are conducted to a quality standard and an appropriate price.

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.

Licensing conditions – quoting in realistic time

- 5.41 In relation to the quoting of repair work in realistic time, the Committee heard about the difficulties assessors have with insurers that utilise the outmoded business practice of ‘funny time, funny money’ (FTFM).

What is Funny Time, Funny Money?

- 5.42 According to the submission of Allianz to the Inquiry, FTFM has been widely used in Australia for nearly half a century and was introduced around 1970 at the initiation of repairers who had grown dissatisfied with the ‘piece rate’ approach to quoting, that is, x dollars to do a certain repair operation.¹⁸⁷ Mr Graham Judge, Acting Body Repair Division Manager of the MTA provided an explanation to the Committee of what the FTFM method actually involves:

The funny time is the insurance companies and the Motor Traders’ Association had a schedule of times, a times guide to take a bumper bar off, change a quarter panel, whatever; so that time was considered funny time. If we said an hour to take a bumper bar off, the insurance company’s funny money was they were only paying \$30. Now most shops in Sydney would say we need at least \$90 to survive. It does not take an hour to take that bumper bar off; it probably takes about 15 minutes. So you get this inflated time with a low value. The opposite being realistic times, is give us a realistic time of 0.25, 15 minutes, but give me the \$90.¹⁸⁸

- 5.43 However, Mr Judge went onto explain that times under FTFM are not always inflated, making the system even more confusing and less transparent:

We have got a situation at the moment, Insurance Australia Group run two schedules. They have realistic times and they operate with a funny time schedule in Western Australia; for one State. A good example would be to weld a hinge pillar on a Toyota Camry. You could have a time of eight hours real time but in the funny time schedule they have only got five hours. So the repairer in Western Australia is getting five hours at \$30 to change a panel that in Sydney today, a repairer would be getting eight hours at the \$90. So the funny time, funny money does not always work to say all the times are inflated, sometimes are not that inflated. Some times are actually pretty real but you are only getting the \$30 an hour.¹⁸⁹

¹⁸⁷ Submission 34, Allianz Australia Insurance Ltd, p8.

¹⁸⁸ Mr Graham Judge, Transcript of Evidence, 17 March 2014, p9.

¹⁸⁹ Mr Graham Judge, Transcript of Evidence, 17 March 2014, p9.

Concerns about Funny Time, Funny Money

- 5.44 During the Inquiry a number of concerns were raised by stakeholders concerning the use of FTFM. For example, Innovation Group commented:

With regard to the repair industry's estimating methodology, the use of the "funny time – funny money" model presents challenges to the whole industry. The main one is the lack of transparency when comparing estimates or assessing the true nature of the work to be carried out for a particular repair. There would appear to be no reason why this would not be resolved by the adoption of the realistic times methodology.¹⁹⁰

- 5.45 Concerns were also raised that assessors would prefer to work in real-time-real-money. A repairer commented:

There is huge unrest with assessors in the industry, many are continually changing jobs to other companies, many open up to repairers and advise they are not happy with what they are instructed to do, or they will lose their job. Most assessors would prefer to work with RTRM (Real Time, Real Money) but their companies direct them to work to the FTFM (Funny Money, Funny Time) system which mainly benefits the Insurer but is open to errors, serious shortfalls, manipulation and abuse.¹⁹¹

- 5.46 In addition the MTA commented:

Funny time, funny money allows repairers and insurers the flexibility to manipulate the hours of labour worked on a particular repair as well as the costs of that labour. It allows for insurers to adjust quotations provided by repairers to ensure cheap repair works...and allows repairers to adjust quotations to remain competitive.

Funny time, funny money creates significant financial uncertainty for repairers. Repairers are not able to accurately prepare budgets or forecast future earnings or losses.

Again it is the consumer who is at a loss in this whole process, as the quality of repair works is often jeopardised by inaccurate quotes and a misrepresentation of works actually completed.¹⁹²

Work Undertaken on Realistic Times

- 5.47 In an effort to resolve the issues surrounding FTFM, both the MTA and NRMA indicated to the Committee that they have developed schedules of realistic times it takes to undertake various repair work.

- 5.48 Mr Judge of the MTA explained the MTA's process to develop realistic times in his verbal evidence to the Committee:

The Motor Traders' Association have a time schedule going back to 1974, a funny time. Since 2011 we have moved to having realistic times. That was what I was originally employed at the Motor Traders' Association to do. We have four video cameras rolling constantly capturing that information. But yes, we do prefer to talk realistic times, not perfect times, but just something that is fair and reasonable. The

¹⁹⁰ Submission 78, Innovation Group, p5.

¹⁹¹ Submission 40, T.R. Flanagan Smash Repairs, p1.

¹⁹² Submission 51, Motor Traders' Association of NSW, p8.

difference between the best tradesman in the shop and the worst, you could have a difference of 10, 15, 20 per cent on a job, but we are looking for the average tradesman in a well equipped shop, good equipment, what is a fair and reasonable time to do that job?¹⁹³

5.49 The MTA's realistic times schedule is recorded on a database called eMTA which can be accessed by insurers and repairers.¹⁹⁴

5.50 Similarly, NRMA Insurance commented on the work it has undertaken in consultation with stakeholders, including the MTA, to develop a system of realistic times and rates:

NRMA Insurance is a leading advocate in the development of industry-wide realistic times and rates. This aims to address on-going friction between repairers and insurers and we have invested significant resource and effort into developing New Times and Rates [NTAR] in consultation with Repairer Representative Organisations such as MTA NSW. As part of this collaboration we implemented a mutually beneficial solution in consultation with MTA NSW to "Funny Time, Funny Money" in 2007. Our introduction of NTAR meant we were the first insurer to deliver a 'realistic times' solution which is still widely accepted, liked by industry and working today.¹⁹⁵

5.51 Mr Roy Briggs, Executive General Manager Marketing, Reputation and CTP, NRMA Insurance, also explained the role of NRMA's research centre in ensuring that its new times and rates schedules are maintained and updated:

In terms of maintenance of the models, we have the only insurance research centre in Australia and we are a member of the Australasian New Car Assessment Program...One of the roles of that research centre is to continue to assess and to develop times as new vehicles are brought onto the market.¹⁹⁶

5.52 The MTA has advocated for realistic time in all repair quotations for a number of years. The MTA's submission to the Inquiry comments:

The Act should incorporate a provision which abolishes funny time, funny money. The Act should require quotations to reflect 'real time' spent on a repair which is comparable to an industry standard such as the 'Realistic Times Glossary' published by the MTA in 2005. The Act should also require labour rates to be calculated annually by a common, impartial third party, such as the Small Business Commissioner.¹⁹⁷

Committee comment

5.53 The Committee notes that there are a number of realistic times models for quoting repairs currently in use within the industry including the MTA's realistic times schedule and the NRMA's New Time and Rates model. The Committee also notes that the recommendations arising out of the December 2013 review of the Motor Vehicle Insurance and Repair Industry Code of Conduct has called for a nation-wide realistic times model to be established. This is discussed further in

¹⁹³ Mr Graham Judge, Transcript of Evidence, 17 March 2014, p10.

¹⁹⁴ eMTA website, <http://www.emta.com.au/company/what-we-do.html>, viewed 30 April 2014.

¹⁹⁵ Submission 45, NRMA Insurance, p16.

¹⁹⁶ Mr Roy Briggs, Transcript of Evidence, 21 March 2014, p21.

¹⁹⁷ Submission 51, Motor Traders' Association of NSW, p8.

Chapter 7 and further consideration is given to requiring realistic times in quoting in relation to the Code of Conduct in that chapter.

- 5.54 The Committee considers that the use of FTFM is an outmoded practice and should not be used by assessors when approving quotes for repairs. Accordingly, the Committee is of the view that the licensing arrangements for assessors should require assessors to use realistic times in assessments of vehicles.
- 5.55 The Committee does not want to place a requirement on assessors to use a particular model for realistic time given that there are currently a number of models out there which appear to be working effectively. However, the Committee considers that should disputes between repairers and insurers arise regarding quotes Fair Trading should refer to the eMTA schedule of real times adopted by the MTA as a benchmark until such time as a national model is adopted. Further discussion and a recommendation to this effect is included in chapter 7 of this report.
- 5.56 The Committee also notes the comments made by the MTA about labour *rates*. However, the Committee considers that while quotes should be assessed in realistic times that the price of labour a repairer agrees to work for should not be regulated by the Government. The marketplace should allow competitive labour rates and requiring quotes to be approved in realistic *time* will result in greater transparency in the payments made to repairers.

Recommendation 8

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

QUALIFICATIONS OF ASSESSORS

- 5.57 The knowledge and qualifications required by motor vehicle assessors was raised as an issue during the Inquiry. Under the current regulatory framework assessors are required to be appropriately qualified. The regulatory impact statement for the *Motor Dealers and Repairers Regulation 2014* notes that:

...two existing regulatory requirements require assessors to be appropriately qualified before they can work in NSW – the *Motor Vehicle Insurance and Repair Industry Code of Conduct* and the *Road Transport Act 2013* and Road Transport (Vehicle Registration) Regulation.¹⁹⁸

- 5.58 The *Fair Trading Act 1987* mandates the Motor Vehicle Insurance and Repair Code of Conduct in NSW. Under the Code, insurers are required to ensure that all assessors engaged by it are:

- Appropriately trained and have appropriate technical experience; or
- Have successfully completed an approved assessors course; or

¹⁹⁸ NSW Fair Trading, 'Regulatory Impact Statement: Motor Dealers and Repairers Regulation 2014', May 2014, NSW Fair Trading website, http://www.fairtrading.nsw.gov.au/biz_res/ftweb/pdfs/About_us/Have_your_say/Motor_dealers_and_repairers_regulation_2014_RIS.pdf, p13.

- Have not less than five years experience as an insurance (motor) assessor.¹⁹⁹

5.59 The regulatory impact statement for the *Motor Dealers and Repairers Regulation 2014* goes on to state that:

The Road Transport Act and Road Transport (Vehicle Registration) Regulation, administered by the Minister for Roads and Ports, require that vehicle assessors involved in assessing vehicles as a total loss following any insurance claim, have the prescribed training, qualification or experience (or act on the advice of a person who has such training, qualifications or advice). This means completing an approved course in vehicle repair assessment provided by a training provider accredited by the Australian Skills Quality Authority, or a course which covers identified instructions on how to assess vehicles.²⁰⁰

5.60 Despite these regulatory requirements, the Committee heard that assessors often lack the necessary expertise to appropriately assess vehicles for repair. The MTA submitted to the Committee that it is not uncommon for assessors employed by insurers to lack 'the skills, expertise or knowledge to undertake any meaningful assessment of the technical work or labour time required for each repair.'²⁰¹

5.61 The Committee sought information as to what qualifications are considered appropriate for assessors employed by insurance companies and operating in the motor vehicle repair industry. NRMA Insurance detailed the qualifications required by its assessors and the ongoing training that they are provided with:

At the time of recruitment, all assessor candidates must come from the automotive industry and a) be appropriately trained and have appropriate technical experience, or b) have successfully completed an approved assessor's course, or c) have not less than five (5) years experience as an insurance (motor) assessor.

Upon joining our assessing team as an employee, a candidate completes a five (5) week full-time assessor's course to confirm their knowledge and skills as an assessor, whilst training them in our internal systems, processes and procedures.

As part of our ongoing commitment to training and development of our assessing teams we are working in collaboration with the Institute of Automotive Mechanical Engineers (IAME) and Auto Skills Australia. As a result our motor assessors are progressively being awarded the Certificate IV in Motor Vehicle Assessing qualification.

We also conduct extensive training with the assistance of various manufacturers and industry specialists. During the past three financial years, we provided approximately 2,400 days training for our staff.²⁰²

¹⁹⁹ Sub-clause 4.2 Motor Vehicle Insurance and Repair Industry Code of Conduct.

²⁰⁰ NSW Fair Trading, 'Regulatory Impact Statement: Motor Dealers and Repairers Regulation 2014', May 2014, NSW Fair Trading website, http://www.fairtrading.nsw.gov.au/biz_res/ftweb/pdfs/About_us/Have_your_say/Motor_dealers_and_repairers_regulation_2014_RIS.pdf, p13.

²⁰¹ Submission 51, Motor Traders' Association of NSW, p5.

²⁰² Submission 45, NRMA Insurance, pp29&30.

5.62 In response to a question about what qualifications were held by Allianz Australia Insurance assessors, Mr David Krawitz, Chief Operating Officer and Mr Peter Hartman, National Technical Manager Motor Assessing, stated:

Mr KRAWITZ: All of our assessors today are motor trade qualified. In addition we conduct extensive internal training, which is very important. As our assessors are constantly on site at repairers they are continually exposed to new techniques and new technologies, which allows them to continue to hone their skills. Peter, would you like to add to that?

Mr HARTMAN: We have also got continuing internal and external training. We do a lot of internal training, especially when there is new compliance and repair techniques that we identify.²⁰³

5.63 A Certificate IV qualification is also undertaken by assessors employed by Suncorp:

Suncorp's team of 88 highly-trained assessors in NSW, which is comprised primarily of former smash repair tradespeople. These trained professionals are Certificate IV qualified in loss adjusting, with newcomers immediately put on a pathway towards Certificate IV qualification. Our assessors interact on a daily basis with repairers to progress our customers' repairs to Suncorp standards. They also accompany aligned repairers to smash repair training sessions to ensure they stay on top of the latest repair methods.²⁰⁴

5.64 Mr Craig Summers, Executive Manager of NSW Motor Claims at Suncorp Insurance, provided some insight to the Committee in regards to Suncorp's approach to training of assessors and mechanisms to ensure that Suncorp assessors are capable and focused on quality.

We invest heavily in our assessing team. All our assessors in New South Wales—and across the country—have completed a certificate IV, which provided more than 1,500 training modules over the last year to the New South Wales assessing team. It has taken a lot of time, effort and expense, but we are committed to making sure they are trained professionals and making the right decisions to drive the right outcomes from a quality perspective. There is also a range of other internal mechanisms in place.²⁰⁵

5.65 The Institute of Automotive Mechanical Engineers submitted that vehicle loss assessors and body repair estimators in many instances do not work to the same standards, due significant gaps in skills, knowledge and processes between assessors and estimators.²⁰⁶ The Institute also indicated that if a uniform qualification was required of assessors and estimators, more efficient preparation, negotiation implementation of vehicle repair quotations and repairs could be achieved.²⁰⁷

²⁰³ Mr David Krawitz and Mr Peter Hartman, Allianz Australia Insurance, Transcript of Evidence, 21 March 2014, p3.

²⁰⁴ Submission 46, Suncorp Group Limited, p15.

²⁰⁵ Mr Craig Summers, Suncorp Group Limited, Transcript of evidence, 21 March 2014, p38.

²⁰⁶ Submission 44, Institute of Automotive Mechanical Engineers, p2.

²⁰⁷ Submission 44, Institute of Automotive Mechanical Engineers, p2.

- 5.66 The Institute recommended that a qualification such as the Certificate IV in Vehicle Loss Assessing, or a superseding or updated qualification, should become the endorsed benchmark qualification for any type of automotive vehicle loss assessing accreditation or licencing schemes. The Institute also submitted that if all body repair estimators and vehicle loss assessors had a similar qualification with shared knowledge, all such professionals could work to the same standard and have similar levels of training and awareness with regards to repair issues.
- 5.67 The Institute also commented that there would be certain advantages of requiring assessors in New South Wales to be licenced and to have a formal qualification.

We did have licensing in New South Wales and I think it is the case that we need to re-introduce it. I believe, as I said in my opening comment, the vehicles are just getting smarter. The information that is held in them, the technology that is in them, the scope of repairs that is required in the cars today, we need our assessors and we need our estimators up to speed.²⁰⁸

Committee Comment

- 5.68 The Committee notes that a Certificate IV qualification appears to be supported by insurance companies with their assessors either already holding such a qualification or working towards it. However, it is yet to be nationally accredited. The Committee also notes that the December 2013 review of the Code has recommended that guidelines be adopted in relation to training for assessors.
- 5.69 Accordingly, at this stage the Committee does not believe any particular qualification should be specified for motor vehicle assessors and that RMS should determine whether applicants for a licensed assessor are appropriately qualified at the time their license is issued.
- 5.70 The Committee is of the view that with the ever-changing technology in modern vehicles, assessors must undertake on-going training to ensure they have the skills and knowledge to assess motor vehicle repairs over time. The Committee considers that under the proposed licensing regime for assessors that occupational training will prevail requiring assessors to ensure they maintain their qualifications to receive ongoing accreditation.

Recommendation 9

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

²⁰⁸ Mr Peter Blanshard, Transcript of Evidence, 17 March 2014, p19.

Chapter Six – Consumer Issues

- 6.1 This chapter considers consumer issues as they relate to the motor vehicle insurance and repair industry, in particular: steering practices and their impact on a consumer’s choice of repairer; consumer knowledge of repairs; and content of insurance policies.

STEERING PRACTICES AND IMPACT ON CHOICE OF REPAIRER

What is Steering?

- 6.2 During the Inquiry, the Committee heard evidence about steering practices in the motor vehicle insurance and repair industry. Broadly speaking, ‘steering’ refers to an alleged practice where insurance companies direct customers who have made an insurance claim following an accident to insurer-preferred or insurer-owned repair shops even though the customer has asked to have his or her car repaired at a repair shop of his or her choice and he or she has that right under his or her insurance policy. As one repairer told the Committee:

The big problem at the moment is the amount of steering that is going on in our industry by insurance companies trying to get the customer to go to their preferred repairers, even when the policy they sign up to has got choice of repairer, even after they have nominated a repairer they want to use, they try to get them to go where they want to and we find that is one of the biggest issues at the moment today and lots of complaints go on in that area.²⁰⁹

- 6.3 Steering may also involve insurers requiring repairers to use particular parts and/or parts suppliers in undertaking repairs to reduce costs.²¹⁰

Business Models Associated With Steering

- 6.4 While insurer business models are discussed in detail in Chapter 3 of this report, the business models associated with claims of steering necessarily incorporate some form of preferred repairer scheme and/or insurer-owned repair shops and parts suppliers or ‘vertical integration’. All three insurers that the Committee heard evidence from during its Inquiry incorporated some sort of preferred repairer scheme or vertical integration into their business models. The ‘two quote’ model is also linked to steering. Therefore, these models are discussed again briefly below.

NRMA “Partner Repairers”

- 6.5 As outlined in chapter 3, in the NRMA’s case, it has partnering arrangements with 96 ‘partner repairers’ in NSW – 5 year agreements that aim to provide partner repairers with a suitable volume and type of work in return for them meeting the NRMA’s performance measures including customer satisfaction levels and the speed with which vehicles are returned to the road.²¹¹ In providing some

²⁰⁹ Name suppressed, *in camera* Transcript of Evidence, 17 March 2014, p2 (quoted with permission).

²¹⁰ Submission 67, confidential, pp7&9 (quoted with permission).

²¹¹ See discussion of NRMA’s Partner Repairer arrangements, Transcript of Evidence, 21 March 2014, pp19-20.

explanation of how the NRMA ensures volume of work for some of its partner repairers, Mr Roy Briggs, Executive General Manager Marketing, Reputation and CTP told the Committee:

...it is a commercial model that we have in place with a very small, select group of repairers that enables them to predict their revenue and provide certainty. So we contract with them the volume of repairs that we provide and they contract with us the price. Let me be really clear about this: each job is quoted and priced on the work that is required. So, for example, a \$7000 repair is quoted and paid for as \$7000 and indeed a \$500 repair is quoted in the same way. What happens when a large volume of repairs takes place is that you move back very close to the average.²¹²

- 6.6 As also detailed in chapter 3 of this report, NRMA indicated to the Committee that it has a variety of mutually agreed commercial contracts with its partner repairers and denied operating any type of fixed cost for repairs model.²¹³

Allianz “Select Repairers” and the “Two Quote Model”

- 6.7 In the case of Allianz Insurance, as outlined in chapter 3, the Committee heard that (unlike the NRMA), it does not have contracts with preferred or ‘partner’ repairers and instead has a list of ‘select repairers’. Mr David Krawitz, Chief Operating Officer stated:

We have no arrangements or contracts with any repairers in NSW...We have a list of what we call select repairers that any eligible repairers can be on. There are no contracts for being on that list. We derive that list and it changes based on quality, value and customer experience.²¹⁴

- 6.8 Mr Nicholas Scofield, General Manager Corporate Affairs, Allianz, explained further:

We do not have a network...When we talk about select repairers, this is not a network. They are repairers that, through our experience, provide good quality work, good value prices and good customer experience. When someone rings – and most people do not have a preferred repairer as they do not have accidents often – and they ask us for a recommendation, we would give them a repairer from our list that is geographically convenient for them.²¹⁵

- 6.9 Allianz also uses a ‘two quote model’ that is, while all Allianz policies are said to offer choice of repairer, if an insured’s nominated repairer quotes at a price Allianz does not agree is competitive, Allianz can require a second quote from a repairer that Allianz chooses to determine ‘reasonable cost’. If a customer insists on his/her choice of repairer, Allianz will ‘cash settle’ the claim by providing the customer with that ‘reasonable cost’.²¹⁶

²¹² Mr Roy Briggs, Transcript of Evidence, 21 March 2014, p26.

²¹³ Submission 45, NRMA Insurance, pp13-14.

²¹⁴ Mr David Krawitz, Transcript of Evidence, 21 March 2014, p8.

²¹⁵ Mr Nicholas Scofield, Transcript of Evidence, 21 March 2014, p9.

²¹⁶ Submission 34, Allianz Australia Insurance Limited, pp5&6.

Suncorp “Recommended Repairers”, Vertical Integration and the “Two Quote Model”

- 6.10 As outlined in chapter 3, Suncorp has established a network of long term partnerships with recommended repairers who carry out more than 50 per cent of its repair work in NSW.²¹⁷ For example, Suncorp advised the Committee they have over 150 aligned repairers in metropolitan Sydney under one single agreement.²¹⁸ Suncorp’s submission further advised that a new agreement for Suncorp recommended repairers was set to come into operation in April 2014 under which recommended repairers must meet the Suncorp Vehicle Repairer Standard, a maximum average repair day rate, and a re-work rate of less than 5 per cent.²¹⁹
- 6.11 In addition, as also outlined in chapter 3, Suncorp has vertically integrated its business, that is, it has ownership interests in repair shops at the same time as selling motor vehicle insurance. Suncorp’s ‘joint venture’ repair shops carry out a further 21 per cent of all Suncorp repair work.²²⁰
- 6.12 The first of its joint venture repair businesses is Capital SMART Repairs which Suncorp co-owns with smash repairer Mr Jim Vais. There are 7 Capital SMART Repair shops across NSW and they are designed to undertake small to medium non-structural repairs with an average repair time of 10 hours.²²¹
- 6.13 The second of its joint venture repair businesses is QPlus which Suncorp co-owns with smash repairer Mr Daniel Zammit. QPlus only undertakes structural repairs. There is one QPlus facility in NSW, located at Riverwood, and Suncorp has a 60% ownership interest in it while Mr Zammit owns the remaining 40%.²²²
- 6.14 Further, Suncorp has decided to initiate a joint venture with a US company called LKQ to supply *parts* to the motor repair industry. Mr Sean Dempsey, Executive General Manager, Shared Insurance Ventures told the Committee:
- Suncorp spends nationally more than \$500 million per year on smash repair parts, collision parts and mechanical parts...we conduct global research, which is where we came across...LKQ. In precisely the same way as us wanting to invest with innovative Australian smash repairers, we decided to invest with LKQ – a USA company that has the know-how to effectively take damaged vehicles and recycle parts and can effectively look at alternative sources of parts other than original equipment.²²³
- 6.15 Finally, it also appears from the submission of the MTA to the Inquiry that, like Allianz, at least one of the Suncorp brands, AAMI, adopts the ‘two quote model’. under this model AAMI obtains two independent, competitive quotes from repairers, with at least one being obtained from a repairer chosen by AAMI.

²¹⁷ Submission 46, Suncorp Group Limited, p1.

²¹⁸ Mr Sean Dempsey, Executive General Manager Shared Insurance Ventures, and Mr Rob Bartlett, National Industry Relations Manager, Suncorp Group Limited, Transcript of Evidence, 21 March 2014, p36.

²¹⁹ Submission 46, Suncorp Group Limited, p22.

²²⁰ Submission 46, Suncorp Group Limited, p7.

²²¹ Submission 46, Suncorp Group Limited, p7.

²²² See submission 46, Suncorp Group Limited, p7; and Mr Sean Dempsey, Transcript of Evidence, 21 March 2014, p34.

²²³ Mr Sean Dempsey, Transcript of Evidence, 21 March 2014, p35.

Should a customer wish to obtain a quote from a repairer of his/or her choice AAMI will consider it and authorise repairs if it is the more competitive quote.²²⁴

Why is Steering Considered to be a Problem?

Stifling Consumer Choice and Anti-Competitive Effect

- 6.16 Some stakeholders consider steering to be a problem arguing that it limits consumer choice and destroys the good will that smash repair businesses have built over the years. A consumer who has a long-running relationship with a repair shop may find that he or she is pressured to use a different repairer.²²⁵
- 6.17 In addition, steering may stifle competition in the industry ultimately leading to poor results for consumers. Repairers may go out of business not because they have failed to satisfy customers with quality repair work but because they can no longer win jobs from insured customers who are instead directed to preferred or insurer-owned repairers.²²⁶ Meanwhile, insurer-preferred and insurer-owned repairers have a captive clientele, do not have to compete with other repairers, and arguably have less commercial imperative to provide a high level of quality or service.²²⁷
- 6.18 Indeed, one repairer stated:
- The... easiest solution... would be to do away with preferred repairer schemes and then those businesses offering the best customer service and quality of repairs will flourish...Those who do the right thing will be rewarded, not just those who do special deals based on secret contracts and the promise of keeping costs low.²²⁸
- 6.19 The same repairer expressed even more fundamental concerns with vertical integration:
- By owning and operating their own repair shops...Suncorp has created a huge conflict of interest...In these shops, Suncorp now writes the quote, repairs the car and pays the bill. This creates major concerns...Who checks the quote is fair and reasonable...? Who checks the car has been repaired correctly? In many US states there is legislation banning insurers from owning their own repair shops and I believe it is for very good reason.²²⁹
- 6.20 In relation to parts-related steering, that is, insurers requiring the use of particular parts or parts suppliers, the Committee heard that this is a problem because, as also discussed in chapter 4 of this report, where parts used are non-genuine, they can void a manufacturer's warranty.²³⁰ Similarly, this practice may have an anti-competitive effect:

²²⁴ Submission 51, Motor Traders' Association of NSW, Annexure 4, p1.

²²⁵ Submission 67, confidential, p4, (referred to with permission).

²²⁶ For a general discussion of steering, see Mr Graham Judge, Acting Body Repair Division Manager, Motor Traders' Association of New South Wales, Transcript of Evidence, 17 March 2014, pp2-3.

²²⁷ Submission 2, Mr James Woods, eCollect.com.au Pty Ltd and E C Legal Pty Ltd, p5.

²²⁸ Submission 67, confidential, p7 (quoted with permission).

²²⁹ Submission 67, confidential, p6 (quoted with permission).

²³⁰ Submission 67, confidential, p8 (quoted with permission).

Last year, Suncorp entered into a joint venture with a large overseas parts supplier, the LKQ Group...Currently they are setting up a national parts supplying network...Suncorp will again try to either direct supply parts for repair jobs or...say, 'we can supply that \$600.00 part for \$150.00, that's all we are going to pay [the repairer] but you can buy it wherever you want to'. If this scenario unfolds to be true, dealerships and aftermarket parts suppliers will be closing down all over the country as they will not be able to compete against this corporate giant. Repairers too will be closing down as our parts profit margin will be almost non-existent.²³¹

6.21 Another repairer stated:

In the past, Suncorp (AAMI) Insurance instilled strong penalties to repairers for the use of aftermarket parts. Suncorp has now acquired a company, L.K.Q, which manufactures aftermarket parts and they will be requiring their repair facilities and preferred repairers to use these parts, which will in turn affect local manufacturers and suppliers.²³²

Safety Issues

6.22 The Committee also heard repairer claims that steering practices can place customers in danger because tele-claims staff may require them to drive unsafe vehicles to particular venues for assessment following an accident. For example, one repairer stated:

I had a...customer come into the office, he is 84 years old. He had his 60 year old daughter with him. The driver's side front wheel guard and door were heavily impacted. The guard was stuck to the wheel. The lady drove the car down to us. I advised her that she should not drive the car and she should lodge a claim with her insurance company...I contacted [the insurer] on her behalf...I advised the tele-claims consultant [of the]...damage...She then requested the policy holder lodge the claim, to which I handed the phone over; the claim was lodged. The tele-claims operator then advised that the car should be driven home as there will be assessment delays as we are not one of the preferred repairers...I did not let the car leave my premises. I gave the customer a lift home.²³³

6.23 Similarly, another repairer stated:

Upon making a claim, Suncorp's customers are advised to attend an Assessment Centre to have their vehicle assessed. The customer is obliged to make their own way to the Assessment Centre regardless of the condition of the vehicle or the distance to the centre. This practice places the customer at risk. The condition of the vehicle may have been compromised by the accident, rendering it unsafe to drive and susceptible to mechanical defects. Once the vehicle is at the Centre it provides the insurer the opportunity to source cheap repairs or farm the work to their own repair shops, often without the consent of the customer. This method benefits insurers only.²³⁴

6.24 The MTA also pointed in its submission to the link between the two-quote model and the requirement to drive unsafe vehicles:

²³¹ Submission 67, confidential, p9 (quoted with permission).

²³² Submission 4, confidential, p1 (quoted with permission).

²³³ Name suppressed, *in camera* Transcript of Evidence, 17 March 2014, pp6&7 (quoted with permission).

²³⁴ Submission 4, confidential, p1 (quoted with permission).

where an insurance company procures multiple quotations, consumers can be required to drive damaged vehicles...²³⁵

- 6.25 As noted in chapter 7 of this report, clause 4.2 of the Motor Vehicle Insurance and Repair Industry Code of Conduct provides that insurers must not knowingly ask customers to drive unsafe motor vehicles for the purposes of obtaining alternative estimates.

Steering Methods

- 6.26 During the Inquiry, the Committee received anecdotal evidence from some stakeholders in relation to the methods used by insurers to steer customers. This could be divided into three main areas – inducements to use or steer to preferred repairers; lack of proper disclosure in insurance policies; and the two quote model.

Inducements

- 6.27 The Committee received some anecdotal evidence from repairers that insurers offer inducements to customers to use preferred repairers, even if they have a choice of repairer insurance policy. The Committee also received some anecdotal evidence that insurers provide incentives to their tele-claims staff to steer customers to preferred repairers.

- 6.28 In relation to customer inducements, one repairer stated:

The tele-claims staff ask the consumer where they want to go and they will say [X] Smash Repairs. Then the tele-claims staff will go, yes, I can see them there. They are not one of our preferred repairers. Our preferred repairer, the closest to you is [Z Smash Repairs] down the road. If you go there, they will give you a lifetime warranty on your repairs, we will be able to give you a cab fare home and back to pick your car up. They will do a full detail on your car and everything like that...[the non-preferred repairer] will give you a lifetime warranty but the way [the tele-claims staff] sell it is they say, 'If you take it to our repairer down the road, you will get a lifetime warranty on repairs'. They do not actually say that they will not get one with us, but they imply that.²³⁶

- 6.29 Another repairer provided similar evidence:

NRMA Insurance claims operators are instructed to steer the customer towards their Network repairers. Operators are offering such inducements as free wash and vacuum and taxi fare to and from Network repairers. A lifetime warranty on repairs is also being offered, misleading the customer to believe that unless they use a Network repairer, they will not be covered by a warranty. A lifetime warranty is NOT limited to Network repairers...Many repairers who were once NRMA approved now find that they have lost long term customers causing down turn in business.²³⁷

- 6.30 The Committee also heard claims that, in addition to providing customer inducements and misleading advice about lifetime warranties, insurers may offer a host of *disincentives* to use a non-preferred repairer:

²³⁵ Submission 51, Motor Traders Association of NSW, p4.

²³⁶ Name suppressed, *in camera* Transcript of Evidence, 17 March 2014, pp11&12 (quoted with permission).

²³⁷ Submission 4, confidential, p2 (quoted with permission).

When a customer lodges a claim and nominates a non preferred repairer for these companies, they are told a number of reasons, which aren't necessarily true...why they shouldn't take their car to that repairer. That's providing the teleclaims staff member is even able to find that repairer on their list to start with...which straight away puts doubt in the customer's mind. Other reasons include 1. That the repairer is very busy and that our repairer could repair it much quicker, 2. That if you take it there we will have to organise an assessor to inspect it which will delay the repairs whereas our repairer can start straight away, 3. You won't receive a lifetime warranty on the repairs if done through that repairer, 4. You may need to get a second quote if you use that repairer, 5. You can use that repairer but then you will have to organise everything yourself, 6. We may not authorise the work at that repairer's shop and we may have to cash settle you.²³⁸

- 6.31 The Committee notes that any such practices are contrary to clause 9.3 of the Motor Vehicle Insurance and Repair Industry Code of Conduct which states, 'Insurers will not make misleading or deceptive statements about the quality, capability, or timeliness of Repairers that are not members of the Insurer's NSR [network smash repair] scheme'.
- 6.32 Finally, the Committee heard that insurers may provide incentives to their *teleclaims staff* to steer customers to preferred repairers. For example, one witness indicated that one insurer had a system where teleclaims staff would receive a bonus payment if they steered at least 60 per cent of all claims through the preferred repairer scheme.²³⁹

Disclosure Under Insurance Policies

- 6.33 The Committee also heard that insurance companies may steer consumers to their preferred repairers or parts suppliers by failing to provide information, upfront in product disclosure statements, about parts policy and whether choice of repairer is available under the insurance policy that they are taking out. As the MTA stated:

Consumers are not properly informed of their rights or obligations when entering into an agreement of insurance with an insurance company. Insurance companies typically include terms and conditions of an insurance policy toward the end of a PDS [Product Disclosure Statement]...some of which include important information which require customer approval prior to entering into the agreement. Such information can include...conditional choicer of repairer [and] use of genuine/non-genuine parts; or second hand parts...²⁴⁰

- 6.34 Indeed, as outlined in chapter 7 of this report, it is a requirement of the Motor Vehicle Insurance and Repair Industry Code of Conduct for insurers to clearly state in unambiguous and plain language, upfront in their Product Disclosure Statements, their policy in relation to choice of repairer and the use of new and non-genuine and recycled parts.²⁴¹ Yet Mr Graham Judge, Acting Body Repair Division Manager of the MTA told the Committee:

²³⁸ Submission 67, confidential, pp 6-7 (quoted with permission).

²³⁹ Name suppressed, *in camera* transcript of evidence, 17 March 2014, p5 (quoted by resolution of the Committee).

²⁴⁰ Submission 51, Motor Traders Association of NSW, pp9&10.

²⁴¹ See Clause 9 of the Motor Vehicle Insurance and Repair Industry Code of Conduct.

[under the Code] the insurance companies are supposed to provide in an upfront prominent position clear, plain English about repairer of choice. We find it on page 45, 55, now 69 of product disclosure statements.²⁴²

- 6.35 In discussing what could be done to remedy this state of affairs, the MTA stated in its submission:

The MTA submit that this type of important information should be agreed upon prior to the consumer entering into the insurance contract. It is common knowledge that consumers will rarely read or understand an entire PDS for motor vehicle insurance.²⁴³

- 6.36 In its submission to the Inquiry, the Insurance Law Service, which provides advice nationally to consumers about insurance claims and debts to insurance companies, confirmed the MTA's view that consumers are often unaware of their rights in relation to things like choice of repairer until they have an accident:

In our experience, when consumers are shopping around for insurance products they rarely base their decision on product features such as whether they can choose their own repairer or need to use the insurer's authorised repairer. Instead they base their decision on premium price. Often they will only become aware of the limitation of the policy after a repair is required.²⁴⁴

- 6.37 At one of the hearings conducted by the Committee on 17 March 2014, when asked about whether it would be helpful to require certain important information, including about choice of repairer and parts, to be placed upfront in the product disclosure statement, the Principal Solicitor of the Insurance Law Service, Ms Alexandra Kelly replied:

I think space in a product disclosure statement is at a premium. Where do you put everything in there? They are lengthy documents...I think consumer information and consumer knowledge is a very difficult and tricky thing to achieve. I think it is incredibly difficult to work out how to convey that information to a consumer. Whether it is upfront, maybe that would work, I do not have the data behind that, whether psychologically the consumer is more likely to understand that information if it is closer to the front...²⁴⁵

- 6.38 Ms Kelly did, however, caution against a system where consumers are required to tick a box when taking out an insurance policy, indicating whether they opt in or out of choice of repairer under that policy. Ms Kelly stated:

[under such a system] The contractual arguments about ambiguity, we have lost completely, because we have opted out and we have opted out clearly. So I guess my view is that it is difficult to put that at a consumer upfront. They will say well it is unlikely that I am going to have an accident so I will opt out to get a cheaper premium. Then we end up with an accident and they end up with a different problem.²⁴⁶

²⁴² Transcript of Evidence, 17 March 2014, p12.

²⁴³ Submission 51, Motor Traders Association of NSW, p10.

²⁴⁴ Submission 57, Insurance Law Service, Consumer Credit Legal Centre NSW Inc, p7.

²⁴⁵ Ms Alexandra Kelly, Insurance Law Service, Transcript of Evidence, 17 March 2014, pp49&50.

²⁴⁶ Ms Alexandra Kelly, Insurance Law Service, Transcript of Evidence, 17 March 2014, p50.

The Two Quote Model

- 6.39 Finally, the two-quote model may contribute to a lack of genuine consumer choice under insurance policies. The MTA states in its submission that this model encourages repairers to quote unrealistically low prices²⁴⁷ and consumers who theoretically have choice of repairer under their insurance policy may be unable to exercise this choice because their chosen repairer may not be able to quote at a rate competitive enough to win a job against a preferred repairer.

Insurer Response to Claims of Steering

- 6.40 In responding to claims around steering some insurers conceded that incentives are provided to staff to steer customers to preferred repairers and/or that rewards are provided to customers who use the preferred repairer scheme that are not available to customers who choose their own repairer.
- 6.41 However, more broadly, all three insurers that gave evidence to the Inquiry, (NRMA, Allianz and Suncorp), indicated that, while some consumers value choice of repairer, most do not have a preferred repairer and actually rely on insurers to recommend one and to assist them through the claims process from start to finish.

NRMA Insurance

- 6.42 With regard to incentives provided to customers to use its partner repair network, NRMA indicated that customers who use a partner repairer are provided with a free taxi from the partner repairer after dropping a vehicle off for repairs, and a free taxi to the partner repairer to pick up the vehicle after the repairs are complete. No such taxis are available to customers who choose their own repairer.²⁴⁸
- 6.43 Similarly, in relation to repair turnaround, NRMA indicated that it generally takes longer to have a car repaired where a customer chooses his or her own repairer than where a partner repairer repairs the vehicle.²⁴⁹ The NRMA's answers to Questions on Notice indicate that for the 6 month period to February 2014, the average cycle time for partner repairers was 6.4 days versus 8.9 days for non-partner repairers.²⁵⁰ However, Mr Briggs of NRMA did clarify that:

...it is not deliberately slower in the non-partner network. What we have done is we have built processes with our partners.²⁵¹

- 6.44 Similarly, NRMA's answers to Questions on Notice indicated:

Customers who use Partners are usually booked in immediately and our assessment process is highly streamlined and often commences immediately once the car is presented to a repairer's shop... With Non-Partners the booking and assessing process is different due to the different nature of our relationship. For example, we

²⁴⁷ Submission 51, Motor Traders Association of NSW, p4.

²⁴⁸ Mr Steve Bubulj, Acting Head of Supply Chain, NRMA Insurance, Transcript of Evidence 21 March 2014, p28.

²⁴⁹ Mr Steve Bubulj, Transcript of Evidence, 21 March 2014, p28.

²⁵⁰ NRMA Insurance, answers to questions taken on notice, 21 March 2014, p1.

²⁵¹ Mr Roy Briggs, Transcript of Evidence 21 March 2014, p28.

conduct a line by line assessment and agree a repair plan and cost once the customer has visited their repairer of choice...²⁵²

- 6.45 NRMA's answers to Questions on Notice also stated that difference in repair turnaround is not alluded to in NRMA's scripts for call centre staff:

Our scripts do not remark for example, on the differences in terms of days for Partners and weeks for non-Partners in terms of repair cycle times, and on the limited occasions the inference may have been made to customers it is a mistake and the consultant has been coached/re-trained.²⁵³

- 6.46 In evidence to the Inquiry, NRMA also indicated that it offers some monetary incentive to its staff for allocating customer repairs to a partner repairer. Mr Steve Bubulj, Acting Head of Supply Chain stated:

There is an overall financial result. There is 2 per cent of an entire remuneration for...one of our call centre people...That is the same in terms of allocations...We reward sticking to the scripts,...offering good customer service more than we do allocation to a partner repairer network.²⁵⁴

- 6.47 On the subject of its partner repairer scheme more broadly, Mr Bubulj emphasised its benefits for consumers:

...over a large period of time customers have asked us to choose repairers for them. They have asked us to get a quality repair and get their cars back on the road quicker than ever before. That story has not changed for 20 years...Our customers are asking us to get them a repairer to get them back on the road as soon as we can. That is what this is about.²⁵⁵

- 6.48 Reported benefits of preferred repairer schemes are discussed in more detail in chapter 3.

Allianz Australia Insurance Limited

- 6.49 In its evidence to the Inquiry, Allianz confirmed that it provides incentives to its staff to direct customers to its select repairers. Mr Krawitz of Allianz stated:

I cannot think of any commercial business that does not have some type of incentive program for its staff to encourage what we consider to be appropriate behaviours. In our instance, we have a program for referring vehicles to our select repairers: those we consider to give high quality, good value for money and good customer experience.²⁵⁶

- 6.50 On the use by Allianz of select repairers more broadly, Mr Scofield emphasised the benefits for consumers:

When someone rings – and most people do not have a preferred repairer as they do not have accidents often – and they ask for a recommendation, we would give them

²⁵² NRMA Insurance, answers to questions taken on notice, 21 March 2014, p1.

²⁵³ NRMA Insurance, answers to questions taken on notice, p1.

²⁵⁴ Mr Steve Bubulj, Transcript of Evidence 21 March 2014, p28.

²⁵⁵ Mr Steve Bubulj, Transcript of Evidence 21 March 2014, p28.

²⁵⁶ Mr David Krawitz, Transcript of Evidence 21 March 2014, p9.

a repairer from our list that is geographically convenient for them. As the list is made up of repairers providing competitive pricing and good quality service and repairs, to the extent that they are getting more work and that has any impact on industry structural change, I believe it is a positive effect.²⁵⁷

- 6.51 Again, reported benefits of preferred repairer schemes are discussed in more detail in chapter 3.

Suncorp Group Limited

- 6.52 In its evidence to the Inquiry, Suncorp indicated that it provides a range of insurance products aimed at meeting the different requirements of its customers, including policies that offer choice of repairer for the 27% of customers that value it. Where choice of repairer is available on a policy, Suncorp categorically denied steering customers with such policies to its recommended repairers or its own repair shops.

- 6.53 Speaking of the wide range of products offered by Suncorp, Mr Dempsey stated:

Our biggest brands including AAMI, GIO Just Cars, Vero, Insure MyRide and Shannons are all different products aimed at meeting the needs of different groups of consumers. From the family looking for a stress-free claims service and repair by asking their insurer to manage their claim from end to end to the motoring enthusiast who can confidently manage their own claim, Suncorp is committed to meeting the varied needs of NSW consumers.²⁵⁸

- 6.54 Similarly, Suncorp's submission to the Inquiry included research conducted on its behalf by Newspoll Market and Social Research in 2013 which found that:

- 69 per cent of Australian motorists would prefer their insurer to handle their claim from start to finish;
- 12 per cent of Australian motorists would prefer to handle their own claim and repair end-to-end;
- 27 per cent of Australian motorists have an existing relationship with a smash repairer and would prefer to have them repair their car;
- 34 per cent of GIO customers exercise choice of repairer;
- 52 per cent of Shannons customers exercise choice of repairer.²⁵⁹

- 6.55 In denying that Suncorp steers customers with choice of repairer policies to recommended repairers or repairers owned by it, Mr Craig Summers, Executive Manager of NSW Motor Claims stated:

...there are policies that have been created specifically to cater for that need and our mechanisms and process within the company support that for our customers. So

²⁵⁷ Mr Nicholas Scofield, Transcript of Evidence 21 March 2014, p9.

²⁵⁸ Mr Sean Dempsey, Transcript of Evidence 21 March 2014, p30.

²⁵⁹ Submission 46, Suncorp Group Limited, p8.

there is no steering. I do not see any cases of steering and there are no incentives directly related to that sort of activity.²⁶⁰

6.56 Mr Dempsey elaborated on this point:

...we operate in an enormously competitive market and for us to spend millions of dollars on advertising in building products and to then restrict access to consumers to the benefits under their policy would not be sensible for us to do and we do not do that.²⁶¹

Structural Change in the Industry

6.57 In a broader response to arguments that preferred repairer schemes and vertical integration should be banned as they encourage steering and are anti-competitive, insurers also argue that the smash repair industry in Australia is in a state of structural change and it is this, not insurer business models or practices that is forcing many repairers out of the industry.

6.58 For example, Allianz indicated in its submission to the Inquiry that a range of factors have and will continue to impact on the operation and viability of smash repairers including:

- Changes in the frequency and severity of motor vehicle accidents (which has been falling);
- The incorporation of more advanced technologies into the manufacture of vehicles;
- The need for repairers to invest in more advanced equipment to diagnose faults and repair accident damage;
- The need for repairers to upgrade and/or develop the skills needed to operate increasingly advanced repair equipment and to undertake new repair techniques;
- The impact of changes to the efficient scale economies of repair shops in light of technological and other changes.²⁶²

6.59 The Allianz submission goes on to state:

In such a market, the exit of repair businesses and the entry of new ones into the industry is inevitable and is a sign of an industry adapting to the constantly changing environment in which it operates. That in the process of an industry's ongoing adaptation to changes in its operating environment...some businesses fail...or the total number of businesses in the sector declines over time as the industry consolidates, is inevitable.²⁶³

6.60 Relating this back to insurer business models, Allianz then stated:

²⁶⁰ Mr Craig Summers, Transcript of Evidence 21 March 2014, p32.

²⁶¹ Mr Sean Dempsey, Transcript of Evidence 21 March 2014, p33.

²⁶² Submission 34, Allianz Australia Insurance Limited, p1.

²⁶³ Submission 34, Allianz Australia Insurance Limited, p2.

Indeed, the view has been put that, if only insurers ceased using these...approaches (e.g. preferred repairer schemes or...vertically integrated repairers), in favour of alternative approaches...all the commercial challenges facing the repair sector would miraculously disappear. Given the multitude of external factors and challenges...impacting on the commercial environment in which repairers operate, simple commonsense suggests that this is untrue...²⁶⁴

- 6.61 A similar argument is made by a report prepared by Deloitte Access Economics appended to the Insurance Council of Australia's submission to the Inquiry.²⁶⁵ Further details regarding these arguments can be found in chapter 2 of this report.

Possible Solutions in Response to Claims of Steering

Anti-Steering Legislation

- 6.62 As discussed above, some stakeholders who provided evidence to the Inquiry called for an end to preferred repairer schemes and vertical integration.²⁶⁶ As one repairer who favours such anti-steering provisions put it:

I believe that the choice of repairer by customers should be the number one priority on every policy. Every customer should be allowed to get their vehicle repaired where they prefer, with the insurer and the repairer working together to fix the vehicle in a safe and timely manner. If the customer is uncertain on where to go, then the insurer should...recommend and advise the customer on some local repairers they can see based on their postcode.²⁶⁷

- 6.63 Given these calls, the Committee conducted some research into anti-steering legislation with the assistance of the NSW Parliamentary Research Service.
- 6.64 The Committee notes from the research conducted that the actual content of anti-steering legislation can vary. For instance, such legislation could entirely ban insurers from recommending repair shops to customers or it could simply require more information about choice of repairer to be provided to the consumer when he or she takes out a policy.

Anti-Steering Legislation in the United States of America

- 6.65 A good example of the varying content of anti-steering legislation exists in the United States of America. While at least 31 out of 50 US states appear to have some form of legislation to prevent insurers from requiring the use of a particular repairer²⁶⁸, provisions within this legislation vary from state to state.
- 6.66 Speaking about legislation on 'direct repairer programs' or 'DRPs' (that is, where insurers use repair shops that they have contracts with), a paper published by the United States National Association of Mutual Insurance Companies in 2010 explains:

²⁶⁴ Submission 34, Allianz Australia Insurance Limited, p9.

²⁶⁵ Deloitte Access Economics February 2014, appendix to Submission 48, Insurance Council of Australia, pp15-28.

²⁶⁶ For example, submission 20, name suppressed, p2; or submission 67, confidential, p7, (quoted with permission).

²⁶⁷ Submission 20, name suppressed, p2.

²⁶⁸ According to research conducted for the Committee by the NSW Parliamentary Research Service.

Because insurance is regulated at the state level [in the US], laws affecting DRPs can and do differ across states. The main issues addressed by such laws concern the ability of insurers to require policyholders to seek repairs at a particular shop, and the amount and type of information that is allowed (or required) to be communicated to the policyholder.

The debate over DRP legislation occurs on a continuum that ranges at one end from not permitting insurers even to recommend a shop to policy holders, to the other end where insurers are allowed to recommend that repairs be made at a shop selected by the insurer, but are prohibited from requiring or coercing claimants to use the insurer's preferred shop. Toward the centre of the continuum are disclosure requirements in which states require that consumers are provided with information to make them aware of their options regarding body shop choice.²⁶⁹

6.67 Concrete examples of varying provisions across US states include:

- Arkansas defines unfair methods of competition or unfair practices in the insurance context to include 'requiring, as a condition of payment of a claim that repairs must be made by a particular contractor, supplier or repair shop'.²⁷⁰
- California and Oregon require insurers to give notice, in specified terms, to their customers that, while they have suggested a repairer, the customer has the right to choose his or her own repairer.²⁷¹
- In Minnesota, the legislation provides in part that: 'At the time a claim is reported, the insurer must provide the following advisory to the insured or claimant: *'You have the legal right to choose a repair shop to fix your vehicle. Your policy will cover the reasonable costs of repairing your vehicle to its pre-accident condition no matter where you have repairs made. Have you selected a repair shop or would you like a referral?'* After an insured has indicated that the insured has selected a repair shop, the insurer must cease all efforts to influence the insured's or claimant's choice of repair shop'.²⁷²
- In Mississippi, the law provides: 'No insurer may require as a condition of payment of a claim that repairs to a damaged vehicle, including glass repairs or replacements must be made by a particular contractor or motor vehicle repair shop; provided, however, the most an insurer shall be required to pay for the repair of the vehicle or repair or replacement of the glass is the lowest amount that such vehicle or glass could be

²⁶⁹ Lawrence S. Powell, Kathleen A. McCulloch, Patrick F. Maroney, and Cassandra R. Cole, 'Consumer Choice in Auto Repair: The Politics and Economics of Automobile Insurance Repair Practices', *National Association of Mutual Insurance Companies Issue Analysis*, September 2010, p4.

²⁷⁰ Arkansas Code, Public Utilities and Regulated Industries, Insurance, Chapter 66, Trade Practices, Subchapter 2, Trade Practices Act, section 23-66-206, 13(O).

²⁷¹ Section 758.5 California Insurance Code; Oregon Revised Statutes, Volume 16, Financial Institutions, Insurance, Ch 746, Trade Practices, section 746.280.

²⁷² Minnesota Statutes, 72A.201, Regulation of Claims Practices, Subdivision 6(7).

properly and fairly repaired or replaced by a contractor or repair shop within a reasonable geographical or trade area of the insured²⁷³.

6.68 According to the research conducted by the NSW Parliamentary Research Service, some of the other US states that do not have a law preventing insurers from requiring the use of a specified repairer, have legislation or regulations preventing insurers from requiring claimants to travel unreasonable distances to get their vehicles repaired.

6.69 Regarding legislation regulating the use of after-market parts for repairs, the paper published by the United States National Association of Mutual Insurance Companies in 2010 states:

The main issue considered by the states appears to be consumer awareness. Within this context, the focus is on a variety of issues including ensuring that consumers are aware that aftermarket parts are being used in the repair process; that they understand that they need not consent to the use of these parts (though they may bear additional costs); and that they are informed of the potential impact of the use of aftermarket parts on existing warranties...Currently, the majority of states have some legislation or regulation related to aftermarket parts, with many of these being passed or adopted in the 1990s.²⁷⁴

Motor Vehicle Repairs (Anti-Steering) Bill 2006

6.70 In the course of its research, the Committee also noted that a Private Member's Bill, the *Motor Vehicle Repairs (Anti-Steering) Bill 2006*, was introduced into the NSW Legislative Assembly on 30 March 2006 by the Hon. Richard Torbay MP. While it lapsed with the prorogation of Parliament on 19 May 2006, it provides a good example of comprehensive or wide-ranging anti-steering legislation. The Bill included the following major features:

- Restrictions on content of insurance policies:
 - Invalidating the use in insurance policies of provisions that restrict the insured's choice of repairer.
 - Invalidating the use in insurance policies of provisions that impose additional charges on an insured for choosing their own repairer.
 - Invalidating the use in insurance policies of provisions that require the use of particular parts or products in the repair of the insured's motor vehicle.
 - Specifying that such provisions are void.²⁷⁵
- Restrictions on agreements between insurers and repairers:

²⁷³ Mississippi Code of 1972, tit 83, Insurance, Chapter 11, Automobile Insurance art 9., Repairs to damaged vehicles, 501.

²⁷⁴ Lawrence S. Powell, Kathleen A. McCulloch, Patrick F. Maroney, and Cassandra R. Cole, 'Consumer Choice in Auto Repair: The Politics and Economics of Automobile Insurance Repair Practices', p7.

²⁷⁵ Clause 5 *Motor Vehicle Repairs (Anti-Steering) Bill 2006*, NSW Parliament website, <http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/>, viewed 15 May 2014.

- Invalidating the use, in agreements between insurers and repairers, of provisions that require the repairer to offer discounted prices for parts or products to be paid for by the insurer.
- Invalidating the use, in agreements between insurers and repairers, of provisions that entitle the insurer to direct an insured's vehicle to that repairer.
- Specifying that such provisions are void.²⁷⁶
- Offence of steering an insured:
 - Providing that it is an offence to suggest to or advise an insured to choose a particular repairer, or have a repairer prepare a quotation for the repair of a motor vehicle.
 - Providing that it is an offence to accept or offer kickbacks for steering an insured to a particular repairer.
 - Providing that it is an offence to state or suggest to an insured that a specific repairer should or must be used by the insured for the repair to be covered under their policy.
 - Providing that it is an offence to require a repairer to use particular parts or products in repairing an insured's vehicle.
 - Specifying the penalties for these offences - maximum \$110,000 fine for first offence and \$165,000 fine and imprisonment for 12 months or both for second or subsequent offence.²⁷⁷
- Exception:
 - Providing that it is not an offence to allow an insurer to suggest or advise the use of a particular repairer if an insured so requests, provided the suggestion or advice is in the form of a list of repairers from which the insured is free to choose.²⁷⁸
- Disclosure Notices
 - Specifying that an insurer must provide the insured with a disclosure notice stating: 'By law, you have the right to select where your vehicle is repaired and the parts used for repairs. However, we are not required to pay more than a reasonable amount for those repairs and parts' when the insured first enters into an insurance policy with the insurer,

²⁷⁶ Clause 6 *Motor Vehicle Repairs (Anti-Steering) Bill 2006*, NSW Parliament website, <http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/>, viewed 15 May 2014.

²⁷⁷ Clause 7 *Motor Vehicle Repairs (Anti-Steering) Bill 2006*, NSW Parliament website, <http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/>, viewed 15 May 2014.

²⁷⁸ Clause 9 *Motor Vehicle Repairs (Anti-Steering) Bill 2006*, NSW Parliament website, <http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/>, viewed 15 May 2014.

on each occasion the policy is renewed, and whenever the insured makes a claim under the policy.

- Specifying that an insurer must provide third party claimants with a disclosure notice stating: ‘By law, you have the right to select where your vehicle is repaired and the parts used for repairs. However, we are not required to pay more than a reasonable amount for those repairs and parts’ when the third party makes a claim against the insurer.
- Specifying a penalty for failure to comply with the above requirements - \$5,500 fine for first offence and \$11,000 fine or 12 months imprisonment or both for second or subsequent offences.²⁷⁹
- Information About Repairs
 - Providing that an insurer must not prevent a repairer from disclosing to an insured or to a third party claimant any information about the parts and products the repairer has used to repair a motor vehicle, and a repairer is required to disclose that information to an insured or third party claimant.
 - Specifying a penalty for failure to comply with above requirements - \$5,500 fine for a first offence and \$11,000 fine or 12 months imprisonment or both for a second or subsequent offence.²⁸⁰
- Vertical Integration
 - From specified date, an insurer may not hold or acquire any ownership interest in a motor vehicle repair business or a motor vehicle parts supplier located in NSW.
 - Specifying a penalty for contravention of vertical integration provisions - maximum \$110,000 fine for first offence and \$165,000 fine and imprisonment for 12 months or both for second or subsequent offence.²⁸¹

Changes to the Motor Vehicle Insurance and Repair Industry Code of Conduct

- 6.71 The Committee also notes that the recent external review of the Motor Vehicle Insurance and Repair Industry Code of Conduct conducted by Executive Counsel Australia, discussed in more detail in chapter 7 of this report, contains a steering-related recommendation.
- 6.72 As above, clause 9.3 of the Code provides ‘Insurers will not make misleading or deceptive statements about the quality, capability or timeliness of Repairers that are not members of an Insurer’s NSR scheme’. The external review recommends

²⁷⁹ Clause 11 *Motor Vehicle Repairs (Anti-Steering) Bill 2006*, NSW Parliament website, <http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/>, viewed 15 May 2014.

²⁸⁰ Clause 13 *Motor Vehicle Repairs (Anti-Steering) Bill 2006*, NSW Parliament website, <http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/>, viewed 15 May 2014.

²⁸¹ Clause 14 *Motor Vehicle Repairs (Anti-Steering) Bill 2006*, NSW Parliament website, <http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/>, viewed 15 May 2014.

that clause 9.3 be expanded to include examples of unacceptable practices by insurers' teleclaims officers as a basis upon which repairers can base internal dispute resolution and external dispute resolution actions under the Code.²⁸²

Committee Comment

- 6.73 The Committee accepts from the evidence supplied to it by repairers and the MTA, and concessions made by insurers in relation to staff incentives for the allocation of repair jobs to preferred repairers and inducements to customers to use preferred repairers, that steering may occur in the smash repair industry.
- 6.74 The Committee also accepts the MTA's evidence that consumers often do not know what their rights are under their policy in relation to choice of repairer, or parts used for a repair job, until they make an insurance claim following an accident. In particular, the Committee notes this evidence is backed up by that of the Insurance Law Service which specialises in assisting consumers with insurance law issues. This lack of knowledge impacts on genuine consumer choice.
- 6.75 On the other hand, the Committee accepts insurer evidence that many consumers do not have a preferred repairer as they do not have accidents often, and that many welcome assistance from their insurer to find one and to manage their claim from start to finish. Indeed, this is backed up by five submissions to the Inquiry from consumers providing very positive feedback about having their vehicles fixed at Suncorp's Capital SMART Repairs.²⁸³
- 6.76 More broadly, the Committee accepts that the smash repair industry in Australia is a dynamic one undergoing change. In the Committee's view, the industry itself is in the best position to structure its business to respond to such changes, and to consumer demand, and it is not for Government to intervene to ban insurer business models incorporating vertical integration and preferred repairer schemes.
- 6.77 Hence, the Committee does not support far-reaching anti-steering legislation to ban preferred repairer schemes or vertical integration. However, the Committee *does* support changes to ensure that consumers are provided with the necessary information upfront to make a genuine choice about whether to pick a policy that offers choice of repairer and/or specific provisions in relation to parts.
- 6.78 On the subject of parts, as discussed in chapter 4 of this report, the Committee is also of the view that consumers should be notified by their insurer when a non-genuine part is used on their vehicle, if the vehicle is under a manufacturer's warranty as this would be considered a change in the contract agreed to by the respective parties.
- 6.79 In addition, where consumers *have* elected to take out a choice of repairer policy, the Committee supports legislative change, backed up by penalties, to ensure that consumers are not prevented from exercising that choice. While the

²⁸² Recommendation 26, Executive Counsel Australia, *A Review of the Motor Vehicle Insurance and Repair Industry Code of Conduct*, Code Administration Committee website, <http://www.abrcode.com.au>, viewed 19 May 2014, p39.

²⁸³ See submission 21, Ms Amanda Grounds, p1; submission 22, Ms Mary Nosworthy, p1; submission 24, Mr Brian Hade, p1; submission 64, Mr Vassilios Kriketos p1; and submission 65, Mr Leslie C. Wilson, p1.

Committee supports the proposed changes to clause 9.3 of the Code recommended by Executive Counsel Australia, discussed directly above, they do not go far enough to achieve this – specific legislative provisions that can be acted on by *consumers* as well as repairers (the Code only governs the insurer/repairer relationship) are needed to send a strong message in relation to steering of consumers with choice of repairer policies. Therefore the Committee supports measures such as:

- prohibiting insurance companies from suggesting or advising an insured to choose a particular repairer where s/he has a choice of repairer policy unless s/he has requested such a suggestion or advice;
- prohibiting insurance companies from using a two quote method to determine the price of a repair for policies that are said to offer choice of repairer. Insurance companies would instead need to negotiate a fair and reasonable price with the repairer nominated by the consumer with the assistance of one of the licensed assessors recommended in chapter 5 of this report.

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.

- 6.80 The Committee is mindful that steering complaints will come from repairers *and* consumers under such a system. Therefore, the Committee considers NSW Fair Trading should produce specific material to assist consumers to understand their rights under a choice of repairer insurance policy.

Recommendation 12

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

- 6.81 Finally, the Committee notes with concern evidence regarding a link between steering practices and a requirement for consumers to drive unsafe vehicles to assessment centres and between repairers to get more than one estimate. The Committee also notes (as above) that clause 4.2 of the Motor Vehicle Insurance

and Repair Industry Code of Conduct prohibits insurers from knowingly asking customers to drive unsafe motor vehicles for the purposes of obtaining alternative estimates.

- 6.82 In chapter 7 of this report, the Committee has made recommendations to increase the enforceability of the Code, including this provision, partly through penalties to deter insurers from engaging in such unsafe practices.

CONSUMER KNOWLEDGE OF MOTOR VEHICLE REPAIRS

- 6.83 Consumer knowledge of motor vehicle repairs was another major theme that emerged during the course of the Committee's Inquiry. A number of stakeholders informed the Committee that it is almost impossible for the average consumer to assess whether their vehicle had been repaired to its pre-accident condition, or to manufacturer specifications.

Levels of Consumer Knowledge

- 6.84 It was generally acknowledged by vehicle repairers who gave evidence to the Committee that, while some consumers may be able to gauge the quality of repair to external surfaces of the vehicle by sight, a consumer's ability to assess the quality of repair to the internal structure of a vehicle is severely limited. Indeed, Mr Greg Patten, Chief Executive Officer of the MTA stated:

I do not believe that most consumers can even pick up paint differences in many cases and of course a lot of the repairs actually take place under the skin of the car. The outside of the car, the doors may open and close. It might look like a reasonably good job but underneath the more average consumer would not have an idea of what to look for underneath.²⁸⁴

- 6.85 Similarly, at an in camera hearing on 17 March 2014, when specifically questioned regarding what sort of assessment a layperson could make of the quality of a vehicle's repair, one repairer indicated that due to the technical nature of motor vehicle mechanics and repair, a lay person would have very little to no ability to accurately assess repair quality.²⁸⁵

Committee Comment

- 6.86 The Committee considers that the ability of consumers to assess the quality of repairs conducted on their vehicles is limited due to a lack of experience or expertise in motor vehicle repair and difficulties in accessing and inspecting repairs conducted within the interior of a vehicle.
- 6.87 This is of particular concern given figures provided by insurance companies, discussed in more detail in chapter 3, that indicate a number of vehicles are returned to the road with *safety* issues following a repair. Given this, recommendations are made in that chapter that assessors be required to provide Roads and Maritime Services with details of vehicles subject to repairs of a structural or safety nature; and that the *Road Transport (Vehicle Registration)*

²⁸⁴ Mr Greg Patten, Transcript of Evidence 17 March 2014, p4.

²⁸⁵ Name suppressed, *in camera* Transcript of Evidence, 17 March 2014, p2 (quoted by resolution of the Committee).

Regulation 2007 be amended to include another category of vehicles subject to structural and/or safety repairs, and that such vehicles be subject to random audit.

- 6.88 Further recommendations to address the consumer knowledge gap are discussed below.

Name and shame register for motor vehicle repairers

- 6.89 Given the difficulty for consumers in assessing repair quality, the Committee noted proposals for the introduction of a name and shame register for motor vehicle repairers who have committed offences relating to repair work.²⁸⁶ The register may also improve repair quality as repairers would wish to avoid being named and shamed on it.
- 6.90 However, Mr Roy Briggs of NRMA Insurance submitted that the effectiveness of a name and shame register was unclear, citing the experience of other industries that had adopted name and shame registers:

I think naming and shaming has been on the agenda for some time and it seems to be considered to be some sort of panacea to cure the quality ills of the industry. I am not sure that is correct. There are a number of other name and shame websites that exist, for example for restaurants, et cetera. I am not sure they actually serve to deliver the quality outcomes that we are looking for. I guess what I can say is that we are absolutely committed to ensure that the repairers who are licensed in New South Wales can and do carry out the work to a standard that the consumer demands. Whether the name and shame helps to deliver that, to be honest, I am not sure.²⁸⁷

- 6.91 The question of whether name and shame registers have worked in the past in terms of providing information to the public about the quality of services provided by businesses in other industries was put to the Commissioner for Fair Trading, Mr Rod Stowe, at a public hearing. Mr Stowe stated that the wider circulation of information regarding the quality of services provided by businesses was of particular interest to Fair Trading NSW:

I think that suggestion [the establishment of a name and shame list for motor vehicle repairers] has great value. However, I do not think it should be confined to the motor sector. What NSW Fair Trading is anxious to do is put more information about the conduct of traders into the community. In fact you might have heard Minister Ayres only yesterday speaking about proposals we have to make more information available about the conduct of traders. We think there are a couple of advantages in doing that: It can change the behaviour of traders that are not compliant and have a bad record of complaint and market place history and it will assist consumers in making decisions about who to engage when it comes to services and goods.

There will need to be an amendment to the Fair Trading Act to do that. The Minister and I have the capability to name individual traders if there is thought to be a problem in the market place and consumers are endangered, but that is very much a one-off power and there needs to be a comprehensive approach. The Minister's Fair

²⁸⁶ See for example Submission 51, Motor Traders' Association of NSW, p7.

²⁸⁷ Mr Roy Briggs, Transcript of Evidence, 21 March 2014, p24.

Trading Advisory Council has provided some guidance as to how we might make such a register work. I think there is considerable value in that proposal but not limited to the motor trade industry... my intention is to make sure that information is more generally available.²⁸⁸

- 6.92 With regard to the practical means of providing information about repairers who had a history of completing poor quality repair work on motor vehicles, Mr Stowe provided a proposal for action by Fair Trading NSW:

What we would propose is putting that data on our website and I am sure consumers would value that information. We would have to have a process that we would put traders on notice. We have a better trader program now. If problems occur in the market place such as poor customer service that causes consumer complaint—it is not always the case of breaching legislation—we bring that to the attention of businesses and our intention would be to put them on notice that if we did not see an improvement over a period of time they would find their way on to that list... I think we could do it within our resources. I am not saying that we would have hundreds of names up there... This would be something that New South Wales would be leading the other states and territories on.²⁸⁹

- 6.93 The Committee considered the NSW Food Authority's name and shame register for businesses which have breached or alleged to have breached food safety laws as an example of how a name and shame register may operate for motor vehicles. The NSW Food Authority's website states:

The NSW Food Authority publishes lists of businesses that have breached or are alleged to have breached NSW food safety laws. Publishing the lists gives consumers more information to make decisions about where they eat or buy food.

Individuals and businesses may receive either a penalty notice for their alleged offence or be prosecuted before a court. Each is listed as a separate register.²⁹⁰

- 6.94 The Committee notes that there has been some commentary by stakeholders regarding the development of a name and shame register not only for repairers, but also for assessors. The MTA argued during a public hearing that the name and shame system should apply to motor vehicle assessors, indicating that it is possible for independent assessors to take advantage of consumers by collaborating with unscrupulous repairers to charge consumers, particularly those without motor vehicle insurance, with unfair and unreasonable prices for repair work:

Mr Chair, I would go so far to say the name and shame can also apply to the assessors. I am aware that you have submissions from consumers where one consumer in particular ran into the back of a taxi. The taxi driver stopped on the Harbour Bridge for no good reason, the consumer ran into the back of the taxi and she received a bill for \$12,000. An independent assessor decided that was a fair and reasonable price. When we investigated, the car was off the road for two shifts and the pricing of the repair could not be justified. We have got these independent

²⁸⁸ Mr Rod Stowe, Commissioner for Fair Trading, Transcript of Evidence, 21 March 2014, p57.

²⁸⁹ Mr Rod Stowe, Transcript of Evidence, 21 March 2014, p 57-58.

²⁹⁰ NSW Food Authority Website, <http://www.foodauthority.nsw.gov.au/news/offences/>, viewed 21 May 2014.

assessors just claiming to be independent, doing third party recoveries, there is your consumer who forgot to renew her policy, stuck with a \$12,000 bill...²⁹¹

Committee Comment

- 6.95 The Committee considers that the motor vehicle repair industry could be improved for the benefit of consumers through the introduction of increased transparency and accountability for individual repairers.
- 6.96 In particular, the Committee notes the view of the Commissioner for Fair Trading that a name and shame register could assist to better inform the public of repairer quality, and to improve compliance by repairers. In addition, the Committee notes the MTA's support for such a register.
- 6.97 Further, the Committee acknowledges the Commissioner's support for a name and shame register across *all* trades in NSW and recognises that this may be beneficial in delivering information and accountability for consumers. Nonetheless, owing to the important safety issues that are associated with motor vehicle repairs (discussed in detail in Chapter 3 of this report), the Committee considers that a separate register dealing with motor vehicle repair professionals is warranted.
- 6.98 The Committee is also of the view that the option of a name and shame register for *assessors* is worthy of further investigation by Government. This is particularly the case given chapter 5 of this report recommends that assessors be given additional responsibility so that they not only have to determine the extent of motor vehicle damage and appropriate quote for the cost of repairs but also have to approve the repair method when authorising a quote. In short, it would be beneficial for assessors to be held accountable for all their decisions via a name and shame register. It is notable such a register may also assist to provide consumers and repairers with information about quality of services provided by independent assessors.
- 6.99 In sum, the Committee considers that the NSW Government should investigate the development of a name and shame register for motor vehicle professionals in NSW, including assessors, to be jointly administered by Roads and Maritime Services and Fair Trading NSW.

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.

Digital Images of Repairs

- 6.100 As discussed in greater detail in chapter 3 of this report, the Committee also heard evidence during the Inquiry about the benefits of using digital image technology during the motor vehicle repair process. For example, the MTA submitted to the Committee that the Government should consider encouraging

²⁹¹ Mr Graham Judge, Transcript of Evidence, 17 March 2014, p12.

the use of digital recording of repair processes within the industry to ensure accountability and transparency:

Repairers should also be required to document all repairs by keeping file notes, tax invoices, and progress digital imagery. This will ensure greater consistency within the industry and will improve the overall quality of repairs.²⁹²

Committee Comment

- 6.101 As discussed in chapter 3, the Committee is of the view that wider use of digital camera technology across the motor vehicle repair industry would provide substantial benefits for all parties involved in a vehicle's repair, including the consumer. Indeed, if consumers were provided with clear information and documentation regarding repair work on their vehicle it may help to address the difficulties they have in assessing repair quality that are discussed in this chapter.
- 6.102 In this regard, the Committee notes that a recommendation is made in chapter 3 that motor vehicle repairers be required to record digital images of repairs undertaken on vehicles, and that these digital images be made available to the owners of repaired vehicles.

A Rating System for Repair Shops

- 6.103 During the Inquiry, the Committee also heard that consumers often have difficulty comparing smash repairers and understanding the services they provide:
- A majority of consumers do not have the experience and expertise to compare smash repairers and their quotations...For these consumers, there are benefits to leveraging off insurer recommendations.²⁹³
- 6.104 To increase the information that is available to consumers about the services provided by, and the capability of individual repairers, the MTA recommended to the Committee that NSW Fair Trading introduce and manage a rating system for motor vehicle repairers.²⁹⁴ Similarly, in his submission to the Inquiry, smash repairer and instructor Mr Garry Maher, indicated that a rating system should be introduced to 'allow better consumer choice' and 'identify different areas of expertise within the industry that would suit a particular repair.'²⁹⁵
- 6.105 During the Inquiry, Mr Peter Blanshard, Chief Executive Officer of the Institute of Automotive Mechanical Engineers, also indicated the Institute's support for the introduction of a rating system for repairers to enable consumers to readily and clearly identify the capabilities of repairers:
- Mr RAY WILLIAMS: Should we be looking at what has already been suggested as a rating system for motor vehicle repair shops across the board? If there are motor vehicle repairers who have invested in that technology to do that particular work and do a grade of work and there are smaller companies who have operated for

²⁹² Submission 51, Motor Traders' Association of NSW, p6.

²⁹³ Submission 48, Insurance Council of Australia, p46.

²⁹⁴ Submission 51, Motor Traders' Association of NSW, p12.

²⁹⁵ Submission 1, Mr Garry Maher, p1.

many, many years do not want to make that investment in the new technology, they would therefore have a rating system as to what they could actually repair or the quality of repairs that they can provide to the individual repairs across the board?

Mr BLANSHARD: A basic understanding of that and how it has been put up, and I suppose in an initial stage it certainly has our support. There are panel shops out there that would love to do rust repairs and do the small minor accidents on older motor vehicles and they are probably fully equipped and fully trained to do so. Then you have got shops that invest massively into qualified technicians, very fancy pieces of equipment and they do operate with some excellent training for their people and they are probably skilled enough to do larger hits, yes.²⁹⁶

Committee Comment

- 6.106 The Committee considers that the motor vehicle repair industry has become increasingly specialised, with some repairers moving towards specialising in certain types of vehicle repairs. This process has been encouraged by a number of factors, including increased complexity in new vehicle design and repair methods, and the need for significant investment in the purchase, training and development of sophisticated new processes and technologies to repair modern vehicles.
- 6.107 The Committee further considers that an increase in the information that is available to the public about the services and capability of individual repairers will allow for a better informed consumer base. It would also allow repairers to continue to specialise in particular types of repair or repair techniques.
- 6.108 The proposed rating system could be based on a repairer's capability to complete a certain type of motor vehicle repair, rather than on quality of work or customer feedback. Variants of motor vehicle repair that could comprise the rating system could include categories of 'minor or surface damage repair', 'auto electrical system repair' or 'major structural damage repair'.
- 6.109 Regarding practical implementation of such a ratings system, in the Committee's view, such a system could potentially be regulated as part of the current requirement for motor repair businesses operating in NSW to be licensed through NSW Fair Trading.

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.

Consumer Recourse

- 6.110 Another issue that came up during the course of the Inquiry surrounded recourse for consumers who have a dispute regarding a repair.
- 6.111 In short, the NSW Government submission to the Inquiry indicated that under the *Motor Vehicle Repairs Act 1980*, shortly to be replaced by the *Motor Dealers and Repairers Act 2013*:

²⁹⁶ Mr Peter Blanshard, Transcript of Evidence, 17 March 2014, p49.

Consumers can initiate dispute resolution through Fair Trading and if this proves unsuccessful, seek resolution of a dispute through the NSW Civil and Administrative Tribunal for substandard work by repairers.²⁹⁷

6.112 However, the Committee also received evidence that Fair Trading does not have jurisdiction over insurance contract disputes. Insurance contracts and arrangements between insurers and consumers are instead regulated by the Commonwealth through the *Insurance Contracts Act 1984*. This Act excludes remedies under other legislation – the Act’s consumer protections are the sole source of remedies in relation to insurance contracts.²⁹⁸

6.113 If a consumer is dissatisfied with a repair and he or she has motor vehicle insurance he or she can bring this to the attention of the nationally run Financial Ombudsman’s Service. A note on the website of the Insurance Law Service explains this more fully:

If you have had repairs done by your insurer and you are unsatisfied with the quality of workmanship or parts used or the timeliness of the work there are steps you can take. Regardless who actually does the work be [it] the insurer’s authorised repairer or a subcontractor, the insurance company is [responsible] for the quality of the repairs...In general, if repair work to your...vehicle is not to your satisfaction you may do the following:

1. Request that the insurer fixes the problem.
2. If your insurer refuses to fix the problem, lodge a complaint with your insurer’s Internal Dispute Resolution Scheme...
3. Your insurer has 45 days to provide you with written response outlining their decision.
4. If your insurer refuses to fix the repairs or does not respond in 45 days, you can lodge a complaint with the Financial Ombudsman Service...
5. After investigating the matter:
 - a. If the Financial Ombudsman Service finds in your favour the insurer is obligated to carry out the repairs; or
 - b. If the Financial Ombudsman Service finds in favour of the insurer you still have the option of taking the insurer to court...²⁹⁹

6.114 Consumers can also take a dispute concerning their insurer’s assessment of the cost of repairs to the Financial Ombudsman’s Service.³⁰⁰

6.115 In its evidence to the Committee, the MTA expressed a preference for NSW Fair Trading to have responsibility for resolving *all* consumer disputes regarding repairs. Mr Judge told the Committee:

²⁹⁷ Submission 69, NSW Government, p6.

²⁹⁸ Submission 69, NSW Government, p7.

²⁹⁹ Insurance Law Service website, <http://www.insurancelaw.org.au/fact-sheet/problems-with-the-quality-of-repairs-arranged-by-the-insurer/>, viewed 21 May 2014.

³⁰⁰ Submission 57, Insurance Law Service, Consumer Credit Legal Centre NSW Inc., p6.

It is fair to say we do not go looking for consumer complaints but over the last 12 to 18 months we have had a steady flow of consumers ringing the Motor Traders' Association for assistance. It would be all right if we could just forward those complainants off to Fair Trading officers to cover the problem but because of the insurance company relationship with the customer, the customer is directed to go to the Financial Ombudsman Service, or through the courts if they need to resolve a dispute.³⁰¹

- 6.116 Mr Patten of the MTA elaborated on this point indicating that the Financial Ombudsman's Service takes a long time to resolve disputes and does not possess the necessary expertise:

No, the current mediation disputes when there is an insurance repair problem, we have got a couple of examples of taking in excess of 12 months to resolve...It is extraordinarily long to be without your motor vehicle...[The Financial Ombudsman's Service] do[es] not have any skills to be able to go out and assess a repair to say it is okay or it is not okay and get it fixed. We believe that...should be re-worked so that complaints are taken up firstly with the Department of Fair Trading and then if the mediation process through that does not work, go to the Claims Tribunal of NSW. That way at least consumers will get a result in a reasonable amount of time rather than over an extended period of time.³⁰²

- 6.117 This evidence is consistent with that of the Insurance Law Service which indicated that 'The Ombudsman process can take many months to resolve'.³⁰³ It is also consistent with the evidence of a consumer participant in the Inquiry who is having a dispute with an insurance company over the cost of repairs to his vehicle. The consumer indicated that the dispute had been referred to the Financial Ombudsman's Service in September 2013 and, as at March 2013, there had been no resolution. Over that time the consumer was without use of his vehicle. He commented:

The dispute resolution process with the Financial Ombudsman's Service is a lengthy process...I request that...Fair Trading intervene to resolve my complaint as the Financial Ombudsman's Service are based in Melbourne and have no technical expertise to understand and physically engage in this dispute.³⁰⁴

Committee Comment

- 6.118 In the Committee's view it would be ideal if the role of Fair Trading NSW were expanded so that the agency had responsibility for resolving all disputes regarding repairs regardless of whether a consumer is insured or not.
- 6.119 However, the Committee is cognisant of the fact that it would not be legally possible for NSW Fair Trading to take over this role. As above, the Commonwealth's *Insurance Contracts Act 1984* excludes remedies under other legislation – the Act's consumer protections are the sole source of remedies in relation to insurance contracts.³⁰⁵ A law giving NSW Fair Trading jurisdiction over

³⁰¹ Mr Graham Judge, Transcript of Evidence, 17 March 2014, p2.

³⁰² Mr Greg Patten, Transcript of Evidence, 17 March 2014, p13.

³⁰³ Submission 57, Insurance Law Service, Consumer Credit Legal Centre NSW Inc., p6.

³⁰⁴ Submission 33, confidential, p4 (quoted with permission).

³⁰⁵ Submission 69, NSW Government, p7.

insurance-related disputes would be contrary to this and thus unconstitutional. This is because section 109 of the Australian Constitution provides that ‘when a law of a state is inconsistent with a law of the Commonwealth, the latter shall prevail and the former shall, to the extent of the inconsistency, be invalid’.

6.120 In the circumstances, the Committee notes the claims that have been made concerning the Financial Ombudsman’s Service and its timeliness in resolving disputes, lack of expertise to do so and lack of ability to physically engage in NSW disputes because of its Melbourne location; and makes the following recommendation.

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.**

CONTENT OF INSURANCE POLICIES

6.121 The content of insurance policies is an important issue for consumers of motor vehicle insurance. As discussed above in the steering section of this chapter, consumers often have little knowledge of the content of their insurance policies when entering into one, only becoming aware of this matter when they make a claim following an accident.³⁰⁶ The disclosure requirements recommended above in relation to choice of repairer and vehicle parts are intended to assist consumers with this issue.

6.122 Another area where consumers may not be particularly well-informed is in the area of ‘umbrella companies’ in the insurance industry, that is, whether the company offering the insurance policy that they are interested in buying is actually owned by a larger umbrella or parent company.

6.123 In short, as discussed in Chapters 2 and 3, insurers Suncorp Group Ltd and Insurance Australia Group (IAG) own over 62% of the market share for motor vehicle insurance in NSW. Suncorp owns 29.6% of it³⁰⁷ and the following major brands fall under its umbrella:

- Suncorp Insurance;
- AAMI;
- GIO; and

³⁰⁶ Submission 57, Insurance Law Service, Consumer Credit Legal Centre NSW Inc., p7.

³⁰⁷ Deloitte Access Economics, February 2014, appendix to Submission 48, Insurance Council of Australia, p33.

- Apia.³⁰⁸

6.124 In addition, the following specialist brands fall under the Suncorp umbrella:

- Vero;
- JustCar;
- Bingle;
- InsureMyRide;
- Shannons;
- CIL Insurance (Caravans and RVs); and
- Resilium.³⁰⁹

6.125 IAG owns 32.6% of the market share for motor vehicle insurance in NSW³¹⁰ and its brands include the following:

- NRMA Insurance;
- SGIO (Western Australia-focussed);
- SGIC (South Australia-based);
- CGU; and
- Swann Insurance.³¹¹

6.126 To increase the amount of information that consumers have access to in deciding which motor vehicle insurance policy to take out, the Committee considers that each Product Disclosure Statement should include information on whether the insurer offering the policy is owned by an umbrella (or parent) company, and if so, which company that is. It would be helpful if a clause were included in the Motor Vehicle Insurance and Repair Industry Code of Conduct to make this a requirement.

FINDING 2

The Committee considers that the Motor Vehicle Insurance and Repair Industry Code of Conduct should be amended to include a new Clause 9.6 that requires insurers to declare their umbrella and parent companies. This information should be clearly visible, upfront in the product disclosure statement and/or advised to customers at the time they enter into the insurance policy.

³⁰⁸ Submission 46, Suncorp Group Limited, 'Roadmap to a Shared Future', p3.

³⁰⁹ Submission 46, Suncorp Group Limited, 'Roadmap to a Shared Future', p3.

³¹⁰ Deloitte Access Economics, February 2014, appendix to Submission 48, Insurance Council of Australia, p33.

³¹¹ IAG Australia website, <http://www.iag.com.au/business/australia.html>, viewed 19 May 2014.

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.

Chapter Seven – Motor Vehicle Insurance and Repair Industry Code of Conduct

- 7.1 This chapter explores the current Motor Vehicle Insurance and Repair Industry Code of Conduct (the Code), 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.

MOTOR VEHICLE INSURANCE AND REPAIR INDUSTRY CODE OF CONDUCT

Background to the Code

- 7.2 The Code commenced in September 2006 following a 2004-05 Productivity Commission Inquiry into Smash Repair and Insurance, which found that there were ‘...serious issues of dispute between the body repair and insurance industries that affect fair trading and transparency, and impact on efficiency.’³¹² The Productivity Commission recommended the establishment of a voluntary Code to govern aspects of the relationship between repairers and insurers.³¹³
- 7.3 The Code was developed by the Smash Repair and Insurance Industry Implementation Taskforce, chaired by Ms Mary Urquhart, and comprised of ten representatives including from the Insurance Council of Australia, Suncorp Metway, Allianz Australia, Insurance Australia Group, AAMI, two from the Motor Trades Association of Australia, Motor Trades Association of Queensland, Motor Traders Association of NSW (MTA), and the Victorian Automobile Chamber of Commerce.³¹⁴
- 7.4 It is a voluntary national Code in all states apart from NSW where it has been mandated under the *Fair Trading Act 1987* since late 2006.³¹⁵ Failure to comply with the Code in NSW could constitute a breach of the Act. If it is in the public interest; and dispute resolution procedures under the Code have been followed but have not resolved the dispute, or a party refuses to use these procedures, NSW Fair Trading can take action to enforce compliance with the Code and monetary penalties can be imposed.³¹⁶ It appears that the maximum penalty available for breaching the Code is a \$2,200 fine for an individual and a \$11,000 fine for a corporation.³¹⁷

³¹² Productivity Commission, ‘Smash Repair and Insurance’, 2005, Productivity Commission website, <http://www.pc.gov.au>, viewed 8 April 2014, pxii.

³¹³ See recommendations 6.1 and 6.2, Productivity Commission, ‘Smash Repair and Insurance’, pp143-144.

³¹⁴ Commonwealth Department of Industry website, <http://www.innovation.gov.au/SmallBusiness/CodesofConduct/Pages/MotorVehicleInsuranceandRepairIndustryCodeofConduct.aspx>, viewed 8 April 2014.

³¹⁵ See Part 4, Division 4 of the *Fair Trading Act 1987*; and Submission 69, NSW Government, p2.

³¹⁶ See section 54 and Part 6 of the *Fair Trading Act 1987*.

³¹⁷ Section 69, *Fair Trading Act 1987*.

Content of the Code

Principles of the Code

- 7.5 The Code is intended to promote transparent, informed, effective and cooperative relationships between smash repairers and insurance companies based on mutual respect and open communication.
- 7.6 Under the Code, insurers and repairers agree that they have a responsibility to ensure vehicle repairs are authorised and carried out in a professional manner, and to ensure the safety, structural integrity, presentation and utility of the vehicle are restored. Insurers and repairers are also to comply with relevant legislation and fulfil their obligations to policy holders and each other.³¹⁸

Administration of the Code

- 7.7 The Code is administered by a Code Administration Committee (CAC) made up of three members of the insurance industry, and three members of the motor vehicle repair industry.³¹⁹ The CAC's role includes monitoring compliance with the Code; producing a publicly available annual report on the Code which includes an assessment of insurer and repairer compliance with the Code and the number and type of applications for external dispute resolution under the Code; and conducting and facilitating an external review of the operation of the Code every three years from the commencement of the Code.³²⁰
- 7.8 Despite recommendations for change over the years, the Code has not been varied significantly. Similarly, while the NSW Government mandates the Code for repairers and insurers in respect of the majority of motor vehicles repaired in NSW, it is unable to amend the provisions contained in the Code – this is the prerogative of the CAC.³²¹
- 7.9 Incidentally, the Code has recently been subject to external, independent review by Executive Counsel Australia, and its recommendations for reform, some of which are discussed below, are currently under consideration by the CAC.³²²

Insurer and Repairer Requirements

- 7.10 Under the Code, repairers are required to:
- Repair estimates that provide for an appropriate range of repairs;
 - Ensure that all repairs are carried out in a safe, ethical, timely and professional manner and in accordance with the method of repair and the parts specified by the insurer;

³¹⁸ See Clause 1 of the Code, NSW Fair Trading website, <http://www.fairtrading.nsw.gov.au/pdfs/Businesses/motorvehicleinsurancecodeofpractice.pdf>, viewed 9 April 2014.

³¹⁹ See sub-clause 12.1 of the Code.

³²⁰ See sub-clause 12.2 of the Code.

³²¹ Submission 69, NSW Government, p2.

³²² Submission 34, Allianz Australia Insurance Limited, p4.

- Not dismantle a vehicle for the purpose of preparing an estimate unless requested or authorised to do so by the insurer;³²³
- Not engage in practices designed to hinder or prevent the insurer or claimant seeking to obtain an alternative quotation;
- Carry out repairs taking into consideration the age and condition of the motor vehicle that are in accordance with the documented manufacturers' technical specifications; use methods that are consistent with vehicle warranty conditions; and, in the absence of these points, that are in accordance with accepted industry standards and practice.³²⁴

7.11 Under the Code, insurers are required to:

- Provide repairers with relevant details to enable them to paper an estimate or undertake a repair including details of sub-let repairs and payments by customers including any excess and contributions;
- Not refuse to consider an estimate on unreasonable or capricious grounds;
- Pay the agreed amount for completed work that has been authorised or requested by the insurer;
- Ensure all assessors engaged by the insurer are appropriately trained and have appropriate technical experience; or have successfully completed an approved assessors course; or have not less than five years' experience as an insurance (motor) assessor;
- Not remove a motor vehicle from a repairer's premises without notifying him/her in advance and compensating the repairer for any legitimate or reasonable towing or storage costs associated with the vehicle and in compliance with relevant legislation; and
- Not knowingly ask claimants to drive unsafe motor vehicles for the purpose of obtaining alternative estimates.³²⁵

Estimate, Repair and Authorisation Process

7.12 Under the Code, insurers are required to ensure that the estimation process is fair and transparent, and that estimates are comprehensive, complete and inclusive of all obvious damage. The estimates must also clearly state the estimation techniques to be applied. Insurers may not unreasonably alter a repair estimate unless the insurer insists on changing the repair process, parts or materials to be used.

³²³ See sub-clause 4.1 of the Code.

³²⁴ See sub-clause 1.4 of the Code.

³²⁵ See sub-clause 4.2 of the Code.

- 7.13 In addition, while insurers may enter into commercial arrangements with repairers that specify performance targets, they must not unduly influence any repairer to submit estimates on the basis of inducements of further work.³²⁶

Repair Warranties

- 7.14 Under the Code, insurers must provide details in writing to repairers of the warranty cover that the insurer provides to the claimant, including the insurer's responsibilities under lifetime warranties. Repairers must provide insurers with a warranty in respect of their workmanship for a period of three years from the date of repair.
- 7.15 Repairers are only required to provide a guarantee for parts or paint to the extent that the manufacturer, distributor, supplier or importer of the parts or paint is liable under an express warranty or under the law; and repairers still have to provide a guarantee for the quality of workmanship carried out using the parts or paint. The insurer is not liable to pay any loss or liability incurred by the repairer where the loss or liability arises from faulty workmanship.
- 7.16 Where rectification is required, the repairer concerned must be given the opportunity to do the work where practicable, taking into account customer preferences.³²⁷

Payment Terms

- 7.17 Under the Code, an insurer must pay a repairer within 30 days from receipt of an invoice. Where price, work or documentation is disputed, payment of the undisputed amount must be paid within 30 days. Insurers must also disclose alternative payment arrangements, if any, between repairers in and those not in the insurer's network smash repairer scheme.³²⁸

Disclosure Obligations

- 7.18 Under the Code, insurers must clearly state, in unambiguous and plain language, upfront in their Product Disclosure Statements, their policy in relation to choice of repairer for customers; use of new, non-genuine and recycled parts, sub-let repairs, and guarantees and warranties.
- 7.19 In addition, insurers must not make misleading or deceptive statements about the quality, capability or timeliness of repairers that are not members of their network smash repair schemes. Similarly, repairers must not make misleading or deceptive statements about the quality, safety or timeliness of repairs based on who the insurer is or the approach the insurer uses to allocate repairs or manage claims.³²⁹

Dispute Resolution – Repairs

- 7.20 Under the Code, if a repair has not commenced or been completed and the repairer believes that the safety, structural integrity, presentation or utility of the

³²⁶ See Clause 6 of the Code.

³²⁷ See Clause 7 of the Code.

³²⁸ See Clause 8 of the Code.

³²⁹ See Clause 9 of the Code.

vehicle will be compromised by the repair method proposed by the insurer, the repairer must notify the insurer providing full details of the dispute and supporting evidence of the concern and the redress sought.

- 7.21 The insurer must then investigate the issue and make a determination within two business days. If the repairer disagrees with the determination he or she can refuse to carry out the repairs and the insurer may transfer the vehicle to another repairer.
- 7.22 Disagreements relating to the amount to be paid for repairs or differences of opinion about the preferred repair method other than those above cannot be disputed under the Code and are matters for individual repairer/insurer negotiation.³³⁰

Dispute Resolution – Breaches of Code and Contractual Matters

- 7.23 Disputes related to alleged breaches of the Code, or disputes over contractual arrangements must first go through internal dispute resolution (IDR) conducted by the insurer. Insurers must provide written acknowledgement of the complaint within five business days, and within a further ten business days, repairers and insurers must have concluded the IDR process, unless otherwise agreed by both parties.
- 7.24 If the repairer disagrees with the outcome of the IDR, he or she can commence an external dispute resolution process (EDR) by lodging a notice of dispute with the CAC and the insurer. A mediator paid for equally by both parties is then appointed and, at the conclusion of mediation, the mediator advises the CAC in writing about whether the mediation was successful or unsuccessful.³³¹

EFFECTIVENESS OF THE CODE AT REGULATING THE RELATIONSHIP BETWEEN REPAIRERS AND INSURERS

Motor Traders Association of NSW and Repairer Evidence

- 7.25 During its Inquiry, the Committee heard and received evidence from the Motor Traders Association of NSW and various repairers that the Code has had minimal impact on improving relations between insurers and repairers. While they appeared largely satisfied with the *content* of the Code³³², they cited frequent breaches of it by insurers and indicated that these breaches go unchecked.
- 7.26 Mr Graham Judge, Acting Body Repair Division Manager of the MTA told the Committee:

[The Code] is a failure... [under the Code] the insurance companies are supposed to provide in an upfront prominent position clear, plain English about repairer of choice. We find it on page 45, 55, now 69 of product disclosure statements. I am yet to find one person who actually admits that they have read the product disclosure statement. Another good [example] is section 8.3 payment terms. Insurers are supposed to disclose the payment terms that they make to repairers. If

³³⁰ See Clause 10 of the Code.

³³¹ See Clause 11 of the Code.

³³² See for example submission 20, name suppressed, p1.

you are a partner repairer and you are getting paid within 24 hours and then you have got a non-partner repairer who has to wait 30 days...The Code says they are supposed to do certain things but no one is policing it and there are no fines...I have got repairers who are complaining about not being paid within 30 days...³³³

7.27 Various individual repairers made similar comments. For example, one repairer stated:

As an example of how the [Code] is disregarded by the Insurers, Clause 9.1 of the [Code] requires that "Insurers will clearly state, in unambiguous and plain language, upfront in their PDS, their policy in relation to choice of Repairer". I am yet to see a Product Disclosure Statement that aligns with the above disclosure obligation. In fact, sometimes this information is contained in a Supplementary PDS, presumably in the hope that the small number of people who read a PDS will overlook their entitlement in this area.³³⁴

7.28 In its submission, another repairer listed a number of provisions in the Code that it suggested insurers routinely breach including:

- Contrary to the Code's requirement that insurers must not knowingly ask claimants to drive unsafe motor vehicles for the purpose of obtaining alternative estimates, 'when a customer contacts an insurer and advises their car has been damaged, the insurer's telephone operator asks the customer if the car is safe to drive...The customer in most cases has no idea if it is safe to drive'.³³⁵
- Contrary to the Code's requirement for insurer's to clearly state the estimation methodology to be applied, 'I have never received an estimation methodology from any insurer other than NRMA'.³³⁶
- Contrary to the Code's requirement that insurers may not unreasonably alter a repair estimate unless the insurer insists on changing the repair process, parts or materials to be used, 'Every insurer adjusts my prepared estimate for repair without changing the repair process and in most cases without any form of contact or negotiation'.³³⁷
- Contrary to the Code's requirement that insurers will disclose alternative payment arrangements, if any, between repairers and those not in the insurer's network smash repair scheme, 'I have never received a copy from any insurer in over 20 years'.³³⁸
- 'Insurers delay payments [to repairers] over 30 days when an IDR is lodged it is useless as it carries no penalties'.³³⁹

³³³ Mr Graham Judge, Transcript of Evidence, 17 March 2014, pp12&13.

³³⁴ Submission 28, name suppressed, p1.

³³⁵ Submission 50, confidential, p4 (quoted with permission).

³³⁶ Submission 50, confidential, p4 (quoted with permission).

³³⁷ Submission 50, confidential, p4 (quoted with permission).

³³⁸ Submission 50, confidential, p4 (quoted with permission).

³³⁹ Submission 50, confidential, p4 (quoted with permission).

- ‘Insurers do not advise their policy in relation to choice of repairer [upfront in their Product Disclosure Statement] as no fines apply’.³⁴⁰

7.29 Another repairer summed up the position in the following terms:

[The Code] is a starting point but it is nowhere near effective as what it could be and what it should be. How it is treated by insurance companies is okay we will handle that problem. If we get caught doing something, sure, we will get wrapped on the knuckles and apologise to that repairer but there is nothing in place to stop them from doing it again. We find that the same problem and the same incidents keep on re-occurring because, as I said there are no penalties in place to make them change their mind. If that thing is working for them, they will do it no matter what. If someone has to apologise along the way or do something on a one-off basis or two-off basis, they will keep doing it because it works for them and I think that needs to be addressed.³⁴¹

Insurer Evidence

7.30 In contrast, insurers have provided more positive feedback about the Code, indicating that it has improved the relationship between repairers and insurers since its introduction. For example, Allianz stated in its submission:

The Code sets out a range of principles, rights and obligations that govern the relationship between insurers and repairers and has worked well since 2006. It has assisted in resolving the very small number of disputes that have arisen between Allianz and repairers since its inception. Allianz has had two disputes addressed under the External Dispute Resolution (EDR) procedures of the Code during its more than seven years of operation.³⁴²

7.31 The Insurance Council of Australia made a similar observation:

...the MVIRI Code has eliminated many areas of dispute, and has allowed for matters to be resolved between the parties without the need for more formal and expensive dispute resolution. We believe that this may go some way to account for the small number of official disputes.³⁴³

7.32 While insurers concede that some level of tension still exists between industry participants, they also contend that this is inevitable – any commercial relationship involving millions of transactions will give rise to some level of dispute.³⁴⁴ In addition, insurers indicated that in some cases repairers are calling on the Code to resolve issues that it was never designed to resolve, for example, pressures caused by structural change in the industry. For example, in its submission NRMA Insurance stated:

NRMA does not view the role of the Code of Conduct...to seek to affect the nature or pace of fundamental structural change within the smash repair industry. This change continues at a rapid rate, driven by changes in technology and consumer demand, not at the hands of most insurers...A Code cannot remove the pressures

³⁴⁰ Submission 50, confidential, p5 (quoted with permission).

³⁴¹ Name suppressed, *in camera* Transcript of Evidence, 17 March 2014, p2 (quoted with permission).

³⁴² Submission 34, Allianz Australia Insurance Limited, pp3&4.

³⁴³ Submission 48, Insurance Council of Australia, p10.

³⁴⁴ Submission 34, Allianz Australia Insurance Limited, p3.

these market ‘supply and demand’ factors place on repairers’ abilities to run sustainable businesses, nor can the Code and its Principles provide a single solution to addressing all issues and challenges within the industry.³⁴⁵

7.33 In his evidence to the Committee, Mr Robert Whelan, Executive Director and Chief Executive Officer of the Insurance Council of Australia expanded on this point:

Well, as far as we can see from all the reports that we get from the code administrative committee, [the Code]...is working well...but the Code cannot deal with issues that are about the transformation of the industry...The industry...is going through massive changes...It is a combination of a number of factors, not the least of which is technology and the changing nature of cars and the requirements to be able to repair them has changed quite dramatically. The overall industry is consolidating...³⁴⁶

Committee Comment

7.34 In the Committee’s view, while the Code provides a mechanism to deal with disputes there is evidence of continued, significant tension between insurers and repairers; and of a systemic enforcement issue, that is, frequent breaches of the Code. This acrimonious environment is not beneficial for consumers as there is potential for them to get caught in the middle of disputes between insurers and repairers.³⁴⁷ In short, while the Code has provided a start in improving the relationship between repairers and insurers, changes and improvements are required. These changes and improvements are discussed in what remains of the chapter.

DISPUTE RESOLUTION AND ENFORCEMENT

“Toothless” Nature of the Code

7.35 The Committee received evidence from the MTA and repairers during the Inquiry linking continued tension between insurers and repairers, and repeated breaches of the Code, with a lack of enforcement activity and penalties. For example, one repairer stated:

Without a commercial deterrent, or at the very least a “name and shame” aspect, and this cuts both ways – Repairers and Insurers – the dispute aspect of the [Code] serves very little purpose.³⁴⁸

7.36 Another repairer made the point in this way:

The Code of Conduct, when it was introduced they [the insurers] were scared and if we were to use it there would be an outcome...As the years progressed and they realised we are not going to get spanked here and no-one is really looking...you just see their arrogance...I liken it to the road rules that we are all governed by and if

³⁴⁵ Submission 45, NRMA Insurance, p21.

³⁴⁶ Mr Robert Whelan, Transcript of Evidence, 17 March 2014, p37.

³⁴⁷ Submission 20, name suppressed, p1, which mentions the potential for consumers to get caught in the middle of disputes.

³⁴⁸ Submission 28, name suppressed, p1.

there was no penalty for driving down that road over the speed limit, as much as we get pulled up and spoken to, there is nothing stopping us from going over again.³⁴⁹

7.37 Indeed, despite the fact that the Code is mandated in NSW under the *Fair Trading Act 1987*, to date NSW Fair Trading has never taken action or imposed the monetary penalties available under the Act in response to complaints about breaches of the Code.³⁵⁰ NSW Fair Trading informed the Committee that one of the underlying principles of the Code is that *self-enforcing* insurers and repairers can resolve disputes themselves using its IDR and EDR procedures; and that (as mentioned above) under the Act, NSW Fair Trading can only take action to enforce compliance with the Code and impose monetary penalties if:

- dispute resolution procedures under the Code have already been followed but have not resolved a dispute, or the non-complaining party has refused to participate in dispute resolution; and
- it is considered in the public interest.³⁵¹

7.38 Hence, if Fair Trading receives enquiries or complaints from repairers or insurers regarding the Code it first provides them with information concerning its IDR and EDR provisions. The Fair Trading Commissioner, Mr Rod Stowe told the Inquiry:

We get very little in the way of complaints; as I said, we have had two complaints about the Code [in the last 5 years]. Most of the inquiries we receive usually are prior to the participant actually utilising the Code for a dispute.³⁵²

7.39 As above, however, even in respect of the two complaints received after participants had utilised dispute resolution procedures under the Code, it appears that NSW Fair Trading did not take action.³⁵³ Incidentally, this ‘hands-off’ approach appears to contrast with that applied to complaints made by *consumers* about sub-standard repair work. Mr Stowe told the Committee that in those instances:

We have staff that are able in the first instance to speak to both parties to see if the issue can be resolved. Quite often that can be done over the telephone. We have also trained staff who have industry skills and can go on site and work with the two parties to see if they can get an outcome. I have to say that that is generally a very successful process.³⁵⁴

7.40 Relevantly, some repairers argued that as well as the monetary penalties available for breaches of the Code under the Act, cancellation or suspension of individuals’ trade certificates and licences, and business licences, should be considered. For example, one repairer stated:

³⁴⁹ Name suppressed, *in camera* Transcript of Evidence 17 March 2014, p27 (quoted with permission).

³⁵⁰ Submission 69, NSW Government, p5.

³⁵¹ See section 54 and Part 6 of the *Fair Trading Act 1987*.

³⁵² See Transcript of Evidence, 21 March 2014, pp50&51.

³⁵³ Submission 69, NSW Government, p5.

³⁵⁴ Mr Rod Stowe, Transcript of Evidence, 21 March 2014, p51.

What I believe needs to be introduced is a licence points system, similar to the Driver Licence System currently enforced by the Roads and Maritime Services (RMS). This system should be enforced upon all parties who would hold this licence including insurance companies, assessors and repair shops...If someone is at fault a fine or penalty should be enforced, with points taken away from their licence. For instance, if all points were to be lost on an assessor's licence then they would not be able to assess vehicles for any insurer for a set period or until all points are returned. I also believe that a loss of points should not be returned for at least 5 to 10 years depending on the severity of the fault.³⁵⁵

Repairer Reluctance to Initiate Disputes Under the Code

7.41 The Committee also heard evidence linking the continued tension between repairers and insurers and frequent breaches of the Code with repairer reluctance to actually *use* the dispute resolution procedures available under the Code to resolve issues. This may wholly or partially account for the small number of official disputes referred to by the Insurance Council of Australia in its evidence to the Committee.³⁵⁶ Indeed, one repairer told the Committee:

The dispute resolution aspect of it indicates nothing other than Repairers having given up on it and Insurers promoting this as evidence that everything is working well.³⁵⁷

7.42 Interestingly, Suncorp Insurance also confirmed that the most recent external review of the Code conducted by Executive Counsel Australia did indicate that some repairers do not feel confident to raise issues with insurers.³⁵⁸

7.43 Speaking about the possible reasons for this low utilisation rate, the MTA stated:

The majority of repairers will not commence internal disputes with insurance companies as there is a well-held scepticism in the dispute resolution effectiveness. In any event...repairers are reluctant to make use of the dispute resolution process due to the well-founded fear of losing favour with an insurance company and losing work by insurers steering/directing consumers.³⁵⁹

7.44 Indeed, when questioned about how many disputes are actually *resolved* once they are initiated, insurers indicated some may result in an 'agree to disagree' outcome. For example, in response to a question about how many of the three EDR processes Allianz Australia had been involved in within NSW resulted in such an outcome Mr Nicholas Scofield, General Manager Corporate Affairs stated:

Well I mean it is probably fair to say all of them have been an agree to disagree outcome.³⁶⁰

7.45 Likewise, Mr Steve Bubulj, Acting Head of Supply Chain, NRMA Insurance stated that of about a dozen EDRs since 2009:

³⁵⁵ Submission 20, name suppressed, p1.

³⁵⁶ Submission 48, Insurance Council of Australia, p10.

³⁵⁷ Submission 51, Motor Traders Association of NSW, p6.

³⁵⁸ Submission 46, Suncorp Group Limited, p34.

³⁵⁹ Submission 51, Motor Traders' Association of NSW, p6.

³⁶⁰ Mr Nicholas Scofield, Transcript of Evidence, 21 March 2014, p13.

...there is a combination – there were certainly circumstances where we agreed to disagree, I am aware of that.³⁶¹

7.46 Consistent with this, at a national level, the 2013 CAC Annual Review of the Code indicated that in the last reporting year, of 50 EDRs reported by the Association of Dispute Resolvers (LEADR), 13 were successfully resolved, 15 were not resolved and 22 were withdrawn.³⁶²

7.47 To obtain a result following EDR in NSW, a complaint would need to be made to NSW Fair Trading which, as above, is rare and has not to date resulted in enforcement action. Alternatively, court action for compensation or other orders could be taken against the party contravening the Code³⁶³.

7.48 In addition, expanding on the point that many repairers are loathe to initiate disputes under the Code for fear of insurer retribution, one repairer indicated to the Committee:

...the Dispute Resolution Mechanisms within the Code further...aggravate the relationships between repairers and insurers, due to retaliation and reactive victimisation post the conclusion of disputes.³⁶⁴

7.49 The MTA estimates that over 90% of smash repair work is controlled by insurers in NSW³⁶⁵ meaning that losing favour with them would have serious consequences for repair businesses.

External Review of the Code by Executive Counsel Australia

7.50 The issues of lack of enforceability and reluctance by repairers to use dispute resolution mechanisms were also identified by Executive Counsel Australia in its recent external review of the Code.³⁶⁶ The Committee has taken the work of the external reviewers into account in formulating its own recommendations for improvements surrounding the Code.

7.51 In response to concerns about the lack of binding outcomes following dispute resolution under the Code, the external review recommended:

- The establishment of an arbitration process for disputes under the Code where an insurer or repairer requests such arbitration;

³⁶¹ Mr Steve Bubulj, Transcript of Evidence, 21 March 2014, p19.

³⁶² Submission 48, Insurance Council of Australia, p10.

³⁶³ Submission 69, NSW Government, p1.

³⁶⁴ Submission 47, confidential, p3, (quoted with permission).

³⁶⁵ Submission 51, Motor Traders Association of NSW, p3.

³⁶⁶ See Executive Counsel Australia, 'A Review of the Motor Vehicle Insurance and Repair Industry Code of Conduct', December 2013, Code Administration Committee website, <http://www.abrcode.com.au>, viewed 17 April 2014, pp11-12&14.

- Costs to be the responsibility of the complainant with the arbitrator able to make a binding decision on the matter in relation to sharing of costs at the conclusion of arbitration.³⁶⁷
- The CAC must identify instances of non-compliance with the Code by any signatory and should publicise that non-compliance and/or require the signatory to undertake reasonable rectification steps.³⁶⁸
- The appointment of an independent Industry Ombudsman by the relevant Commonwealth Government Minister with powers defined by the CAC to act as a ‘court of industry appeal’ with particular reference to the Code dispute resolution process. The Ombudsman to have the power to apply penalties for non-compliance with dispute resolution decisions.³⁶⁹

7.52 The external review also considered whether, more broadly, there should be a move from self-regulation under the Code to co-regulation, that is, whether the motor vehicle repair and insurance industries require the Australian Competition and Consumer Commission (ACCC) to oversight the Code.

7.53 The external review found that, at this stage, co-regulation may be a step too far because it would require extra layers of bureaucracy and could lead to full regulation, contrary to the agenda of the current Commonwealth Government to reduce red tape. It did however note that co-regulation should be discussed at an industry level especially if the fundamental issues and deadlocks within the Code cannot be resolved.³⁷⁰ It also supported making the Code mandatory in all states.³⁷¹

Committee Comment

7.54 The Committee accepts that there are valid concerns regarding the enforceability of the Code and a reluctance of repairers to initiate disputes under the Code, partly because of this lack of enforceability. The Committee notes these issues were raised not only before it but as part of the recent external review of the Code conducted by Executive Counsel Australia.

7.55 In the Committee’s view, as the Code is a national Code, these issues would ideally be solved at the national level. The Committee believes that there is a case for the Code to be mandated at the national level under the *Competition and Consumer Act 2010 (Cth)*, inclusive of penalties for non-compliance and actively oversighted and enforced by the ACCC. For example, options to seek

³⁶⁷ See Report Recommendation 3, Executive Counsel Australia, ‘A Review of the Motor Vehicle Insurance and Repair Industry Code of Conduct’, p17.

³⁶⁸ See Report Recommendation 4, Executive Counsel Australia, ‘A Review of the Motor Vehicle Insurance and Repair Industry Code of Conduct’, p18.

³⁶⁹ See Report Recommendation 7, Executive Counsel Australia, ‘A Review of the Motor Vehicle Insurance and Repair Industry Code of Conduct’, p21.

³⁷⁰ Executive Counsel Australia, ‘A Review of the Motor Vehicle Insurance and Repair Industry Code of Conduct’, pp18-19.

³⁷¹ Executive Counsel Australia, ‘A Review of the Motor Vehicle Insurance and Repair Industry Code of Conduct’, p18.

remedies from the ACCC following failure of dispute resolution could be included in the Act and the ACCC could also undertake pro-active regulatory activity e.g. inspections, to ensure that the Code is being complied with.

- 7.56 To further empower parties to dispute resolution, the Committee would also support production of educational materials by the ACCC to advise repairers and insurers about the content of the Code, dispute resolution processes *and the ACCC's oversight and enforcement role*. Such education would be helpful in encouraging parties to seek ACCC intervention if necessary.
- 7.57 In sum, the Committee believes that independent and objective monitoring and enforcement would improve compliance and increase repairer confidence in the independence and transparency of dispute resolution processes. Indeed, whilst it ultimately recommended a *voluntary* Code during its 2004-05 Inquiry into the industry, the Productivity Commission noted these advantages of a mandatory Code in its report.³⁷² As compliance and repairer confidence issues do not appear to have been resolved by a voluntary Code the Committee makes the following finding and recommendation:

FINDING 3

The Committee supports the introduction of a mandatory Code of Conduct for the Motor Vehicle Insurance and Repair Industry, which would include penalties for non-compliance and be subject to oversight and enforcement by the Australian Competition and Consumer Commission (ACCC). The Committee notes that such a Code would need to be established under the *Competition and Consumer Act 2010 (Cth)*, the administration of which is a Commonwealth responsibility.

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.

- 7.58 While the details of such a system would need to be worked out at the national level, the Committee also notes the desirability of a channel for judicial review of any decisions made, or penalties imposed by the ACCC as part of such a system. Perhaps this role could be undertaken by the Australian Competition Tribunal.

FINDING 4

The Committee supports possible extension of the jurisdiction of the Australian Competition Tribunal to hear appeals from repairers and insurers disputing decisions and penalties handed down by the ACCC for non-compliance with a mandatory Code of Conduct. The Committee notes that such a decision would be a Commonwealth responsibility.

³⁷² Productivity Commission, 'Smash Repair and Insurance', p142.

FINDING 5

If and when the ACCC's new Code oversight and enforcement role is embedded under the *Competition and Consumer Act 2010 (Cth)*, the Committee supports the ACCC developing educational materials for insurers and repairers to advise them about the content of the Code, dispute resolution, and the ACCC's new oversight and enforcement role.

- 7.59 However, the Committee notes the observations of the external reviewers about the Commonwealth Government's desire to cut red tape, and the fact that a mandatory Code and a role for the ACCC would run counter to this agenda. If appetite does not exist for such changes, the Committee instead explicitly supports the external review recommendations for the establishment of an arbitration process for disputes under the Code where an insurer or repairer requests such arbitration as detailed above.
- 7.60 The Committee also supports the appointment of an independent industry ombudsman to act as a court of appeal with reference to the Code's dispute resolution process (although it does not agree with the external review's recommendation that the ombudsman have power to apply penalties for non-compliance with dispute resolution decisions as this is not in keeping with the traditional functions of an ombudsman). The Committee believes this would go some of the way to increase repairer willingness to initiate disputes under the Code, as it would guarantee an outcome to disputes, thereby also improving compliance with the Code.
- 7.61 In the absence of a co-regulatory approach involving the ACCC, the Committee also supports (as an alternative enforcement mechanism) the external review's recommendation to monitor and publicise instances of non-compliance with the Code.

FINDING 6

Failing the adoption of a mandatory Code by the Commonwealth Government with oversight and enforcement by the ACCC, the Committee instead supports the following recommendations made as a result of the external review of the Code by Executive Counsel Australia in December 2013:

- 1. The Code Administration Committee (CAC) establish an arbitration process for disputes under the Code as per recommendation 3 of the external review of the Code;**
- 2. The Commonwealth Government appoint an independent Industry Ombudsman with powers defined by the CAC to act as a court of industry appeal with particular reference to the Code dispute resolution process; as per recommendation 7 of the external review of the Code;**
- 3. The CAC identify instances of non-compliance with the Code by any signatory and publicise it/require the signatory to undertake**

reasonable rectification steps, as per recommendation 4 of the external review of the Code.

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.

- 7.62 However, while the Committee is of the view that matters involving the Code, as a national Code, are best solved at the national level, the Committee recognises that the Commonwealth Government and the CAC may choose not to progress any of the above recommended reforms. If this is the case, the Committee recommends reform at the NSW level to address identified issues.
- 7.63 In particular, the Committee is concerned at the limited role that NSW Fair Trading has so far played in assisting to mediate disputes under the Code which appears to contrast with its approach in assisting to resolve complaints made by *consumers* about repair work (see discussion above).
- 7.64 While the Committee accepts that this ‘hands-off’ approach reflects the self-enforcement gist of the Code and the current NSW legislation to encourage insurers and repairers to resolve disputes themselves, as above, the Committee believes the case has been made for more Government intervention to encourage greater compliance with the Code and greater repairer confidence in dispute resolution processes. The Committee also notes that specific reference is made in section 54(4) of the *Fair Trading Act 1987* to Fair Trading considering the ‘public interest’ in taking action against a party contravening the Code. Given the potential for Code breaches to be linked with safety issues, the Committee is of the view that Fair Trading must take such public interest considerations very seriously and intervene where necessary.
- 7.65 Under a more interventionist system at State level, Fair Trading could be *required* to actively mediate and impose the penalties available to it under the *Fair Trading Act 1987* where it found complaints about breaches of the Code to be well-founded. The Committee notes it would be helpful for mediators for these type of disputes to have appropriate industry experience. In addition, education would again be important to encourage repairers and insurers to approach Fair Trading to help resolve disputes, and to complain about breaches of the Code, where IDR and EDR had failed or was not possible.
- 7.66 Further, as suggested by some repairers who participated in the Inquiry, it may be useful to explore the inclusion of alternative penalties to those already contained in the *Fair Trading Act 1987* for breaches of the Code, such as loss or suspension of professional licences and/or specific monetary penalties on a sliding scale, with insurance companies to receive a substantially larger monetary penalty than individual repairers. Such penalties may provide a more effective deterrent to breaching the Code.
- 7.67 A more interventionist role for Fair Trading also necessitates a body to provide judicial review of its decisions. While, as above, the parties to a Code dispute can currently institute their own legal action in the courts for orders or

compensation, the Committee is of the view that the NSW Civil and Administrative Tribunal (NCAT) should be made the final adjudicator of any decisions made by Fair Trading regarding breaches of the Code. This reflects a move from a self-regulatory focussed system where enforcement is, in practice, only possible through potentially costly legal action initiated by a party to a dispute, to a more co-regulatory system with a greater role for Government.

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.**

COMPOSITION OF THE CODE ADMINISTRATION COMMITTEE

7.68 Another theme that emerged during the course of the Inquiry was the current composition of the CAC which is made up of three members of the insurance industry appointed by the Insurance Council of Australia, and three members of the motor vehicle repair industry appointed by the Motor Trades Association of Australia³⁷³.

7.69 Some Inquiry participants indicated to the Committee that this structure prevents much needed change to the Code by causing a deadlock – the repairer representatives voting as a block and the insurer representatives voting as a

³⁷³ See sub-clause 12.1 of the Code.

block. Indeed, as an industry Code, changes to it can only be made by the CAC, Governments cannot change it.³⁷⁴ The MTA stated in its submission:

The Industry Code of Conduct needs to be amended to have 7 members, 3 represented by insurance companies, 3 representatives from the auto body repairers, and 1 independent member to adjudicate on any future changes required to the Code. This will ensure that the Code evolves to meet the requirements of the industry and the consumer, for the future.³⁷⁵

7.70 Similarly, an individual repairer told the Committee:

...the current structure of the Code Administration Committee has created an impasse in previous attempts to amend and update the Code to ensure it maintains currency with the fast paced and ongoing changes of the Motor Vehicle Repair Industry.³⁷⁶

7.71 As discussed above, under sub-clause 12.2(f) of the Code, the CAC is required to facilitate an external review of the operation of the Code every three years. While the results of the second such external review, discussed above, are currently under consideration by the CAC, the first one was conducted in 2009 by ICDPA. Another individual repairer told the Committee that very few changes recommended by this first external review were implemented by the CAC because of its makeup:

I was extremely disappointed with that process in terms of the outcome that that first three yearly review came up with...regrettably the way the council was set up that you had three members from one team if you like and three members from the other team and it was a State of Origin – it was always a draw.³⁷⁷

7.72 In contrast, Mr Scofield from Allianz Australia told the Committee:

We think one of the strengths of the current arrangement is that the Code evolves in a mutually agreed and consensual way – some might argue that it evolves more slowly because of that. But there is quite a risk to the ongoing commitment of the parties to the Code by virtue of the fact, if you like, that a seventh person can determine at various points in time to side with one side or the other and make amendments to the Code that the losing party finds highly objectionable and difficult. We think that over time that would undermine the Code and probably do it no great service.³⁷⁸

7.73 Indeed, this matter was the subject of discussion in the latest external review of the Code conducted by Executive Counsel Australia. In noting that industry stakeholders believed balanced numbers on the CAC were leading to difficult but necessary decisions being deferred, Executive Counsel Australia found that:

³⁷⁴ See sub-clause 12.1(h) of the Code and Submission 69, NSW Government, p2.

³⁷⁵ Submission 51, Motor Traders Association of NSW, p13.

³⁷⁶ Submission 47, confidential, p3 (quoted with permission).

³⁷⁷ Name suppressed, *in camera* Transcript of Evidence, 17 March 2014, p22 (quoted with permission).

³⁷⁸ Mr Nicholas Scofield, Transcript of Evidence, 21 March 2014, p2.

Many of the seemingly intractable issues facing the industry can be sourced back to the CAC's inability to resolve deadlocks [and that] This...is undermining the [CAC's] credibility and workability in the minds of industry players.³⁷⁹

- 7.74 Rather than recommending a seventh CAC member to break such deadlocks, Executive Counsel recommended:
- That where matters remain in significant disagreement, the CAC may utilise the services of a mediator to assist resolution; and
 - The appointment of three more CAC members who are non-aligned with the insurer/repairer industry. Executive Council Australia found that one should be from the mediation industry and two from the vehicle manufacturing areas thereby helping to break decision deadlocks.³⁸⁰

Committee Comment

- 7.75 The Committee accepts that the current makeup of the CAC causes decision deadlocks and prevents changes to the Code even where independent processes, such as external reviews of the Code, have found the changes to be necessary. However, the Committee also accepts that allowing one independent member the balance of power to side with either insurer or repairer members of the CAC to impose potentially radical changes may unduly de-stabilise the Code and parties' commitments to it.
- 7.76 To ensure that decision deadlocks can be broken in a more considered way, taking a broader cross-section of views into account, the Committee instead supports the recommendations of Executive Counsel Australia's external review to enable the CAC to utilise the services of a mediator to assist resolution of matters, and the appointment of *three* more CAC members, one from the mediation industry and two from the vehicle manufacturing industry.

FINDING 7

The Committee supports insertion of an additional sub-clause into clause 12.1 of the Code to provide that where matters remain in significant disagreement, the CAC may utilise the services of a mediator to assist resolution, as per recommendation 16 of the external review of the Code published by Executive Counsel Australia in December 2013.

FINDING 8

The Committee supports the appointment of an additional three, more independent, non-industry members to the CAC – one to be from the mediation industry and two from the motor vehicle manufacturing industry – as per recommendation 17 of the external review of the Code published by Executive Counsel Australia in December 2013.

³⁷⁹ Executive Counsel Australia, 'A Review of the Motor Vehicle Insurance and Repair Industry Code of Conduct', p27.

³⁸⁰ Executive Counsel Australia, 'A Review of the Motor Vehicle Insurance and Repair Industry Code of Conduct', p27.

- 7.77 The Committee considers the NSW Minister for Fair Trading should also monitor the extent to which the CAC adopts recommendations 16 and 17 of the external review of the Code conducted by Executive Counsel Australia in December 2013, with a view to raising the surrounding issues with the Commonwealth if necessary.

THE ROLE OF ASSESSORS

- 7.78 As outlined in chapter 5 of this Report, the Committee heard much evidence during the Inquiry about the role of assessors in the industry. In particular, the Committee heard evidence about conflicts of interest – claims that assessors were shaving the cost of repair jobs to benefit the insurance companies they are employed by and to receive bonuses and incentives supplied by those insurers.³⁸¹

- 7.79 While these issues are covered in detail in chapter 5, they are mentioned here because the external review of the Code conducted by Executive Counsel Australia made two recommendations for changes to the Code regarding assessors. The first relates to anecdotal evidence that insurers provide incentives to assessors, in the form of overseas trips (ostensibly for training), to drive repair costs down. In relation to this, the external review recommended that:

- In the interests of Code transparency, guidelines be set up to cover assessor ‘training’ courses with specific reference to such courses when they occur overseas. Such guidelines to make clear that there is to be no linkage between participation in such courses and cost/price based assessor performance. In addition, such guidelines to be made available to all industry players upon request and guidelines and industry adherence to same to be monitored by the CAC or by an industry ombudsman if so appointed.³⁸²

- 7.80 The second more general recommendation made by the external review was:

- Under its revised nine person configuration, an inquiry be undertaken into the role of assessors with a view to making any changes to the Code that might restore good faith on the part of repairers and insurers in the aforementioned role.³⁸³

- 7.81 In addition to the recommendations made about assessors in Chapter 5 of this report, the Committee supports the above recommendations of the external review and believes they will assist to address issues at the national level.

FINDING 9

The Committee supports guidelines to cover assessor “training” courses with specific reference to such courses when they occur overseas noting that such guidelines are to make clear that there is to be no linkage between

³⁸¹ See for example the evidence of Mr Graham Judge, Motor Traders’ Association of NSW, Transcript of Evidence 17 March 2014, p16.

³⁸² See Report Recommendation 18, Executive Counsel Australia, ‘A Review of the Motor Vehicle Insurance and Repair Industry Code of Conduct’, p28.

³⁸³ See Report Recommendation 20, Executive Counsel Australia, ‘A Review of the Motor Vehicle Insurance and Repair Industry Code of Conduct’, p29.

participation in such courses and cost/price based assessor performance. In addition, such guidelines are to be made available to all industry players upon request with guidelines and industry adherence to same to be monitored by the CAC or by an industry ombudsman if so appointed; as per recommendation 18 of the external review of the Code published by Executive Counsel Australia in December 2013.

FINDING 10

The Committee supports a CAC inquiry into the role of assessors under its revised nine member configuration with a view to making any changes to the Code that might restore good faith on the part of repairers and insurers in the aforementioned role; as per recommendation 20 of the external review of the Code published by Executive Counsel Australia in December 2013.

- 7.82 The Committee considers the NSW Minister for Fair Trading should also monitor the extent to which the CAC adopts recommendations 18 and 20 of the external review of the Code conducted by Executive Counsel Australia in December 2013, with a view to raising the surrounding issues with the Commonwealth if necessary.

NSW CODE TO REFLECT CHANGES AT NATIONAL LEVEL

- 7.83 Another discrete issue that the Committee received evidence about was the need for the Code as it applies in NSW to be updated to reflect any changes that occur at the national level following external reviews.
- 7.84 In short, as a result of the 2009 external review of the Code conducted by ICDPA, the CAC made some minor amendments to the Code. However, while these amendments apply in all other States and Territories, where the Code is voluntary, they do not apply in NSW because the version of the Code that is mandated in NSW under the Fair Trading Regulations is still the 2006 version.³⁸⁴
- 7.85 Mr Rob Bartlett, National Industry Relations Manager, Suncorp Group Ltd expressed concern that the mandatory nature of the Code in NSW means it often lags behind the Code at the national level. He told the Committee:

One of our recommendations relates to the fact that the Code dates from 2006. It has been written into fair trading law in NSW. No other State has proceeded down that path; the voluntary Code applies in all other States and Territories. We believe, as do others, that that could cause NSW to lag behind other States should changes to the Code occur. Changes to the Code have occurred since 2006, so the Code in NSW is...out of date. We are also aware that the Code Administration Committee, which I am a member of as a representative of the Insurance Council, is considering an external review. That external review...has identified a number of matters for consideration. The Code Administration Committee has taken that very seriously. I believe there will be movement in this area in relation to the Code in the not too distant future.³⁸⁵

³⁸⁴ See Clause 21(1) of the *Fair Trading Regulation 2012*.

³⁸⁵ Mr Rob Bartlett, Transcript of Evidence, 21 March 2014, p38.

- 7.86 However, Fair Trading Commissioner Mr Rod Stowe told the Committee that it would not be difficult to update the Code and that, given the minor nature of the amendments made to the Code following the 2009 external review and the distinct possibility of further changes following the recommendations of the latest external review, it would be best to await the CAC's decision regarding these recommendations for change before mandating a new version of the Code. In particular he stated:

It would not be all that difficult to update it. However, what I am saying is that before we do that it probably would be prudent to see if there are going to be some changes. I know there are recommendations for change. Once that process works its way through, yes, we could look certainly at mandating the most up-to-date Code.³⁸⁶

Committee Comment

- 7.87 The Committee is of the view that national consistency of the Code is desirable but does not accept that this is an argument against mandating the Code in NSW. There is no necessary link between the mandatory nature of the Code and a lack of national consistency. Consistent with Mr Stowe's evidence to the Committee, updating the Code appears to be a matter of amending the regulations that sit under the *Fair Trading Act 1987* so that they refer to the most recent version of the Code. This is a relatively simple administrative exercise.
- 7.88 However, given the fact that further changes to the Code are probably imminent as a result of the 2013 external review, and given evidence that inconsistencies between the Code as it applies in NSW and the Code that applies elsewhere following the 2009 external review, the Committee accepts that it would be best to await the CAC's decision regarding 2013 external review recommendations for change to the Code before mandating a new version of the Code.

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.

THE IMPORTANCE OF EDUCATION REGARDING THE CODE

- 7.89 As touched upon above, education of stakeholders concerning the Code is very important in empowering them to exercise their rights under it. As NRMA's submission to the Inquiry stated:

For any code to be effective it must firstly be understood by those who use it. Considering the Code has now been in place since 2006, the experiences of NRMA Insurance and the nature of disputes we receive clearly show the level of both

³⁸⁶ Mr Rod Stowe, Transcript of Evidence, 21 March 2014, p50.

understanding and awareness of the Code of Conduct among industry participants is particularly low and requires improvement.³⁸⁷

- 7.90 The Committee has made a recommendation above for Fair Trading to develop educational materials for insurers and repairers focussing on Fair Trading's role in assisting to mediate disputes and impose penalties for Code breaches where necessary.
- 7.91 More broadly, the Committee notes that the external review of the Code recommended a compulsory Code education campaign for insurers and repairers about the Code dispute resolution process. While this education may overlap with some of the content of any educational material that is ultimately produced at the NSW level, the Committee sees a lot of merit in it, and explicitly supports it. Indeed, if educational material is produced at the NSW level, Fair Trading could tailor it to complement any education delivered at the national level.

FINDING 11

The Committee supports the delivery of a compulsory industry Code education campaign targeting insurers and repairers with reference to the Code dispute resolution processes as per recommendation 13 of the external review of the Code published by Executive Counsel Australia in December 2013.

- 7.92 The Committee considers the NSW Minister for Fair Trading should also monitor the extent to which the CAC adopts recommendation 13 of the external review of the Code conducted by Executive Counsel Australia in December 2013, with a view to raising the surrounding issues with the Commonwealth if necessary.

REALISTIC TIMES AND RATES

Funny Time, Funny Money

- 7.93 During the Inquiry, the Committee also heard concerns that the Code does not require repairers or insurers to comply with any specific method of estimating or pricing repair works. Indeed, sub-clause 6.2 of the Code leaves estimation methodology entirely to the discretion of insurance companies providing only that:

The parties acknowledge ongoing changes in the Industry in relation to the development of realistic times and rates: (a) Insurers will state clearly the estimation methodology to be applied; and (b) Repairers in their estimation methodology may separately cost paint, parts, significant consumables and mandatory government environmental levies in so far as they apply to a repair.

- 7.94 The Committee heard that consequently, many insurers, with the exception of NRMA (Insurance Australia Group), are still using an unsatisfactory estimation methodology called 'funny time, funny money' (FTFM) under which fictitious times are quoted for repair works. A fuller explanation of the FTFM method can be found in chapter 5 of this report.

³⁸⁷ Submission 45, NRMA Insurance, p23.

7.95 As outlined in chapter 5, the Committee was told that the FTFM method results in inaccurate quotes and misrepresentation of repair works actually completed, and that this lack of transparency can jeopardise the quality of repair work.³⁸⁸ In short, if realistic time is not allocated to complete a repair job, the only way to beat the system is to cut corners. As one repairer put it:

It [the funny time system] gets manipulated to try to get to the costs we have got to get.³⁸⁹

Work Undertaken on Realistic Times

7.96 As discussed in greater detail in chapter 5 of this report, in an effort to solve the issues surrounding FTFM, both the MTA and NRMA indicated to the Committee they have developed schedules of realistic times it takes to undertake various repair work. The MTA's realistic times schedule is recorded on a database called eMTA which can be accessed by insurers and repairers.³⁹⁰ Similarly, NRMA has moved from a FTFM quoting methodology to realistic time, or its 'New Times and Rates' system.³⁹¹ NRMA's research centres aim to ensure its New Times and Rates schedules are maintained and updated.³⁹²

7.97 Mr Bubulj of the NRMA added to this:

We do not have times for every single vehicle. That would be difficult to achieve with the size of the fleets out there and the amount of makes, models and years. We have got quite a large database covered and we continue to schedule vehicles on a weekly basis, it is something we continue to produce.³⁹³

The Funny Time Funny Money Deadlock

7.98 Despite the above moves towards realistic times and rates by the MTA and NRMA, the other insurers that gave evidence to the Committee, Allianz and Suncorp, have not moved to a realistic times and rates quoting methodology. Mr David Krawitz, Chief Operating Officer, Allianz, told the Committee:

We do what is commonly referred to as funny time funny money...as far as alternatives are concerned, the challenge we have when looking across the industry is there are no alternatives that have both rigorous and complete vehicle data and widespread repairer acceptance. Until something satisfies both those requirements we believe the methodology we use today is our best approach for its high success rate.³⁹⁴

7.99 Mr Peter Hartman, National Technical Manager Motor Assessing, Allianz, expanded on this point saying that despite Allianz doing work on new times

³⁸⁸ Submission 51, Motor Traders' Association of NSW, p8.

³⁸⁹ Name suppressed, *in camera* Transcript of Evidence, 17 March 2014, p9 (quoted with permission).

³⁹⁰ eMTA website, <http://www.emta.com.au/company/what-we-do.html>, viewed 30 April 2014.

³⁹¹ Mr Roy Briggs, Executive General Manager Marketing, Reputation and CTP, NRMA Insurance, Transcript of Evidence, 21 March 2014, p21.

³⁹² Mr Roy Briggs, Transcript of Evidence, 21 March 2014, p21.

³⁹³ Mr Steve Bubulj, Transcript of Evidence, 21 March 2014, p21.

³⁹⁴ Mr David Krawitz, Transcript of Evidence, 21 March 2014, p8.

systems, sufficient vehicle data is simply not available to move from FTFM to a new quoting system:

...I have been involved in evaluating new time systems since probably 2007 that have been in the marketplace...We have looked at what would stop us from turning the current system on...We have a 3 series current model and we need to put a new A pillar on it. Can I go to the eMTA and find a time to put that new A pillar on? Is there a time there?...there is not...We still need to do some more work on the processes to come up with those times.³⁹⁵

7.100 In Suncorp's case, its evidence indicated that while it endorses moves that the industry has made towards realistic times and rates, and while it will accept quotes from repairers in real time, this is by no means exclusively the case and a lot of the quotes it accepts are still written in FTFM.³⁹⁶

Calls for Urgent Action

7.101 Owing to the lack of transparency surrounding the FTFM approach, both the MTA and repairers called for urgent action to force the industry to adopt realistic times and rates. This is also discussed in chapter 5 of this report.

7.102 For example, speaking about a recommendation of the 2005 NSW Parliamentary STAYSAFE Committee Inquiry, *Repairing to a Price Not a Standard*, to abolish FTFM, one repairer stated:

...we have gotten to a point where we have asked them [the insurers] to do it [abolish FTFM] and it is now 2014 and they still have not done it. We have to get to the stage that we have to force them. For two reasons, number one, the insurers will not do it unless they are forced to do it. Number two, repairers will not start quoting it unless they are advised by the insurer that you are right to quote it now, because a lot of the times they will not force something upon them because they know it rocks the boat.³⁹⁷

7.103 In particular, in its submission to the Inquiry the MTA made the following recommendations:

- To determine 'reasonableness' of a quote, an insurance company must only make reference to a labour rate calculator (proposed to be published by the NSW Small Business Commissioner) and to a standard reference or guide in relation to time guidelines for doing certain works;
- Adoption of industry accepted time standards to be reviewed annually and maintained for all vehicles in Australia;

³⁹⁵ Mr Peter Hartman, Transcript of Evidence, 21 March 2014, p12.

³⁹⁶ Mr Sean Dempsey, Executive General Manager, Shared Insurance Ventures, Suncorp Group Limited, Transcript of Evidence, 21 March 2014, p37.

³⁹⁷ Name suppressed, *in camera* Transcript of Evidence, 17 March 2014, p9 (quoted with permission).

- Auto body repair assessments, estimates and quotes to be produced using realistic times and rates referable to an industry-accepted standard.³⁹⁸

Findings of Executive Counsel Australia External Review

7.104 The Committee notes that the external review of the Code conducted by Executive Counsel Australia received similar evidence to that received by the Committee in relation to FTFM. While noting that repairer organisations want a collaborative approach to developing realistic times and rates, and NRMA’s work in developing its new times and rates, Executive Counsel Australia found that:

The industry appears to have thrown its hands in the air when confronted by the historic anomaly of “funny money funny time”.³⁹⁹

7.105 The external review further found that repairers and insurers need to work collaboratively with the assistance of an independent entity (like Standards Australia) to solve the FTFM deadlock; and that it makes no sense for insurers to put individual quoting practices in place for claims as the time taken to repair a certain model of car with specific damage is the same regardless of the insurer involved.⁴⁰⁰

7.106 The external review therefore recommended setting up a Code sub-committee representative of all sides of the industry to advance a national solution to the “funny money funny time” impasse as a matter of urgency. The external review also noted that the Productivity Commission may be the appropriate authority to review the practice and recommended that the CAC engage the Productivity Commission (if necessary through the Commonwealth Treasurer’s office) to act in this capacity.⁴⁰¹

Committee Comment

7.107 The Committee is of the view that urgent action is necessary to resolve the FTFM issue. It is a recurring theme raised during the 2005 STAYS SAFE Inquiry, the recent external review of the Code, and before this Inquiry, and it is time for a solution.

7.108 The Committee accepts evidence that FTFM is a confusing quoting method that lacks transparency. If realistic times are not allocated to complete a repair job, industry participants could capitalise on this lack of transparency to cut corners, especially if it is the only way to make a job pay. This in turn can affect the quality of a repair job and thus consumer safety and the re-sale value of repaired vehicles.

7.109 It is simply not acceptable to say that a move to realistic times is too difficult because a full database of times is not available, or realistic quoting methods are

³⁹⁸ See recommendations 3, 4 and 5, submission 51, Motor Traders Association of NSW, p11.

³⁹⁹ Executive Counsel Australia, ‘A Review of the Motor Vehicle Insurance and Repair Industry Code of Conduct’, p46.

⁴⁰⁰ Executive Counsel Australia, ‘A Review of the Motor Vehicle Insurance and Repair Industry Code of Conduct’, p47.

⁴⁰¹ See Report Recommendation 30, Executive Counsel Australia, ‘A Review of the Motor Vehicle Insurance and Repair Industry Code of Conduct’, p47.

not widely accepted in the industry. Indeed, the Committee notes that the MTA and NRMA have made significant progress in developing realistic times systems and that the NRMA uses realistic time quoting. In addition, the Committee accepts evidence that one of the reasons many *repairers* still use FTFM is that they are reluctant to 'rock the boat' in a market where they have many competitors and rely on insurers for 90% of their work.

7.110 In short, it is essential for the industry to work together to develop a universally accepted real times guide. The Committee agrees with the observation of the external reviewers that it makes no sense for insurers to put individual quoting practices in place for claims as the time taken to repair a certain model of car with specific damage is the same regardless of the insurer involved.

7.111 In this regard, the Committee notes the commitment under sub-clause 6.2 of the Code to work towards realistic times and rates and supports the external review's recommendation to set up a Code sub-committee representative of all sides of the industry to solve the FTFM issue. However, as outlined in chapter 5 of this report, the Committee does not support the MTA's recommendation for a labour *rate* calculator to be developed as it is of the view that the marketplace should allow competitive labour rates and requiring quotes in realistic *time* will result in greater transparency in the payments made to repairers.

FINDING 12

The Committee supports the establishment of a Code sub-committee representative of all sides of the industry to advance a national solution to the "funny time, funny money" impasse as a matter of urgency, with the possible assistance of the Productivity Commission; as per recommendation 30 of the external review of the Code published by Executive Counsel Australia in December 2013.

7.112 The Committee considers the NSW Minister for Fair Trading should also monitor the extent to which the CAC adopts recommendation 30 of the external review of the Code conducted by Executive Counsel Australia in December 2013, with a view to raising the surrounding issues with the Commonwealth if necessary.

7.113 Until such time as a single national model for realistic times is established, the Committee notes its recommendation in chapter 5 for licensing arrangements for assessors to require them to assess vehicles using realistic time. Should disputes arise on this point that are brought to the attention of NSW Fair Trading to mediate, the Committee is of the view that Fair Trading should refer to the eMTA schedule of real times developed by the MTA in assisting to resolve them. As outlined in chapter 5, this would not preclude individual insurance companies using their own times schedules to estimate as long as they are realistic times schedules (e.g. the NRMA's new times and rates).

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.

Appendix One – List of Submissions

1	L & M Smash Repairs P/L
2	eCollect.com.au Pty Ltd and E C Legal Pty Ltd
3	Name Suppressed
4	Confidential
5	Confidential
6	Confidential
7	Name Suppressed
8	I-Car Australia
9	Name Suppressed
10	Name Suppressed
11	Name Suppressed
12	Name Suppressed
13	Name Suppressed
14	Name Suppressed
15	Name Suppressed
16	Name Suppressed
17	Steven Autobody
18	SmashCare Australia
19	Confidential
20	Name Suppressed
21	Ms Amanda Ground
22	Ms Mary Nosworthy
23	Confidential
24	Mr Brian Hade
25	Name Suppressed
26	Name Suppressed
27	Confidential
28	Name Suppressed
29	Delta-V Experts
30	Name Suppressed
31	Name Suppressed

32	Griffith City Smash
33	Confidential
34	Allianz Australia Insurance Ltd
35	Name Suppressed
36	Confidential
37	Mr Paul Silvestro
38	Name Suppressed
39	Confidential
40	T.R. Flanagan Smash Repairs
41	Mr Todd Mcorley
42	Confidential
43	Confidential
44	Institute of Automotive Mechanical Engineers
45a	NRMA
46	Suncorp
47	Confidential
48	Insurance Council of Australia
49	Name Suppressed
50	Confidential
51	Motor Traders' Association of NSW
51a	Motor Traders' Association of NSW
52	Confidential
53	Confidential
54	Confidential
55	Confidential
56	Mr Gylbert Parriott
57	Insurance Law Service Consumer Credit Legal Centre
58	Tru Blue Smash Repair
59	Confidential
60	Confidential
61	Name Suppressed
62	Mr Ian Faulks
63	Confidential
64	Mr Vassilios Kriketos

SELECT COMMITTEE ON THE MOTOR VEHICLE REPAIR INDUSTRY
LIST OF SUBMISSIONS

65	Ms Leslie Wilson
66	Confidential
67	Confidential
68	Federal Chamber of Automotive Industries
69	NSW Government
70	Mr Peter Goudie
71	Mr Colin Hallinan
72	Financial Ombudsman Service
73	Mr Rob Stokes MP
74	Confidential
75	Confidential
76	Confidential
77	Australian Automotive Repairers Group
78	Innovation Group Australia
79	Ms Livia Ferfoggia

Appendix Two – List of Witnesses

17 MARCH 2014, NSW STATE LIBRARY, JEAN GARLING ANTE ROOM

Witness	Organisation
Mr Greg Patten Chief Executive Officer	Motor Traders' Association of NSW
Mr Graham Judge Acting Body Repair Division Manager	Motor Traders Association of NSW
Mr Peter Blanshard Chief Executive Officer	Institute of Automotive Mechanical Engineers
Mr Rob Whelan Executive Director, and Chief Executive Officer	Insurance Council of Australia
Dr Ric Simes Partner, Deloitte Access Economics	Insurance Council of Australia
Ms Alexandra Kelly Principal Solicitor	Insurance Law Service, Consumer Credit Legal Centre

21 MARCH 2014, JUSTICE AND POLICE MUSEUM, BLACKET COURT

Mr David Krawitz Chief Operating Officer	Allianz Australia Insurance Ltd
Mr Nicholas Scofield General Manager Corporate Affairs	Allianz Australia Insurance Ltd
Mr Peter Hartman National Technical Manager Motor Assessing	Allianz Australia Insurance Ltd
Mr Steve Bubulj Acting Head of Supply Chain	NRMA Insurance
Mr Roy Briggs Executive General Manager Marketing, Reputation and CTP	NRMA Insurance
Mr Sean Dempsey General Manager Corporate Affairs	Suncorp Group Ltd
Mr Rob Bartlett National Industry Relations Manager	Suncorp Group Ltd
Mr Craig Summers Executive Manager of NSW Motor Claims	Suncorp Group Ltd
Mr Rod Stowe Commissioner of Fair Trading	NSW Fair Trading

Appendix Three – Extracts from Minutes

Minutes of Proceedings of the Select Committee on the Motor Vehicle Repair Industry (no 1)

4:01pm, Wednesday, 20 November 2013
Clerk's Meeting Room, Parliament House

Members Present

Mr Barilaro, Mr Doyle, Ms Mihailuk, Mr Piper, Mr Williams

Officers in attendance: Ms Helen Minnican, Ms Rachel Simpson, Ms Clara Hawker

1. Introduction

The Chair opened the meeting and noted the following extracts from the Votes and Proceedings of the Legislative Assembly –

Legislative Assembly Votes and Proceedings

Tuesday 19 November 2013, no 181 (17)—

17 SELECT COMMITTEE ON THE MOTOR VEHICLE REPAIR INDUSTRY

Mr Brad Hazzard moved, by leave, That:

- 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.

The Chair noted the membership nominations received for Mr Doyle, Mr Williams and Ms Mihailuk.

2. Election of Deputy Chair

Resolved, on the motion of Mr Piper, seconded by Mr Williams: That Mr Doyle be elected Deputy Chair of the Committee.

3. Standard Procedural Motions

Resolved, on the motion (in globo) of Mr Piper:

- 1 That during any committee meeting, if a division or quorum is called in the Legislative Assembly, or either House in the case of joint committees, the proceedings of the committee shall be suspended until the committee regains its quorum at the conclusion of the division or quorum call.
- 2 That pursuant to Legislative Assembly Standing Order 297, draft reports, evidence, submissions or other documents presented to the committee which have not been reported to the House are not to be disclosed or published by any member or by any other person unless first authorised by the committee or the House.
- 3 That press statements on behalf of the committee be made only by the Chair after approval in principle by the committee or after consultation with committee members.
- 4 That the Chair and the nominated Committee Director be empowered to negotiate with the Speaker through the Clerk of the Legislative Assembly for the provision of funds to meet expenses in connection with advertising, operating and approved incidental expenses of the committee.
- 5 That persons having special knowledge of the matters under consideration by the committee may be invited to assist the committee, in accordance with the Legislative Assembly's policy on secondees or consultants.
- 6 That the Chair be empowered to advertise and/or write to interested parties requesting written submissions.
- 7 That arrangements for the calling of witnesses and visits of inspection be left in the hands of the Chair and the Inquiry Manager to the committee.

- 8 That, unless otherwise ordered, witnesses appearing before the committee shall not be formally represented by any member of the legal profession or other advocate.
- 9 That, unless otherwise ordered, when the committee is examining witnesses, the press and public (including witnesses after examination) be admitted to the hearing being conducted by the committee.
- 10 That, unless otherwise ordered, access to transcripts of evidence taken by the committee be determined by the Chair and not otherwise made available to any person, body or organisation: provided that witnesses previously examined shall be given a copy of their evidence; and that any evidence taken in camera or treated as confidential shall be checked by the witness in the presence of the Inquiry Manager to the committee or another officer of the committee.
- 11 That the Chair and the Inquiry Manager make arrangements for visits of inspection by the members nominated by the committee, which members are expected to participate in the full itinerary as scheduled.

4. Conduct of the inquiry

Resolved, on the motion of Ms Mihailuk: That the Committee will call for submissions to the inquiry through advertising in the Sydney Morning Herald and the Daily Telegraph and the Chair will issue a media release.

5. Adjournment

The Committee adjourned at 4.15pm *sine die*.

Minutes of Proceedings of the Select Committee on the Motor Vehicle Repair Industry (no 2)

3:45pm, Wednesday, 26 February 2014
Room 1254, Parliament House

Members Present

Mr Barilaro, Mr Doyle, Ms Mihailuk, Mr Piper, Mr Williams

Officers in attendance: Ms Helen Minnican, Ms Elaine Schofield, Ms Jessica Falvey, Ms Stephanie Hesford, Ms Elspeth Dyer, Mr Ben Foxe and Ms Sasha Shevtsova

1. Confirmation of Minutes

Resolved, on the motion of Mr Piper, seconded by Mr Doyle:
That the minutes of the meeting held on 20 November 2013 be confirmed.

2. Inquiry into the motor vehicle repair industry

Research paper on the NSW motor vehicle repair industry

The Committee noted a background research paper produced by the Parliamentary Library regarding regulation of the motor vehicle repair industry.

Correspondence Received

The Committee noted receipt of correspondence from the following organisations:

- GI Policy and Corporate Affairs, Suncorp, dated 2 December 2013
- Australian Competition and Consumer Commission, dated 11 December 2013
- Code Administration Committee, dated 19 December 2013
- National Transport Commission, dated 14 January 2014
- NRMA Insurance, dated 22 January 2014
- Optimum Smash Repairs, dated 31 January 2014
- Optimum Smash Repairs, dated 4 February 2014
- Motor Traders' Association of NSW, dated 12 February 2014
- Committee Secretariat to Motor Trader's Association, dated 12 February 2014
- Perfect Auto Body, dated 12 February 2014
- NSW Civil and Administrative Tribunal, dated 13 February 2014

Submissions Received

The Committee noted that 71 submissions had been received at the time of the meeting. Discussion ensued.

The Committee agreed to consider the publication of submissions at a future meeting.

Proposed inquiry schedule

The Committee noted potential dates for hearings and site visits relating to the inquiry. Discussion ensued.

Resolved, on the motion of Ms Mihailuk, seconded by Mr Piper:

That the Committee hold two public hearings on 17 March and 21 March 2014 and that the Committee conduct a site visit on 7 March 2014.

Resolved, on the motion of Mr Williams, seconded by Mr Piper:

That the Committee invite representatives of relevant overview bodies, NRMA Insurance and Suncorp to attend a future public hearing as witnesses, and that Committee staff be permitted to forward questions to witnesses prior to their appearance at a hearing if necessary.

The Committee discussed potential venues for site visits, and agreed to further consider possible venues and forward any recommendations for site visits to the Chair prior to the next meeting.

The Committee discussed correspondence received from NRMA Insurance dated 22 January 2014.

Resolved, on the motion of Mr Doyle:

That the Committee invite representatives of NRMA Insurance to attend a future public hearing.

3. General Business

The Committee discussed issues regarding the motor vehicle repair industry in NSW. The Committee requested that Committee staff, in collaboration with the Parliamentary Library, conduct research in a number of areas pertaining to the motor vehicle repair industry in NSW and provide relevant briefing notes at a future meeting.

4. Adjournment

The Committee adjourned at 4.22pm *sine die*.

Minutes of Proceedings of the Select Committee on the Motor Vehicle Repair Industry (no 3)

9:00am, Wednesday, 5 March 2014

Room 1153, Parliament House

Members Present

Mr Barilaro, Mr Doyle, Ms Mihailuk, Mr Piper, Mr Williams

Officers in attendance: Ms Elaine Schofield, Ms Stephanie Hesford and Ms Elspeth Dyer

1. Confirmation of Minutes

Resolved, on the motion of Mr Piper, seconded by Mr Doyle:
That the minutes of the meeting held on 26 February 2014 be confirmed.

2. Inquiry into the motor vehicle repair industry

Briefing note on the NSW motor vehicle repair industry

The Committee noted the research paper prepared in relation to request from the Committee regarding the breakdown of insurance companies, profits and attrition rates of repair businesses.

The Committee requested staff to ascertain whether information could be obtained in relation to the profile of profits of insurance companies in relation to motor vehicle insurance.

Submissions Received

The Committee agreed to consider the publication of submissions at a future meeting.

Site Visit

The Committee noted the itinerary for the site visit on 7 March 2014. The Committee discussed whether a regional site visit was required and agreed that Members could liaise with staff about any particular sites they were interested in visiting.

Public Hearings

The Committee considered the proposed witness list and agreed to allow the Chair to liaise with Committee staff in relation to inviting witnesses to attend.

3. General Business

The Committee discussed issues regarding the motor vehicle repair industry in NSW. The Committee requested staff to contact the MTA to obtain information regarding the rectification rate of repaired vehicles prior to the public hearing to be held on 17 March 2014.

4. Adjournment

The Committee adjourned at 9.40am *sine die*.

Minutes of Proceedings of the Select Committee on the Motor Vehicle Repair Industry (no 4)

4:00 pm, Thursday 6 March 2014

Room 1254, Parliament House

Members Present

Mr Barilaro, Ms Mihailuk, Mr Piper, Mr Williams

Apologies

Mr Doyle

Officers in attendance: Ms Elaine Schofield, Ms Stephanie Hesford, Mr Benjamin Foxe and Ms Sasha Shevtsova

5. Confirmation of Minutes

Resolved, on the motion of Mr Piper, seconded by Mr Williams:

That the minutes of the meeting held on 5 March 2014 be confirmed.

6. Inquiry into the motor vehicle repair industry

Publication of submissions

Resolved, on the motion of Mr Williams, seconded by Mr Piper:

That the Committee authorise the publication of submissions:

Submission no. 34, Allianz Australia Insurance Ltd – Published in full;

Submission no. 45, NRMA Insurance – Part One, published in full; Part Two to be confidential;

Submission no. 46, Suncorp Group Limited – Published in full with the exception of Appendix C to be confidential;

Submission no. 48, Insurance Council of Australia – Published in full;

Submission no. 51, Motor Traders' Association of NSW – Published in part;

Submission no. 57, Insurance Law Service, Consumer Credit Legal Centre – Published in full; and

Submission no. 69, NSW Government – Published in full.

Site visit – 7 March 2014

The Committee discussed an itinerary for a proposed site visit to observe a number of motor vehicle repairers in the Sydney region.

Resolved, on the motion of Mr Williams, seconded by Mr Piper:

That the Committee conduct a site visit to motor vehicle repairers in the Sydney area as proposed.

7. General Business

The Committee discussed issues regarding the quality and safety standards of motor vehicle repairs conducted in New South Wales and the rate of repair rectifications that are required.

Mr Williams gave notice of a resolution for consideration by the Committee regarding information to be sought from insurance companies in relation to rectification rates.

8. Adjournment

The Committee adjourned at 4.14 pm *sine die*.

Minutes of the Site Visit of the Select Committee on the Motor Vehicle Repair Industry

Friday 7 March 2014
Sydney Metropolitan Region

Members Present

Mr Barilaro, Mr Doyle, Mr Piper, Mr Williams

Apologies

Ms Mihailuk

Officers in attendance: Ms Stephanie Hesford, Ms Elspeth Dyer, Mr Benjamin Foxe and Ms Sasha Shevtsova

1. Site Visit – 7 March 2014

The Committee conducted a site visit to a number of smash repairers in the Sydney Metropolitan Region in order to obtain information and insight regarding the practical operations of smash repair enterprises. The Committee also used the opportunity to hear from smash repairers about their businesses and their relationships with insurers and consumers. The Chair and Committee staff departed Parliament House at 8:30 am and met the other members of the Committee at the premises of the relevant repairers as the day progressed. In chronological order, members of the Committee visited the following repairers:

- Mount Druitt Auto Body (an NRMA Insurance preferred repairer)
- Perfect Auto Body, Alexandria (a repairer authorised by Mercedes-Benz and recommended to the Committee by the MTA)
- S.M.A.R.T Centre, Botany (recommended to the Committee by Suncorp)
- J & L Munro Auto Body Repairs, Mortdale (recommended to the Committee by the MTA)
- Q-Plus, Riverwood (recommended to the Committee by Suncorp)

Following the Committee's visit to the Q-Plus facility in Riverwood, the formal site visit program concluded and members of the Committee returned to their electorates. The Chair and Committee staff returned to Parliament House at approximately 5:20 pm.

Minutes of Proceedings of the Select Committee on the Motor Vehicle Repair Industry (no 5)

8:45 am Monday 17 March 2014

Jean Garling Ante Room, State Library of NSW

Members Present

Mr Barilaro, Mr Doyle, Mr Piper, Mr Williams

Apologies

Ms Mihailuk

Officers in attendance: Ms Elaine Schofield, Ms Stephanie Hesford, Mr Benjamin Foxe, Ms Elspeth Dyer and Ms Sasha Shevtsova

1. Confirmation of Minutes

Resolved, on the motion of Mr Piper, seconded by Mr Williams:

That the minutes of the meeting held on 6 March 2014 and the site visit of 7 March 2014 be confirmed.

2. Inquiry into the motor vehicle repair industry

Publication of submissions

Resolved, on the motion of Mr Doyle, seconded by Mr Williams, That the Committee authorise the publication of submissions:

Submission no. 1, Mr Garry Maher, L&M Smash Repairs Pty Ltd – published in full;

Submission no. 2, Mr James Woods, eCollect.com.au Pty Ltd – published in full;

Submission no. 3, name suppressed – published in full;

Submission no. 7, name suppressed – published in part;

Submission no.8, I- Car Australia – published in full;

Submission no. 18, Mr Vaughn Pappin and Mr Martin Riseley, SmashCare – published in full;

Submission no. 21, Ms Amanda Grounds – published in full;

Submission no. 24, Mr Brian Hade – published in full;

Submission no. 25, name suppressed – published in part;

Submission no. 26, name suppressed – published in part;

Submission no. 29, Dr Shane Richardson, Delta-V Experts – published in full

Submission no. 41, Sherwood Smash Repairs – published in full;

Submission no. 44, Mr Peter Blanshard, Institute of Automotive Mechanical Engineers – published in full;

Submission no. 62, Mr Ian Faulks, Safety and Policy Analysis International – published in full;

Submission no. 64, Mr Vassilios Kriketos – published in full;

Submission no 68, Mr Tony McDonald, Federal Chamber of Automotive Industries – published in full;

Submission no. 70, Mr Peter Goudie – published in full;

Submission no. 72, Financial Ombudsman Service Limited – published in full;

Submission no. 73, Mr Rob Stokes MP, Member for Pittwater – published in full.

Public Hearing 17 March 2014

The Committee considered witnesses for the hearing to be held on 17 March 2014.

Resolved, on the motion of Mr Williams, seconded by Mr Doyle:

That the Committee hear from the following witnesses at a public hearing:

- Mr Greg Patten, Chief Executive Officer and Mr Graham Judge Acting Body Repair Division Manager Motor Traders' Association of NSW;
- Mr Peter Blanshard, Chief Executive Officer, Institute of Automotive Mechanical Engineers;
- Mr Rob Whelan, Executive Director and Dr Ric Simes, Deloitte Access Economics on behalf of the Insurance Council of Australia; and
- Ms Alexandra Kelly, Principal Solicitor, Insurance Law Service, Consumer Credit Legal Centre.

Resolved on the motion of Mr Williams, seconded Mr Doyle, that the Committee hear from certain witnesses (names suppressed) at an in-camera hearing.

Resolved on the motion of Mr Piper, seconded Mr Doyle, That the Committee authorise the audio-visual recording, photography and broadcasting of the public hearing on 17 March 2014.

3. Information to be sought from insurance companies

The Committee discussed the notice of motion given by Mr Williams at the meeting held on 6 March 2014 regarding information to be sought from insurance companies.

Resolved on the motion of Mr Williams, seconded Mr Piper That the Committee write to Suncorp, NRMA Insurance and Allianz requesting the following information:

- 1 A copy of the standard contract an insurance company has with a preferred, network or associate repairer in that network.
- 2 A copy of all contracts or agreements with any other repairer or 3rd party provider who provides services or supply on a fixed price or margin basis that differs from the standard or preferred network agreement with repairers or suppliers.

- 3 The insurance company's policies, procedures and strategy to their Assessment Teams or their Assessment centres pertaining to their repairer's costs, quality, recoveries, vehicle market values, for both the insured and 3rd party assessments.
- 4 The insurance company's policies, procedures and strategy to their Assessment Teams or their assessment centres pertaining to the fitment OEM Genuinely sourced spare parts, non-genuine or second hand parts for both the insured and 3rd party.
- 5 The percentage of vehicles repaired by their preferred or network repairers.
- 6 Total vehicles repaired annually for the last 2 years.
- 7 Total number of rectifications annually for the past 2 years, including registration numbers from those vehicles.
- 8 Total number of rectifications annually for the past 2 years that were of a structural nature, that required a spare part replaced, including registration numbers from those vehicles.
- 9 Percentage of those rectifications from partner/network repairers.
- 10 Total number of buy-backs or total losses due to poor repairs.
- 11 A copy of all tele-claims departments scripts to deal with customers who have been involved in a motor vehicle accident.
- 12 A copy of the tele-claims incentive programme to reward claims officers that steer customer to preferred repairers/networks.
- 13 A copy of the assessing incentive programme that outlines the targets to be reached to receive the incentive or bonus.

4. Adjournment

The Committee adjourned at 9:00 am until 9:15 am on 17 March 2014

Minutes of Proceedings of the Select Committee on the Motor Vehicle Repair Industry (no 6)

8:45 am Friday 21 March 2014

Police and Justice Museum

Members Present

Mr Barilaro, Mr Doyle, Ms Mihailuk, Mr Piper, Mr Williams

Officers in attendance: Ms Elaine Schofield, Ms Stephanie Hesford, Ms Elspeth Dyer, Ms Sasha Shevtsova and Ms Millie Yeoh

1. Inquiry into the motor vehicle repair industry

Public Hearing 21 March 2014

The Committee considered witnesses for the hearing to be held on 21 March 2014.

Resolved, on the motion of Mr Williams, seconded by Mr Piper:

That the Committee hear from the following witnesses at a public hearing:

- 1 Mr David Krawitz, Chief Operating Officer, Mr Nicholas Scofield, General Manager Corporate Affairs and Mr Peter Hartman, National Technical Manager Motor Assessing, Allianz Australia Insurance Ltd;
- 2 Mr Steve Bubulj, Acting Head of Supply Chain and Mr Roy Briggs, Executive General Manager: Marketing, Reputation and CTP, NRMA Insurance;
- 3 Mr Sean Dempsey, Executive General Manager, Shard Insurance Ventures, Mr Rob Bartlett, National Industry Relations Manager, Mr Craig Summers, Executive Manager of NSW Motor Claims, Suncorp Group Limited; and
- 4 Mr Rod Stowe, Commissioner of Fair Trading.

Resolved on the motion of Mr Piper, seconded Mr Williams, That the Committee hear from certain witnesses (names suppressed) at an in-camera hearing.

Resolved on the motion of Mr Piper, seconded Mr Williams, That the Committee authorise the audio-visual recording, photography and broadcasting of the public hearing on 21 March 2014.

Supplementary submissions

Resolved on the motion of Mr Piper, seconded Mr Williams, That the Committee receive the information supplied by Allianz Insurance, NRMA Insurance and Suncorp as requested by the Committee as confidential supplementary submissions.

Resolved on the motion of Mr Piper, seconded Mr Williams, That the Committee deal with issues contained in the confidential supplementary submissions received from Allianz Insurance, NRMA Insurance and Suncorp in camera.

2. Correspondence received

The Committee acknowledged receipt of correspondence from Mr James Frape, Chief Executive Officer, CompassCorp Pty Ltd regarding concerns about comments made by NRMA Insurance and Suncorp in their submissions.

Resolved on the motion of Mr Piper, seconded Mr Williams, That the Committee write to Mr Frape noting his concerns and advising that his views will be taken into consideration as part of the inquiry.

3. Adjournment

The Committee adjourned at 8:55 am until 9:00 am on 21 March 2014

Minutes of Proceedings of the Select Committee on the Motor Vehicle Repair Industry (Hearing 1)

9:15 am Monday 17 March 2014

Jean Garling Ante Room, State Library of NSW, Macquarie Street, Sydney

Members Present

Mr Barilaro, Mr Doyle, Mr Piper, Mr Williams and Ms Mihailuk

Officers in attendance: Ms Elaine Schofield, Ms Stephanie Hesford, Mr Benjamin Foxe, Ms Elspeth Dyer and Ms Sasha Shevtsova

1. Hearing

At 9:15 am, the Chair declared the public hearing open and witnesses and the public were admitted.

Motor Traders' Association of NSW

Mr Greg Patten, Chief Executive Officer, was sworn and examined.

Mr Graham Judge, Acting Division Manager, Body Repair, was affirmed and examined.

Evidence concluded, the witnesses withdrew.

The Institute of Automotive Mechanical Engineers and Institute of Accident Assessors

Mr Peter Blanshard, Chief Executive Officer, was sworn and examined.

Evidence concluded, the witness withdrew.

Insurance Council of Australia

Mr Robert Whelan, Executive Director and Chief Executive Officer, was sworn and examined.

Dr Ric Simes, Partner, Deloitte Access Economics, was affirmed and examined.

Evidence concluded, the witnesses withdrew.

Insurance Law Service, Consumer Credit Legal Centre

Ms Alexandra Kelly, Principal Solicitor, was affirmed and examined.

Evidence concluded, the witness withdrew.

Per the earlier resolution on the motion of Mr Williams to continue the hearing in camera, the Chair ordered that the room be cleared.

The public withdrew.

The Committee proceeded to take evidence in camera.

Persons present other than the Committee: Ms Elaine Schofield, Ms Stephanie Hesford, Mr Benjamin Foxe, Ms Elspeth Dyer and Ms Sasha Shevtsova.

In camera evidence concluded, the witnesses withdrew.

2. Adjournment

The Committee adjourned at 5:50 pm until 8:45 am Friday, 22 March 2013 at the Police and Justice Museum, Sydney.

Minutes of Proceedings of the Select Committee on the Motor Vehicle Repair Industry (Hearing no. 2)

9:00 am Friday 21 March 2014

Justice and Police Museum,

Members Present

Mr Barilaro, Mr Doyle, Mr Piper, Mr Williams and Ms Mihailuk

Officers in attendance: Ms Elaine Schofield, Ms Stephanie Hesford, Mr Benjamin Foxe, Ms Elspeth Dyer and Ms Sasha Shevtsova

1. Hearing

At 9:00 am, the Chair declared the public hearing open and witnesses and the public were admitted.

Allianz Australia Insurance Ltd

Mr David Krawitz, Chief Operating Officer and Mr Peter Hartman, National Technical Manager, Motor Assessing, were sworn and examined.

Mr Nicholas Scofield, General Manager Corporate Affairs, was affirmed and examined.

Evidence concluded, the witnesses withdrew.

NRMA Insurance

Mr Roy Briggs, Executive General Manager, Marketing, Reputation and CTP, and Mr Steve Bubulj, Acting Head of Supply Chain, were sworn and examined.

Evidence concluded, the witnesses withdrew.

Suncorp Group Limited

Mr Sean Dempsey, Executive General Manager, Shared Insurance Ventures, and Mr Craig Summers, Executive Manager of NSW Motor Claims, were affirmed and examined.

Mr Rob Bartlett, National Industry Relations Manager, was sworn and examined.

Evidence concluded, the witnesses withdrew.

Per the earlier resolution on the motion of Mr Piper to continue the hearing in camera, the Chair ordered that the room be cleared.

The public withdrew.

The Committee proceeded to take evidence in camera.

Persons present other than the Committee: Ms Elaine Schofield, Ms Stephanie Hesford, Mr Benjamin Foxe, Ms Elspeth Dyer, Ms Sasha Shevtsova and Ms Mille Yeoh.

In camera evidence concluded, the hearing resumed in public.

The public were readmitted.

NSW Fair Trading

Mr Rod Stowe, Commissioner, NSW Fair Trading, was sworn and examined.

Evidence concluded, the witness withdrew.

2. Adjournment

The Committee adjourned at 4:20 pm sine die.

Minutes of Proceedings of the Select Committee on the Motor Vehicle Repair Industry (no 7)

9:30 am Thursday 27 March 2014

Room 1136

Parliament House

Members Present

Mr Barilaro, Mr Doyle, Mr Piper, Mr Williams

Apologies: Ms Mihailuk

Officers in attendance: Ms Elaine Schofield, Ms Stephanie Hesford, Ms Elspeth Dyer, Mr Ben Foxe

1. Confirmation of Minutes

Resolved on the motion of Mr Piper, seconded Mr Doyle:

That the minutes of the meetings held on 17 and 21 March 2014 and the hearings held on 17 and 21 March 2014 be confirmed.

2. Inquiry into the motor vehicle repair industry

Publication of transcripts

Resolved, on the motion of Mr Doyle, seconded by Mr Piper:

That the transcripts of the public hearings held on 17 and 21 March 2014 be published.

Publication of submissions

Resolved on the motion of Mr Piper, seconded Mr Doyle, that:

- The resolutions regarding publication are made on the basis of the following considerations: where matters contained unsubstantiated allegations about third parties and where authors have requested confidentiality;
- the following submissions be received and published in part:

Submission no. 9, name suppressed;

Submission no. 10, name suppressed;

Submission no. 11, name suppressed;

Submission no. 12, name suppressed;

Submission no. 13, name suppressed;

Submission no. 14, name suppressed;

Submission no. 16, name suppressed;

Submission no. 17, name suppressed;

Submission no. 20, name suppressed;

Submission no. 28, name suppressed;

Submission no. 30, name suppressed;

Submission no. 31, name suppressed;

Submission no. 32, name suppressed;

Submission no. 35, name suppressed;

Submission no. 37, name suppressed;

SELECT COMMITTEE ON THE MOTOR VEHICLE REPAIR INDUSTRY
EXTRACTS FROM MINUTES

Submission no. 38, name suppressed;
Submission no. 40, name suppressed;

Submission no. 49, name suppressed;

Submission no. 56, Mr Gylbert Parriott;

Submission no. 58, name suppressed;

Submission no. 61, name suppressed;

Submission no. 65, Leslie C. Wilson;

Submission no. 66, name suppressed;

Submission no. 71, Mr Colin Hallinan, Col's Body Shop.

Resolved on the motion of Mr Doyle, seconded Mr Piper: That the following submissions are to be treated confidentially and not published by the Committee:

Submission no. 4, name suppressed;

Submission no. 5, name suppressed;

Submission no. 6, name suppressed;

Submission no. 15, name suppressed;

Submission no. 19, name suppressed;

Submission no. 23, name suppressed;

Submission no. 27, name suppressed;

Submission no. 33, name suppressed;

Submission no. 36, name suppressed;

Submission no. 39, name suppressed;

Submission no. 42, name suppressed;

Submission no. 43, name suppressed;

Submission no. 47, name suppressed;

Submission no. 50, name suppressed;

Submission no. 52, name suppressed;

Submission no. 53, name suppressed;

Submission no. 54, name suppressed;

Submission no. 55, name suppressed;

Submission no. 59, name suppressed;

Submission no. 60, name suppressed;

Submission no. 63, name suppressed;

Submission no. 67, name suppressed;

Submission no. 74, name suppressed;

Submission no. 75, name suppressed;

Submission no. 76, name suppressed.

3. General Business

The Committee discussed issues arising from the submissions and evidence given at the hearings and agreed to hold a workshop in early April to discuss issues and possible recommendations for the Committee's report.

4. Adjournment

The Committee adjourned at 9:50 am *sine die*.

Minutes of Proceedings of the Select Committee on the Motor Vehicle Repair Industry (no 8)

9:30 am Monday 7 April 2014

Room 1043

Parliament House

Members Present

Mr Barilaro, Mr Piper, Mr Williams, Ms Mihailuk (by telephone from 11.00 am)

Apologies: Mr Doyle

Officers in attendance: Ms Elaine Schofield, Ms Stephanie Hesford, Ms Elspeth Dyer, Mr Ben Foxe, Ms Sasha Shevtsova.

1. Inquiry into the motor vehicle repair industry

Issues and possible recommendations and or findings

The Committee considered issues that have been raised during the inquiry and discussed possible recommendations and findings for its report.

Briefing from Independent Assessors

Resolved, on the motion of Mr Williams, seconded Mr Piper: That the Committee invite independent assessors to a private briefing.

Resolved, on the motion of Mr Williams, seconded Mr Piper: That the Committee invite independent assessors to a private briefing.

Further questions to Fair Trading

Resolved on the motion of Mr Piper, seconded Mr Williams, that the Chair write to the Commissioner for Fair Trading to seek further information and clarification about:

- 1 The role the Department plays in the dispute resolution process under the Code of Conduct if parties to a dispute have either exhausted the procedures or refuse to participate in the process;
- 2 If legislative change mandated the Department to mediate in the dispute resolution process, with NCAT as the final adjudicator in such cases, what procedures would the Department need to put in place.

Publication of responses to questions on notice

Resolved, on the motion of Mr Piper, seconded by Mr Williams:
That the responses to questions on notice received from the Insurance Council of Australia, the Insurance Law Service, NRMA Insurance, and the Commissioner of Fair Trading be published.

Publication of submissions

Resolved on the motion of Mr Piper, seconded Mr Williams, that the supplementary submission from the Motor Traders' Association be published in part.

2. Adjournment

The Committee adjourned at 12:30 pm *sine die*.

Minutes of Proceedings of the Select Committee on the Motor Vehicle Repair Industry (no 9)

8:30 am Wednesday 30 April 2014

Room 1254

Parliament House

Members Present

Mr Barilaro, Mr Doyle, Mr Piper, Mr Williams, Ms Mihailuk

Officers in attendance: Ms Elaine Schofield, Ms Stephanie Hesford, Ms Elspeth Dyer, Ms Sasha Shevtsova.

1. Minutes

Resolved on the motion of Mr Doyle, seconded Mr Williams: That the minutes of the meetings held on 27 March 2014 and 7 April 2014 be confirmed.

2. Inquiry into the Motor Vehicle Repair Industry

Submissions

Resolved on the motion of Mr Williams, seconded Mr Doyle: That submission no. 77 from the Australian Automotive Repairers Group (AARGI) be received and published in full.

Correspondence received

- (a) Letter from NRMA Insurance offering the Committee a follow-up briefing on their operating model.

Resolved on the motion of Mr Piper, seconded Mr Williams: That the Committee accept the offer for the briefing.

- (b) Representation from Mr Adam Thomas to reappear before the Committee to provide further evidence.

Resolved on the motion of Mr Piper, seconded Mr Williams: That the Committee write to Mr Thomas advising that at this stage the Committee considers it has sufficient evidence and will not be holding any further hearings but that it will accept further written submissions.

Alleged intimidation of witnesses

The Committee was informed about allegations of actions against witnesses to the inquiry that have been reported to the Police and wished to be kept up to date if there were any developments in the police investigations.

Publication of responses to questions on notice

Resolved, on the motion of Mr Doyle, seconded by Mr Williams:
That the response to questions on notice received from the Commissioner of Fair Trading, dated 15 April, be published.

Briefing from Independent Assessors

The Committee heard from Mr Rod Wood, Group Executive – Insurance and Mr Daniel Lukich, Business Development Manager – Insurance Services from Innovation Group; Mr John Florida, Vehicle Accident Recovery Services and Mr Frank Cottonaro, Claims Made Easy; and Mr Brian Christenson in relation to the role of assessors.

Extension of reporting date

Resolved on the motion of Mr Williams, seconded Mr Doyle, that the Committee seek an extension of its reporting date to 30 June 2014.

3. Adjournment

The Committee adjourned at 11:55 am until Wednesday 7 May 2014 at 9.15 am.

Minutes of Proceedings of the Select Committee on the Motor Vehicle Repair Industry (no 10)

9.15 am Wednesday 7 May 2014

Waratah Room
Parliament House

Members Present

Mr Doyle, Mr Piper, Mr Williams, Ms Mihailuk

Apologies

Mr Barilaro

Officers in attendance: Ms Elaine Schofield, Ms Stephanie Hesford, Ms Elspeth Dyer, Ms Sasha Shevtsova.

1. Minutes

Resolved on the motion of Mr Williams, seconded Mr Piper: That the minutes of the meetings held on 30 April 2014 be confirmed.

2. Inquiry into the Motor Vehicle Repair Industry

Proposed findings and recommendations

The Committee considered the proposed findings and recommendations for the report and agreed in principle to the following recommendations:

- 1 That, a requirement be introduced under the *Road Transport Act 2013* for assessors to provide RMS with details of vehicles subject to repairs of a structural or safety nature.
- 2 That, the *Road Transport (Vehicle Registration) Regulation 2007* be amended to include another category of vehicles to be certified to include vehicles subject to structural and/or safety repairs, and that such vehicles be subject to random audit.
- 3 That, a public 'name and shame' register be established by the NSW Office of Fair Trading, which will list motor vehicle repairers that are found to be in breach of the *Motor Dealers and Repairers Act 2013* and its regulations or the *Road Transport Act 2013* and its regulations.
- 4 That, the Minister for Roads require vehicle manufacturers to provide specifications when supplying parts for repairs.
- 5 That, a rating system for smash repair businesses be introduced following consultation with industry stakeholders.
- 6 That, motor vehicle accident assessors be licensed.
- 7 That, the licensing arrangements for assessors require assessors to use real time as per MTA standards when approving quotes until such time as a national model for realistic times is established.
- 8 That, the regulations require independent assessors to abide by Business Rules issued by RMS, which set out industry standards.
- 9 That, assessors be required to approve the repair method when authorising a quote.
- 10 That, the Minister for Fair Trading write to the CAC providing support for the review's recommendation and requesting the recommendations of the review be adopted by June 2015.
- 11 That, Fair Trading be required to take an active role in resolving disputes under the Code.
- 12 That, the *Fair Trading Act 1987* be amended to provide for additional penalties for breaches of the Code including:

- (a) The introduction of an occupational licence points system and the suspension or cancellation of licenses; and
 - (b) Increased monetary penalties, on a sliding scale with insurance companies receiving a substantially larger financial penalty than individual repairers.
- 13 That, the NSW Government call on the Federal Government to request the Productivity Commission to review the need for realistic times and rates in the motor vehicle repair industry.
 - 14 That, regulations be revised to ensure that the Code, as it exists at any point in time, is the applicable Code under the *Fair Trading Act 1987*
 - 15 That the Fair Trading Act be amended to require insurers to provide the insured with a disclosure notice (for all motor vehicle insurance policies taken out in NSW), regarding the choice of repairer and parts used for repairs when the insured first enters into an insurance policy with the insurer, on each occasion that the policy is renewed, and whenever the insured makes a claim under the policy.
 - 16 That, the Fair Trading Act be amended to include penalties for practices that undermine the choice of repairer in motor vehicle policies.
 - 17 That, Fair Trading produce specific material to assist consumers in understanding their rights under a policy of 'choice of repairer'.
 - 18 That, regulations be introduced requiring repairers to record digital images of repairs undertaken.
 - 19 That, Fair Trading be given authority to resolve disputes between consumers and repairers regarding the costs of repairs.
 - 20 That, the NSW Government write to the CAC seeking an amendment to clause 9.1 of the Code of Conduct making it clear that the choice of repairer must be within the first few pages of a PDS.
 - 21 That, the NSW Government write to the CAC seeking the inclusion of a new clause 9.6 in the Code requiring insurers to declare parent and umbrella companies in the PDS for insurance as part of the disclosure obligations.
 - 22 That, motor vehicle repairers be able to seek assistance with contractual issues they have with insurance companies from the NSW Small Business Commissioner.

Further information to be sought from the Commissioner of Fair Trading

Resolved on the motion of Mr Piper, seconded Mr Williams: That the Committee write to the Commissioner of Fair Trading requesting records relating to the inspection and compliance activity conducted on Motor Repairers during the financial years 2013-14; 2012-13; 2011-12; 2011-10; and 2009-10.

Extension of reporting date

Resolved on the motion of Mr Williams, seconded Mr Piper, that the Committee seek an extension of its reporting date to 31 July 2014.

Meeting with the Commissioner of Fair Trading

Resolved on the motion of Mr Williams, seconded Ms Mihailuk, that the Committee request the Commissioner of Fair Trading to meet with it on Wednesday 14 May 2014 to discuss proposed recommendations that affect the work of Fair Trading.

3. Adjournment

The Committee adjourned at 10:04 am until Wednesday 14 May 2014 at 9.15 am.

Minutes of Proceedings of the Select Committee on the Motor Vehicle Repair Industry (no 11)

9.15 am Wednesday 14 May 2014

Room 1254

Parliament House

Members Present

Mr Barilaro, Mr Piper, Mr Williams,

Apologies

Mr Doyle, Ms Mihailuk

Officers in attendance: Ms Elaine Schofield, Ms Stephanie Hesford, Ms Elspeth Dyer, Ms Sasha Shevtsova.

1. Briefing by NRMA Insurance

The Committee meet with Mr Roy Briggs, Executive General Manager, Marketing, Reputation and CTP; Mr Steve Bubulj, Acting Head of Supply Chain; and Mr George Karagiannakis, Head of Corporate Affairs and Government Relations to discuss aspects of NRMA Insurance's partner repairer program.

2. Minutes

Resolved on the motion of Mr Williams, seconded Mr Piper: That the minutes of the meetings held on 7 May 2014 be confirmed.

3. Adjournment

The Committee adjourned at 10:35 am until Wednesday 14 May 2014 at 4.00 pm.

Minutes of Proceedings of the Select Committee on the Motor Vehicle Repair Industry (no 12)

4.00 pm Wednesday 14 May

Clerk's Meeting Room

Parliament House

Members Present

Mr Barilaro, Mr Doyle, Mr Piper, Mr Williams,

Apologies

Ms Mihailuk

Officers in attendance: Ms Elaine Schofield, Ms Stephanie Hesford, Ms Elspeth Dyer, Ms Sasha Shevtsova.

1. Meeting with the Acting Fair Trading Commissioner

The Committee meet with Mr Robert Vellar, Acting Commissioner of Fair Trading to discuss issues arising from the inquiry.

2. Adjournment

The Committee adjourned at 5:20 pm until Wednesday 28 May 2014 at 9.15 am.

Minutes of Proceedings of the Select Committee on the Motor Vehicle Repair Industry (no 13)

9.15 am Wednesday 28 May 2014

National Party Room

Parliament House

Members Present

Mr Barilaro, Mr Doyle, Ms Mihailuk, Mr Piper, Mr Williams,

Officers in attendance: Ms Elaine Schofield, Ms Stephanie Hesford, Ms Elspeth Dyer, Ms Sasha Shevtsova.

1. Minutes

Resolved on the motion of Mr Williams, seconded Mr Piper: That the minutes of the meetings held on 14 May 2014 be confirmed.

2. Submission received

Resolved on the motion of Mr Williams, seconded Mr Doyle: That submission no. 78 from Innovation Group be received and published in full.

3. Correspondence received

- (a) The Committee noted the letter received from the Acting Commissioner of Fair Trading regarding resolutions of disputes between insurers and repairers, dated 15 May 2014.
- (b) Resolved on the motion of Mr Doyle, seconded Mr Piper: That the letter be published.
- (c) The Committee noted correspondence received by email from name suppressed regarding the use of non-genuine parts by insurance companies.
- (d) The Committee noted correspondence received from Mr Nicholas Scofield, General Manager, Corporate Affairs, Allianz Insurance regarding comments made by the MTA in its supplementary submission.

4. Proposed regulation under the Motor Dealers and Repairers Act

The Committee discussed the regulatory impact statement for the *Motor Dealers and Repairers Regulation 2014*, which seeks the views of stakeholders as to whether the implementation of the regulation should be delayed until the Committee reports.

Resolved on the motion of Mr Williams, seconded Mr Piper: That the Committee write to the Minister for Fair Trading requesting the implementation of the *Motor Dealers and Repairers*

Regulation 2014 be postponed until consideration is given to the Committee's findings and recommendations.

5. Proposed Recommendations

The Committee reconsidered a number of proposed recommendations and further deliberated on:

- 1 Availability of manufacturers vehicle repair specification.
- 2 The use of genuine parts for vehicles under manufacturers' warranties.
- 3 Licensing arrangements for assessors.
- 4 The requirement or not of independent assessors.
- 5 Concerns stakeholders have raised regarding the Financial Ombudsman's Service.

6. Adjournment

The Committee adjourned at 9.55 am *sine die*.

Minutes of Proceedings of the Select Committee on the Motor Vehicle Repair Industry (no 14)

4pm Wednesday 25 June 2014
Room 1153
Level 11, Parliament House

Members Present

Mr Barilaro, Mr Doyle, Mr Piper, Mr Williams, Ms Mihailuk (by telephone).

Officers in attendance: Ms Helen Minnican, Ms Elspeth Dyer, Ms Sasha Shevtsova.

1. Apologies

Nil.

2. Minutes

Resolved on the motion of Mr Williams, seconded Mr Doyle: That the minutes of meeting no 13 held on 28 May 2014 be confirmed.

3. Correspondence received

- (a) The Committee noted the email from [name suppressed] dated 27 May 2014, complaining about motor vehicle repairs and vertical integration.
- (b) The Committee noted the letter received from the Commissioner of Fair Trading, dated 5 June 2014, regarding a possible licensing scheme for motor vehicle loss assessors.

- (c) The Committee noted the letter received from Jaguar Land Rover Australia, dated June 2014, regarding ongoing changes in repair procedures for vehicles.
- (d) The Committee noted the letter received from Mr Steve Bubulj, Acting Head of Supply Chain, NRMA Insurance, dated 11 June 2014, regarding NRMA's Partner Repairer Model.
- (e) The Committee noted the letter received from Mr David Miller, Partner, CBP Lawyers, dated 13 June 2014, regarding submissions made by the Motor Traders' Association of NSW to the Inquiry.

4. Consideration of Chair's Draft Report

The Committee proceeded to deliberate on proposed amendments to the Chair's draft report, previously distributed by Mr Williams.

The Committee also considered proposed amendments circulated at the meeting by the Chair.

Resolved on the motion of Mr Williams that paragraph 2 of the Executive Summary be amended by omitting the words "in some quarters" and inserting instead the words "by a large number of key stakeholders".

Resolved on the motion of Mr Williams that paragraph 8 of the Executive Summary be amended by inserting the words "assessed or" after the word "not".

Mr Williams **moved** that paragraph 9 of the Executive Summary be amended by omitting the words "that licensed" and inserting instead the words "the licensing of all"; and by inserting the words "under the VSCCS Scheme be introduced and that all licensed motor vehicle assessors" after the words "motor vehicle assessors".

Discussion ensued.

Upon which the Committee considered and **agreed** to the following alternative: that paragraph 9 of the Executive Summary be amended by omitting the words "that licensed" and inserting instead the words "the licensing of all"; and by inserting the words "under Roads and Maritime Services' Vehicle Safety Compliance and Certification Scheme (VSCCS) and that all licensed motor vehicle assessors" after the words "motor vehicle assessors".

Mr Williams **moved** that paragraph 10 of the Executive Summary be amended by omitting the words "The Committee found no necessary link between these models and poor repairs and recommended against banning them, finding that other recommendations contained throughout the report would adequately deal with the quality issues" and inserting instead the words "The Committee is concerned with the potential conflict of interest that arises out of the fact that insurance companies own 60% of certain repair shops. The conflict of interest becomes more evident in the rate of rectifications from the insurer owned repair shops, which is above that of non-insurer owned repair shops. However, the Committee does not believe they have the power to request that insurance companies not own repair shops".

Discussion ensued.

Upon which the Committee considered and **agreed** to the following alternative: that paragraph 10 of the Executive Summary be amended by omitting the words “The Committee found no necessary link between these models and poor repairs and recommended against banning them, finding that other recommendations contained throughout the report would adequately deal with the quality issues” and inserting instead “The Committee is concerned with the potential conflict of interest that arises out of the fact that insurance companies own up to 60% of certain repair shops. The conflict of interest becomes more evident in the rate of rectifications from the insurer owned repair shops, which is above that of non-insurer owned repair shops. However, the Committee decided it is not necessary to ban insurer-owned repair shops to deal with quality issues, finding that other recommendations contained throughout the report would adequately deal with these issues”.

Mr Williams **moved** that paragraph 11 of the Executive Summary be amended by omitting the words “allowing repairers to approach the Small Business Commissioner for assistance in negotiating contract terms with insurers” and inserting instead the words “all contracts between insurers and repair shops be negotiated and approved by the Small Business Commissioner”.

Discussion ensued.

Upon which the proposed amendment was negated.

Resolved on the motion of Mr Williams that paragraph 11 of the Executive Summary be amended by omitting the words “may have” and inserting instead the word “has”.

Resolved on the motion of Mr Williams that paragraph 13 of the Executive Summary be amended by inserting the word “licensed” after the words “repairers and”.

Resolved on the motion of Mr Williams that paragraph 13 of the Executive Summary be amended by inserting the words “as a matter of urgency” after the words “specifications to repairers and assessors”.

Resolved on the motion of Mr Williams that paragraph 14 of the Executive Summary be amended by inserting the words “licensed motor vehicle” after the words “in which case it is the”.

Mr Williams **moved** that paragraph 17 of the Executive Summary be amended by inserting after the words “the repair” the following words: “The Committee has not been made aware of any complaints by consumers who are insured by the remaining 40% of insured motor vehicles (that are not insured by the two major insurance companies). There appears therefore to be a structure in place whereby these insurance companies when assessing damaged motor vehicles utilise independent assessors”.

Discussion ensued.

Upon which the Committee considered and **agreed** to the following alternative: that paragraph 17 of the Executive Summary be amended by inserting after the words “the repair” the following words: “The Committee has not received any assessor-based complaints from any of the 40% of consumers insured by insurers other than the two major insurance

companies. There appears therefore to be a structure in place where these other insurance companies use independent assessors to assess damaged motor vehicles”.

Resolved on the motion of Mr Williams that paragraph 18 of the Executive Summary be amended by omitting the words “However, the Committee acknowledged the difficulties in establishing a system of independent assessors and found that other measures, such as licensing arrangements, could be implemented to provide the desired accountability for assessors, ensuring repairs and repair method are authorised appropriately” and inserting instead the words “While the Committee acknowledged difficulties in establishing a system of independent assessors, they found other measures, such as licensing assessors under a VSCCS Scheme should be implemented to provide the desired accountability for assessors, ensuring repairs and repair methods are authorised appropriately”.

Resolved on the motion of Mr Williams that paragraph 19 of the Executive Summary be amended by omitting the words “a licensing scheme for assessors be introduced in NSW” and inserting instead the words “therefore that all motor vehicles assessors be licensed under the VSCCS Scheme, which is currently”.

Mr Williams **moved** that paragraph 19 of the Executive Summary be amended by omitting the words “that a demerit points system apply to such licences for breach of licensing conditions and regulations” and inserting instead “that applicable fines apply to such licences for breach of licensing conditions and regulations (such as a three strikes approach)”.

Discussion ensued.

Upon which the Committee considered and **agreed** to the following alternative: that paragraph 19 of the Executive Summary be amended by omitting the words “that a demerit points system apply to such licences for breach of licensing conditions and regulations” and inserting instead the words “that fines apply to such licences for breach of licensing conditions and regulations, and licence cancellation be introduced following three strikes”.

Resolved on the motion of Mr Williams that paragraph 19 of the Executive Summary be amended by inserting the words “the same as VSCCS certifiers” after the words “relevant qualifications”.

Resolved on the motion of Mr Williams that paragraph 19 of the Executive Summary be amended by inserting the words “licensed motor vehicle” after the words “requirement for”; and omitting the word “a” and inserting instead the words “the appropriate”.

Resolved on the motion of Mr Williams that paragraph 25 of the Executive Summary be amended by inserting the words “and motor vehicle assessors” after the words “register for repairers”.

Resolved on the motion of Mr Williams that paragraph 25 of the Executive Summary be amended by inserting a full stop after the words “breach relevant legislation”.

Resolved on the motion of Mr Williams that paragraph 25 of the Executive Summary be amended by omitting the words “and a rating system for repair businesses allowing consumers to identify the extent and standard of services provided” and inserting instead “A rating system should also be applied to repair shops outlining their ability to repair different degrees

of damage to a motor vehicle which would enable licensed assessors to determine the ability of a particular repair shop to undertake the required work to a damaged vehicle and also allow consumers to identify the extent and standard of services provided by a particular repair shop”.

Resolved on the motion of Mr Williams that paragraph 26 of the Executive Summary be amended by omitting the words “supports changes to require” and inserting instead the word “recommends”.

Resolved on the motion of Mr Williams that paragraph 26 of the Executive Summary be amended by omitting the word “to” after the words “insurance companies”.

Resolved on the motion of Mr Williams that paragraph 26 of the Executive Summary be amended by inserting the words “which should be clearly visible and/or advised to customers in the first instance of seeking a premium” after the words “relationships to consumers”.

Mr Williams **moved** that paragraph 29 of the Executive Summary be amended by omitting the words “The Committee therefore supports change to increase enforceability of the Code including mandating the Code at the national level, increased oversight and compliance activity, binding dispute resolution outcomes, and penalties for breaches of the Code” and inserting instead the words “The Committee therefore recommends enforceability of the Code by imposing fines and penalties for breaches of the mandatory NSW Code of Conduct and recommends the NSW Minister for Fair Trading apply to the Federal Government to mandate the Code at the national level, increased oversight and compliance activity, binding dispute resolution outcomes, and penalties for breaches of the Code”.

Discussion ensued.

Upon which the Committee considered and **agreed** to the following alternative: that paragraph 29 of the Executive Summary be amended by omitting the words “The Committee therefore supports change to increase enforceability of the Code including mandating the Code at the national level, increased oversight and compliance activity, binding dispute resolution outcomes, and penalties for breaches of the Code” and inserting instead the words “The Committee therefore recommends enforceability of the Code by imposing fines and penalties for breaches of the mandatory NSW Code of Conduct and recommends the NSW Minister for Fair Trading apply to the Commonwealth Government to mandate the Code at the national level including increased oversight and compliance activity, binding dispute resolution outcomes, and penalties for breaches of the Code”.

Mr Williams **moved** that recommendation 1 be amended by omitting the words “enable motor vehicle repairers to seek assistance from the NSW Small Business Commissioner in relation to unfair contractual terms between repairers and insurance companies” and inserting instead the words “require all contracts between insurers and repair shops be negotiated and approved by the Small Business Commissioner”.

Discussion ensued.

Upon which the proposed amendment was negated.

Mr Williams **moved** that recommendation 3 be amended by inserting the words “Licensed Motor Vehicle VSCCS certified” before the word “assessor”.

Discussion ensued.

Upon which the proposed amendment was negated.

Mr Williams **moved** that recommendation 5 be amended by omitting the words “introduce a licensing scheme for all motor vehicle assessors operating in New South Wales to be” and inserting instead the words “legislate under the Motor Dealers and Repairers Act 2013, that all Motor Vehicle Assessors be VSCCS certified and”.

Discussion ensued.

Upon which the Committee **agreed** to the following alternative: that recommendation 5 be amended by omitting the words “introduce a licensing scheme for all motor vehicle assessors operating in New South Wales to be” and inserting instead the words “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)” and inserting the words “Such licensing and certification should be implemented within 6 months of the legislation coming into force” after the words “administered by Roads and Maritime Services”.

Mr Williams **moved** that recommendation 6 be amended by omitting the words “That a demerit points system apply to licences for assessors for breach of licensing conditions and regulations” and inserting instead the words “That applicable fines apply to such licences for breach of licensing conditions and regulations, such as a three strikes approach”.

Discussion ensued.

Upon which the Committee **agreed** to the following alternative: that recommendation 6 be amended by omitting the words “That a demerit points system apply to licences for assessors for breach of licensing conditions and regulations” and inserting instead the words “That fines apply to licences for assessors for breach of licensing conditions and regulations; and licence cancellation after three strikes”.

Resolved on the motion of Mr Williams that recommendation 7 be amended by inserting the words “licensed motor vehicle” after the words “authorising quotes”.

Resolved on the motion of Mr Williams that recommendation 9 be amended by omitting the words “under the licensing scheme, all motor vehicle accident assessors and estimators be required to” and inserting instead the words “all licensed motor vehicle assessors be VSCCS certified and”.

Resolved on the motion of Mr Williams that recommendation 14 be amended by inserting the words “and licensed assessors” after the word “consumer”.

Resolved on the motion of Mr Williams that finding 2 be amended by omitting the words “in their product disclosure statements” and inserting instead “This information should be clearly

visible, upfront in the product disclosure statement and/or advised to customers at the time they enter into the insurance policy”.

Mr Williams **moved** that finding 3 be amended by inserting the words “fines and penalties to enforce the” after the words “introduction of”; by inserting the words “Fair Trading and” after the words “enforcement by” and by omitting the word “a” after the word “introduction of”.

Discussion ensued.

Upon which the proposed amendment was negated.

The Committee agreed that recommendation 19 be amended by omitting the words “If the changes recommended in this report to introduce a mandatory Code at the national level with oversight and enforcement by the ACCC; or an arbitration system for the Code overseen by an Independent Ombudsman as recommended by Executive Counsel Australia’s External Review of the Code; are not adopted by June 2015” and inserting instead the words “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:”.

Resolved on the motion of Mr Piper that finding 8 be amended by omitting the words “of three more independent, non-industry” and inserting instead “of an additional three, more independent, non-industry”.

The Committee agreed to omit recommendation 20 “The NSW Minister for Fair Trading monitor the extent to which the CAC adopts recommendations 16 and 17 of the external review of the Code conducted by Executive Counsel Australia in December 2013” and reflect it chapter 7 directly following finding 8 instead.

The Committee agreed to omit recommendation 21 “The NSW Minister for Fair Trading monitor the extent to which the CAC adopts recommendations 18 and 20 of the external review of the Code conducted by Executive Counsel Australia in December 2013” and reflect it in chapter 7 directly following finding 10 instead.

The Committee agreed to omit recommendation 23 “The NSW Minister for Fair Trading monitor the extent to which the CAC adopts recommendation 13 of the external review of the Code conducted by Executive Counsel Australia in December 2013” and reflect it in chapter 7 directly following finding 11 instead.

The Committee agreed to omit recommendation 24 “The NSW Minister for Fair Trading monitor the extent to which the CAC adopts recommendation 30 of the external review of the Code conducted by Executive Counsel Australia in December 2013” and reflect it in chapter 7 directly following finding 12 instead.

Resolved on the motion of Mr Piper that finding 12 be amended by omitting quotation marks around the words “funny time, funny money impasse”.

Resolved on the motion of Mr Williams that paragraph 2.19 be amended by inserting the words “It should however be noted that Coles Insurance has recently been purchased by NRMA IAG” after the words “entered the market”.

Mr Williams **moved** that paragraph 2.38 be amended by omitting the word “co-owns” and inserting instead the words “owns 60% of” and to insert the words “and 60% of Q-Plus which repairs large numbers of structurally damaged motor vehicles” after the words “non-structural repairs”.

Discussion ensued.

Upon which the proposed amendment was negatived.

Mr Williams **moved** that paragraph 3.96 be amended by omitting the words “As with preferred repairer schemes, the Committee does not consider there is any necessary link between vertical integration and poor quality repairs, and does not agree that vertical integration should be banned on this basis” and inserting instead the words “The Committee is concerned with the potential conflict of interest that arises out of the fact that insurance companies own 60% of certain repair shops. The conflict of interest becomes more evident in the rate of rectifications from the insurer owned repair shops, which is above that of non-insurer owned repair shops. However, the Committee does not believe they have the power to request that insurance companies not own repair shops”.

Discussion ensued.

Upon which the Committee **agreed** to the following alternative: that paragraph 3.96 be amended by omitting the words “As with preferred repairer schemes, the Committee does not consider there is any necessary link between vertical integration and poor quality repairs, and does not agree that vertical integration should be banned on this basis” and inserting instead the words “The Committee is concerned with the potential conflict of interest that arises out of the fact that insurance companies own 60% of certain repair shops. The conflict of interest becomes more evident in the rate of rectifications from the insurer owned repair shops, which is above that of non-insurer owned repair shops.”

Resolved on the motion of Mr Williams that paragraph 3.97 be amended by inserting the word “However” before the words “As above”.

Resolved on the motion of Mr Williams that paragraph 5.32 be amended by omitting the word “other” and inserting instead the word “current”.

Resolved on the motion of Mr Williams that paragraph 5.35 be amended by omitting the words “regulated under the Roads Legislation” and inserting instead the words “administered by RMS”.

Resolved on the motion of Mr Williams that paragraph 5.36 be amended by omitting the words “a demerit points system for breaches of licensing conditions or breaches of the regulations” and inserting instead “applicable fines for breach of licensing conditions and regulations and licence cancellation following three strikes”.

Resolved on the motion of Mr Williams that a new paragraph, previously reflected in recommendation 20, be inserted into chapter 7 directly following finding 8 “The Committee considers the NSW Minister for Fair Trading should also monitor the extent to which the CAC adopts recommendations 16 and 17 of the external review of the Code conducted by Executive

Counsel Australia in December 2013, with a view to raising the surrounding issues with the Commonwealth if necessary”.

Resolved on the motion of Mr Williams that a new paragraph, previously reflected in recommendation 21, be inserted into chapter 7 directly following finding 10 “The Committee considers the NSW Minister for Fair Trading should also monitor the extent to which the CAC adopts recommendations 18 and 20 of the external review of the Code conducted by Executive Counsel Australia in December 2013, with a view to raising the surrounding issues with the Commonwealth if necessary”.

Resolved on the motion of Mr Williams that a new paragraph, previously reflected in recommendation 23, be inserted into chapter 7 directly following finding 11 “The Committee considers the NSW Minister for Fair Trading should also monitor the extent to which the CAC adopts recommendation 13 of the external review of the Code conducted by Executive Counsel Australia in December 2013, with a view to raising the surrounding issues with the Commonwealth if necessary”.

Resolved on the motion of Mr Piper that paragraph 7.103 be amended by omitting the quotation marks around the words “funny time, funny money impasse”.

Resolved on the motion of Mr Williams that a new paragraph, previously reflected in recommendation 24, be inserted into chapter 7 directly following finding 12 “The Committee considers the NSW Minister for Fair Trading should also monitor the extent to which the CAC adopts recommendation 30 of the external review of the Code conducted by Executive Counsel Australia in December 2013, with a view to raising the surrounding issues with the Commonwealth if necessary”.

Resolved on the motion of Mr Williams that the Executive Summary, as amended, be adopted.

Resolved on the motion of Mr Williams, seconded by Ms Mihailuk, that recommendations 1-4, 8, 10-13, 15-18, 22 and 25 be adopted.

Resolved on the motion of Mr Williams, seconded by Ms Mihailuk, that recommendations 5-7, 9, 14, and 19 as amended, be adopted.

Resolved on the motion of Mr Williams, seconded by Ms Mihailuk, that findings 1,3-7 and 9-11 be adopted.

Resolved on the motion of Mr Williams, seconded by Ms Mihailuk, that findings 2, 8 and 12, as amended, be adopted.

Resolved on the motion of Mr Williams, seconded by Ms Mihailuk, that chapters 1, 4 and 6 be adopted.

Resolved on the motion of Mr Williams, seconded by Ms Mihailuk, that chapters 2, 3, 5 and 7, as amended, be adopted.

Resolved on the motion of Mr Williams, seconded by Ms Mihailuk that the draft report as amended be the report of the Committee and that it be signed by the Chair, presented to the House, and published to the Committee’s website.

Resolved on the motion of Mr Piper, seconded by Mr Williams, that the Chair and the Secretariat be permitted to correct stylistic, typographical and grammatical errors.

5. Confidential Evidence Included in the Chair's Draft Report

Resolved on the motion of Mr Williams, seconded by Mr Piper, that the Committee include in its report confidential evidence provided to it by two witnesses whose names were suppressed.

6. Adjournment

The Committee adjourned at 5:20 pm sine die.