

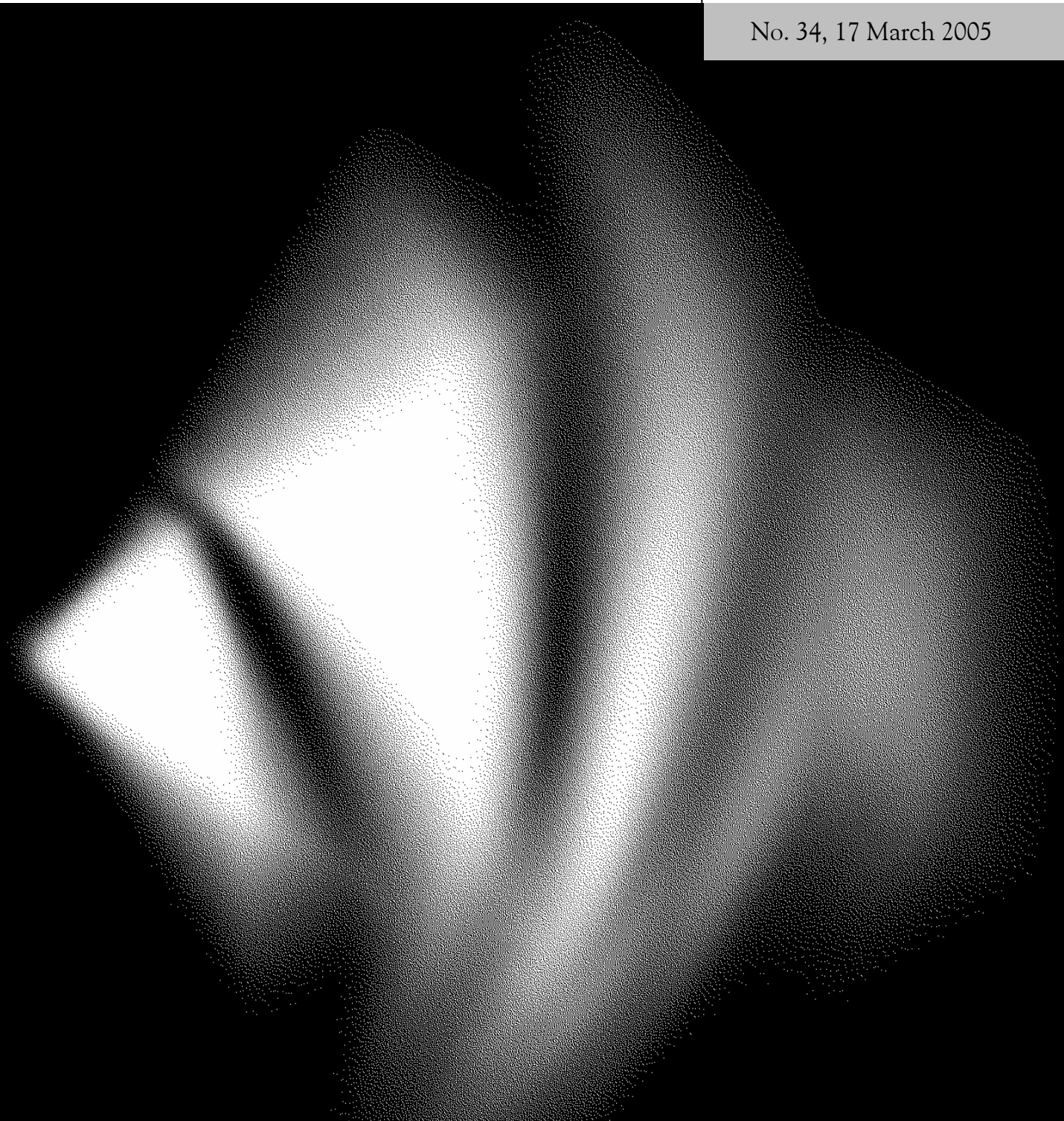


Australian Government  
Productivity Commission

# Smash Repair and Insurance

Productivity  
Commission  
Inquiry Report

No. 34, 17 March 2005



**ISSN 1447-1329**

**ISBN 1 74037 172 0**

This work is subject to copyright. Apart from any use as permitted under the *Copyright Act 1968*, the work may be reproduced in whole or in part for study or training purposes, subject to the inclusion of an acknowledgment of the source. Reproduction for commercial use or sale requires prior written permission from the Attorney-General's Department. Requests and inquiries concerning reproduction and rights should be addressed to the Commonwealth Copyright Administration, Attorney-General's Department, Robert Garran Offices, National Circuit, Canberra ACT 2600.

*This publication is available in hard copy or PDF format from the Productivity Commission website at [www.pc.gov.au](http://www.pc.gov.au). If you require part or all of this publication in a different format, please contact Media and Publications (see below).*

**Publications Inquiries:**

Media and Publications  
Productivity Commission  
Locked Bag 2 Collins Street East  
Melbourne VIC 8003

Tel: (03) 9653 2244  
Fax: (03) 9653 2303  
Email: [maps@pc.gov.au](mailto:maps@pc.gov.au)

**General Inquiries:**

Tel: (03) 9653 2100 or (02) 6240 3200

**An appropriate citation for this paper is:**

Productivity Commission 2005, *Smash Repair and Insurance*, Report No. 34, Canberra.

**The Productivity Commission**

The Productivity Commission, an independent agency, is the Australian Government's principal review and advisory body on microeconomic policy and regulation. It conducts public inquiries and research into a broad range of economic and social issues affecting the welfare of Australians.

The Commission's independence is underpinned by an Act of Parliament. Its processes and outputs are open to public scrutiny and are driven by concern for the wellbeing of the community as a whole.

Information on the Productivity Commission, its publications and its current work program can be found on the World Wide Web at [www.pc.gov.au](http://www.pc.gov.au) or by contacting Media and Publications on (03) 9653 2244.



**Australian Government**  
**Productivity Commission**

*Canberra Office*

Level 3, Nature Conservation  
House  
Cnr Emu Bank and Benjamin Way  
Belconnen ACT 2617

PO Box 80  
Belconnen ACT 2616

Telephone 02 6240 3200  
Facsimile 02 6240 3399

*Melbourne Office*

Telephone 03 9653 2100

[www.pc.gov.au](http://www.pc.gov.au)

17 March 2005

The Honourable Peter Costello MP  
Treasurer  
Parliament House  
Canberra ACT 2600

Dear Treasurer

In accordance with Section 11 of the *Productivity Commission Act 1998*, we have pleasure in submitting to you the Commission's final report on *Smash Repair and Insurance*.

Yours sincerely

Robert Fitzgerald  
Presiding Commissioner

Curt Rendall  
Associate Commissioner

---

## Terms of reference

I, PETER COSTELLO, Treasurer, pursuant to Parts 2 and 3 of the Productivity Commission Act 1998, hereby refer the relationship between the Australian motor vehicle smash repair industry and the motor vehicle insurance industry to the Commission for inquiry and report within five months of receipt of this reference.\* The Commission is to hold hearings for the purpose of the inquiry.

### Scope of Inquiry

1. The Commission is to report on the following matters:
  - a. the appropriateness and transparency of criteria used by insurance companies to confer ‘preferred smash repairer’ status on smash repairers, including:
    - i. the transparency with which such status is conferred on (and removed from) individual repairers;
    - ii. measures to ensure that market arrangements, including ‘preferred smash repairer’ status, do not compromise quality and safety;
    - iii. the scope for nationally agreed criteria to qualify for ‘preferred smash repairer’ status; and
    - iv. any measures to ensure that non-preferred repairers are treated in a fair and reasonable manner and which improve overall transparency, competitiveness and consumer protection in the smash repair industry.
  - b. financial relationships between smash repairers and insurance companies including:
    - i. the rates paid by insurance companies for smash repair work;
    - ii. the timeframes provided to smash repairers by insurance companies to consider and make an informed decision on contract offers; and
    - iii. the time taken by insurance companies to pay smash repairers for completed work.
  - c. arrangements for consumers to have reasonable choice in the selection of repairers.
  - d. the extent, adequacy and independence of dispute resolution systems between the smash repair industry, insurance companies and consumers.

- 
2. In making assessments in relation to the matters in the above matters, the Commission is to have regard to relevant provisions of the Trade Practices Act 1974 and the recommendations contained in the September 2003 issues paper prepared on this matter by the ACCC.
  3. Where appropriate, recommendations should be made for improving the relationships between insurance companies, smash repairers and consumers, including possible regulatory approaches that take into consideration the need to keep red tape at a minimum.
  4. In undertaking the inquiry, the Commission is to advertise nationally inviting submissions, hold public hearings and consult with, at a minimum, the smash repair and insurance industries and relevant consumer groups.
  5. The Commission will provide a draft report within three months of receiving this reference and a final report within five months. The final report will contain recommendations for Government and/or industry action as appropriate, and where appropriate will quantify the likely benefits and costs of recommendations for repairers, insurers, consumers and the community generally.

PETER COSTELLO

[received 31 August 2004]

- \* Due to unforeseen circumstances, the Government agreed to the Commission's request to extend the reporting deadline to 31 March 2005.



---

# Contents

<b>Terms of reference</b>	<b>iv</b>
<b>Abbreviations</b>	<b>ix</b>
<b>Key points</b>	<b>xii</b>
<b>Overview</b>	<b>xiii</b>
<b>Findings and recommendations</b>	<b>xxxvii</b>
The Commission's recommendations	xlii
<b>1 Introduction</b>	<b>1</b>
1.1 Background	1
1.2 Scope of the inquiry	5
1.3 Recognising market power	7
1.4 Inquiry procedures	8
1.5 Structure of the report	9
<b>2 Characteristics of the insurance and smash repair industries</b>	<b>11</b>
2.1 The motor vehicle insurance industry	12
2.2 The smash repair industry	19
<b>3 Preferred smash repairer arrangements</b>	<b>37</b>
3.1 The nature and extent of preferential arrangements	38
3.2 Advantages and disadvantages for insurers, repairers and consumers	42
3.3 Transparency and contract issues	48
3.4 Quality, safety and consumer protection	56
<b>4 Financial and commercial relationships</b>	<b>75</b>
4.1 Current price-setting arrangements	76
4.2 The rates of payment set in the quoting process	79
4.3 Timeframes provided to smash repairers on quoting and contract offers	98
4.4 Time taken by insurers to pay repairers	100

---

<b>5</b>	<b>Choice for consumers</b>	<b>105</b>
5.1	Current arrangements and choice	106
5.2	Benefits and costs of choice	109
5.3	Is there ‘reasonable’ choice?	115
<b>6</b>	<b>Dispute resolution and codes of conduct</b>	<b>119</b>
6.1	Disputes between consumers and insurers	120
6.2	Disputes between consumers and repairers	123
6.3	Disputes between insurers and repairers	123
<b>A</b>	<b>Participation in the inquiry</b>	<b>145</b>
A.1	Meetings and visits	145
A.2	Public submissions	145
A.3	Confidential submissions	146
A.4	Public hearing participants	147
	<b>References</b>	<b>149</b>

---

# Abbreviations

Allianz	Allianz Australia Insurance
ACA	Australian Consumers' Association
ACCC	Australian Competition and Consumer Commission
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
FTFM	'Funny time, funny money'
IAG	Insurance Australia Group
ICA	Insurance Council of Australia
IEC	General Insurance Enquiries and Complaints Scheme
MTA	Motor Trade Association (South Australia, Western Australia), Motor Traders Association (New South Wales), Motor Trades Association (Australian Capital Territory, Queensland)
MTAA	Motor Trades Association of Australia
PSR	Preferred smash repairer
R&R	Repair and replace
SBDC	Small Business Development Corporation of Western Australia
Suncorp	Suncorp Metway
TPA	<i>Trade Practices Act 1974</i>
VACC	Victorian Automobile Chamber of Commerce

---

# OVERVIEW

---

## Key points

- Serious issues of dispute between the smash repair and insurance industries affect fair trading and transparency, and impact on efficiency. The situation has worsened in recent years as insurer power has concentrated.
- Rationalisation and productivity improvement in the smash repair industry will continue in response to a wide range of industry and market factors, not just in response to actions by the four major insurers to reduce costs.
- Preferred smash repairer (PSR) arrangements benefit insurers, consumers and many repairers. Inevitably, some repairers are disadvantaged. But PSR arrangements should not in principle adversely affect the quality and safety of repair. Nevertheless, some improvements can be made.
  - Insurers could, at little cost, enhance the transparency of PSR arrangements.
  - Provided probity and prudential requirements are met, PSR status should not be automatically terminated on sale or transfer of a repair business.
  - The disadvantages of industry-wide nationally agreed PSR criteria are likely to outweigh any advantages.
- The commonly used quoting system known as *funny time*, *funny money* should be abandoned.
  - If times and hourly rates are used, they should reflect realistic times and rates. Parts, paint and significant consumables should be separately costed.
  - There is no justification for *regulating* for an industry standard hourly rate or *imposing* industry standard hours.
- If an insurer specifies repair methods and/or parts, it should accept responsibility in writing for the quality and safety consequences of its requirements.
- Repairers should only be required to guarantee their work for an agreed reasonable time. They should not be required to guarantee parts or paint for longer than the manufacturers' own warranties.
- Current payment times appear commercially acceptable in the vast majority of cases.
- Consumers wanting choice of repairer can choose a policy from one of the several insurers offering that choice. On this basis, consumers have restricted, but reasonable, choice of repairer. But insurers should clearly and accurately explain to consumers the choice options under their policies.
- There is prima facie justification for the development of an industry-wide code as a cost effective way to improve the relationships between insurers and repairers.
  - However, the net benefits of a code depend critically on its scope and content.
- Provided that its scope and content follow principles outlined in this report, the benefits for the community as a whole of an industry-wide code are likely to outweigh the costs, even if mandated.
  - If a voluntary code cannot be agreed between insurers and repairers within six months from release of the Government's decision on this report, a code should be mandated.

---

# Overview

This inquiry concerns aspects of the financial and other commercial relationships between two industries: smash repair and insurance. The difference between the average size of the businesses in these industries is stark.

- There are over 5000 smash repair businesses in Australia, none of which is very large.
- In contrast, motor vehicle insurance is now dominated by just four corporate groups (the Insurance Australia Group, Promina, Suncorp and Allianz).

Repairers obtain about three-quarters of their income from insurance work. Thus, the processes used by the major insurers to allocate damaged vehicles for repair, and the prices they are prepared to pay, have a major influence on the workload and financial viability of most repairers.

- Many repairers feel exposed to the major insurers' market power. They claim that insurers, through unfairly seeking cost reductions, are causing harm to the repair industry.
- Insurers, on the other hand, claim that much of the pressure on the repair industry arises from a need for it to improve efficiency and better cope with changes in the nature and extent of the repair task.

## **Background to the inquiry**

Over the last 10–15 years, insurers have become much more focused on control of costs, driven by a need to improve shareholder returns and contain premium levels to attract and retain customers.

- The adoption of preferred smash repairer (PSR) arrangements (see below), a redirection of repair work through reductions in consumer choice, and tighter control of costs on individual jobs have placed considerable financial pressure on many repairers.

Tensions between repairers and insurers were already apparent at the time of a 1995 Industry Commission inquiry into the repair and insurance industries. Among other things, the Commission recommended that insurers and repairers enter discussions

---

to formulate a voluntary code of conduct to improve the relationship between them, together with a procedure for resolving disputes.

During 2002, the Australian Competition and Consumer Commission (ACCC) convened round table discussions with insurers, repairers and consumers. In late 2003, it released an Issues Paper summarising the issues and making some recommendations, including support for a voluntary industry-wide code of conduct.

Subsequently, the July 2004 meeting of the Small Business Ministerial Council supported:

- the development of a national solution to problems in the smash repair and general insurance industries, at a minimum, through a voluntary, industry-wide code.

The Australian Government has stated that it will consider a strong regulatory response should a voluntary code not be satisfactorily progressed.

## **The scope of the inquiry**

The terms of reference identify four main issues:

- the appropriateness and transparency of PSR criteria;
- financial relationships between repairers and insurers;
- consumer choice; and
- dispute resolution systems.

The Commission has been asked, where appropriate, to propose recommendations to improve relationships between insurers, repairers and consumers, including possible regulatory approaches.

## **Rationalisation in the smash repair industry**

The smash repair industry is characterised by a large number of small, independent, privately-owned businesses. In 1998-99, average employment per repair shop was less than 6 persons, although it has probably increased a little since. Total operating income in 2000-01 was about \$3.9 billion, with a decline in 2002-03 to about \$3.5 billion.

There has been considerable rationalisation over the past 15 years or so. Indeed, the number of repairers has decreased from about 6500 in 1991-92 to around 5000 today. Some insurers claimed that ongoing rationalisation was inevitable, given the

---

relatively small average size of Australian smash repairers compared with those in other countries — for instance, related to the total passenger vehicle fleet, the average number of vehicles per repair shop in Australia is about 2000, compared with almost 2500 in the United States and nearly 5000 in the United Kingdom.

But the underlying factors driving rationalisation are diverse.

- Repairers face a continuing cost–price squeeze as insurers attempt to drive repair costs down in various ways, including through PSR arrangements (see below).
- There is some evidence that the incidence and severity of accidents may have declined in recent years due to factors such as improvements in vehicle safety, better roads and more stringent policing of road safety.
- Several vehicle manufacturers have established their own PSR arrangements.
- Industry regulation through OH&S and environmental requirements has become more stringent.
- Changes in vehicle technology have increased capital and skill requirements for repair.
- Declining returns have reduced the ability of repairers to train new apprentices, in turn, somewhat paradoxically, necessitating payment of higher wages to those skilled employees already in the industry.

Many repairers will successfully respond to such internal and external factors by continuing to improve their efficiency and productivity. Inevitably, however, there will be further rationalisation in coming years.

## **The insurance industry**

In terms of premium revenue, motor vehicle insurance represents the largest component of the broader general insurance market. Motor vehicle insurance premium revenue in 2001-02 totalled about \$4.8 billion of the \$21 billion premium revenue for the general insurance sector as a whole. (Total general insurance premium revenue increased to about \$29 billion in 2004.)

The general insurance market has consolidated recently as a result of factors such as demutualisation, privatisation of government insurers, the collapse of HIH and a range of regulatory reforms which have increased prudential requirements. As a consequence, and as noted above, motor vehicle smash insurance is now dominated by just four insurer groups.

There are significant differences in the ways these major motor vehicle insurers operate their businesses, including in their PSR arrangements, provisions for consumer choice and their guarantees (see table).

**Table Characteristics of the major motor vehicle insurers**

	<i>IAG</i>	<i>Suncorp</i>	<i>Promina</i>	<i>Allianz</i>
Major brands	NRMA, CGU, SGIO, SGIC, RACV (joint venture)	Suncorp, GIO	AAMI, APIA, RACI (joint venture)	Allianz
National market share (approx.)	50 per cent	22 per cent	20 per cent	7 per cent
Preferred smash repair arrangements	Yes. Multilevel preferred repairer scheme and a multilevel associated repairer scheme	Yes	Yes	Yes
Repairer choice for consumers	Yes, but limited. From November 2004, an extra premium is required to obtain choice of repairer	Yes	Very restricted	Yes
Quotation system	Sometimes quote from single repairer; sometimes call tenders	Single quote if price acceptable	Competitive quotations	Single quote if price acceptable
Funny time, funny money (see text)	Yes	Yes	No	Yes
Lifetime of vehicle guarantee	Yes	Yes	Yes	No
Corporate code of conduct	Yes	No	Yes	Yes

## Preferred smash repairer arrangements

Terminology differs, but all the main insurers have arrangements to designate selected repairers as PSRs.

These arrangements are intended to benefit the insurer (and ultimately consumers) in a number of ways:

- reduced administrative overheads;
- lower repair costs from economies of scale;
- faster turnaround times; and
- better control of quality.

---

Preferred repairers can benefit through greater and more stable volumes of work, faster payment and more efficient arrangements for preparing repair quotes and otherwise dealing with insurers. Many repairers are accorded PSR status by more than one insurer.

However, there are downsides, both for preferred and for non-preferred repairers:

- PSRs face considerable added pressure as insurers drive costs down (see below); contracts appear detailed and somewhat intrusive; tenure of PSR status is not secure; and PSR status is generally non-assignable and thus lost if the business is sold.
- Non-preferred repairers often miss out on work (particularly as insurers, through ‘valet’ services and managed repair schemes, ‘direct’ consumers to preferred repairers); suffer the loss of long term consumer relationships; receive slower payment for the insurance work they manage to obtain; and often have to deal with a misleading perception that they provide lower quality work.

### *Transparency issues*

Many repairers accept the right of insurers to operate PSR arrangements — indeed, preferred supplier arrangements exist in many industries. However, repairers consider that the current arrangements are unclear in several ways — including the notification of PSR vacancies, PSR selection criteria, notification of reasons for selection or non-selection, and the removal of PSR status for alleged unsatisfactory performance. A particular concern relates to the sale or transfer of a business. Although some insurers may provide a new owner with a trial period as a PSR, others usually cancel that status if the business is sold — in effect, removing goodwill from the sale price.

- In the Commission’s view, insurers could, at little cost, enhance transparency in a number of relevant respects. Some major insurers, in response to the Commission’s draft report, are now working towards this goal. This would be a major step to improving relations between the two industries.
- Further, subject to probity and prudential requirements being met, PSR status should not be automatically terminated on sale or transfer of a business. Allowing a trial period with the new owner — say, six months — would enhance repairer certainty and goodwill without undue risk to the insurer. Some insurers have now indicated that they are reconsidering their processes in this regard.

---

### *Scope for industry-wide PSR criteria*

Industry-wide nationally agreed PSR criteria could lead to some small administrative cost savings, as repairers would need to understand only one set of criteria rather than several. However, there would be important disadvantages. In particular, national criteria could limit the ability of individual insurers to tailor arrangements to their own specific needs and those of their own customers and repairers.

- As well, there is a danger that national criteria would require insurers to accord PSR status to all repairers meeting those criteria, rather than restricting the numbers as sought by insurers — this would undermine the very rationale of such arrangements.

In the Commission's view, the disadvantages of industry-wide nationally agreed criteria are likely to outweigh any advantages.

### *Quality and safety*

Through fostering a closer relationship between insurers and repairers, PSR arrangements should facilitate the opportunity for enhanced quality and safety of repair. But many repairers argued that the awarding and maintenance of PSR status give an unduly high weighting to cost, at the expense of quality and safety. For example, several claimed they were required by insurers to use lower quality parts and materials or inferior repair methods.

The objective of smash repair under insurance policies, however, is to return the vehicle to the 'quality' or state it was in before the accident. From this viewpoint, the use of second hand parts (or non-genuine replacement parts) may be quite acceptable, provided the consumer is not misled about this when taking out insurance, and safety is not compromised.

Under PSR arrangements, the responsibility for the quality and safety of repairs generally remains entirely with the repairer. (Indeed, insurers require repairers to offer warranties with their work, sometimes even 'lifetime' guarantees — see below.) To an extent, this appears inappropriate, given the often close involvement of insurance assessors in specifying the scope of work, parts usage and, in some instances, the manner of the repair to be carried out.

- In the Commission's view, if an insurer specifies the repair method and/or the parts to be used, it should do so *in writing* and accept responsibility for the quality and safety consequences of those requirements. Of course, the repairer

---

should continue to accept responsibility for the quality of its workmanship in response to the insurer's specifications.

Insurers have strong incentives to ensure adequate quality and safety of vehicles repaired by their PSRs — indeed, most consumers consider this to be the responsibility of the insurer, not the repairer.

- Consumers who find the value of their vehicles devalued on sale or trade-in because of poor quality smash repairs are very likely to take their insurance business to another insurer. A poor reputation can quickly spread in this highly competitive market.
- Accidents resulting from poor quality repairs can have far reaching consequences, including possibly severe legal sanctions, for insurers, as well as repairers.

### *National licensing of repairers and assessors*

Several participants suggested that there would be quality and safety advantages from implementing national registration of repairers, of tradesmen and/or of insurance assessors. In respect of repairers, existing mechanisms such as state-based regulation, the insurers' PSR arrangements and repair-industry-based accreditation already provide some assurance about quality and safety. As for assessors, it is in the insurers' own interests to employ qualified assessors and to ensure their adequate training. The Commission has not examined licensing in detail, however, because of the limited terms of reference and the short time available.

- Nevertheless, it is far from clear that such national licensing would bring a net benefit to the community. Further, national registration arrangements would necessarily involve significant additional administrative and compliance costs, as well as risks of inefficiency, for example through focusing on input regulation rather than on quality of outputs.

## **Financial relationships**

The arrangements for repair quotations used by the different insurers underpin the financial relationships between insurers and repairers.

### *Quotation systems*

Quotation systems differ between insurers.

- 
- Some insurers require only a quote from a single repairer before authorising work. Others require multiple quotes as part of a competitive tendering process.
  - Some insurers severely restrict the ability of non-preferred repairers to quote for work, whereas others provide fairly unrestricted access.
  - Arrangements for defining the scope of work differ. With AAMI, for example, competitive quotes are accepted from two repairers who independently define the scope of work they quote for. In contrast, in some parts of the IAG system, prior to obtaining competitive quotes, assessors define the scope of work required.

Although AAMI focuses on the overall ‘bottom line’, choosing the most ‘complete and competitive’ quote, other insurers require quotations to be based on a number of separate cost elements: remove and replace (R&R); parts; repair; and paint. Except for parts, each element is costed on the basis of time and hourly rates. The system used is colloquially known as ‘funny time, funny money’ (FTFM), as neither the times nor the rates reflect real times and real costs.

- The hourly rates allowed for repair, for example, are well below the actual costs incurred. Repairers, with the full knowledge of insurers, compensate for this by inflating the number of hours they charge for.
- Some hourly rates, those for paint for example, include the cost of materials.

Many participants claimed that the hourly repair rates paid by insurers remain at uneconomically low levels, have not been adjusted over time, have failed to keep pace with costs and changes in vehicle design and repair technology and have failed to allow for tighter OH&S and environmental requirements. Taken in isolation, hourly rates certainly fail to reflect current costs.

- However, the payment for repairs is determined by a combination of these hourly rates and the time allowed — thus, the adequacy of payment cannot be determined from the hourly rates alone.

### *Funny time, funny money*

Some of the major insurers signalled their support for the FTFM system, whereas many repairers were opposed to it. In the Commission’s view, it has major drawbacks compared with a transparent and accurate system of pricing and costing (chapter 4):

- it does not reflect the particular costs faced by individual repairers;
- the structure of the repair task becomes biased, with the FTFM system artificially inflating or deflating particular cost elements at the expense of others;

- 
- it induces repairers to use lower quality materials, such as lower-grade paint;
  - it increases the ability of insurers to force prices down irrespective of repairers' costs; and
  - it is highly misleading, especially to third parties.

In the Commission's view, the abandonment of FTFM is a necessary step towards clarifying the nature of returns in the repair industry and improving commercial relations between repairers and insurers. Further, it would enhance effective competition between repairers.

This is not to say, however, that FTFM should be replaced by an *imposed* or *regulated* industry-wide standard system of real time, real money (see below).

- But if times and hourly rates are used in any of the cost elements specified in quotes, they should reflect realistic times and rates. All significant materials, including paint, should be costed separately, rather than included in an hourly rate.
- Similarly, if a PSR agreement specifies an hourly rate, that too should be a realistic rate rather than a fictitious industry standard rate.
- A transition towards realistic times and rates would seem to require both a reduction in times allowed (depending on the current extent of 'overstatement') and an increase in rates compared to those current with FTFM. The actual rates sought by individual repairers would vary over time to reflect not only their costs of capital, labour and materials but also the productivity and efficiency improvements required for them to remain competitive.

Because of the likely significant consequences for repairers as well as insurers in moving away from FTFM, the Commission acknowledges that a transitional period for full implementation of these principles may be required.

### *A cost squeeze?*

Even though the FTFM system obscures analysis, the available evidence suggests that repairers have been subject to a cost-price squeeze in recent years.

- Some elements of cost, for example wages, workers compensation insurance and paint, have increased by 50–100 per cent over the past 10 years. But payments have not risen to compensate — hourly rates (funny money) have remained fairly static and the allowed hours (funny time) have often been tightened, rather than increased.

- 
- Changes in arrangements for the supply of and payment for parts, and for the subcontracting of activities, such as the replacement of windscreens and radiators, have increased repairers' costs and/or reduced their returns.
  - Equipment and technology costs have escalated too, often without adjustment of hourly rates or times.

In response, many repairers have improved productivity by increasing the scale of their operations, investing in better equipment and technology, and by streamlining work flows. But, as in many other industries, the cost squeeze has clearly contributed to the ongoing reduction in repairer numbers.

The changes to quotation arrangements discussed above would assist repairers to structure quotations to reflect their actual costs better. Beyond this, however, taking the broader consumer and community interest into account, there is little justification for further specific prescribed action to address cost pressures on repairers.

- In particular, there is no justification for regulating for an industry standard hourly rate or for industry standard hours for particular repair tasks. That would reduce competition and increase costs for insurers and consumers.

This does not mean that individual insurers and repairers or, indeed, insurer or repairer groups, should be prevented from adopting standard times or standard rates as a basis for preparing and negotiating individual quotes. Such arrangements should, however, meet with regulatory requirements in relation to anticompetitive conduct, be genuinely voluntary, include times and rates that are realistic and not preclude further genuine negotiation in respect of individual jobs.

### *Fairness of competitive quoting*

Repairers raised two areas of concern with competitive quoting practices:

- acceptance of the lowest quote, but then subsequently, as a routine practice, negotiating down the price; and
- absence of 'like for like' quoting.

While each of these practices can be efficient, they can also be unfair depending on the circumstances in which they are applied, and undermine confidence in the competitive quoting process. Were specific repairers or categories of repairer (for example, those without preferred repairer status) always to lose out in the bidding process, irrespective of the merit of their quotes, it would be disingenuous for insurers to claim that their systems are genuinely competitive.

---

The Commission has no evidence to clarify the extent of any such unfair practices. However, there is clearly a continuing role for the ACCC to monitor quoting practices against the market power and fair trading provisions of the TPA. As well, in the Commission's view, any industry-wide code should require insurers to agree that, where competitive quotes are sought, the quotation process should be fair and transparent.

### *Cost of guarantees*

As noted, several insurers offer 'lifetime' guarantees for repair work. Some insurers, but not all, require repairers to carry the cost and risk burden associated with these guarantees. Many repairers regard this as unfair.

- The guarantee period far exceeds that provided by the supplier of the vehicle — for example, for paint on a new vehicle — and by the supplier of the replacement parts used.
- As noted above, insurers may dictate the method of repair — for example, requiring panel beating rather than replacement of a panel. Yet where this results in a warranty claim possibly some years later, insurers may not accept the financial responsibility for this work.

In the Commission's view, the repairer should only be required to guarantee the work it actually performs, and then only for an agreed reasonable time. Further, it should not be required to guarantee parts or paint for a period longer than the manufacturers' own warranties.

### *Timeframes for considering offers*

The current timeframes allowed for repairers to consider both PSR contracts and quotation offers for damaged vehicles do not seem to be creating significant or widespread problems between repairers and insurers.

Nevertheless, the provision of a short 'cooling off' period within an industry-wide code may provide, at little cost, a useful safeguard mechanism for repairers entering into PSR contracts.

### *Time taken by insurers to pay for repairs*

In their initial submissions, many repairers claimed that they experience unreasonable delay in receiving payment from insurers. They pointed to differences in payment times for PSR and for non-preferred repairers, and claimed that late payments are sometimes used as a means of 'disciplining' repairers. A 2004

---

Victorian Automobile Chamber of Commerce survey of repairers indicated that about one quarter of invoices took more than 30 days to settle — however, due to the small number of respondents, this result may not be indicative of the experience of the smash repair sector as a whole.

In contrast, the major insurers claimed their payment records were good.

- Allianz stated that 94 per cent of invoices were paid within 30 days, with 84 per cent paid within 15 days;
- AAMI claimed its payment record was ‘exemplary’;
- Suncorp stated that it pays electronic and paper invoices within 5 and 15 days, respectively; and
- IAG stated that 81 per cent of its PSRs were paid within 24 hours, and its associate repairers were paid within 14 or 21 days (depending on the system used).

Indeed, in responding to the draft report, several repairers noted that the performance of insurers in relation to payment times had recently improved and that contention over this issue had diminished as a result.

As in other industries, there will be occasions when payment times are unsatisfactory. However, it would appear that, from the evidence of insurers, payment times are either good, or at the least within acceptable commercial standards, in the vast majority of cases.

In the Commission’s view, provision in any industry-wide code for minimum payment terms of a reasonable period (such as 30 days or less) where work is not in dispute would enhance certainty for repairers in relation to invoice payment while according with the current payment practices of major insurers.

## **Consumer choice**

The nature and extent of available choice of repairer by consumers varies significantly between the major insurers. It can be:

- largely unrestricted, as in the case of Allianz, Suncorp and IAG’s new ‘choice of repairer’ additional cost option;
- almost entirely at the discretion of the insurer, as for AAMI and IAG’s revised ‘standard’ policies; or
- subject to significant restrictions, as under existing ‘standard’ IAG policies.

---

Repairer groups and many individual repairers argued that consumers should be given greater freedom to choose their own repairers. Some suggested that ‘anti-steering’ legislation (such as applies in some parts of the United States) should be passed to prevent insurers from referring consumers to particular repairers. This would institutionalise a system of ‘compulsory choice’.

In response, insurers and the Australian Consumers’ Association contended that in practice most consumers do not want choice and are willing to leave repair arrangements to their insurance companies. Further, they considered that consumers always have the option of choosing an insurer that offers choice of repairer.

### *Benefits and costs of choice*

All things equal, consumers generally value the opportunity to choose, whether for everyday items from the supermarket shelf or for services such as banking, insurance, vehicle servicing and repair. But consumers are often prepared to accept more limited choice, or forego it entirely, in return for greater convenience, lower transactions costs and less risk. In the case of motor vehicle insurance, many consumers would feel that:

- the insurer should be better placed to ensure quality of repair, given its better knowledge of the smash repair market; and
- arranging repair should be part of the insurer’s service package for which premiums are paid.

Requiring insurers to offer choice would disadvantage those many consumers satisfied with present arrangements.

- Even though some consumers would benefit, ‘anti-steering’ requirements would impose transactions costs and risks on all consumers.
- But even if active choice was optional for consumers, they would be disadvantaged if some of the extra costs incurred by insurers was passed on.

As well, insurers could face significant additional costs if the cost advantages of PSR arrangements, including economies of scale and lowered administrative costs, were to be eroded through the requirement to offer greater choice.

The outcome for repairers would be mixed:

- As the *total* volume of work coming into the sector would be largely unaffected by greater consumer choice, what one repairer gained in volume, another would lose — thus, some work would move from preferred smash repairers to non-preferred repairers. To the extent that PSR status accurately reflects the insurers’

---

assessment of relative repairer cost efficiency in the context of their particular business needs, this redistribution would lower the average cost efficiency of repair work.

- Reflecting this shift, the prices paid by insurers for repairs would be likely to increase.

### *Do consumers have ‘reasonable’ choice?*

Insurers compete strongly to provide consumers with products that are attractive to them — the range of insurance products available implicitly illustrates the judgments which insurers make about product features that consumers value, including choice. Thus, insurers have judged that most consumers are prepared to forgo some choice of repairer in favour of the convenience of allowing the insurer to arrange repair and for lower premiums.

But, even so, the nature and extent of choice varies widely. Indeed, several insurers have judged that there is a ‘market’ for greater choice of repairer, and cater for that segment of demand. As noted, the standard policies of Suncorp and Allianz provide choice and IAG has recently introduced a ‘choice of repairer’ policy option, requiring payment of an additional premium — thus, three of the four major insurers now offer choice of repairer.

Understandably, no insurer allows completely unfettered choice of repairer, irrespective of the cost of repair. But with this caveat, there is already choice available to consumers, largely through the availability of insurance policies that offer choice of repairer. Further, forcing greater consumer choice on the insurance industry, for example through the ‘anti-steering’ regulation requested by some repairer groups, would be a costly step. Apart from increasing costs for insurers and consumers, it would adversely affect the structure of the repair sector itself.

- In sum, consumers have restricted, but reasonable, choice of repairer.
- Consumer choice of repairer should not be mandated — in particular, ‘anti-steering’ measures should not be introduced.

### *Need for greater transparency*

For a number of reasons, many consumers may not be aware of the options for choice provided under their policies:

- consumers submit a claim only every seven to eight years on average and many will have changed their insurer over such a period; and

- 
- many will be unaware that their policy provisions may have changed, for example as a result of recent rationalisation in the insurance sector.

In the Commission's view, choice options should be accurately explained to customers when taking out policies and making claims in clear and unambiguous terms. Insurers could, at little cost, strengthen their procedures to ensure that they obtain and record customer agreement that such explanations have been provided and understood. Some insurers already do so, but there would be advantages from the wider adoption of such procedures. Similarly, when consumers take out a new policy and make claims, the provisions about the use of parts and about guarantees for repair work should also be clearly and accurately explained.

Many repairers alleged that when advising consumers some insurers misrepresent available choice, or exert undue pressure not to exercise choice, especially when a claim is being made. The Commission considers that insurers should not misrepresent choice options and, in particular, should refrain from making misleading, inaccurate or unjustified comments about the quality or timeliness of the work of non-preferred repairers.

## **Dispute resolution and codes of conduct**

### *Disputes between consumers and insurers*

Individual insurers have their own procedures for dealing with complaints from consumers. These procedures involve a number of stages, ultimately leading to referral of a complaint to the external General Insurance Enquiries and Complaints Scheme (IEC).

- The IEC, which is independent of individual insurance companies but funded by the insurance industry, covers a broad range of general insurance disputes, including motor vehicle insurance, generally in respect of retail consumers and small business. It is a national external dispute resolution body approved by the Australian Securities and Investments Commission, the financial services regulator.

Judging from the very small number of consumer complaints about motor vehicle insurance referred to the IEC — less than 15 per cent of those initiated with insurers — the existing internal consumer dispute resolution systems of the individual insurers appear to be working adequately.

Further, while the Commission has not assessed the IEC's administrative arrangements, it has seen no evidence that the IEC's systems for resolving

---

consumer disputes are not broadly appropriate, nor that the IEC is not sufficiently independent.

### *Disputes between consumers and repairers*

A significant minority of work is contracted directly between the consumer and repairer, including non-insurance work. Disputes about this work can be progressed in a number of ways, including through state-based consumer affairs departments under fair trading arrangements, and action in the small claims tribunals.

There is no apparent evidence of any significant deficiencies in the procedures for resolving disputes that arise directly between consumers and repairers.

### *Disputes between insurers and repairers*

In contrast to arrangements for dispute resolution between insurers and consumers, there is no generally available external and independent mechanism for examining disputes between insurers and repairers. Nevertheless, three of the four main motor vehicle insurers — that is, excluding Suncorp — have developed their own dispute resolution procedures under which complaints from repairers can be reviewed.

- They include some provision for ‘external’ review of disputes.
- The codes of AAMI and Allianz, but not that of IAG, extend to repairers outside their respective PSR networks.

Repairers contested the adequacy of the procedures used by insurers to deal with disputes and, indeed, the adequacy of individual insurer codes more generally. The solution proposed by many repairers was the adoption of a mandatory industry-wide code of conduct. However, over a period of many years, insurers have not supported the need for an industry-wide code of conduct, whether voluntary or mandatory.

This failure to implement an industry-wide code of conduct is despite the recommendation of the Industry Commission in 1995 and the ACCC during 2003. However, state and federal ministers have now agreed to support a voluntary, industry-wide code, as a minimum. And, as noted, the Australian Government has signalled that it will consider ‘a stronger regulatory response, should a voluntary code not be satisfactorily progressed’.

Some change of position was signalled in response to the Commission’s draft report. The Insurance Council of Australia, together with the major insurers, have modified their positions of outright opposition to an industry-wide code into one of conditional support for a voluntary code, depending on its scope and content. And

---

even though some scepticism was expressed about the chances of voluntary agreement with insurers, some repairer groups, including the peak body Motor Trades Association of Australia, supported giving further time to endeavour to negotiate a voluntary code.

### *The case for an industry-wide code*

The case for an industry-wide code needs to be considered in a broad benefit–cost framework, taking account not only of the particular needs of insurers and repairers, but also the interests of consumers and of the community more generally.

Many of the serious issues of dispute between the two industries have been briefly canvassed above — they are discussed in more detail in the body of this report. Their nature varies: some concern the efficiency of operation of the insurance and repairer industries, some relate to transparency and others could be generically described as matters of ‘fair trading’. Overwhelmingly, they stem from a lack of trust and cooperation between the two industries.

The considerable friction between insurers and smash repairers going back many years has inevitably reduced sector efficiency. Both time and resources are wasted in disagreement. In such an adversarial environment, it is impossible to develop the trust or cooperative relationships that underlie efficient business, as in other industry sectors. The effects are not confined to insurers and to smash repairers, but are experienced also by consumers and by the wider community. There is evidence that these problems and the underlying tension between the two industries have worsened in recent years, as smash repair insurance has concentrated into four major groups, with a consequent increase in insurer negotiating strength.

There are only a limited number of options to address these issues.

- Continue to rely on the current practices and procedures of insurers, including their individual corporate codes of conduct, where they exist. However, many of the contentious issues are either industry-wide in nature, or deal with matters that individual insurers have been reluctant to address in those codes. Further, the present arrangements have not prevented a deterioration in relationships between repairers and insurers in recent years. Problems may continue to worsen under this option.
- Adopt prescriptive legislative or regulatory means such as ‘anti-steering’ provisions, licensing requirements or constraints on PSR arrangements. While these might be welcomed by some repairers, they would open up a whole new range of problems, imposing high costs on insurers, consumers and, indeed, on many repairers themselves.

- 
- Take action in a broader context: for example, through amending the Trade Practices Act. Such possibilities have ramifications extending well beyond the insurance and smash repair industries and are thus, in the Commission's view, beyond the scope of the present inquiry.
  - Develop an industry-wide code.

In the Commission's view, particularly given the major differences in negotiating strength between insurers and repairers, there is *prima facie* justification for the development of an industry-wide code of conduct as a cost effective means of dealing with the problems and tension. But a firm conclusion can only be reached after *detailed* consideration of scope and content, as not all issues of dispute between the two industries are appropriate for inclusion in a code.

Finally, consideration also needs to be given to whether any industry-wide code should be voluntary or mandatory, taking into account any additional impacts on firm flexibility and additional administrative and compliance costs likely to be associated with a mandatory code.

### *Scope and content are critical*

An industry-wide code of conduct should deal with issues of fair trading, process and transparency. As far as possible, it should not be prescriptive: for example, while the code could require that insurers publish selection criteria for awarding PSR status, it should not specify what the criteria should be. It should focus on the relationships between insurers and repairers extending, where appropriate, to dispute resolution with repairers outside PSR arrangements.

But the code should not cover the insurer-consumer or the consumer-repairer relationship:

- as discussed above, it would be inappropriate to include provisions for compulsory consumer choice of repairer;
- the independent IEC already provides adequate means for resolution of consumer disputes with insurers; and
- disputes between repairers and consumers are dealt with through jurisdictional-based arrangements, such as consumer affairs departments and fair trading tribunals, as well as through the ACCC.

A code would inevitably intrude somewhat into the commercial relationships between insurers and repairers, given that the purpose of a code is to help overcome longstanding problems in those relationships. Nevertheless, the code should avoid provisions which would *unduly* affect the normal commercial relationships between

insurers and repairers. Achieving an appropriate balance between inclusions and exclusions is a matter for judgment — but, of course, any anticompetitive provisions would need to be avoided. In line with these considerations, the following box outlines the Commission’s views about appropriate code inclusions and exclusions — more detail is given in chapter 6.

Box	Content of an industry-wide code
<p><b><i>Include</i></b> provisions relating to:</p> <ul style="list-style-type: none"> <li>• notifying opportunity for PSR status;</li> <li>• disclosure of PSR selection criteria;</li> <li>• a ‘cooling off’ period for PSR contract offers;</li> <li>• PSR tenure on sale of business;</li> <li>• use of realistic hourly times and rates;</li> <li>• separate cost specification of paint and significant consumables;</li> <li>• fair and transparent quotation processes;</li> <li>• minimum terms of payment;</li> <li>• responsibility for quality and safety;</li> <li>• responsibility for guarantees;</li> <li>• transparency in regard to repairer choice, the use of parts and warranties;</li> <li>• avoidance of misleading, inaccurate or unjustified comments about non-preferred repairers; and</li> <li>• an independent external dispute resolution mechanism.</li> </ul>	<p><b><i>Exclude</i></b> provisions relating to:</p> <ul style="list-style-type: none"> <li>• regulated minimum hourly rates or prices;</li> <li>• prescribed ‘standard’ hours;</li> <li>• types of parts to be used;</li> <li>• industry-wide PSR selection criteria and/or weightings for PSR selection criteria;</li> <li>• prescribed consumer choice;</li> <li>• requirements to spread work among repairers; and</li> <li>• particular conditions of guarantees.</li> </ul>

In summary, the Commission considers that any industry-wide code should:

- focus on insurer-repairer relationships;
- not explicitly encompass insurer-consumer or consumer-repairer relationships;
- specify minimum standards in matters of fair trading, process and transparency;
- avoid undue interference in the commercial relationships between individual insurers and repairers; and

- 
- not prevent individual insurers developing their own codes consistent with, or building on, the industry-wide code.

### *Dispute resolution procedures*

A transparent and independent external disputes resolution process would need to form a central part of any industry-wide code of conduct. This is particularly so, given the large number of repairers outside PSR arrangements. However, not all of the issues of dispute between repairers and insurers are appropriate for inclusion in those disputes procedures. Further, complementary internal dispute resolution procedures of individual insurers should be encouraged.

In the Commission's view, dispute resolution procedures should avoid *undue* interference in the commercial relationship between insurers and repairers and, in particular, avoid areas which could have anticompetitive consequences. Nevertheless, as with an industry-wide code itself, some intrusion into commercial relationships will be inevitable if the dispute resolution mechanism is to have any value. Further, although the Commission envisages that the mechanism would be established under the code, it would not be necessarily restricted just to disputes relating to matters *covered* by the code — it could be used wherever it offered a cost effective way of resolving relevant disputes.

- The dispute resolution procedures could deal with disputes about breaches of the code of conduct itself. This would include disputes about, for example, whether an insurer had fairly applied its own procedures for selection and non-selection of repairers for PSR status, for monitoring performance under PSR contracts, and for termination or non-renewal of PSR status.
- It would be appropriate for the dispute resolution procedure to deal with disputes arising *after* a job had been contracted to a particular repairer, including disputes about whether a repairer had completed work as agreed, whether work was of adequate quality, and about whether payment had been made as agreed. Similarly, disputes about whether the insurer or repairer should pay the cost of rectification for work under guarantee could be included.
- However, it would be inappropriate to include individual disputes related to the awarding of a particular job contract to a particular repairer — this would excessively interfere in commercial relationships, with possible anticompetitive consequences. Thus, disputes about the choice of repairer for a particular job, about the scope of work required, repair methods to be utilised, the types of parts to be used and price should be excluded. (But broader disputes about whether quotation processes were fair and transparent — that is, whether the code of

---

conduct had been breached — would be appropriately covered by the disputes mechanism.)

There are various alternatives to finance the cost of the process — for example, the unsuccessful party could bear the full cost, or it could be shared between repairer and insurer. Insurers and repairers should generally, however, be required to attempt to resolve problems through corporate-specific dispute resolution procedures before accessing the external mechanism.

### *Voluntary or mandatory?*

The changes in position by insurers and some repairers noted above confirm the Commission's view, expressed in its draft report, that voluntary agreement might now be easier to obtain than in the past. Nevertheless, significant differences of opinion between insurers and repairers about scope and content remain. Thus, although discussions between insurer and repairer groups have been foreshadowed, voluntary agreement between the insurers and repairers appears far from certain. Comments at the public hearings suggest, however, that insurers may now intend to develop a voluntary industry-wide code of conduct, even if repairer agreement cannot be reached.

As with a voluntary code, the case for a mandatory code must be set in a benefit–cost framework. But the assessment of a mandatory code must necessarily be more rigorous — indeed, existing government policy has spelled out a framework for rigorous assessment (chapter 6). This is because, at least in principle, a mandatory code is more likely to reduce the flexibility of insurers and repairers to respond according to their needs, to add to compliance costs, and to impose external administrative costs on the community generally — thus affecting the balance of benefits and costs.

In practice, the magnitude of such extra costs, however, is likely to be limited in the context of these industries:

- Given that the scope and content of the code defined by the Commission would focus on 'minimum' requirements in regard to fair trading, process and transparency, any loss of flexibility between a voluntary code — involving at least the main insurers — and a mandatory code would be minimal.
- Similarly, the additional compliance costs of a mandatory code could be relatively small given the scope of the code envisaged. Importantly, as all insurers would be bound by a mandatory code, the costs of securing and maintaining insurer commitment to a voluntary code would be avoided.

- 
- A voluntary code could be pursued by agreement between insurers and repairers, or just between insurers themselves. Such voluntary codes could be declared under Part IVB of the Trade Practices Act, as would a mandatory code. Administrative costs under all these approaches are likely to be similar.

In the Commission's judgment, *provided* that the scope and content of a code follow the principles outlined above and avoid *undue* interference in the normal commercial relationship between insurers and repairers — and, in particular, avoid provisions that are inherently anticompetitive — then the benefits for the community as a whole of an industry-wide code of conduct are likely to outweigh the costs, even if mandatory.

The most desirable outcome is for voluntary agreement to be reached between insurers and repairers collectively about the particular provisions of the code, consistent with the Commission's views about scope and content. In contrast to a voluntary code agreed just among the major insurers, agreement between repairers and insurers would promote joint ownership of, and commitment to, the code, and its associated dispute resolution procedures. In particular, agreement to the code by the repairer representative organisations would help to reassure individual repairers that the code was a genuine attempt by insurers to improve their relationships with repairers and that the associated dispute resolution procedures were independent and transparent.

Depending on its scope and content, an industry-wide code voluntarily agreed to by insurers only could potentially deliver worthwhile benefits provided that at least the four main insurers were to join. However, the breadth of an insurer-developed code, and the commitment of the major insurers to it, might well be less than under a jointly agreed code in respect of which repairers have a role in ensuring compliance. Further, even if such a 'unilateral' voluntary code was declared under the Trade Practices Act, repairer suspicion and mistrust might well increase or continue, rather than reduce. From this viewpoint, such a code might be counterproductive in the longer term.

Nevertheless, final judgment about the adequacy of scope, content and insurer coverage of an insurer-developed voluntary code, and about repairer reaction to any such code, cannot be made at this stage. In the Commission's view, the Australian Government would need to assess these matters in deciding whether or not to proceed to a mandatory code.

A mandatory code developed in accordance with the Commission's views on scope and content might not entirely satisfy either side. But, in terms of improving relationships between repairers and insurers, it would have advantages. In particular, repairers would be assured that all insurers would be bound by a code

---

and that compliance would be independently and objectively monitored. Further, mandating the code might increase individual repairer confidence in the independence and transparency of the dispute resolution process. In the Commission's view, this approach, while not as attractive as a voluntary code agreed between insurers and repairers is preferable to a code developed only by insurers.

In summary, the Commission considers that the Australian Government should facilitate and promote the development and implementation of an industry-wide code of conduct as soon as practically possible.

Changes in insurer and repairer positions since release of the draft report confirm the Commission's initial view that a specified reasonable time should be allowed to seek voluntary agreement between the two industries on an industry-wide code. As noted above, a range of views were expressed about what was 'reasonable'. The Commission considers that a period of six months from release of the Government's decisions on its final report would be appropriate. The total time to reach agreement would be longer, of course, given that discussions commenced on a voluntary code early in 2005.

The Commission considers that, if voluntary agreement between insurers and repairers is not reached within this time, a code should be mandated under the provisions of the Trade Practices Act.

---

# 1 Introduction

The smash repair industry comprises about 5000 small, independent, privately owned businesses, with average employment of less than six persons. In contrast, although more than one hundred general insurers are authorised to write new business, motor vehicle insurance is now dominated by just four corporate groups (the Insurance Australia Group, Promina, Suncorp and Allianz). As repairers obtain about three-quarters of their income from insurance work, the processes of these major insurers for allocating damaged vehicles for repair and the prices they are prepared to pay have a major influence on repairer workload and financial viability.

This inquiry covers aspects of the commercial and financial relationships between the two sectors. Many repairers feel that the actions of the major insurers unfairly affect their businesses, as well as adversely affecting the repair industry more generally. Insurers, on the other hand, claim that the repair industry must continue to rationalise to improve its efficiency and to respond to changes in the nature and extent of the repair task.

## 1.1 Background

In past years, the relationship between smash repairers and insurance companies was less intensely commercial and competitive than it is now. Insurers were more likely to accept what repairers wished to charge, as it was relatively easy to pass on those costs in the form of insurance premiums. Indeed, motorist and repairer representative organisations alike were involved in the insurance business.

However, over the past 10 to 15 years, there have been significant changes in the insurance industry, including the demutualisation of the insurance arms of the state-based motoring clubs, the privatisation of government insurers and a series of takeovers and mergers that has resulted in the concentration of motor vehicle insurance into a handful of major insurer groups. Other relevant influences have included the collapse of HIH and more stringent prudential requirements. As a result, motor vehicle insurers have become much more focused on competition for customers and control of costs so as to improve returns for their owners and shareholders. This change in approach by insurers has placed greatly increased cost pressures on the repair industry, contributing to continuing rationalisation.

---

Concurrently, relationships between the two industries deteriorated significantly and tensions greatly increased. This has been exacerbated by allegations from some insurers that many repairers inflated repair costs through poor and sometimes illegal practices. AAMI, for instance, stated:

Insurers' limited interest in repair quality and cost allowed the practices to continue to flourish. Unfortunately many of these practices still occur today. (sub. 19, p. 9)

Repairers, however, considered that claims of illegal practices are overstated and are used unfairly by insurers to justify their business practices. For instance, the VACC stated:

Repairers maintain that the criminal element in the [smash repair] industry is not greater than that found in other industry sectors, including professional sectors. To most repairers, preferred repairer schemes and removal of choice from consumers is all about maximising insurer profits at the expense of the repairers and the consumers. (sub. 14, p. 7)

Both these viewpoints were reaffirmed at the public hearings. IAG stated that of the 127 applications received from repairers to join its PSR network in one particular state in the last 12 months '25 of those actually had significant criminal records' (trans., p. 14). But the MTA of New South Wales retorted that no insurer or relevant authority had 'charged a repairer or a representative of a repairer or an employee of a repairer with criminal activity in relation to being a licensed motor vehicle repairer in New South Wales' (trans., p. 63).

## **Industry Commission report (1995)**

Tensions between repairers and insurers were already apparent at the time of a 1995 Industry Commission inquiry into *Vehicle and Recreational Marine Craft Repair and Insurance Industries* (IC 1995). The report said that many of the underlying issues should be — and could be — addressed most efficiently by the industries themselves. The report made several recommendations relevant to the current inquiry.

- The insurance and repair industries should jointly convene a forum to determine processes needed to establish a code of conduct covering matters which impinge on relationships between the two industries, and a procedure for resolving disputes between insurers and repairers.
- The current time and hourly rate schedules used for repair quotations should be abandoned. If time and hourly rate schedules are considered to be useful in preparing quotations, they should reflect true times and costs.
- To improve the internal dispute resolution schemes of insurers, dispute resolution sections should be provided with greater autonomy. Alternatively,

---

insurers should consider including a consumer representative on review panels or, as a minimum, ensuring that internal reviews are undertaken by staff not involved in the original decision.

Some aspects of these recommendations have been addressed in the intervening years. But many of the problems apparent at the time of that report still exist and, if anything, have worsened. Industry tensions have, in certain respects, intensified.

### **Australian Competition and Consumer Commission (ACCC) involvement (2002 and 2003)**

From time to time, the ACCC has investigated alleged breaches of the *Trade Practices Act 1974* (TPA) in relation to smash repair and insurance. It has received allegations against insurers of anticompetitive conduct — including misuse of market power and third line forcing — as well as complaints against insurers of unconscionable and misleading or deceptive conduct. However, investigation of these allegations has not led to any legal proceedings by the ACCC (2003a, p. 3).

Nevertheless, in view of the frequency and variety of concerns raised with it about the relationship between these industries, the ACCC convened roundtable discussions in July and October 2002 with representatives of insurers, repairers and consumers. In September 2003, it released an Issues Paper, summarising the issues and making some recommendations (box 1.1), including enhancing transparency and dispute resolution. Although the ACCC did not find evidence of breaches of the TPA, it concluded that there was conduct:

... which is perceived to be unfair and unreasonable [and which] may impact on the development of continuing commercial relationships. (ACCC 2003b)

### **Subsequent developments**

Subsequent to the ACCC's initiatives, the July 2004 meeting of the Small Business Ministerial Council supported '... the development of a national solution to problems in the smash repair and general insurance industry, at a minimum, through a voluntary, industry-wide code' (FCA 2004).

At about the same time, the Victorian Ministers for Small Business and for Consumer Affairs appointed Mr Luke Donnellan, MP '... to consult with smash repairers and insurers to forge the parameters under which a code may be established' (Thomson 2004, p. 1). The results of this consultation were taken into account by the Victorian Government in preparing its submissions to the Commission's inquiry.

---

**Box 1.1      The ACCC's conclusions and recommendations — September 2003**

The key conclusions and recommendations of the ACCC's Issues Paper of September 2003 are set out below.

**Consumer choice**

The majority of the issues which have arisen in the course of developing this paper relate to the relationship between small businesses and big businesses. The ACCC notes some concerns which have been raised which might affect the rights of consumers, particularly, in the area of consumer choice. These issues of consumer choice should effectively be dealt with under the existing Insurance Enquiries and Complaints scheme. The ACCC considers that any future developments focus on the issues arising between smash repairers and insurers.

**Further industry discussion**

The ACCC strongly recommends that the interested parties attempt to resolve outstanding issues through a bi-partisan approach, which should include further consultation and addressing outstanding issues on an industry-wide basis.

**Codes of conduct**

The ACCC notes that there are still broader concerns involving insurers and those smash repairers who are not participants in corporate codes of conduct. There is scope [for] extension of these schemes in some areas to resolve the outstanding concerns. Whilst the majority of insurers have incorporated dispute resolution mechanism provisions in their corporate codes, access to this mechanism is often limited to those accredited repairers within the respected preferred repairer schemes.

The ACCC recommends that:

- the dispute resolution mechanisms be extended and access to such mechanisms be provided to those repairers and suppliers, who have commercial dealings with the insurance company; and
- insurance companies provide to repairers clear guidelines and reasons to repairers for decisions made, particularly when a repairer is unsuccessful in being granted preferred repairer status.

There is also scope for the development of a voluntary code which covers the industry on a national basis. Such a code could be developed with a bi-partisan approach. The ACCC has a proactive approach to the development of codes and is prepared to consider for endorsement codes which meet the stringent requirements the ACCC enunciated.

If parties are unwilling and unable to do so, and in the event that individual corporate codes of conduct do not remedy substantive concerns, the ACCC recognises that there might be some scope for government intervention at a later stage.

*Source:* ACCC (2003a, pp. 25–6).

---

Further, in August 2004, the Commonwealth Minister for Small Business said that the Australian Government supports a voluntary code of practice and that:

... the Government will consider a strong regulatory response should a voluntary code not be satisfactorily progressed. (Hockey 2004, p. 1)

Changes to the TPA announced by the Australian Government following its consideration of the Dawson report (Trade Practices Act Review 2003) may affect the future relationship between repairers and insurers. Relevant legislation was introduced into the Commonwealth Parliament during 2004, but lapsed when the 2004 federal election was called. It was reintroduced on 17 February 2005.

The legislation includes measures designed to facilitate collective bargaining by small businesses in dealing with large business:

[there will be] a notification process for collective bargaining by small businesses dealing with large business. ... It will aim to provide an appropriate balance of power where small businesses are competing or dealing with businesses that have substantial market power. (Costello 2003)

As well, it includes a measure to remove the *per se* prohibition of third line forcing and, instead, make it subject to a competition test.

The relationship between smash repairers and insurers has also been considered in some Senate Committee reports, including the *Late Payment of Commercial Debts (Interest) Bill 2003* (Senate 2003) and *The Effectiveness of the Trade Practices Act 1974 in Protecting Small Business* (Senate 2004).

## 1.2 Scope of the inquiry

Despite this background, the Commission's current inquiry is not explicitly premised on the basis that an industry-wide code of conduct should be adopted, either on a voluntary or mandatory basis. Rather, the terms of reference require the Commission to report on a number of specific issues concerning the commercial and financial relationships between insurers and repairers. Nevertheless, the Commission has been asked, where appropriate, to propose recommendations to improve those relationships, including possible regulatory approaches. Accordingly, the Commission has considered the appropriate role for an industry-wide code of conduct.

In responding to the terms of reference and preparing its recommendations, the Commission, in line with its policy guidelines, is adopting an approach that seeks to maximise the welfare of the community as a whole, rather than the particular sectional interests of insurers, smash repairers or consumers (policyholders).

---

There are four key issues specified in the reference (set out in full from page iv):

- the appropriateness and transparency of criteria used by insurance companies to confer ‘preferred smash repairer’ (PSR) status on smash repairers;
- financial relationships between smash repairers and insurance companies;
- arrangements for consumers to have reasonable choice in the selection of repairers; and
- the extent, adequacy and independence of dispute resolution systems between the smash repair industry, insurance companies and consumers.

In turn, these key issues lead on to a number of subsidiary matters:

- the transparency with which PSR status is conferred on (and removed from) individual repairers;
- any impact that market arrangements, including PSR status, may have on quality and safety;
- the scope for industry-wide nationally agreed criteria to qualify for PSR status;
- whether non-preferred repairers are treated in a fair and reasonable manner;
- issues of transparency, competitiveness and consumer protection;
- the rates paid by insurance companies for smash repair work;
- the timeframes provided to smash repairers by insurance companies to consider and make an informed decision on contract offers;
- the time taken by insurance companies to pay smash repairers for completed work;
- the extent to which consumers can select a repairer and the adequacy of information provided to them to allow an informed choice; and
- the adequacy, effectiveness and scope for improvement of dispute resolution procedures.

Many submissions from individual repairers focused on particular problems and particular insurers. However, in this report, the Commission addresses relevant issues at a broad level. It has not attempted to investigate individual claims or specific allegations related to the financial and commercial relationships between particular repairers and particular insurers.

Motor vehicle insurance comprises a range of insurance types, including both mandatory and voluntary components. However, this inquiry covers only the insurance of motor vehicles, and does not cover any insurance for personal injury or property damage caused by insured vehicles.

---

Most of the evidence received related to the insurance and repair of passenger motor vehicles, rather than to commercial vehicles such as trucks and buses. Nevertheless, many of the Commission's findings and recommendations are relevant to the insurance and smash repair of all categories of vehicle.

In their submissions, repairers and their representative groups canvassed a wide range of issues, extending well beyond the specific matters covered by the terms of reference. Several that are of significant concern to repairers have been mentioned in relevant sections of this report and some conclusions reached. Nevertheless, the Commission has not attempted to comprehensively analyse issues related to the following topics:

- towing;
- subcontracting by the insurer or repairer;
- preferred supplier arrangements for parts;
- prices for parts;
- technical and safety issues related to the use of parts and repair methods;
- licensing of repairers, premises, tradespeople and assessors; and
- possible amendments to the TPA.

### **1.3 Recognising market power**

As noted above, the ACCC has not found to date any cause to proceed formally against insurers in regard to market power issues. Nevertheless, it is apparent from the evidence tended to this inquiry that the major insurers particularly wield strong negotiating power in their dealings with the generally much smaller repairers. Indeed, some aspects of business, for example the terms and conditions of PSR contracts, are virtually offered on a 'take-it or leave-it' basis. Many repairers and their representatives, including the VACC, considered that the Commission should:

... take into consideration in its deliberations and final recommendation ... [the] disproportionate level of market share, and hence the market power that rests with [the major insurers]. (sub. DR40, p. 2)

Certainly, the problems perceived by repairers about PSR arrangements, lifetime warranties for repair work and quotation systems, for example, could be less pronounced if negotiating strength were more evenly balanced between insurers and repairers. But, although implementation of the TPA changes noted above may make some difference, it is likely that the negotiating power of the four major insurers will remain strong.

---

In these circumstances, it seems likely that considerable friction and serious issues of dispute between repairers and insurers will remain. These waste resources and adversely affect the efficiency of both industries. This report considers whether action is appropriate to ameliorate these problems and, if so, its appropriate form.

## **1.4 Inquiry procedures**

The Commission received the terms of reference for this inquiry on 31 August 2004. It advertised the inquiry in national newspapers and on its website, inviting public submissions from interested parties.

Because of the short time allowed for this inquiry, the Commission considered that it was important to provide inquiry information to interested parties as soon as possible. Accordingly, the Commission dispensed with a formal issues paper, and instead quickly made widely available a circular containing the terms of reference, detailing the inquiry procedures and timetable and providing a list of key questions to guide participants. Subsequently, a more detailed listing of data and documentation sought by the Commission was also made available.

The Commission has met informally with a number of interested parties during the course of the inquiry (see appendix A).

A draft report was released in November 2004 to allow interested parties the opportunity to comment on the Commission's preliminary analysis and findings. Public hearings were subsequently held at Sydney (10 participants) and Melbourne (8 participants) in late-January and early-February 2005, respectively. The names of participants are listed in appendix A. This final report takes into consideration the views expressed at those hearings as well as written submissions received since publication of the draft report.

All public submissions received are listed in appendix A. The Commission received 184 submissions in total, including 49 received after finalisation of the draft. However, about 70 per cent of these were accepted on a confidential basis because they contain information about the dealings of individual repairers with insurance companies. Indeed, many of those repairers were concerned that even publication of their names could disadvantage them in future dealings with insurers. In the main, the material in the confidential submissions is illustrative of the issues canvassed in the public submissions of the repairer representative organisations. Where appropriate, the Commission has drawn on the material provided in confidential submissions, as well on the public submissions, throughout the report.

---

The Commission wishes to thank all those individuals and organisations who contributed to this inquiry.

## **1.5 Structure of the report**

The remainder of this report is structured as follows. Chapter 2 summarises some key characteristics of the insurance and smash repair industries. Chapter 3 discusses the PSR arrangements. Financial and commercial relationships between smash repairers and insurers are the subject of chapter 4. The extent to which consumers have choice of repairer, and the implications of this, are discussed in chapter 5, while chapter 6 examines processes for dispute resolution and codes of conduct.

---

## 2 Characteristics of the insurance and smash repair industries

### Key points

- The Australian motor vehicle insurance industry has, in recent years, become increasingly concentrated and is now dominated by just four major insurer groups.
- In contrast, smash repairs are performed by approximately 5000, relatively small, independent businesses.
- Repairers obtain the large majority of their income from insurance work and insurers, therefore, have a major influence on the workload and financial viability of most repairers.
- There is evidence of rationalisation within the smash repair industry although the evidence on industry-wide profitability levels is mixed. There has also been a general increase in the capital intensiveness of smash repairing.
- The efficient number of smash repairers is influenced by a variety of factors which include not only cost and price pressures in general but also the type and scope of available repair work and industry regulation.
- Efforts by insurers to reduce costs as a means of enhancing shareholder returns and containing premiums, and other factors in the market such as advances in vehicle technology and a possible decline in the incidence and severity of road accidents, are likely to increase the pressure on smash repairers to improve their productivity. These factors are also likely to further continue the trend towards fewer, more productive repairers.
- Within the current environment of increasing cost pressures for smash repairers, there is a shortage of skilled labour in the industry, fewer apprentices and an apparent inability to sell smash repair businesses with goodwill.

The terms of reference for the inquiry specifically cover two industries, the insurance industry and the automotive smash repair industry. Their core products are the provision of insurance against motor vehicle damage and the repair of damaged motor vehicles.

A high level of interdependence exists between the two industries. Smash repairers obtain on average around 75 per cent, with some up to 90 per cent, of their work through the insurance sector (IBISWorld 2003, as quoted in sub. 15). This is usually

arranged directly between insurers and repairers, with only a small proportion arranged by policyholders. The various procurement arrangements are discussed in chapters 3 and 4.

As background to the rest of the report, this chapter provides an overview of both the insurance and smash repair industries, presenting some key structural and market information, as well as briefly describing the regulatory environment in which they operate.

## 2.1 The motor vehicle insurance industry

The motor vehicle insurance industry forms part of the general insurance industry, which in turn covers insurance other than life and health insurance. There are currently around 140 private sector general insurers in Australia (APRA 2004a). In 2004, the general insurance sector generated gross insurance premium revenue of \$29 billion and held assets worth \$76.2 billion. In that year, net profits after tax were \$4.8 billion (APRA 2005). Table 2.1 shows key financial data for the 1999 to 2004 period.

Table 2.1 **Key financial data for the general insurance industry, 1999 to 2004<sup>a</sup>**  
\$ million

	1999	2000	2001	2002	2003 <sup>b</sup>	2004
Gross premiums	17 727	18 967	17 623	21 047	28 459	28 882
Net premiums	13 956	14 358	12 697	14 946	20 127	20 793
Gross claims	17 801	20 957	15 294	17 648	20 824	17 289
Net claims	12 361	13 198	10 528	11 463	13 017	12 095
Underwriting expenses	3 842	3 782	3 351	4 113	4 867	5 037
Underwriting result	-2 247	-2 623	-1 182	-630	2 243	3 691
Profits after tax	-139	-940	1 327	740	3 017	4 778

<sup>a</sup> Changes to the general insurance reporting framework took effect on 1 July 2002 and, as a result, the figures for 2003 and later are prepared on a different basis from those of earlier years. <sup>b</sup> Figures for 2003 reflect, to some extent, the effects of transition to the revised reporting framework.

Source: APRA (2004b; 2005).

Insurers made underwriting losses for each year except for 2003 and 2004. However, as most insurance premiums are paid in advance, insurers hold substantial funds and often receive considerable investment returns on those funds. Indeed, over the period, investment returns allowed underwriting losses to be significantly offset, with net profitability for the general insurance industry improving in recent

---

years. Gross premiums also grew strongly over the period, increasing by around 63 per cent in nominal terms.

In terms of the recent turnaround in the general insurance industry, the Australian Prudential Regulation Authority (APRA) stated:

The last two years' improved results highlight the recovery from the recent years of soft markets, where insurers often relied on investment income to offset underwriting losses. There has been a return to more technical underwriting, with emphasis being placed on making underwriting profits, not only net profits. (2005, p. 5)

The market for motor vehicle insurance is dominated by a small number of companies. In the year ending 30 June 2002, the latest year for which comprehensive data are available, the five largest direct insurers accounted for 78 per cent of earned premium income (APRA 2003).

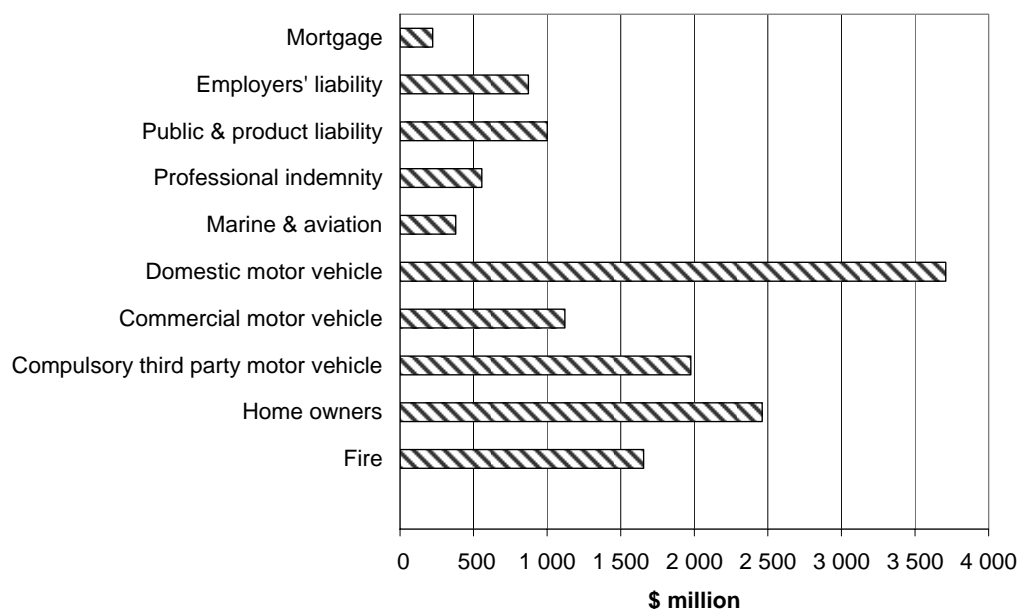
The level of market concentration has increased in recent years. In 1995-96, there were around 170 private sector general insurance providers, with the top five insurers comprising 32 per cent of premium income (ISC 1997). Recent consolidation follows the demutualisation of several insurers, the privatisation of government insurance businesses, the collapse of HIH, and regulatory reforms which have increased prudential requirements for insurers.

Most large insurers provide a range of insurance products (for example, home building and contents and life insurance). Motor vehicle insurance, like householder cover, is considered 'short-tail' business, where claims are usually made and settled within 12 months. For the five largest general insurers, about 70 per cent of premium revenue is from such 'short-tail' business. The remaining 30 per cent derives from 'long-tail' business such as indemnity or liability cover, where claims can take considerably longer to settle (APRA 2004b).

The motor vehicle insurance sector represents the largest component of the general insurance business by premium revenues (APRA 2004b). About 40 domestic motor vehicle insurance providers serve approximately 10 million policyholders (APRA 2004b; ICA 2004). For the year ending 30 June 2002, total premium revenue for commercial and domestic motor vehicle insurance was \$1.12 billion and \$3.71 billion respectively (see figure 2.1). Claims expenses during 2001-02 were \$0.95 billion for commercial motor vehicle insurance and \$3.2 billion for domestic motor vehicle insurance (see figure 2.2).

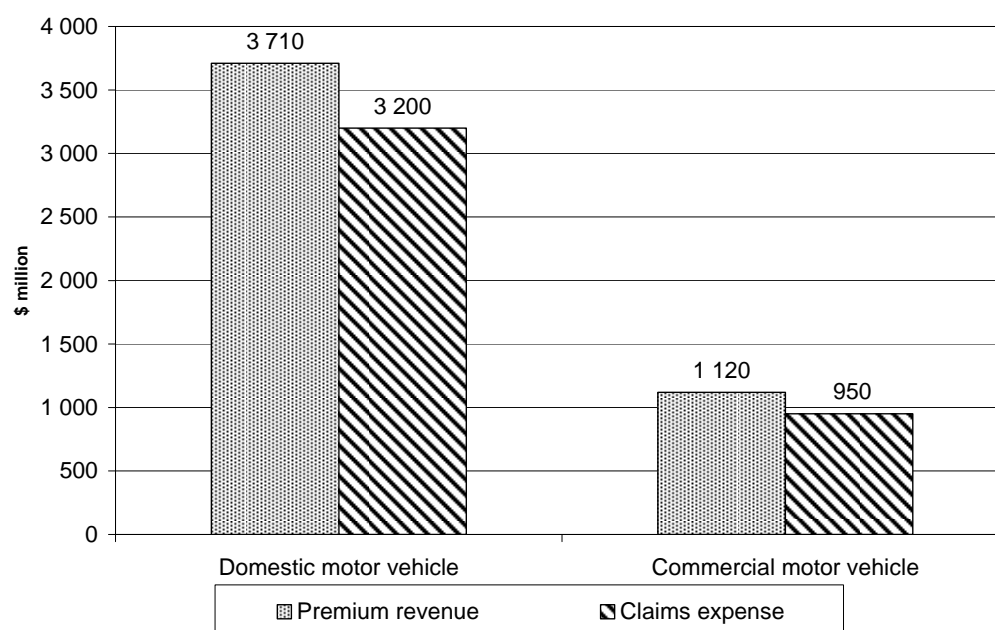
Growth in premium revenue for domestic and commercial motor vehicle insurance is shown in figure 2.3. Over the period, premium revenue in respect of domestic motor vehicle insurance increased by 25 per cent. The corresponding figure for commercial motor vehicle insurance was 28 per cent.

**Figure 2.1 Selected premium revenue by direct general insurers, 2001-02**  
\$ million



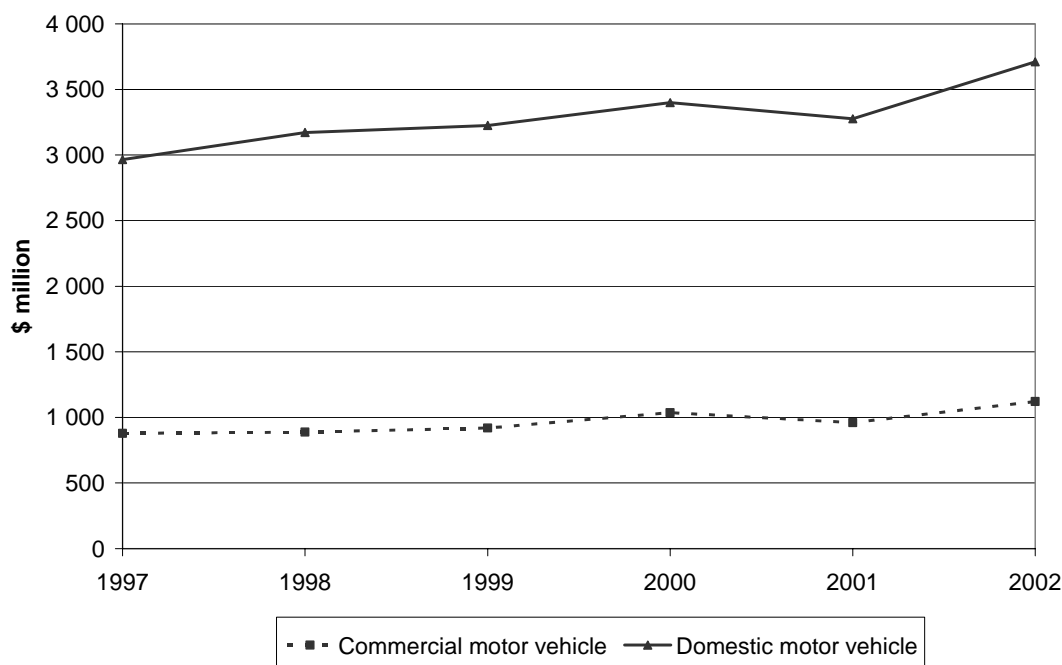
Data source: APRA (2003).

**Figure 2.2 Premium revenue and claims expense, 2001-02**  
Domestic and commercial motor vehicle insurance, \$ million



Data source: APRA (2003).

**Figure 2.3 Insurance premium revenue, 1997 to 2002**  
Domestic and commercial motor vehicle insurance premiums, \$ million



Data source: APRA, *Selected Statistics on the General Insurance Industry* (various years).

Some participants asserted that there have been no decreases in motor vehicle insurance premiums for consumers, despite a cost squeeze on repairers (see below and chapter 4), an effective reduction in consumer choice and recent high profitability within the insurance industry. For instance, the MTAA stated:

While it is certainly true that insurers are forcing costs down in the smash repair industry through the use of unrealistically low labour and paint rates, there is no evidence of any flow-on benefit to consumers through reduced premiums; indeed, while insurers reduce the insured value of cars on an annual basis, insurance premiums typically either remain stable or increase. (sub. DR41, p. 2)

In respect to consumer choice of repairer, MTAA further added:

For many years Australian policyholders were responsible for selecting their preferred repairers and obtaining quotes. However, over the last decade the insurance industry has sought to remove consumers' rights in this area, with no apparent reduction in premiums. This is despite insurers arguing that choice increases costs. (sub. DR41, p. 5)

However, IAG noted that its premiums for 2003-04 'tended to be flat or down in the major portfolios reflecting improved claims outcomes from cost savings, portfolio mix and environmental factors' (sub. 8, p. 8). It further added, in regard to the

---

average premium for its comprehensive motor vehicle insurance in New South Wales, that:

... affordability [against average weekly earnings] is 8 per cent cheaper as at February 2004 compared to the same period two years ago, and is 2 per cent cheaper than at December 2003. (sub. 8, p. 8)

A range of factors influence the setting of premiums by insurers. Some are likely to place upwards pressure on premiums, such as the recovery of past poor financial performances and efforts to enhance shareholder returns. Others, such as insurers' efforts to retain or enhance market share, may exert downwards pressure on premiums. Indeed, an array of cost, market and risk factors continually impact on premium levels. The net effect at any given time may not necessarily be negative, but without efforts by insurers to contain their costs, premiums would be higher than they otherwise are.

Since 2002 (see above), there has been further insurer rationalisation and there are now only four major providers of motor vehicle insurance:

- Insurance Australia Group Limited (IAG) — includes NRMA and CGU. IAG holds about 50 per cent of the national motor vehicle insurance market.
- Promina — includes Australian Associated Motor Insurers Limited (AAMI) and Australian Pensioners Insurance Agency (APIA). AAMI has around 20 per cent of the national motor vehicle insurance market.
- Suncorp Metway Limited (Suncorp) — includes GIO. Suncorp is Australia's third largest general insurance provider and has around 22 per cent of the national motor vehicle insurance market.
- Allianz Australia Insurance Limited (Allianz) — which is a subsidiary of the German based Allianz group. Allianz is Australia's fifth largest general insurance provider and holds around 7 per cent of the national motor vehicle insurance market, mainly through intermediaries.

Except for Allianz, each of the four major providers of motor vehicle insurance has a number of brands through which they compete in the various state markets (see table 2.2).

**Table 2.2 Key motor vehicle insurance providers**

<i>Insurer</i>	<i>Major insurance brands</i>	<i>Approximate national market share</i>
		%
IAG	<ul style="list-style-type: none"> <li>• NRMA</li> <li>• CGU</li> <li>• Swann Insurance</li> <li>• SGIO</li> <li>• SGIC</li> <li>• State <sup>a</sup></li> <li>• NZI <sup>a</sup></li> <li>• RACV (joint venture)</li> </ul>	50
Suncorp	<ul style="list-style-type: none"> <li>• Suncorp</li> <li>• GIO</li> </ul>	22
Promina	<ul style="list-style-type: none"> <li>• AAMI</li> <li>• APIA</li> <li>• Vero</li> <li>• RACI (joint venture)</li> <li>• Just Car Insurance</li> <li>• Shannons</li> </ul>	20 (mainly AAMI)
Allianz	<ul style="list-style-type: none"> <li>• Allianz</li> </ul>	7

<sup>a</sup> Insurance brands operating in New Zealand.

These insurers also underwrite a range of insurance products offered by third parties such as banks and financial institutions, as well as motor vehicle insurance offered by a number of vehicle manufacturers exclusively for their own vehicles (for example, Lexus and Subaru). Such specialised products are supplemented by vehicle manufacturers' own preferred repairer networks to provide damage repair services to purchasers of their vehicles.

Subaru, for example, has been seeking to enter into arrangements with about 100 repairers, which will be accredited on the basis of location, presentation, expertise and equipment, and given detailed training on Subaru vehicles and their repair (Paint and Panel, July/August 2004). Similarly, Lexus has a repair network of 36 collision repairers, while DaimlerChrysler (which includes Mercedes-Benz and Jeep) has a network of 10 repairers. These developments are discussed further below.

## Regulatory framework

As part of Australia's general insurance industry, motor vehicle insurance is subject to high levels of regulation (box 2.1). This aims to ensure that prudential standards are maintained and that consumers are protected.

---

### Box 2.1      **Regulatory framework for the insurance industry**

IAG listed the following legislation and regulation that governs its operations:

- General Insurance Industry Code of Practice;
- Insurance Enquiries and Complaints Scheme;
- *Trade Practices Act 1974*;
- State and territory consumer and fair trading legislation;
- *Financial Services Reform Act 2001*;
- State and territory towing legislation and regulations;
- ASIC Act;
- *Corporations Act 2001*; and
- *Insurance Contracts Act 1984*.

Source: Sub. 8, p. 47.

Prudential requirements for the insurance industry are established through the *Insurance Act 1973*, the *Insurance Contracts Act 1984* and the *Insurance Regulations 2002*, which give APRA the power to govern and implement the prudential framework and police prudential standards. APRA's objectives in respect of general insurance are to protect the interests of policyholders through prudential and market supervision and to promote the development of a well managed, competitive and financially sound general insurance industry. Under the general prudential requirements for the industry, an insurer is required to hold sufficient capital to ensure it can meet its obligations as and when they fall due, even in adverse conditions.

In addition to APRA, other government agencies are charged with some responsibility for supervising the conduct of the insurance industry. For instance, the Australian Competition and Consumer Commission (ACCC) is responsible for competition aspects of the industry and the Australian Securities and Investments Commission (ASIC) is responsible for supervising the market conduct of insurers. As part of ASIC's supervision, there is a requirement, prescribed under the *Financial Services Reform Act 2001*, for insurers to disclose their practices to policyholders, including their motor vehicle repair arrangements.

Motor vehicle insurers are also subject to the corporate regulatory regime that applies to incorporated businesses generally. This regulatory framework includes the *Corporations Act 2001*, the *Trade Practices Act 1974*, various state based fair trading legislation and, for listed insurers, the requirements of the Australian Stock Exchange.

---

## *General Insurance Code of Practice*

The *Insurance Act 1973* requires insurers to subscribe to a code of practice approved by ASIC. To date, the General Insurance Code of Practice is the only approved code. This Code was developed by the Insurance Council of Australia (ICA) and aims to raise the standards of practice and service in the insurance industry. The Code is self regulatory and establishes standards of practice in respect of the relationship of insurers and their agents and employees, and in respect of policy documentation and claims handling procedures. The Code includes an industry-wide independent dispute resolution procedure, the General Insurance Enquiries and Complaints Scheme (IEC). This scheme is designed to resolve disputes between consumers and insurers. Consequently, it is not available to suppliers such as smash repairers.

The Code is reviewed every three years and any amendments to the Code are subject to stakeholder consultation and the approval of ASIC. A draft revised code has recently been developed by the ICA. It was released for public consultation in June 2004. Subsequently, an independent review of the submissions received was commissioned. Further revision of the draft revised code is now being undertaken prior to it being submitted to ASIC for approval.

The Code and its effectiveness are discussed further in chapter 6.

## **2.2 The smash repair industry**

The smash repair industry forms a significant part of the motor vehicle retailing and services industry, itself one of the larger service industries in Australia. The latest available comprehensive statistics indicate that the smash repair industry had a turnover in excess of \$3 billion and generated an operating profit of \$197 million in 1998-99.

The smash repair industry is characterised by a large number of small, independent, (privately owned) businesses, with only a very small number of smash repair operations owned by insurers, mainly IAG. In 1998-99, there were almost 5600 smash repair businesses nationally that employed an average of 5.8 persons each (see table 2.3). This structure is evident also within the broader motor vehicle services industry where barriers to entry are traditionally low and around 97 per cent of businesses employ less than 20 people. In 2000, around 83 per cent of smash repairers had an annual turnover of under \$1 million (ABS, unpublished data 2004). These small businesses dominated the motor vehicle services industry and accounted for approximately 64 per cent of the overall industry turnover (ABS Cat. no. 8622.0).

**Table 2.3 Motor vehicle retailing and services, 1998-99**

<i>Description</i>	<i>Management units</i>	<i>Employment</i>	<i>Total income</i>	<i>Labour costs</i>	<i>Operating profit</i>	<i>Operating profit margin</i>
	no.	no.	\$ million	\$ million	\$ million	%
Car retailing	2 698	34 054	21 127.6	1 265.4	281.5	1.3
Motor cycle dealing	686	5 224	1 853.1	155.2	89.9	4.9
Trailer and caravan dealing	211	1 105	377.5	30.6	13.4 <sup>a</sup>	3.6
Automotive fuel retailing	4 257	45 396	14 816.8	928.1	272.1	1.9
Automotive electrical services	1 609	6 125	480.8	141.6	24.3	5.1
<b>Smash repairing</b>	<b>5 594</b>	<b>32 659</b>	<b>3 040.4</b>	<b>889.4</b>	<b>197.0</b>	<b>6.5</b>
Tyre retailing	1 345	11 490	2 364.6	350.0	39.1 <sup>a</sup>	1.7
Automotive repair and services n.e.c.	11 455	48 093	4 513.3	1 123.0	242.5	5.4

<sup>a</sup> Estimate has a relative standard error of between 25 per cent and 50 per cent and should be used with caution. n.e.c. Not elsewhere classified.

Source: ABS (*Retail Industry*, Cat. no. 8622.0).

The operating profit margin for smash repairers in 1998-99 was 6.5 per cent (see table 2.3). This was greater than the profit margins achieved for all other sectors of the motor vehicle retailing and services industry. Indeed, the average return for the broader industry for that year was 3.8 per cent. There is evidence, however, that profit margins for smash repairers have fluctuated considerably in recent years (see below).

## Industry rationalisation

The smash repair industry has been undergoing a process of rationalisation for at least 15 years. Between 1991-92 and 1998-99, the number of smash repair businesses declined from around 6500 to just under 5600 (ABS Cat. nos. 8613.0 and 8622.0). It is likely that further reductions in the number of businesses have occurred in recent years and that approximately 5000 smash repairers now operate nationally (see table 2.4).

Information on smash repair numbers was also provided by state based repairer groups (see box 2.2). The figures provided by these groups indicate that around 5100 smash repairer businesses operate nationally. While these figures are not

strictly comparable to those presented in table 2.4, they indicate the rate of rationalisation in the smash repair industry may have stabilised in recent years.

**Table 2.4 Smash repair businesses, October 2000**  
Employing businesses which are registered and active for GST

<i>NSW</i>	<i>Vic</i>	<i>Qld</i>	<i>SA</i>	<i>WA</i>	<i>Tas</i>	<i>NT</i>	<i>ACT</i>	<b><i>Total</i></b>
1 788	1 206	988	392	468	95	50	51	<b>5 038</b>

Source: ABS (unpublished data, 2004).

### Box 2.2 Smash repairers by jurisdiction

Information regarding the smash repair industry in jurisdictions was presented by state based repairer groups. This information suggests there are around 5100 smash repairers currently operating.

- The MTA of New South Wales stated that there are currently 2100 smash repairers licensed in New South Wales (sub. 27, p. 9).
- The VACC indicated that there are currently 1544 smash repairers in Victoria, a decline from 1791 repair businesses in 1996 (sub. 14, p. 5).
- The MTA of Queensland said that there are 650 smash repairers in Queensland, including 300 repairers in Brisbane. There are around 2.28 million vehicles in Queensland and the state's repairers undertake approximately 220 000 vehicle repairs per annum (sub. 7, p. 7).
- The MTA of South Australia stated that the South Australian smash repair industry comprises approximately 250 smash repairers (sub. 22, p. 2).
- The MTA of Western Australia noted that its membership comprises 228 smash repairers which constitutes 65 per cent of Western Australia's smash repairers (sub. 16, p. 2). (This implies there are around 350 smash repairers in the state.)
- The VACC stated that there are currently 165 smash repairers in Tasmania (sub. 14, p. 45).
- The MTA of the ACT said that there are approximately 221 000 vehicles and 32 smash repairers in the ACT. Around 20 000 vehicle repairs are performed per annum (sub. 25, p. 6).

There are also indications that repairer profitability may have stabilised to some extent following a decline in recent years. Operating profit margins, for instance, decreased from 7.8 to 5.4 per cent between 1999-00 and 2000-01 (see table 2.5). In 2002-03, however, profitability appears to have improved to 7.4 per cent. (More recent information is not available.) These figures are not directly comparable to those in table 2.3 as different methodologies were used.

**Table 2.5 Performance of the smash repair industry, 1999-00, 2000-01 and 2002-03 <sup>a, b</sup>**

Current prices

<i>Year</i>	<i>Total operating income</i>	<i>Total operating expense</i>	<i>Operating profit</i>	<i>Operating profit margin</i>
	\$ million	\$ million	\$ million	%
1999-00	4 289	3 956	335	7.8
2000-01	3 851	3 644	207	5.4
2002-03 <sup>c</sup>	3 465	3 223	255	7.4

<sup>a</sup> These figures are considered 'experimental estimates' as they are based on a relatively small ABS sample survey of businesses combined with business income tax data sourced from the ATO. The estimates are subject to both sample and non-sample error. <sup>b</sup> These figures are not directly comparable to those in table 2.3 as different methodologies were used. <sup>c</sup> Figures for 2002-03 are compiled using a revised statistical infrastructure.

Source: ABS (*Australian Industry*, Cat. no. 8155.0).

Over this four-year period, there has also been a reduction in industry operating income — by around 20 per cent.

In terms of industry profitability, AAMI contended that while considerable cost pressures are evident, many smash repairers are operating profitable businesses. To support its claims, AAMI provided evidence from an independent survey of its national preferred repairer network taken in September 2004. The survey, which had a 86 per cent response rate, reported:

- 69 per cent [of AAMI's network repairers] indicated their profit position had improved or stayed the same over the past 12 months;
- 85 per cent reported the same or a higher turnover than the previous year, with 91 per cent expecting the same or higher turnover over the next 12 months;
- 80 per cent expect to be running their businesses in 5 years time;
- the mean capital investment across all businesses for the year is \$56 000 and the median level is \$30 000;
- the median number of full time staff employed is 10, with 93 per cent of repairers expecting to maintain or increase these levels over the next 12 months; and
- 63 per cent intend to employ more apprentices in the next 12 months. (sub. DR50, p. 3)

Participants raised a range of views regarding the causes and implications of rationalisation within the smash repair industry. For instance, Allianz considered that rationalisation:

... is not a result, as has been claimed, of features of the competitive market dynamic between insurers and repairers such as labour rates or preferred repairer networks. Rationalisation is being driven by more fundamental and longer-term trends that are

---

causing significant reductions in the number of motor vehicle accidents and hence the demand for repair services, resulting in an over-supply of repairers. (sub. 20, p. iii)

AAMI suggested that international comparisons, with the United States and the United Kingdom, indicate that Australia has an oversupply of smash repairers (sub. 19, p. 20).

An alternative view was presented by the VACC:

VACC supports the natural rationalisation of the crash repairer industry. However, it firmly believes that any rationalisation process should be based on market forces, which are not just cost driven. Such a process should not be influenced by the market power of insurers trying to construct an artificial market through selective and arbitrary processes, purely to control the industry for the narrow intent of delivering short-term financial gains, at the expense of the repairer and consumer. (sub. 14, p. 6)

Similarly, the MTAA stated that:

... regardless of whether or not there is room for rationalisation in the industry, this issue is more properly a matter for the market and ought not to be at the discretion and advantage of insurers whose interests are not necessarily at all times aligned with body repairers or insureds. MTAA believes that the market is more than capable of supporting the number of body repairers presently in operation and that attempts by insurers to rationalise the industry are a disservice to both consumers and body repairers. (sub. 15, p. 9)

### *International comparison*

As shown in table 2.6, the number of smash repairers in Australia is proportionately higher, relative to the passenger vehicle fleet, than in both the United States and the United Kingdom.

**Table 2.6 International comparison of vehicles/smash repairers ratio, 2003**

<i>Country</i>	<i>Number of repair shops</i>	<i>Total passenger vehicles</i>	<i>Vehicles per repair shop</i>
	no.	million	no.
United States	53 000	130	2 453
United Kingdom	5 300	25	4 717
Australia	5 038	9.7	1 925

Source: Paint and Panel (March/April, 2003).

The MTA of New South Wales provided alternative figures. According to its sources, Australia has approximately 2600 vehicles per repair shop while the

---

United States and the United Kingdom have around 5400 and 4400 vehicles per repairer respectively (sub. DR36, p. 6). Although the basis on which these figures have been compiled is unclear, they are nevertheless consistent with table 2.6 in that the number of vehicles per repair shop for Australia is markedly lower than for the other countries.

Neither set of figures, however, accounts for the various spatial and demographic differences that exist in these markets. In this respect, repairer groups asserted that the differences may not necessarily indicate that the current number of Australian smash repairers is too large and that further rationalisation is required, but rather reflect the requirement in Australia for a greater number of smash repairers to service dispersed regional and isolated communities (VACC, sub. 14, p. 5).

Although international comparisons highlight differences in the relative number of repairers between countries, the figures prove little in relation to an efficient number of smash repairers. A range of factors will affect this including not only demographic characteristics (as noted above) and cost and price differences in general, but also possible differences in the incidence of motor vehicle accidents, the type and scope of available repair work and in industry regulation.

Similarly, changes to these factors will influence the nature and extent of continuing rationalisation in the Australian smash repair industry. The rest of this chapter discusses a number of relevant factors.

### *Volume of repair work*

The volume of repair work available largely depends both on the number of vehicles on the road and the incidence and severity of vehicle accidents, as well as on factors such as theft and weather damage.

According to the ABS, Australia's passenger vehicle fleet comprised 10.6 million vehicles in 2004, a 9.7 per cent increase from 9.7 million vehicles in 1999 and a 28 per cent increase from a fleet of 8.3 million vehicles in 1993 (see table 2.7). The average age of passenger vehicles was 10.0 years in 2004, with 70 per cent of vehicles manufactured after 1990. This represented a small reduction in age from 10.3 years in 1999.

**Table 2.7 Australia's vehicle fleet**

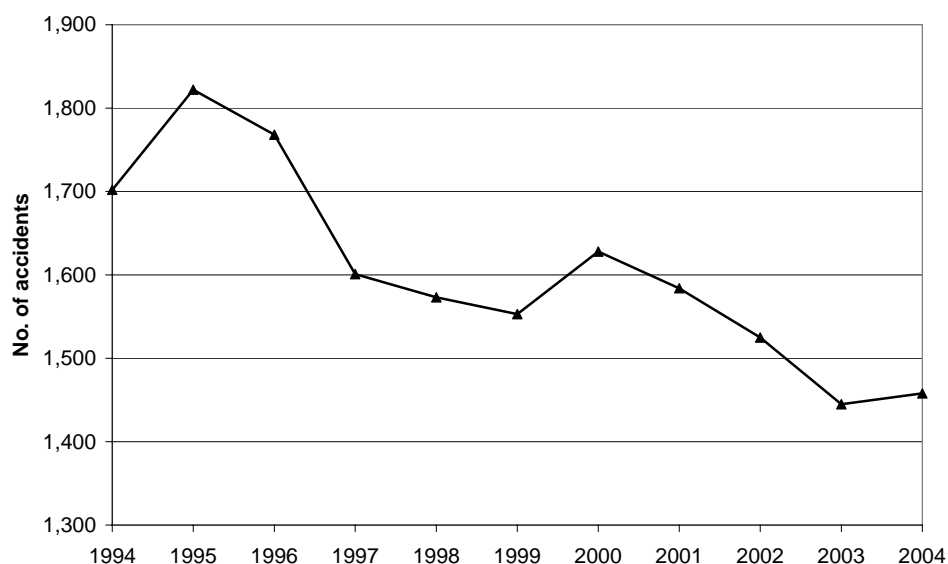
	1993	1999	2004	<i>Change</i> 1999-2004
	'000	'000	'000	%
Passenger vehicles	8 279	9 686	10 629	9.7
Light commercial trucks	1 454	1 721	1 952	13.4
Rigid trucks	336	347	358	3.1
Articulated trucks	52	63	66	4.7
Non-freight carrying trucks <sup>a</sup>	47	51	60	16.2
Buses	47	66	71	8.2
Motor cycles	289	334	396	18.7
<b>Total <sup>b</sup></b>	<b>10 504</b>	<b>12 269</b>	<b>13 533</b>	<b>10.3</b>

<sup>a</sup> Campervans are included with non-freight carrying trucks. <sup>b</sup> Columns may not add to totals due to rounding.

Source: ABS (*Motor Vehicle Census*, Cat. no. 9309.0).

Although the size of Australia's motor vehicle fleet has significantly increased, there is some evidence of a reduction in the incidence of motor vehicle accidents over recent years. For example, there has been a generally decreasing trend in the number of fatal road accidents in Australia (see figure 2.4).

**Figure 2.4 Road accidents involving fatalities, 1994 to 2004**



Data source: Australian Transport Safety Bureau (2003; 2004).

---

Allianz noted also that its motor vehicle insurance claims in 2003 fell by 6000 from the previous year and that claims in the first six months of 2004 declined a further 2000 from the corresponding period in 2003 (sub. 20, p. 3).

According to the IEC, there were around 970 000 motor vehicle insurance claims in 2002-03, a decline of about 20 per cent from approximately 1 210 000 claims in 2001-02 (information provided by IEC, October 2004). More recent IEC data, however, show that the number of insurance claims increased by 33 per cent in 2003-04 to 1 295 000 claims (IEC 2004a).

Given the significant volatility in the claims data reported by IEC, it is difficult to determine confidently any longer term trend in the rate of motor vehicle repairs. Nevertheless, a number of participants have asserted that there are a range of factors that are having a lowering effect on the incidence and severity of motor vehicle accidents. These include:

- improvements in vehicle technology, which have assisted drivers to avoid accidents (for example, anti-lock braking and traction control systems);
- drier weather, which has resulted in generally improved driving conditions;
- traffic calming initiatives (for example, reductions to speed limits in certain suburban areas) and better roads; and
- more stringent policing of unlawful drink driving and greater numbers of speed cameras (sub. 17, p. 4; sub. 19, p. 20; sub. 20, p. 3).

Other factors also exert an influence on claims numbers and the volume of available repair work. These include the number of vehicle thefts — many vehicles are written off or damaged as a result of theft — and the prevalence of major hail storms. Such storms can cause widespread damage to motor vehicles, especially in built-up areas. Over recent years there has been both a reduction in vehicle thefts and an absence of major hail storms. (The last major hail storm to significantly affect claims occurred in Sydney in April 1999.)

While the precise processes and the extent of rationalisation within the smash repair industry may be contested, factors in the market, such as advances in vehicle technology and a possible decline in the incidence and severity of road accidents, are likely to increase pressure on repairers to improve their productivity. Given this, and actions by insurers to reduce costs as means of enhancing shareholder returns and containing premiums, the trend towards fewer, more productive repairers, is also likely to continue. The pressures on repairers to increase their productivity, and the implications, are further discussed within chapters 3 and 4.

---

## **Regulation of smash repairers**

The smash repair industry has relatively low levels of industry-specific regulation, although the extent of regulation varies between jurisdictions. In New South Wales, a statutory authority, the Motor Vehicle Repair Industry Authority (MVRIA), administers a licensing scheme which covers the broader motor vehicle repair industry as well as smash repairers. The MVRIA has responsibility for the licensing of motor vehicle repairers, certification of tradespeople working in repair businesses, promotion of improvements in the standard of repair work and dispute resolution concerning motor vehicle owners and repairers. Western Australia is currently implementing a similar licensing scheme to that adopted in New South Wales. It is expected that this scheme will be rolled out from late 2005, with licensing of motor vehicle tradespeople, followed in late 2006 by licensing of repairers.

In other states and territories, there is no industry specific licensing of smash repairers. However, membership of some repairer bodies (such as the VACC in Victoria) is dependent on repairers being appropriately equipped, employing adequately qualified tradesmen and abiding by a code of business practice.

Issues concerning the national registration of smash repairers are discussed in chapter 3.

The introduction of comprehensive occupational health and safety (OH&S) and environmental requirements in recent years has increasingly impacted on the smash repair industry, as they have in many other industries. The impact of these requirements is discussed further below and in chapter 3.

## **Trends in the smash repair industry**

Most smash repairers concentrate on smash repair and do not generally carry out non-collision related mechanical repairs or vehicle servicing. The large majority of repair work, around 75 per cent, is insurance based (IBISWorld 2003 as quoted in sub. 15). This work is arranged directly by insurers and repairers, with only a small proportion arranged by policyholders. In addition, smash repairers source repair work through other channels such as fleet operators, motor vehicle dealers and directly from motor vehicle owners.

As discussed further in chapter 4, the key activities in the repair of collision damaged vehicles (and the basis on which repair quotes are usually determined) are:

- remove and replace damaged and other components (often termed 'R&R');

- 
- supply of replacement parts;
  - repair of damaged components (often termed ‘repair and align’); and
  - painting replacement parts and damaged components.

### *Replacement parts*

Replacement parts are an important cost to repairers and insurers — typically representing around 50 per cent of the overall cost of repairing a damaged vehicle (Suncorp, sub. 12, p. 7). There is considerable scope to vary the type of replacement parts used, with parts supplied by vehicle manufacturers or by specialist new and recycled parts distributors. The procurement of replacement parts has typically been the responsibility of the repairer, which can earn a margin on the purchase. According to IAG, the large majority of parts used in the repair of collision damaged vehicles are cosmetic, such as panels, rather than structural components (sub. 8, app. J, p. 5).

In order to control costs, some insurers have increasingly sought to directly control certain elements of parts supply. Under one such form of arrangement, an insurer will itself enter into supply arrangements with parts distributors and effectively remove smash repairers from this aspect of the repair process. As well, some insurers make arrangements for the supply and fitting of components such as windcreens, headlights and radiators by subcontractors (see below).

There are two main classes of replacement parts — ‘genuine’ parts and ‘non-genuine’ (or ‘parallel’) parts. Genuine parts are manufactured exclusively for, or by, motor vehicle manufacturers. Non-genuine parts are alternative copy parts which may be manufactured independently of the vehicle manufacturer. The design and production of parts (and vehicles) are subject to government regulation. In particular, the *Motor Vehicle Standards Act 1989* prescribes the standards for safety and emissions — the Australian Design Rules — that new vehicles have to meet in order to be registered (see box 3.5 in chapter 3 for an outline of requirements concerning Australian Design Rules).

A range of terminology is used by both smash repairers and the insurance industry to describe various sub-categories of replacement parts. The different terminology can often be a source of confusion, especially as parts which are branded by a vehicle manufacturer and equivalent unbranded parts are often produced by the same original equipment manufacturer (OEM) and the real technical distinction between parts categories can be contested. Box 2.3 provides an outline of the various types of replacement parts.

---

### Box 2.3      **Replacement parts**

There are basically four types of replacement parts available for the repair of damaged vehicles:

- **Badged genuine parts** — these are parts branded by a vehicle manufacturer and guaranteed by that manufacturer. These parts are commonly referred to as original equipment (OE) and are usually retailed through the vehicle manufacturer's distribution network.
- **Non-badged genuine parts** — these are parts produced by an original equipment manufacturer (OEM), but do not include the endorsement of the vehicle manufacturer and are not guaranteed by that manufacturer. Retail of non-badged genuine parts usually occurs through independent parts distributors.
- **Parallel parts** — these are 'non-genuine' parts produced independently of vehicle manufacturers. They are not guaranteed by vehicle manufacturers. Parallel parts are usually retailed by independent parts distributors.
- **Recycled parts** — these are second hand parts, often OE, that have been salvaged from wrecked vehicles (and possibly repaired or reconditioned). These parts are often the only source of replacement parts for older model vehicles. Recycled parts are typically retailed through specialist parts recyclers that purchase vehicles that have been written off by insurance companies.

While there is usually a significant cost difference between genuine and non-genuine parts, a number of repairers argued that there are also notable differences in quality and that non-genuine parts may not comply with Australian Design Rules (for example, see MTA of Queensland, sub. 7, p. 12). The cost and quality issues with replacement parts and the policies of insurers with respect to the use of non-genuine parts are discussed in chapters 3 and 4.

### *Capital intensity*

Traditionally, smash repairing has involved fairly labour intensive standard panel beating and painting techniques. More recently, repair technologies have advanced in a number of areas including plastic heat welding, computerised alignment systems, paintless dent removal, two-pack paint, computerised paint matching, recycling and infrared paint booths, and digital imaging for internet-based quoting and assessments (see box 2.4).

To some extent, these changes have been necessitated by the improved technology embodied in modern vehicles. Production techniques of vehicles have become more complex in such ways as unibody construction and the application of lighter and

---

exotic materials for body work and certain structural components (for example, boron steel, aluminium and plastic composites).

#### **Box 2.4 Indicative costs for major smash repair equipment**

According to the VACC, indicative costs for some of the major capital equipment required to repair modern vehicles are as follows:

- jiggling and measuring equipment — \$65 000;
- welding equipment (inverter welders) — \$25 000;
- panel straightening tools — \$25 000;
- pulling (major straightening) equipment — \$28 000;
- hoist — \$8000; and
- paint baking oven — \$65 000.

*Source:* Sub. 14, p. 22.

While automotive technological advances are typically introduced into high-end prestige vehicles, the diffusion of technology gradually flows into cheaper higher volume models. These advances are leading to an increase in the skills and the use of more sophisticated equipment and techniques to repair collision damaged vehicles (see box 2.5).

#### **Box 2.5 Advances in vehicle technology**

Roberts (2004, pp. 1–2) illustrates the increased complexity of repairing vehicles containing sophisticated technology. Examples of such technology are currently embodied within the BMW 7 Series:

It has a 4.4 litre V8 330 bhp engine with twin overhead camshafts providing variable valve lift and valve timing. It has a unique variable intake manifold system for power optimisation. Transmission is a 6-speed automatic ZF gear box, incorporating a shift by wire arrangement, meaning there is no mechanical connection between the shift lever and gear selection. There are disc brakes on all four wheels and a four wheel park brake that can be operated from a simple switch on the steering wheel for maximum convenience in traffic. The vehicle is equipped with dynamic drive suspension, electronic damping, and a self-levelling rear axle to control body roll on corners and pitch under acceleration and braking. The vehicle is fitted with powerful Xenon headlights. Most of these innovative features are controlled by computers, since they are far too complex for mere humans to control. ... we see that in addition to the advanced body repair skills of the 21<sup>st</sup> Century, the ideal body repairer must be a well educated, IT literate, highly skilled technician, well versed in electronics and requiring constant training updates to keep pace with the technology being employed.

---

As a result of this trend, there has been a general increase in the capital intensiveness of the smash repair business. Indeed, this has led to the recent emergence of two contrasting business models, in addition to the ‘traditional’ smash repair business.

- ‘High tech’ repairers — these are large scale repairers that have invested in the latest repair technologies. They operate more like factories, rather than traditional repair shops, and exploit economies of scale by adopting a production line process to undertake repairs.
- Niche repairers — these are specialist repairers that concentrate, almost exclusively, on the repair of a particular make of vehicle, like Mercedes-Benz, Lexus and other prestige marques. As mentioned above, they are often part of vehicle manufacturers’ own preferred repairer networks. Due to their specialisation, these repairers are able to invest in the dedicated, and often expensive, equipment necessary to repair the materials and components used in that particular make of vehicle.

Allianz claims that advances in vehicle technology have increased the minimum capital investment required for a smash repair business. It stated that the effect of vehicle technology ‘increases the potential for scale economies and, hence, reduces the number of repairers needed to supply an efficient level of repair capacity’ (sub. 20, p. 3).

### *Business value and goodwill*

Repairers asserted that changes within the smash repair industry have significantly reduced the value of their businesses. They argued that the goodwill they had established has been eroded by the practices of some insurers and that, consequently, the value of their repair businesses has been adversely affected. A commonly-held view among repairers was that:

My business is worth very little to sell. At the moment we are worth only the tools and equipment we carry. There is no encouragement or optimism for anyone to invest in the smash repair industry. ... I contend the constant maintenance and building of goodwill is a fundamental right of any business. This right is now being undermined by the practices of some insurers. (conf. sub. C.95, pp. 1–2)

The VACC also contended:

For any small business, a regular client base forms the basis of their long-term viability and the goodwill of their business. ... Current practices by the two major insurance companies ... potentially destroys all goodwill the business may have worked hard to build. The notion put forward by many insurance companies that crash repairers do not have a client base because, on average, individuals only have an accident every 7 years, is spurious, as it does not acknowledge the number of members in the immediate and

---

extended family, nor does it acknowledge relationships that have been built up between the crash repairer and business entities in their local area. (sub. 14, p. 38)

This matter is further discussed in chapter 3 in the context of insurers' preferred repairer networks.

### *Subcontracting*

A level of subcontracting of repair work occurs within the smash repair industry. It is typically undertaken for specialist or complex repair works where a smash repairer may not possess the requisite equipment or expertise to undertake the repairs — for example, the repair of mechanical components such as engines, steering and suspension components, braking systems and airbags.

As noted above, a recent trend is for insurers to also make subcontracting arrangements for the supply and fitting of components such as windscreens, headlights, radiators and air-conditioning. Some repairers were critical of such arrangements, especially in cases where insurers require subcontractors to work out of repairers' premises without any compensation (VACC, sub. 14, p. 43). A repairer stated, for instance:

Certain insurance companies have started to do direct supplies, especially with ... sublet items, like windscreens, radiators [and] condensers ... Some of the companies that are doing it in other states aren't paying any handling or mark-up fee, yet [repairers] are still expected to check that part when it comes in the door, mark off the invoice and make sure that they have received the part so there's no problems later, store the parts, get rid of the waste cardboard. All that is obviously a cost that the repair trade have to absorb. (trans., p. 116)

The implications of subcontracting for repairers and insurers including payment arrangements are discussed in chapters 3 and 4.

### *Health, safety and environmental standards*

Smash repairers have been increasingly made subject to stringent occupational health and safety (OH&S) requirements. These requirements have placed increased demands and cost pressures on smash repairers, including necessary investments in:

- fume and dust exhausts;
- paint booths and paint mixing rooms;
- fire proof storage facilities;
- personal protective clothing;

- 
- noise, electrical and equipment testing; and
  - health testing for spray painters and other employees.

In addition to these OH&S requirements, there have been increased environmental standards placed on the industry. For instance, smash repairers are required to dispose of or recycle waste materials such as oils, solvents, coolants and paint in an environmentally responsible manner. Environmental requirements are further discussed in chapter 4.

### *Skills shortage*

There is a general concern among repairers that there is a lack of skilled labour entering the industry. Some in the industry contend that this is a direct consequence of declining profitability among smash repair businesses and the ongoing rationalisation within the industry. For example, the MTAA claimed that comparatively low wages within the industry have reduced the availability of skilled labour, which is placing increasing pressure on smash repairers (sub. 15, p. 8).

Similarly, the VACC considered:

... the industry is finding it difficult to attract apprentices. Some of this is due to general factors such as competition from other more 'glamorous' industry sectors and the unappealing nature of automotive trades to young people and their parents. However, a significant contributing factor is the industry's inability to pay attractive wage rates, due to very low returns, and the lack of certainty for many crash repairers, about their future. Crash repairers are not going to take on apprentices, on a four-year basis, if they only have one-year contracts, or have severely limited access to repairing vehicles insured with Australia's two largest motor vehicle insurance companies. (sub. 14, p. 6)

Seemingly in contrast, AAMI stated:

Proprietors now find themselves with escalating wages in order to retain or attract the better tradespersons and also find themselves using these tradespersons for tasks that might previously have been performed by apprentices, at substantially lower costs. (sub. 19, p. 21)

These two points of view, however, are not necessarily inconsistent. In an environment of poor and decreasing returns for an industry, firms will typically have greater difficulty paying attractive wages to their tradespeople and apprentices. This situation may be persistent enough to give rise to a shortage of skilled labour in that industry and, consequently, firms may be required to pay higher wages to retain those workers currently in the industry.

---

The shortage of skilled labour will have important implications for the smash repair industry in the future. However, there is no evidence to suggest that this is the result of institutional factors outside of the industry such as apprentice or training arrangements. Rather, it is likely to be a consequence of the industry's internal commercial environment and largely determined, therefore, by the broader economic relationship between the insurance and repair sectors.

Given such factors, it is not suggested that the shortage of skilled labour in the smash repair industry needs to be specifically addressed. However, the findings and recommendations detailed in remaining chapters may help ease the problem.

## **International perspectives**

The issues discussed above regarding the smash repair industry, and its interaction with the motor vehicle insurance industry, are not unique to Australia. A market structure characterised by a small number of insurers that provide the majority of work to a large number of independent repairers also prevails in other countries. For example, around 70 per cent of the motor vehicle insurance market in the United Kingdom is held by five insurers. And, in that country, the insurance industry accounts for around 85 per cent of repair work (sub. 15, p. 40; sub. DR33, p. 9).

It is claimed that smash repairers in other countries such as the United Kingdom, the United States, Canada, South Africa and New Zealand face similar commercial pressures to those in Australia (sub. 15, pp. 40–3; sub. 9, p. 2). In this respect, the MTAA stated that there has been rationalisation within the United Kingdom's repairer sector:

Due to increased competition in the insurance sector, a number of mergers have concentrated the market in recent years and the number of body shops has, in turn, also declined from 30 000 in 1970 to 5800 in 2002. (sub. 15, p. 40)

Consolidation of the repairer sector in the United Kingdom was further supported by autoPOLIS:

- In four years [1997-2000] the total repairer population dropped by 27 per cent with small repairers declining by 40 per cent.
- The number of large repairers has increased as the economics of being a medium sized player have become increasingly less viable.
- This could ultimately lead to a polarisation of the market between small and very large [repairers]. (sub. DR33, p. 6)

In terms of the New Zealand market, the Motor Trade Association of New Zealand stated that:

---

The condensed [insurance] market leaves repairers open to misuse of market power in relation to the negotiation of repairer arrangements and other matters such as payments and disputes. (sub. 9, p. 3)

A range of regulatory arrangements governing the commercial relationship between the smash repair and insurance industries have been adopted in other countries. In the United States, for example, around 35 states have some form of anti-steering legislation that prohibits insurance companies from directing claimants to a particular repairer. In respect to such legislation, the MTAA stated:

The legislation differs in degree from state to state and deals with issues and matters such as insurers requiring that consumers travel unnecessary distances to have their vehicle repaired, requirements that consumers have their vehicle repaired at certain shops, recommendation of a preferred repairer, pre-inspection price setting, intimidation, coercion and threats of non-payment of claims. (sub. 15, p. 43)

Canada also has legislation that enshrines consumer choice. The *Collision Repair Standards Act 2002* requires that consumers have a choice of repairer. Insurers are also required to provide a range of information to their customers in the form of a ‘Bill of Rights’ that advises on matters like:

... the customer’s right to safe repair, a shop of their choice, advice to the effect that they are not required to use an insurance company’s recommended shop (although they can should they so wish), a declaration of whether parts used are OEM or aftermarket and a statement from the shop that the repair has been undertaken in accordance with all applicable safety standards. (MTAA, sub. 15, p. 41)

The Canadian legislation also provides for self-management of the smash repair industry in which an advisory board — comprising membership from industry, government and consumers — establishes industry standards. All repairers are required to be accredited and must comply with the standards (MTAA, sub. 15, p. 41).

Neither the United Kingdom nor New Zealand specifically controls the interaction between insurers and smash repairers in such ways.

#### FINDING 2.1

*Ongoing rationalisation in the smash repair industry can be expected. This reflects actions by insurers to reduce costs as a means of enhancing shareholder returns and containing premiums for consumers, as well as a range of ‘external’ factors, including: increased capital requirements due to changes in vehicle technology; a possible decline in the incidence and severity of motor vehicle accidents; more stringent occupational health and safety, and environmental requirements; and difficulties in attracting skilled labour.*

---

## 3 Preferred smash repairer arrangements

### Key points

- The majority of insurance-funded repair work is carried out by preferred smash repairers (PSRs) with whom insurers have preferential commercial and contractual relationships. PSR arrangements assist in keeping costs down for insurers and allow them to keep vehicle insurance premiums lower than otherwise.
- PSR arrangements benefit many repairers through greater and more stable volumes of work, and faster payment. Nevertheless, those repairers are beholden to a few large powerful insurers for much of their current and potential future workload and income. This is a source of insecurity for some smash repairers.
  - Those with PSR status face continuing pressures to cut costs and otherwise meet the requirements of the insurers, so as to keep that status.
  - Those without PSR status may have difficulty in finding sufficient work to remain viable. Some would like the opportunity to join the PSR networks.
- Repairers argue that the processes for accrediting or removing PSR status are non-transparent and a source of unnecessary uncertainty.
  - Greater transparency, which could alleviate some concerns and improve relationships within these industries, could be achieved at little cost.
- On transfer of a business that has PSR status, insurers should, subject to probity and prudential requirements being met, accord that status to the new owner for a trial period of six months, during which time the repairer's capacity to meet the insurer's standards could be assessed.
- Some repairers argue that PSR arrangements drive prices down too far, leading to poor quality and sometimes unsafe repairs being undertaken.
  - The evidence does not indicate a systemic or industry-wide problem in relation to safety. While quality is harder to assess, insurers and repairers face strong incentives to ensure that repair quality and safety appropriately meet the needs of their customers.
- Where non-new or non-genuine parts may be used in repairs, this should be made clear to the consumer at the time of taking out the policy and at the time of making a claim.
- If an insurer specifies the repair method and/or the parts to be used, it should do so in writing and accept responsibility for the quality and safety consequences of those choices. The repairer should continue to accept responsibility for the quality of its workmanship in response to the insurer's specifications.
- The disadvantages of industry-wide nationally agreed criteria for repairers to qualify for PSR status are likely to outweigh any advantages.

---

Preferred smash repairer (PSR) arrangements have evolved over the past decade or so as insurers have sought to control repair costs and obtain greater control over repair processes by entering into close commercial relations with a selection of smash repairers. These developments occurred during a period when the insurance industry was experiencing considerable change (chapter 2). AAMI said that, during this period, the tolerance for the previous poor financial performance of insurers ‘largely evaporated’:

... major insurers began to realise they could no longer continue to ignore repair quality and costs. ... the larger motor insurers in particular, set about re-engineering their approach to managing repairs with a view to rein in repair costs and deliver a superior customer experience. (sub. 19, p. 14)

To this end, some insurers experimented with repair centres and assessment centres, to allow them to have more control over the cost and manner of repairs, while others continued to rely on traditional quoting and assessing arrangements. However, each major insurer has since entered into preferential commercial and contractual relationships with preferred repairers. Consequently, the majority of insurance-funded repair work is now carried out by PSRs.

This chapter looks at the current PSR arrangements used by the four major insurers. It notes their advantages and disadvantages for each party, discusses how preferred status is gained or lost and the appropriateness and transparency of the procedures used. Subsequent sections consider the scope for nationally agreed criteria for preferred smash repairer status and questions of quality and safety, including the role of insurance assessors in specifying repair methods and parts.

### **3.1 The nature and extent of preferential arrangements**

All of the major vehicle insurers have PSR arrangements in one form or another, as do some smaller vehicle insurers such as Lumley, Western QBE and RACQ.

The numbers of PSRs for each insurer and the extent to which the network is open to new repairers also varies widely.

- IAG allows relatively open access of repairers to its larger associate repairer (ASR) group, of which there are about 1300, but maintains close control over the number and performance of its 838 preferred smash repairers, which undertake about three-quarters of all IAG-funded repairs.
- Suncorp has about 600 PSRs and when a need or a vacancy arises it selects repairers in a particular geographic area and invites them to apply for accreditation, advising them in advance of the selection criteria (sub. 12, p. 4).

- 
- AAMI has a stable group of over 500 PSRs to which it adds only infrequently, although it will consider applications at any time, responding to applicants within 28 days (sub. 19, p. 70). When offers are made, they are typically to repairers that have previously approached AAMI.
  - Allianz has around 160 preferred repairers.

However, the extent to which each insurer uses PSRs for its repair work varies. For example, Allianz uses PSRs for about 30 to 40 per cent of all of its repairs, Suncorp for about 60 per cent and AAMI about 75 per cent. With IAG, about 75 per cent is carried out by its 'first tier' PSRs and much of the remainder is undertaken by its ASRs.

Repairers may have preferred status with more than one insurer. Moreover, some of these arrangements can be long-standing. Suncorp, for example, said that many of its core group of repairers (about 80 per cent of the total) have relationships with Suncorp and GIO (its other major brand) which date back more than 20 years.

Differences among the major insurers include the ways in which PSRs are chosen, monitored and removed from preferred networks; the categorisation (if any) of PSRs in an insurer's network, and the different rules for each; the methods for allocating work to PSRs; the way quoting is undertaken and the price is set; and the extent to which the vehicle owner is entitled to choose a repairer outside of the insurer's network of preferred repairers.

The first two matters are discussed in this chapter. Quoting, pricing and allocating work are discussed in the next chapter, while issues concerning consumer choice are addressed in chapter 5.

## **Choosing preferred repairers**

Among insurers, the broad criteria used to determine which repairers are granted PSR status are very similar (box 3.1). They encompass such matters as the need for a repairer in a particular geographical location, its capability and competence, ability to undertake quality repairs at low cost, commitment to customer service, the quality of its business systems and any previous relationship with the insurer. The repairer must also be a 'fit and proper person'.

A further consideration is the number of PSRs an insurer needs in view of the likely work available. For example, AAMI has a relatively fixed network whose numbers change very little, as does Allianz, which said:

... the amount of work Allianz policyholders choose to put into our network is satisfied by our existing network of 157 repairers nationally and, for example, 34 in Sydney.

---

However, there are probably more than 1000 repairers in Sydney that could meet Allianz' minimum objective criteria for network membership in terms of skills, equipment and quality of repair work. (sub. 20, p. iv)

PSR arrangements may stipulate procedures for quoting on work, restrictions on the method of repair (including the use of particular types of parts), rules covering pricing, quality and timeliness, and agreements as to terms and timing of payment. There may also be requirements to provide lifetime guarantees and procedures for dispute resolution.

### **Box 3.1 Insurers' criteria for choosing PSRs**

IAG said that its criteria for selecting PSRs are the weighted average repair cost, volume of variations to quotes, capability, quality, relationship with the repairer, 'strategic need' or location, and the potential for the repairer's business to expand (sub. 8, p. 14).

AAMI said it does not have specific criteria for entry to PSR scheme. Its network repairers are expected to maintain general industry standards and abide by all existing regulations, but it does not prescribe how repairers should equip or set up their businesses (sub. 19, p. 70).

Suncorp chooses repairers on the basis of need in an area, their size and location, investment in technology, equipment and training, customer access, adherence to OH&S and environmental laws, overall presentation of staff and perhaps its previous relationship with Suncorp (sub. 12, p. 4).

Allianz's repairers are selected on the basis of repair quality, a capacity to undertake all types of repair, a focus on customer service, a desire to work closely with Allianz and the need for convenient locations. Also important is:

A track record of a cooperative and trusting relationship between Allianz and the repairer ...  
In light of the dishonest practices some repairers engage in, a repairer's track record plays a significant role in the decision to offer membership. (sub. 20, p. 7)

Smaller insurers use similar criteria to the major insurers (eg Lumley, Western QBE and RACQ).

## **Performance monitoring and termination of PSR status**

PSR arrangements typically include performance requirements that a repairer must meet, together with procedures for counselling and perhaps withdrawing PSR status from repairers that are assessed as no longer meeting the insurer's needs. Arrangements used by insurers to monitor the performance of their PSRs differ, as do the nature and intensity of those processes (box 3.2).

---

### Box 3.2      **Monitoring of PSR performance**

IAG reviews repairer performance in relation to the cost of repair, the quality of the repair work and the standard of service provided to the customer (sub. 8, p. 16). It monitors each repairer's average repair costs, which it uses to rank them as 'gold' or 'silver' repairers (the better performers)<sup>1</sup> or 'bronze' or 'red' (those performing at less than the expected standard).<sup>2</sup> IAG gives priority to gold and silver repairers in the referral of work. Repairers may be 'promoted' or 'demoted' on the basis of annual performance assessments, and especially IAG's requirement for a reduction in annual average repair costs (adjusted for severity<sup>3</sup> and excluding 'outliers' or unusual jobs). Unless a bronze or red-rated repairer improves its performance, IAG may terminate its agreement with that repairer. During the 12 months to October 2004, IAG made 518 changes in the status of its PSRs, including taking on 314 new Associates and about 50 new Preferred repairers and promoting over 70 Associates. Thirty Preferred repairers were demoted and 39 Associates were removed from IAG's network of about 2100 repairers (sub. 8, p. 18). Associate PSRs may be terminated within 30 days, while Preferred repairers are given a longer period of notice.

AAMI said it sets down clear performance targets for repairers and provides them with feedback on their performance. 'Repairers are not told how to run their business; AAMI simply measures their outputs ... The performance management system is clearly specified, simple and transparent — the same as that for AAMI staff' (sub. 19, p. 70). AAMI says its process for counselling poor performers includes a succession of steps that can take several months to complete. Since 2001, AAMI has terminated 24 PSRs — equivalent to about 5 per cent of its PSR network (sub. 19, p. 35).

Suncorp says it monitors the cost of repairs and parts. When individual repairers are consistently above the overall average cost base of all repairers, it 'works with them to determine the reasons' (sub. 12, p. 7). Suncorp said that grounds for termination would be evidence of unconscionable conduct, such as fraud, or continued underperformance. Suncorp has experienced very little in the way of (forced) exits.

Allianz assessors work with repairers on each job to determine the best way to repair a vehicle and the appropriate parts to use and times to allow. 'This ongoing assessment of the needed repairs and interaction with the repairer reduces the incentives for 'short-cutting' or other dishonest practices used by some repairers' (sub. 20, p. 10). Allianz also may terminate a PSR agreement with at least 30 days notice.

---

<sup>1</sup> PSRs with whom NRMA has a very strong business relationship and who have a proven record of providing competitive quotes may be given 'self-assessing' status, which allows, for example, for fast-track acceptance of quotes.

<sup>2</sup> IAG applies this ranking to those repairers that have signed performance agreements, that is, all Preferred repairers and about 30 per cent of Associate repairers (sub. 8, p. 16).

<sup>3</sup> Each claim is allocated a severity score based on panel damage (light or heavy) and structural damage (light or heavy) in different parts of the vehicle.

---

PSRs may be subject to fixed-term contracts (service level agreements). For example, IAG's contracts with its preferred repairers are of 12-months duration, while Suncorp variously has its repairers on one, three or five-year contracts (trans., pp. 48–9). In both cases, renewal of PSR status can be subject to a performance review at the end of these periods.

A particular concern for some repairers was the strictness and inflexibility of the criteria used by some insurers, particularly IAG, with its performance management based heavily on repairers' average repair costs and its pressure on repairers to continue to reduce those costs (box 3.2). IAG operates a multi-layered hierarchy of preferred repairers, who may be promoted, demoted or removed from the network following performance reviews. Each year, IAG reviews each repairer's performance for the previous 12 months and decides whether to offer a new agreement for the following 12 months (sub. 8, p. 15). IAG also conducts three and six-monthly performance reviews.

Another concern was what repairers saw as an unduly short period within which PSR status — and therefore the main source of a repairer's workload and income — could be withdrawn. All insurers may terminate agreements with repairers for such matters as consistent underperformance or fraudulent practices, with as little as 30 days notice or less. However, it is more common to provide longer periods of review and counselling on performance before terminating a repairer's PSR status. In some cases, a repairer's workload may be reduced progressively, rather than ended abruptly.

## **3.2 Advantages and disadvantages for insurers, repairers and consumers**

### **Insurers**

Insurers see PSR networks as effective commercial arrangements by which they can build and maintain close commercial relationships with particular repairers, keep control over repair costs and processes, ensure that timely repairs are undertaken to a good quality standard and otherwise meet their obligations to their customers (that is, consumers) in a cost effective manner (box 3.3).

The PSR arrangements have similarities with arrangements in place between producers and suppliers in many other industries. However, some argue that PSRs are a response to developments within the repair and general insurance industries (chapter 2). For example, AAMI sees the repair sector as oversupplied, and said:

---

... no insurer can provide sufficient volume to every repairer in Australia to make up for this oversupply problem and ensure long-term viability. AAMI has therefore concentrated its efforts with a group of repairers willing to work with us. ... Targeting the better suppliers is reasonable strategy for any business. (sub. 19, p. 69)

Allianz said that insurers have to deal with a repair industry that has ‘long-standing and ongoing problems with fraudulent and dishonest practices’ and that PSR networks allow insurers more control over repairs, thereby minimising the opportunities for such practices (sub. 20, p. 5).

**Box 3.3 Advantages of PSRs: views of insurers**

IAG said that the aim of its PSR scheme:

... was to improve IAG’s ability to performance manage smash repairers by dealing predominantly with a smaller number of repairers. IAG also hoped to realise cost savings, introduce greater efficiencies in its dealings with smash repairers and improve the average quality of repairs by referring, to the extent it was able, work to PSRs. (sub. 8, p. 19)

AAMI said:

... insurers are endeavouring to build closer relationships with repairers for the benefit of consumers, insurers and repairers (eg greater supply certainty, streamlined operating practices). Cost savings and improved repair quality outcomes can be obtained by directing significant volumes of work into a supplier network. (sub. 19, pp. 67–8)

Suncorp said it:

... benefits through reduced average repair costs and administrative expenses. A higher volume of work through fewer repairers ... significantly reduces the administrative expenses that would otherwise be associated with supervising a broader group of repairers. Reduced average repair costs for work undertaken by preferred repairers come about as repairers improve productivity and drive fixed cost benefits. (sub. 12, p. 3)

Allianz said it:

... supports the use by insurers of repair networks as a way of achieving competitive repair costs, maximising the quality of repair work and improving the level of service provided by repairers to policyholders. (sub. 20, p. 5)

Concentration of repair work on a smaller number of repairers can generate cost savings for insurers through economies of scale. It permits more effective use of assessors when reviewing quotes and repair work and reduces administration costs for insurers.

Within PSR arrangements, insurers are also more readily able to monitor the performance of repairers, including their quality performance, and to compare their average repair costs and repair procedures over time and with other repairers. Greater knowledge of repairers’ businesses may also mean that insurers can more confidently recommend them to customers.

---

IAG said that its PSR arrangements give it more scope to invest in its repair ‘supply chains’ by, for example, increasing the scope for online bidding by suppliers, equipping assessors to access information on the price of parts while in the field, paying all invoices online and the development of preferred supplier networks in peripheral areas such as glazing (Paint and Panel, July/August 2004, p. 36).

Insurers consider that, through PSRs, they can meet the needs of consumers and protect or enhance their own competitiveness in the highly competitive motor vehicle insurance market. More specifically, as smash repair costs account for about 70 to 80 per cent of insurance premium revenue (eg Suncorp, sub. 12, p. 8), such practices allow them to keep insurance premiums lower than otherwise.

There seem to be few, if any, disadvantages for insurers.

## **Preferred repairers**

It can be in the commercial interest of repairers to have a close relationship with one or more insurers (or with vehicle manufacturers that nominate preferred repairers — chapter 2). This allows the repairer the opportunity to obtain more work, subject to meeting the requirements of the insurer. One PSR said:

The advantages of preferred status to the repairer are a reliable source of work, the disadvantage is you don’t have the freedom to run your business as you may choose. (conf. sub. C.38, p. 1)

Another said:

The advantages are that most of your work is coming from the insurance companies, which is guaranteed work. The disadvantages are that we are stuck with their rates, terms and conditions and the requirement to give these customers preference over others. (conf. sub. C.43, p. 2)

Allianz noted that, while it does not guarantee its network repairers a minimum amount of work:

... there is a legitimate expectation that membership of a network will deliver an increased volume of work to repairers. (sub. 20, p. iv)

Similarly, AAMI said that it has focused over the past few years on:

... maintaining the value of the relationship with [its preferred] repairers by providing access to a reasonable volume of repair work. (sub. 19, p. 69)

PSRs also benefit from quicker responses to repair quotes and faster payment on completion. Indeed, some are permitted to begin repair work even before the quote is finalised.

---

PSRs can benefit from operational efficiencies because of the economies of scale that arise from the greater and more assured throughput of work. They may have increased capacity to use their premises, equipment and staff more effectively. They may also be able to invest in better plant and equipment, plan ahead with more surety, obtain better prices on parts and so on. Better performing PSRs may find they have a greater capacity to attract and keep good staff (an issue of concern to many who perceive a decline in the number and quality of qualified tradespeople and apprentices). AAMI said that many repairers are operating very profitable businesses and there is considerable evidence that they are investing in equipment, property and apprentices (sub. DR50, p. 2 and trans., pp. 170–1).

Nevertheless, preferred repairers also face continuing pressures from insurers to keep costs down and price competitively. The MTA of Western Australia claimed that:

... the real essence of a [PSR] agreement is preparedness by a repairer to agree to a regular source of work in return for very low fees and charges. (sub. 16, p. 7)

These pressures can be intense. Indeed, many repairers and their representatives were critical of the return they were able to achieve on insurance work (chapter 4). Where this return is too low, the repairer's capacity to invest in new equipment and to attract and pay for good staff may be reduced. One said:

Having lower margins made the shops have to increase their turnover and the only way to do that was to work your staff harder. With such a work load the first thing to suffer were apprentices, nobody had time to train them, and hence the predicament we have now. (conf. sub. C.33, p. 1)

Indeed, some repairers say that margins are so slim that they cannot now risk having apprentices work on insurance repairs as even a small error may completely erode the profit margin allowed for the whole job. In addition, several repairers said that the salaries they are now able to offer lead many apprentices to leave the industry.

The MTAA noted that it is not uncommon for a PSR to have 30 to 90 per cent of its work tied to one insurer:

This effectively means that the loss of the agreement ... will lead to the end of the business. Repairers are therefore extremely vulnerable to the pressures paced on them by insurers. (sub. 15, p. 24)

In addition, one repairer claimed that an outcome of the PSR schemes was that the repairer's client base is 'unilaterally expropriated' by the insurer, even though:

... many repairers have long-standing business relationships with many clients ... [These PSR arrangements] not only deprive the customers [of] their legitimate right to choose, but also deprive repairers of the ability to benefit from their business relationships. (conf. sub. C.82, p. 2)

---

PSRs also need to comply with insurers' requirements covering such matters as timeliness and repair quality (including rules for the use of OEM or recycled parts) and may have limited scope to meet customers' preferences that are not consistent with that. While insurers' practices vary widely, the performance of PSRs may be measured against benchmarks and their books may be subject to examination (some say intrusively). They may be required to commit to reduce average repair costs each year and they may be encouraged to provide amenities like customer lounges etc. Failure to work to some insurers' standards for low cost repairs will put repairers at risk of losing their preferred status.

These considerations highlight the considerable commercial difficulties faced by many repairers: it is very difficult to operate a viable repair business without being a PSR but, equally, the highly competitive nature of business within the preferred networks could make it very difficult for some repairers with PSR status to maintain profitability. Nevertheless, as AAMI observed, many repairers continue to successfully operate profitable businesses (chapter 2).

## **Non-preferred repairers**

Non-preferred repairers face the prospect of a smaller pool of smash repair work. They can compete for significant non-insurance repair work from, for example, fleet operators, dealers and vehicle owners directly, and may undertake insurance repair work where vehicle owners nominate them and the insurers' policies permit this or where the policyholder is 'cashed out' by the insurer. In the case of Suncorp, for example, where about 40 per cent of its repair work is carried out by its non-preferred repairers (see above):

Repairers who fall outside of the Suncorp preferred repairer scheme are not subject to any different treatment than preferred repairers. Suncorp standards for non-preferred repairers, including the methodology for determining payment rates, are the same as those applied to its preferred repairers. ... In more than 95% of cases the repair is authorised after normal negotiation between the repairer and the assessor. (sub. 12, p. 6)

However, under the policies of some other insurers, non-preferred repairers are, in practice, often excluded from insurance work:

[We have] worked hard to build up a very good and supportive client base, only to see those clients steered away from [us] due to insurance company control. (conf. sub. C.44, p. 1)

This loss of a loyal customer base is a major cause of concern among non-preferred repairers. A common complaint was that consumers will bring vehicles to them as their repairer of choice, only to find that insurers will endeavour to steer the

---

consumer to one of its preferred repairers, with the consequence that the repair job is lost (chapter 5). Evidence from repairers also shows that non-preferred repairers may face delays in having repair work assessed by some insurance companies, slower payment for the insurance work they are able to capture and difficulty in getting variations agreed to. They also expressed concern about the possible perception among vehicle owners that they provide lower quality work (chapter 5).

## Consumers

PSR arrangements benefit consumers by helping to keep insurance premiums lower than they otherwise might be and reducing or eliminating the costs and risks consumers would otherwise face in obtaining competitive quotes and organising their own repairs. Several insurers said that most consumers prefer to have such matters handled for them by the insurer. AAMI said:

... many customers value the fact they do not have to be involved in the repair process and deal with repairers. ... AAMI takes away the stress and hassles associated with a car accident and repair process. The effectiveness of this proposition is constantly reflected qualitatively in research and customer feedback and quantitatively in AAMI's exceptional growth and profitability. (sub. 19, p. 31)

Allianz said that it is a 'myth' that all policyholders want choice of repairer:

Most people have an accident on average every 7 years or so. Most people also generally prefer a repairer conveniently located to their home or place of work. ... very few people use the services of a repairer often enough to develop strong preferences about repairers. (sub. 20, p. 9)

The Victorian Government reported from its industry consultations that:

... the insurance industry claims that up to 80 per cent of vehicle owners prefer to let the insurer choose a repairer for them. (sub. 26, p. 10)

Similarly, the Australian Consumers' Association said that:

Most consumers are happy, in fact prefer, to let their insurer manage the repair. (sub. 31, p. 2)

Indeed, some participants concluded that PSR schemes have considerable benefits for consumers. The Victorian Government commissioned a report from Professor Joshua Gans, which concluded that 'preferred repairer schemes ultimately raise consumer value':

... because insurance companies are generally in a better position than consumers to evaluate smash repair services. Consumer warranties on repair services offered by insurance companies also correct a market failure that would otherwise exist.

---

Moreover, the introduction of these schemes does not appear to have unduly restricted consumer choice. (sub. 26, p. 9)

The ACCC also concluded that:

... the establishment of the preferred repairer schemes has introduced a number of significant benefits for consumers. (ACCC 2003b, p. 9)

However, some vehicle owners who have a preference for a particular smash repairer may find they either cannot use that repairer or are dissuaded from so doing by the operation of their insurer's PSR arrangements. Several consumers advised the Commission about the disputes they had had with insurers when they sought to use a repairer of their own choosing (perhaps one they had used before and in which they had confidence). One consumer attended a public hearing to discuss the problems that had arisen when she was placed in this position (trans., pp. 67–70). The Commission also heard of cases in which disputes between consumers and their insurers have led to claims being 'cashed out' by the insurer.

Consumer issues are discussed further in chapter 5.

### **3.3 Transparency and contract issues**

Although many repairers accept the right of insurers to operate PSR arrangements, some argue that there is insufficient transparency in relation to establishing whether there are PSR vacancies, the procedures for becoming part of a PSR network, the reasons for selection or non-selection, the means by which an insurer monitors the performance of a PSR and the processes and criteria by which it can remove a PSR from its preferred network and the timeframe for removal. There are also concerns about PSR contracts and tenure under those contracts.

#### **Transparency of obtaining or conferring PSR status**

Although achieving or failing to achieve membership of a PSR network will have a significant effect on a repairer's business, several repairers and their representatives argued that it is difficult to obtain information about the criteria and processes used by insurers to confer PSR status. The MTA of Western Australia said that:

... there is no available evidence of any set of, or publicised criteria for, PSR status, with the result that repairers who are not signatories to an agreement are often subject to misrepresentative insinuations by insurance companies when insisting that repair work be done by only those who have signed agreements. (sub. 16, p. 7)

The Victorian Government also advised that:

---

Repairers claim that the criteria and processes to join a preferred repairer scheme lack transparency. (sub. 26, p. 11)

The MTA of Queensland said that, while repairers may understand the broad criteria used by insurers to confer PSR status, the processes they use lack transparency and accountability:

Repairers express concerns that some insurers have not clearly specified what requirements must be met to attain the preferred repairer status, nor are there any clear processes to assess applicants against any such criteria. (sub. 7, p. 10)

However, it observed that some insurers do consult with repairers and their representatives on the criteria they use and the processes they employ. The MTA of Queensland said that RACQ Insurance is restructuring its ‘Selected Repairer’ scheme:

... and has consulted [MTA of Queensland] and asked for input in relation to the selection criteria to be employed. This is in direct contrast to IAG and the selection of its ‘Preferred Smash Repairers’ in Queensland. Despite having numerous members request assistance in their dealings with IAG, IAG refused to acknowledge the Association as an industry representative and would not respond to correspondence sent to it by the Association. (sub. 7, p. 10)

The broad criteria used by insurers to choose PSRs are listed earlier (box 3.1), and are summarised in each insurer’s public submission (and, in some cases, on their websites). But applying these criteria will necessarily involve some subjectivity. In some cases, there might be limited choice anyway — for example, if an insurer needs a repairer in a small town.

Irrespective of the criteria used, many insurer networks are effectively ‘closed’ to non-accredited smash repairers, either completely or in particular geographic areas. But repairers are free to seek accreditation with an insurer where its PSR network (or part of it) is relatively open to applications from eligible repairers or as vacancies become available in networks with more restricted membership. That said, the numbers of repairers within the PSR networks do not appear to change significantly each year.

A common suggestion from repairers was that the criteria used to confer PSR status should be explicitly based on the technical capacity and expertise of the repairer and that any repairer who could meet those criteria should be entitled to become a PSR. However, this would undermine the rationale of PSR arrangements, to which the major insurers are now firmly committed.

Nevertheless, to the extent that the criteria and procedures for entry into those networks are not sufficiently clear to non-preferred repairers, greater transparency

---

about these matters could reduce the real or perceived mistrust about these schemes. It seems likely that insurers could readily provide more information on such matters, at little cost.

Moreover, in cases where the insurer issues a public call for applicants, transparency would be enhanced by giving reasons for non-selection to each unsuccessful applicant. (Suncorp said it had planned such an approach in a recent intended recruitment of a PSR (trans., p. 48).) This could help remove some unnecessary confusion and uncertainty about the fairness of the process.

In their responses to the Commission's draft report, some insurers agreed that there could be benefits from greater transparency in some areas. For example, IAG said it has been working for some time to enhance the transparency of its preferred supplier arrangements, including with smash repairers. IAG said it will investigate:

- publishing on its website the non-commercial-in-confidence criteria it uses to judge whether a repairer meets the minimum benchmarks needed to be considered a preferred supplier; and
- maintaining registers of non-preferred repairers that wish to be appointed preferred repairers and of ASRs that wish to be appointed PSRs, to be used as opportunities arise. These registers will be used as part of IAG's processes to appoint new ASRs and PSRs. IAG said it will investigate advertising twice yearly for expressions of interest, while also allowing repairers to register their interest at any time (sub. DR32, p. 5).

AAMI also said that it may decide to advertise each year for expressions of interest and to use this process to maintain a record of repairers seeking PSR status (trans., p. 178). Similarly, Allianz said that if it needed to significantly increase its PSR network, a more open process 'may be something that is considered for more transparency' (trans., p. 38).

An insurer is entitled to decide with whom it will do business and, given the relatively large number of smash repairers, it is not feasible for all repairers to become preferred repairers. But some current arrangements cause considerable uncertainty, mistrust and disharmony to repairers and related inefficiencies in their relationship with insurers. The Commission's views on these matters are contained in the remainder of this section. The procedures and appropriate degree of transparency in appointing repairers to preferred status are also matters that could beneficially be taken up in individual and industry-wide codes of conduct (chapter 6).

---

### *Scope for nationally agreed criteria to qualify for 'preferred repairer' status*

Repairer representatives, such as the VACC and the MTA of Queensland, supported the introduction of nationally agreed criteria for PSR status, largely in the context of support for the setting of minimum standards for smash repairers. (The arguments concerning minimum repairer standards are discussed in the next section.) Of the insurers that made submissions, only IAG supported national PSR criteria.

Taking the argument for nationally agreed PSR criteria by itself, it is possible that it could generate a very small administrative cost saving, as repairers would need to understand only one set of criteria rather than several. But this would provide a very small benefit.

Moreover, there would be important disadvantages. To some extent, insurers 'compete' among themselves in relation to their dealings with their PSRs and in the provisions they include in their codes of conduct with repairers (chapter 6). Specifying national criteria for PSR status would limit the ability of particular insurers to devise arrangements which best meet their specific needs and those of their own customers. For example, RACQ argued that the relationship between insurers and repairers in Queensland differs considerably from other markets in Australia and that national regulation:

... could adversely affect already strong, long term, transparent and successful relationships. (sub. 6, p. 7)

It added:

Nationally agreed criteria could have the potential to stifle the industry's ability to approach their business operations in a dynamic and innovative manner. ... each insurer has their own specific business requirements, and profile of the geographic region in which they supply insurance related products. (sub. 6, p. 12)

The existence of a set of nationally agreed criteria might also raise expectations among repairers that, were they to meet those criteria, they would thereby obtain PSR status. As Allianz argued, giving repairers such unrealistic expectations could do them a disservice:

This is because far more repairers would meet such criteria than insurers require to handle the volume of repairs that can be delivered into insurer networks. (sub. 20, p. 7)

Abstracting from arguments about minimum repairer standards, there was little interest in national PSR criteria *per se* and the only scope for such a regime to be implemented would be if it were imposed on the industry. But, under a compulsory regime, some insurers might discontinue PSR arrangements altogether. Instead, they might rely on an open system of competitive quotes from any insurer, set up an alternative set of relationships with repairers outside of current PSR arrangements

---

or perhaps open some repair shops of their own (as some insurers have already done to a limited extent). Such consequences could parallel what some insurers see as a consequence of imposing compulsory choice (chapter 5). Compared to current arrangements, insurers, consumers and, indeed, many current repairers might well be disadvantaged, for no net gain.

FINDING 3.1

*Industry-wide nationally agreed PSR criteria should not be established as their disadvantages are likely to outweigh any advantages.*

### **Some PSR contract issues**

An area of concern to repairers was the nature of the contracts between PSRs and insurers and the ease with which insurers could terminate a repairer's PSR status.

A commonly-held view put to the Commission by many was that PSRs are 'forced' to sign contracts that are 'totally one sided':

... there is no negotiation allowed on any part of it. You have only one choice, sign it or don't become one of the preferred repairers. The rights given to the insurance company in these contracts have to be read to be believed. (conf. sub. C.89, p. 3)

Another repairer said:

There is one simple fact in the smash repair industry, the repairer has no rights. (conf. sub. C.61, p. 6)

Several other participants made similar points, noting that, in many cases, repairers are given only very short periods of time in which to review, seek advice on and sign these contracts (sub. 15, p. 21, sub. 27, p. 10). (The question of 'cooling off' periods for PSR contracts is discussed in chapter 4.) However, others said this was not the key issue, as the repairer had no scope to change the contract in any case. The MTA of New South Wales said:

... these contracts are issued on a 'take it or leave it' basis with no room for negotiation. (sub. 27, p. 9)

Several repairer representatives said that independent legal advice had counselled repairers against signing such contracts. The MTA of Western Australia said that legal advice it had obtained on certain PSR agreements had described them as 'unconscionable' (sub. 16, p. 7). The Victorian Government said that some long-term preferred repairers with which it had consulted:

... argued that their preferred status was removed because they did not wish to sign a new contract on legal advice. (sub. 26, p. 11)

---

Other issues raised by repairers include unrestricted rights of insurers to unilaterally vary contract provisions, audits leading to request for repayment of amounts which had been approved by assessors and loss of PSR status due to minor variations in claims made. The MTA of Western Australia argued that:

Too many small businesses in the smash repair sector of industry are subjected to ‘non-negotiable’ contracts, unilateral variation of contracts, and the termination of contracts without just cause or proper notice. (sub. 16, p. 7)

It argued also that section 51AC of the *Trade Practices Act 1974* should be amended to proscribe such practices (sub. 16, p. 7). However, the Government’s proposed amendments to that Act, presented to Parliament in February 2005, do not address this matter.

The MTA of South Australia said that the nature of each insurer’s PSR arrangements has a marked influence on the level of acceptance within the smash repair sector and that:

... the perception that all PSR schemes entail similar traits is totally unrealistic, there are extreme cases of intimidation and dominance from the largest insurer (IAG) that controls 50–60% of the motor vehicle insurance market in SA [and] constant ‘shifting of goal posts’ to benefit insurers and restrict the operations of repairers ... (sub. DR52, p. 2)

A common claim was that insurers engage in:

... bullying, coercion, restrictive trade practices, lawyers and one sided contracts (sign or we will black ban you). (conf. sub. C.26, p. 1)

Several participants also noted that their agreements with particular insurers prohibited them from disclosing contract terms and conditions to other parties or making statements or representations damaging to insurers. Indeed, some repairers cited this as a reason for not being able to make a public submission to the Commission’s inquiry.

### *Monitoring and removal of preferred repairers*

Depending on the insurer, preferred repairers can be subject to close monitoring of their performance. This can include inspection of their workshops and financial records, and requirements to meet performance benchmarks such as consistent success in winning contracts, high levels of timeliness in completing repairs and annual reductions in average repair costs. IAG commented that:

Performance management involves identifying repairers who are providing good quality repairs in a timely manner and at a competitive cost, and seeking to reward them by referring more work to them. Performance management also involves identifying under performing or badly performing repairers, raising with them the areas

---

in which they are under performing and, where an area of concern is not addressed to IAG's satisfaction, seeking to direct less work to them. (sub. 8, p. 12)

Insurers argue that their requirements are clearly spelt out in contracts or corporate codes of conduct, as are their processes for monitoring the performance of repairers and perhaps terminating their PSR status. Some details are provided in box 3.2. For example, AAMI said that removal of preferred status from a repairer may reflect:

... a reduction in work volumes, failure on the part of the repairer to meet the performance criteria or a fundamental breach (eg fraud). (sub. 19, p. 69)

Several submissions referred to the uncertainty that arises from the threat of loss of PSR status, noting that without that status the repairer is unlikely to stay viable. It is possible for a repairer to fail to meet an insurer's requirements and consequently lose its preferred status, and thus a significant proportion of its business, perhaps after having invested heavily in new equipment and business systems to meet the requirements of its PSR relationship. The MTA of Queensland provided an example of a Brisbane-based repairer that had its 'approved repairer' status revoked, and noted that:

The outcome of this incident has resulted in this repairer losing a large proportion of his work and has necessitated the dismissal of staff in order to remain economically viable. (sub. 7, p. 10)

Overall, the relationship between insurer and preferred repairer can be viewed as fairly one-sided and the status of PSRs is perceived by many to be quite insecure — although the extent of this concern appears to vary according to the insurer involved. As noted earlier, the numbers of PSRs that change status are low. Nevertheless, all PSRs face loss of status if they fail to meet performance targets and other requirements. And while agreements with some insurers are otherwise indefinite in duration, others operate for set periods and renewal is dependent upon the outcome of a performance review. If a PSR's performance remains acceptable to the insurer, it can expect to be renewed. In most cases, insurers appear to give reasonable notice of termination of a PSR agreement. However, where this is not the case, there would be merit in repairers being given more notice.

#### FINDING 3.2

*Selection or non-selection for PSR status and removal or modification of such status can have a significant effect on a repairer's business. Insurers should provide greater transparency in such aspects as PSR selection criteria and notification of opportunity to apply for PSR status to reduce uncertainty and improve relationships between the two industries.*

---

### *Tenure on resale*

A further source of considerable insecurity for repairers is that PSR status will not usually transfer with the business upon change of ownership. Suncorp has occasionally allowed PSR status to transfer to a new owner and AAMI currently provides a three-month trial period for the incoming owner of an existing preferred repairer on a probationary basis:

Should the repairer meet the performance targets during that trial period he or she will automatically be signed up as a recommended repairer. This guarantee is provided in writing to the incoming repairer prior to the commencement of the trial period. (sub. DR50, p. 12)

But more commonly, PSR status is automatically lost when the business changes hands. For example, one repairer said that it had been advised by NRMA Insurance that it could not sell its preferred repairer status along with the business, as this status would be revoked. But:

As most of our customers are with NRMA this would devalue our long-standing business investment. (conf. sub. C.51, p. 3)

A consequence is that a business may be built up to serve the PSR market, but a change of ownership, perhaps even through death or retirement of the owner, may preclude the repair shop under its new owner from continuing to serve that market. A significant loss of goodwill could result. On the other hand, it could reasonably be argued that the departure of an owner-operator from a small repairer may well change the skill set and business capability of that repairer, perhaps justifying its treatment by an insurer as a completely different entity.

In view of these competing considerations, the Commission's draft report suggested that a short trial period, during which PSR status could remain with the business under the new owner, might help balance the respective concerns of insurers and repairers. This suggestion was widely supported by repairers and their representatives. The MTAA said:

The automatic loss of PSR status is neither appropriate in contractual fairness terms nor beneficial to the sector as a whole, as it results in lower levels of business confidence, which in turn leads to lower levels of business investment and reinvestment in plant, machinery and skills. (sub. DR41, p. 2)

Several insurers also said they could support this suggestion, provided some conditions were met and any decision was made subject to their business needs at the time. For example, IAG said that it will investigate:

... trial bridging arrangements for smash repairer businesses that, at the time of their sale or transfer of ownership, are contracted as IAG PSRs or ASRs and have an agreed performance plan in place with IAG. [However] IAG would make it clear that PSR

---

status is not guaranteed in any circumstance and that criteria, including enterprise performance and IAG's business needs apply to all PSRs at all times. (sub. DR32, p. 7)

Suncorp also agreed in principle with the Commission's suggestion, subject to the need for safeguards along the lines raised by IAG (sub. DR37, p. 2).

Several repairer groups argued that a trial period should be specified, and suggested a minimum of six months from the time the new owner takes full control of the business (MTAA, sub. DR41, p. 2; VACC, sub. DR40, pp. 3–4; MTA of SA, sub. DR52, p. 2).

In response, AAMI, which already provides a three-month trial period for the incoming owner of an existing preferred repairer, said that:

While we would not be prepared to put customers at risk by allowing a poorly performing repairer more than 3 months to demonstrate an ability to meet the required performance targets, we would consider a longer trial period if performance was close to target levels. (sub. DR50, p. 12)

The Commission sees some value in a trial period sufficient to allow the new owner time to settle into the business and become familiar with the insurer's processes, assessment and quoting arrangements and so forth. While the appropriate length of time that should be allowed is a matter for judgment, a trial period of six months should enhance repairer certainty without undue risk to the insurer.

#### FINDING 3.3

*Provided probity and prudential requirements are met, insurers should not automatically terminate PSR status on sale or transfer of a repair business. Insurers should allow a trial period of six months with the new owner.*

## 3.4 Quality, safety and consumer protection

Many repairers expressed concern that, because of pressure from insurers for repairs to be undertaken at minimal cost, some repairers 'cut corners' by using inferior parts or undertaking inadequate repair work, to the point where quality and safety can be compromised. One repairer said:

... excess competition must lead to price cutting and it is almost certain quality would be compromised as repairers are tempted to cut corners. (conf. sub. C.98, p. 3)

Another said that, to remain competitive:

... repairers are often encouraged by insurance companies to repair rather than replace and use after market parts which are of a sub-standard quality. This may compromise

---

the safety & quality of repairs and the vehicle may lose re-sale value. (conf. sub. C.46, p. 2)

Repairers under cost pressure may reduce the extent and quality of repair work by, for example, seeking to use cheaper parts or lower quality paint or by undertaking incomplete work. This may result in a lesser quality result than the repairer (and vehicle owner) may otherwise prefer. Several repairers told the Commission that they had been forced to do this, reluctantly, because of the considerable price pressure placed on them by insurers. Such work was perceived by them as being of a lower quality than they thought appropriate to the job.

Understandably, reputable repairers are concerned about the pressures they feel they are under to cut costs.

Insurers argued that PSR arrangements do not give rise to systemic repair quality and safety concerns. According to insurers, they seek to ensure the quality of repairs by choosing only quality repairers to become part of their PSR networks, by the rules they set down about repair standards and by the close monitoring of repair performance that their procedures allow. AAMI said that quality repairs are important for insurers' reputation, growth and profitability. It noted that allegations that repair quality had been jeopardised by insurers have been made ever since insurers began to take an interest in the management of repair cost and quality. However:

In today's highly competitive insurance market it is simply not in any insurance company's best interest to encourage, allow or support repairers to produce poor quality or unsafe repairs. (sub. 19, p. 49)

It also said:

... [it is not] in our interests to go about doing silly things and having silly processes that adversely impact quality because as a big insurer there are many people there looking for us to fall and to catch us out and to expose us. (trans., p. 180)

There can be differing conceptions of what a quality job means. A common view is that the appropriate benchmark is the pre-accident condition of the vehicle, although the Victorian Government noted that:

... it is very often difficult for an expert to objectively assess what this means for practical purposes, let alone a typical consumer. (sub. 26, p. 19)

One complication is that, irrespective of the skill of the repairer, a badly damaged but repairable vehicle may be unavoidably of lesser quality post-accident (a contention that is supported by the lower vehicle resale prices that prevail when there is evidence of an accident).

---

An important issue that commonly arises is whether OEM, recycled, second-hand or non-genuine new parts should be used.

## Parts

The policy on the use of parts varies between insurers (box 3.4). A common (but not universal) approach among insurers is to specify that new OEM parts be used if the vehicle is still under the manufacturer's warranty. Some insurers require genuine new OEM parts only for essential mechanical parts, while permitting areas such as doors and light trims to be repaired with recycled or non-original parts. Others consider recycled OEM or non-genuine parts appropriate to use if the age and condition of the vehicle warrant their use. The Insurance Council of Australia noted that:

... the position is complicated by the recognition of parallel parts and non-badged OEM parts that are claimed to be OEM quality but do not carry the vehicle manufacturers brand. (sub. 17, p. 7)

The differences in price between parts from different sources can be considerable. For example, IAG said that, while a front door for a 1999 Lexus LS400 costs \$9749 new, an 'as new' recycled door of the same colour can be bought for \$900 (Paint and Panel, July/August 2004 p. 36). As parts may represent up to 50 or 60 per cent of the cost of repairs, such decisions are crucial to the total cost of the repair undertaken.

Repairer representatives generally accepted that it is not always necessary to use original parts for vehicles outside of manufacturers' warranty periods. Indeed, the VACC expected the automotive parts recycling industry to grow, adding that:

The quality, value and usefulness of recycled parts should not be underestimated, particularly when costs may not warrant new parts. (Paint and Panel, May/June 2004, p. 20)

The Auto Parts Recyclers Association of Australia said that 'quality, cleaned, tested, genuine recycled parts, with supplier guarantees' play an important role in the smash repair industry and help to lower costs (sub. 2, p. 2). As the age of many motor vehicles is ten years or more, there are many still on the road for which new parts may not be available. In such circumstances, there may be little choice but to use recycled and perhaps after-market parts, depending on what is available. This would seem to be reasonable, provided the consumer is not misled when taking out the insurance contract.

---

### Box 3.4 Insurers' rules about use of parts in repairs

IAG said that its repairers:

... must use parts that will conform to all relevant national standards determined under the *Motor Vehicle Standards Act 1989* ... Australian Design Rules and Australian Standards. In addition, the parts used must not compromise the safety or the repair integrity of the vehicle, nor lower the resale value of the vehicle, must fit and operate correctly and not void or affect the warranty provided by the manufacturer of the vehicle. IAG contracts also require repairers to ensure that all repairs meet acceptable standards of quality. (sub. 8, p. 36)

AAMI requires the use of new OEM parts where the vehicle is still under the manufacturer's warranty. For repairs outside the new car warranty period:

... new, recycled and/or reconditioned OEM parts will be used except for the replacement of windscreens and window glass for which Australian manufactured, Australian Design Rule-compliant parts may be used ... the use of non-genuine parts, whether new or recycled, is not acceptable.

It added:

AAMI does not use non-genuine parts and clearly sets out our parts policy in writing. We also take responsibility for informing customers of the repair method, and types of parts used in repairs. We expect our repairers to tell us if they are concerned that the repairs authorised will not allow the accident damage to be properly repaired. (sub. 19, p. 35)

Suncorp requires the use of manufacturers' approved parts for vehicles under warranty:

This, and other information about Suncorp's standards for repairs, is disclosed to our customers in the Motor Vehicle Insurance Product Disclosure Statement. (sub. 12, p. 8)

Allianz does not use non-genuine parts in its repairs but supports the use of good quality recycled parts where appropriate. Recycled parts represent about 10 per cent of all parts used by Allianz. Allianz has a policy of using only new mechanical and safety-related parts (eg steering, brakes) and of using new parts on new vehicles (ie less than one or two years old). However, once a vehicle is more than a few years old, similarly-aged recycled parts can be used and deliver a significant saving on repair costs, which is reflected in lower premiums (sub. 20, p. 10).

However, it is the use of new 'non-genuine' or 'parallel' or 'after market' parts that particularly concerns some in the repair industry. The VACC said that there are two issues: the appropriateness of the parts themselves and the extent to which consumers are made aware of what parts have been used in the repair of their vehicles. Some participants see them as perfectly adequate for some uses, depending on usual technical and commercial considerations such as the quality of the design and manufacturing process and the extent to which the parts are fit for purpose. IAG claimed that the vast majority of repairs are relatively minor and involve only cosmetic parts — and that only about 3 per cent of collision claims involve the replacement of a significant structural component (sub. 8, p. 34).

---

In part, the argument can be interpreted as being about the mark-up earned by repairers from different categories of parts. However, repairers argued that the use of non-genuine parts in even cosmetic repairs can lead to, for example, misfitting panels and the need for additional alterations to the vehicle to allow the part to be attached. This additional work comes at a cost to the repairer and can increase the time taken for the repair. The MTA of Queensland said:

Insurers instruct repairers to use parallel parts to save on costs; however repairers argue that non-genuine parts suffer from inferior quality in relation to finish and 'fit'. Many hours can be spent refurbishing the part to ensure quality standards are met, meaning that the mark-up allowance dictated by insurers disappears. Repairers also contest that imported, non-genuine parts do not comply with Australian Design Rules and in the worst cases may affect the safety and /or structural integrity of a vehicle. (sub. 7, p. 12)

Most submissions that commented on this issue focused on the additional cost to the repairer of making the aftermarket part fit properly. However, some commented on quality. One repairer said:

... the long term reliability of some of the aftermarket parts we use and exchange items has been found ... to be significantly less than those of a genuine nature. (conf. sub. C.61, p. 2)

But many repairers argued more broadly that insurers:

... are not allowing sufficient time to do high quality work and always insisting on the use of ... exchange parts and ... junkyard parts on good cars. (conf. sub. C.37, p. 1)

The VACC argued that the decision about the appropriate method of repair should be one for the smash repairer, noting that:

It is not always just about the cost of the parts, as in some instances a recycled part may be cheaper but the labour involved in using that part could be higher. (sub. 14, p. 19)

In its view, non-genuine new parts should not be used unless they meet Australian Standards, are fit for purpose and are backed by a warranty consistent with the warranty requirements offered by the repairer or the insurer. Similarly, the Federal Chamber of Automotive Industries said that 'repairers need to use genuine parts so as to ensure that the vehicle continues to comply with [Australian Design Rules]' (sub. 29, p. 2). Australian Design Rules for automotive parts are discussed briefly in box 3.5.

The VACC also argued that the type of parts used in the repair should be disclosed to the consumer. The MTA of Queensland also made this point about second hand parts or panels, noting that insurers fail:

... to disclose to consumers when second hand parts have been used in the repair of a vehicle. Some repairers will inform consumers when insurers direct the use of second

---

hand parts, which will often result in the repairer receiving a less than favourable response from the consumer. (sub. 7, p. 13)

In practice, while insurers allow or encourage the use of recycled OEM parts, several avoid the use of any non-genuine parts in repairs. It may be, however, that such policies are based more on marketing considerations than on judgments about the quality or appropriateness of those parts. Indeed, the Victorian Government noted that most insurers direct that only OEM parts be used:

... despite the fact that existing studies are inconclusive as to whether aftermarket parts constitute a safety issue. For a summary of these studies, see the United States General Accounting Office (GAO) report [GAO 2001]. (sub. 26, p. 19)

**Box 3.5 Australian design rules and motor vehicle parts**

Australian Design Rules (ADRs) are established under the *Motor Vehicle Standards Act 1989* to set minimum standards for the safety of vehicles. They cover such matters as seat belt performance and strength, seat belt anchorage strength and the performance in crashes of collapsible steering columns and burst-proof door locks. In addition, 'whole vehicle' crash standards were introduced from the mid-1990s to test a vehicle's crash performance, as measured by instrumented dummies, in full frontal, offset frontal and side impact crashes.

The only practical way of checking that these requirements are met is for manufacturers and importers to test prototypes (in many cases, to destruction) and for the final design to then be 'type approved'.

All new motor vehicles manufactured for the Australian market must be built to the requirements of the ADRs. However, not all motor vehicle components are subject to ADRs. Replacement parts, whether used in regular vehicle servicing or smash repairs, are not required to be approved in the manner applicable to new vehicle components, but those that are subject to ADR compliance requirements are expected to comply with the relevant ADRs.

Once sold into the Australian market, vehicles (and parts) are required to continue to comply with ADR requirements under state and territory registration procedures. However, since there is no scheme of regulatory supervision comparable to that applicable to the manufacture of new vehicles, suppliers are expected to make their own arrangements to confirm compliance and must be prepared to produce evidence of compliance if called upon to do so. Additionally, consumers could report component failures and competitors could report perceived non-compliant parts to the regulatory authorities. Where safety concerns are identified, manufacturers or suppliers may be required to institute a recall and rectification of defective parts under the Trade Practices Act. There is also scope for possible action to prohibit the sale of unsafe parts under the Trade Practices Act.

---

However, the Victorian Government also said an important consideration was:

... the limited technical expertise of customers and the extent to which they can make informed choices regarding the cost/quality trade off. (sub. 26, p. 19)

The Australian Consumers' Association (ACA) took the view that:

... with regard to safety, ACA believes that it is acceptable to use non-OEM parts and second hand parts in appropriate circumstances. (sub. DR31, p. 1)

However, it argued that, because of the variability of both the parts and the repairs to which they are applied:

... it is essential to have a national repair scheme that manages the quality of all second hand and non-OEM parts used for smash repair. ... An opportunity exists at this time to engage with the National Parts Code Inc seeking to establish a Code of Practice for the recycling of automotive parts. While this initiative is focussed on motor vehicle theft reduction it could be expanded into a program for the management of the quality of parts also. (sub. DR31, p. 1)

The Commission is not in a position to make judgments about the technical and safety aspects of parts or repair methods. But it agrees with the Insurance Council of Australia that:

... it is essential for insurers to disclose ... to consumers at the point of sale ... the insurer's policy on the use of original equipment manufacturers (OEM), alternative parts and recycled parts in the repair process. (sub. 17, p. 10)

Insurers' policies on these matters are briefly summarised in box 3.4, and consumers can, when choosing an insurance policy, seek more information from insurers. Indeed, this may be a matter where greater transparency would better inform such choices.

#### FINDING 3.4

*When consumers take out a new policy, or make a claim, insurers should clearly and accurately explain the provisions about the use of replacement parts required to repair accident damage.*

## Repair methodology

Pressures to minimise costs may be manifested in other ways. Some repairers alleged, for example, that there have been instances of vehicles being repaired that should have been written off, because repair was cheaper for the insurance company or that insurers have permitted or required repairs to structural parts such as chassis rails in a manner inconsistent with manufacturers' specifications, again to lower costs. For example, the MTA of Queensland said:

---

The Association has received information to indicate that insurance assessors will direct repairers to perform repairs that contradict manufacturers' specifications and suggested repair techniques. ... Assessors direct repairers to take 'short cuts' in order to save money on repair costs all the while fully aware that it is the repairer that carries the guarantee on the quality of repairs. (sub. 7, p. 12)

However, even obtaining manufacturers' specifications may in some cases be difficult for repairers not affiliated with the vehicle's dealerships. The MTA of the ACT said in many cases:

... it has become very difficult and at times impossible for repairers to access information regarding the correct method and procedures required to repair a specific vehicle. (sub. 25, p. 11)

Similarly, the Victorian Government said that disagreement over the appropriate method of repair:

... is compounded by the original manufacturer's apparent reluctance to provide access to intellectual property. Whilst manufacturers are entitled to some element of protection, it is an obvious concern if this lack of information leads to a deterioration of quality in repairs. (sub. 26, p. 19)

It has also been said that there are cases where components that the repairer considers should be replaced are instead repaired on the direction of assessors:

We are forced to repair badly damaged components that truly should be replaced and the insurance companies pull the wool over peoples' eyes by stating that it is better to always repair than to replace. ... Excessive repairs rather than replacement parts usually result in diminished value of the vehicle. (conf. sub. C.11, p. 2)

Another repairer, while unhappy at being given directions about work practices and the use of exchange or aftermarket parts, said that:

We are never told to do anything that would directly endanger or compromise safety. (conf. sub. C.61, p. 2)

However, it added that, when these cost-cutting efforts by insurers cause problems, repairers usually end up having to rectify the problem at their own cost.

Such differences in opinion, and indeed the actual forms of behaviour referred to, may be found in any industry. In the context of the insurance and smash repair industries, with around a million or more repairs undertaken each year, it is difficult to judge the significance of particular instances of poor work, even where it can be shown unequivocally that the repair work had been substandard or the parts used had been unsuitable. There can be large variations in the quality of work carried out in any industry, and even where there are processes for assuring the overall integrity or quality of the work undertaken, such arrangements cannot be failsafe. In such a

---

large industry, a relatively small number of proven failures should not be interpreted as an indicator of systemic failure.

AAMI provided evidence from state offices of fair trading and the NSW Motor Vehicle Repair Industry Authority that the level of complaints about smash repair quality is very low. However, such sources do not measure complaints made to the repairer or to the insurer that are handled informally or in-house. AAMI also suggested that regular vehicle servicing, registration procedures and random vehicle inspections are other means by which any repair problems may be brought to the attention of the vehicle owner (sub. 19, p. 49).

The overwhelming incentive facing the insurer — and therefore their preferred repairers — is to complete the repair work to the customers' satisfaction. While some repairers may cut corners, reputable repairers have strong incentives to provide quality repairs. AAMI observed that:

... the vast majority of repairers go to great lengths to produce quality repairs and are not likely to jeopardise their reputation and the flow of insurance company work by knowingly engaging in practices that give rise to poor repairs. (sub. 19, p. 49)

Equally, insurance companies have strong incentives to enforce adequate repair standards and do not want to see their customers' vehicles returned to them in a poorly repaired or unsafe condition.

While the lifetime warranty provides surety for the vehicle owner, insurers vary as to how they define 'lifetime' and whether they provide the warranty or require their PSRs to provide it (chapter 4). The Insurance Council of Australia said that:

... it is essential for insurers to disclose ... to consumers at the point of sale ... whether it is the insurer or the repairer who provides the guarantee for the repairs. (sub. 17, p. 10)

The Commission agrees. But it also considers that there is a case to require the insurer to take responsibility for any quality and safety consequences of repairs that arise, including any warranty costs, where there has been a difference of opinion between the repairer and the insurer, and the insurer has directed the repair method and/or the quality of parts to be used.

While there was support for this proposition from repairers and their representatives, the VACC expressed concern that it may not be enforceable unless the insurer formally takes responsibility in writing when it directs the repairer to alter the method of repair:

This concern arises from a legal perspective based on the question of who is regarded as the expert in repairing the vehicle and thus who would a Court of Law find liable should problems arise ... in all probability a Court would find the crash repairer liable,

---

as being the person who actually conducted work on the vehicle due to the fact the repairer owes a Duty of Care, unless the crash repairer is in some way indemnified. (sub. DR40, p. 4)

The VACC acknowledged that getting a written sign-off ‘may not get the repairer out of trouble, but at least it’s a start’ (trans., p. 140). The Commission sees merit in formally recording any such directions by insurers or their representatives in this way.

FINDING 3.5

*Insurers that specify the repair method and/or the parts to be used in any particular repair job should do so in writing and accept responsibility for the quality and safety consequences of those requirements. The repairer should continue to accept responsibility for the quality of its workmanship in response to the insurer’s specifications.*

### **Does the quality of repair raise safety issues?**

Several participants (including vehicle owners) reported instances of poor repair workmanship, in some cases to the point at which the vehicles were dangerous to drive. Indeed, some participants argued that repair quality in the industry has deteriorated such that crash testing of a selection of repaired vehicles is now needed to demonstrate the safety or otherwise of repaired vehicles. They attributed this deterioration to insurer practices. However, insurers argued that their practices are designed to ensure quality repairs. RACQ said:

... quality repairs are by definition safe repairs. Safety is paramount as part of the quality assurance mechanism ... (sub. 6, p. 10)

Accident statistics shed little light on the role of vehicle repairs in accidents. Consequently, the remaining evidence of vehicles that are poorly or unsafely repaired is all anecdotal. That does not mean it should be dismissed or that it does not provide information relevant to this inquiry. But, as noted above, poor or even unsafe workmanship may be found in any industry, particularly in large industries such as insurance and smash repairs. Individual cases of poor or unsafe repairs are insufficient to demonstrate an industry-wide or systemic problem.

To the contrary, the incentives on both repairers and insurers to avoid unsafe repairs are very strong. Legal liabilities aside, the commercial impact of convincing evidence that an insurer had ‘allowed’ vehicles it had insured to be repaired to an unsafe standard, or simply in a poor quality way, would be damaging and could be substantial for the insurer concerned, whether in terms of adverse publicity, court

---

costs, loss of current and potential customers or all three. In a competitive motor vehicle insurance market, where it is relatively easy to change insurers, the negative effect could be felt very quickly.

FINDING 3.6

*There is no clear evidence of a systemic safety issue related to PSR arrangements. While quality is harder to assess, insurers and repairers face strong incentives to ensure that repair quality and safety appropriately meet the needs of their customers.*

## **National accreditation of repairers and assessors?**

### *Repairers*

Some have suggested that quality and safety concerns could in part be addressed by a national registration or accreditation scheme for repairers, aimed at ensuring they are, for example, appropriately equipped and employ adequately qualified tradespeople. The VACC said that an industry licensing regime would benefit the industry:

... by ensuring a level playing field and more genuine competition, and there would be a guarantee that all businesses are meeting their OH&S and EPA compliance obligations. The main beneficiary of licensing would be the consumer as there would be a higher confidence index that a properly equipped crash repair shop would be less likely to engage in inappropriate repairs, through the lack of the required equipment. (sub. 14, p. 24)

It added that:

... virtually all stakeholders including insurers, industry associations and crash repairers, are of a similar view. (sub. DR40, p. 4)

Some participants see licensing as a way for accredited repairers to indicate to the public that they have the skills and capacity to undertake particular repairs. One repairer said:

There has been legislation passed in Western Australia to register all repair businesses and tradespeople — this is a step in the right direction. It should ensure that some of the illegal and unsafe practices of repairers and the on-going trading of back yard repairers are abolished but it needs government to start action and implementing this legislation. (conf. sub. C.29, p. 2)

Another repairer said:

---

If the repairers had to be licensed, half would go as they wouldn't be up to standard. (conf. sub. C.42, p. 3)

The MTA of the ACT also supported licensing of smash repair businesses and sought consultation about the criteria to be used:

A disturbing anomaly within the industry continues to allow at times unqualified, under equipped, poorly trained people to open smash repair shops. Existing arrangements give no comfort or encouragement to proprietors of businesses that have invested many hundreds of thousands of dollars on training and equipment so that they can perform at a professional and economical level. (sub. 25, p. 12)

The VACC said that the issue is confusing for consumers because of the various licensing and accreditation regimes that now operate:

We have one State with a licensing regime [currently], various insurance accredited repair networks, association accreditations, quality assurance programs, and an ever-increasing vehicle manufacturer preferred repairer network. Add to that the fact that all vehicles sold in Australia comply with the same national safety standards, it seems logical that some type of national accreditation scheme be put in place to assist consumers in more readily identifying the capability of the crash repairer repairing their vehicle. (sub. 14, p. 22)

IAG sees its PSR arrangements as ensuring that its quality, probity and other standards are met, thereby 'accrediting' the repairers with which it deals. (Those repairers may then advertise that they have this status.) But even though PSR arrangements already provide a significant accreditation role, IAG supported a national accreditation scheme for repairers across the industry, arguing that it should contain minimum standards for probity, occupational health and safety, safety of repairs and business viability (sub. DR32, p. 10; trans., p. 7). It said:

IAG ... continues to have concerns about probity in the smash repair industry and the probity of some enterprises and individuals linked to criminal elements. ... IAG supports national probity standards for smash repairers to, among other reasons, protect consumers, better address the illegal trade in stolen autobody parts and stymie the demand for stolen motor vehicles in smash repairs (sub. DR 51, p. 2).

IAG also said that:

In New South Wales, licensing is required ... [Repairers must have] specified equipment in the workshop and employing only certificated tradespeople to carry out repairs. Repairers who carry out repairs generally below an acceptable standard or who are guilty of dishonesty, can be disciplined and their repairer's licence suspended or revoked. (sub. 8, p. 24)

The Victorian Government recommended that consideration be given to national accreditation, noting that:

---

Through its consultations, the Victorian Government believes that both sides of the industry are generally supportive of an accreditation system for repairers. (sub. 26, p. 15)

It added that matters that would need to be addressed include whether an individual or the premises should receive accreditation, the standards and criteria to be used, the role of the current standard for the maintenance and repair industry (AS/NZS ISO), who should oversee the accreditation system and who should bear its costs. The Victorian Government recommended a rigorous benefit–cost analysis of any proposed scheme (sub. 26, pp. 15–16).

Allianz said that, as a general principle, it did not support regulation where it was unnecessary and, in its experience, ‘99 per cent of repairers are good’:

... these sort of things are put in place to try and exclude that other 1 per cent. ... there are no panacea to these problems and ... we can read every day in the newspaper about certified or licensed professionals, lawyers or accountants or whatever, being involved in illegal activities. (trans., p. 39)

AAMI also did not favour licensing, noting that it has:

... a lot of attendant issues, risks and costs in terms of how ... [it] might be executed. (trans., p. 190)

In response to these viewpoints, the Commission notes that quality assurance and probity checking are already undertaken under some current industry-based arrangements. State-based industry associations, for example, commonly accredit their members. In Victoria, the VACC has an accreditation program that covers trade-qualified staff, workshop tools and equipment, safety equipment and the general presentation of premises (sub. 14, p. 23). Motor clubs such as South Australia’s RAA also operate approved repairer schemes (sub. DR47, p. 3). As noted earlier, some repairers are also accredited by particular vehicle manufacturers, and the PSR arrangements play an important role in providing insurers and therefore consumers with greater surety as to the skills, probity and bona fides of the repairer. In all of these examples, the accredited repairer may advertise itself as such.

Moreover, there are other ways in which individual repairers may differentiate themselves on the basis of the services they are able to provide and the quality of their repair work. In addition to the above, they may, for example, advertise their workshop’s capability, specialise in particular vehicles or types of repair, obtain and advertise accreditation under the relevant AS/NZS ISO quality standard and/or rely on and develop their reputation and track record in a particular locality.

---

A case for accreditation by government fiat would need to demonstrate broader community-wide benefits that are not available in any other way. If it could be shown, for example, that national accreditation could enhance average repair quality, it might alleviate some of the current costs and risks which must be borne by the insurers in monitoring quality and safety. However, it is far from clear that this could be achieved or that government-sponsored accreditation is the best way to achieve this. Indeed, while state and territory governments have (together or separately) often expressed concerns about this industry, few have chosen to regulate its members through licensing or accreditation. Further, AAMI observed that:

... it would be ludicrous to think that in those states where repairers are licensed compared to those who aren't, that there is a different level of activity that is inappropriate. (trans., p. 39)

Any benefits from a mandatory scheme would need to be weighed against the costs, including the costs to taxpayers and industry of setting up and operating such a scheme. Some of the costs and risks now incurred by (mainly) insurers to ensure probity and quality would, in effect, be shifted onto taxpayers.

In practice, statutory accreditation often focuses on inputs, rather than outputs. For example, it can effectively mandate a particular way of operating (measured by reference to the layout of premises, the ownership of equipment or the formal qualifications of staff) and may thereby keep out repairers that can operate quite successfully in ways that are not permitted under a licensing scheme. For such reasons, accreditation schemes can quickly become, or can be used as, a barrier to entry to repairers, benefiting those on the inside and disadvantaging outsiders.

This issue was looked at by the Industry Commission in its 1995 inquiry, which saw some possible advantages in such an approach, but counselled against setting input controls such as minimum standards for equipment or tradespersons' qualifications — that is, the kinds of licensing requirements suggested during this inquiry (IC 1995, p. 115).

In conclusion, while the Commission has not examined this matter in detail during this current inquiry, the available evidence does not indicate that the benefits from national accreditation of repairers would exceed the costs.

### Assessors

Most motor vehicle insurance assessors are employed by the insurers to review and modify quotes, and determine or agree to the method of repair, in accordance with

---

the insurers' policies. Insurers report that most are qualified tradespeople with a background in smash repairs.

Assessors operate in different ways, but their underlying task is the same: to ensure the repair is undertaken properly, to control costs and to undertake random audits of work done. AAMI's assessors inspect many vehicles at the assessment centres before they are returned to customers. IAG said its assessors conduct random spot checks to audit repair work and ensure vehicle safety and quality. In 2003, there were 838 rectifications required following quality concerns which were identified by IAG's assessors (sub. 8, p. 36). Western QBE assessors also conduct quality control checks on large repair jobs and on all vehicles repaired by way of its 'Valet Services'. Suncorp said its assessors:

... act primarily as relationship managers. Their role is to ensure repairs are carried out safely and in a cost effective manner. ... assessors have regard to the needs of repairers, our business partners, customers and shareholders. (sub. 12, p. 7)

In contrast, a common view expressed by some repairers and their representatives was that assessors are perceived more as 'loss adjusters' or 'cost minimisers' (for example, MTA of Queensland, sub. 7, p. 13). The VACC went further and argued that:

The singular role of insurance companies' assessors is to cut the cost of repair, without giving any genuine regard to the appropriateness of repair and the consumer. In particular, assessors for IAG and AAMI, by virtue of their respective insurers market control, have a mandate to delay assessment, revise repair methods, arbitrarily alter the winning quote to further cut costs and then withhold authorisation until such time as the repairer accepts the altered quote. (sub. 14, pp. 20–1)

For many repairers, the assessor is on the 'front line' of their dealings with insurers. It is here that many tensions surface. There might be disagreement as to the appropriate method of repair, but many disputes concern price (chapter 4). The Victorian Government said it spoke to a variety of assessors during its industry consultations and:

Many provided anecdotes about an industry where the preferred method of repair was determined principally by cost factors, followed by safety and quality. (sub. 26, p. 17)

Some participants said that assessors will identify the lowest quote and then attempt to further reduce it, a practice perhaps made easier by the industry's reliance on 'funny time, funny money' (chapter 4).

Several participants alleged that one insurer paid bonuses to assessors who are able to reduce repairers' quotes and that this was influencing the assessors' approach to quotes. However, the insurer said that it 'does not pay bonuses to its assessors based

---

on their ability to drive the costs of repairs down’ and provided details of its bonus arrangements (box 3.6).

Several repairer representatives as well as many repairers called for assessors to be licensed or otherwise accredited. The MTA of Queensland said:

There is definite need for a national scheme within which automotive insurance assessors are accredited as being ‘qualified’ to evaluate the level of damage to an accident damaged vehicle. Current inconsistencies in relation to direction of repair techniques and what constitutes a ‘written off’ vehicle lend further credibility to such a scheme. (sub. 7, p. 13)

Others have argued that their problems would be reduced if assessors were independent of insurers. For example, the VACC wanted independent licensed assessors operating in tandem with a mechanism for independently resolving disputes over quotes (sub. 14, p. 21).

#### **Box 3.6 Bonus arrangements for IAG’s assessors**

IAG provided the following information on its arrangements for paying bonuses to assessors.

IAG does not pay bonuses to its assessors based on their ability to drive the costs of repairs down. For all of its 11,000 employees, IAG has in place a structured, performance-based incentive scheme, which is explicitly related to the performance of IAG as a company, the performance of the business unit to which the employee belongs (for example, Personal Insurance) and the individual performance of the employee.

An assessor can obtain up to 10% of their salary as a bonus in line with company-wide practice.

The 10% staff allocation is split into 2% for corporate and 8% for individual outcomes, the 2004-2005 weightings have been formulated as follows:

- 2% Corporate — Performance of the IAG PI insurance business
- 4% Cost Effectiveness — 2% Cost & 2% Other e.g. adhered to processes
- 2% Customer Service — 1% Overall (as measured by external survey) and 1% Other e.g. timeliness (measured by internal systems)
- 1% People
- 1% Sustainability e.g. reduction in use of renewable resources

Source: Sub. 8, p. 32.

Several repairers and their representatives questioned the qualifications of assessors, arguing that in many cases they had insufficient industry background. One repairer said that of the assessors he had dealt with, one had previously been a chef, another a pastry cook, another a carpenter and another an auto electrician (trans., p. 225). However, insurers said their assessors were appropriately qualified and trained for

---

their role, irrespective of their earlier backgrounds. For example, AAMI said it only employs qualified assessors who are ex-tradespersons (sub. 19, p. 27). Similarly, Allianz said all of its assessors have trade qualifications in motor vehicle repair (sub. DR38, p. 4). Suncorp said that its assessors go through a rigorous selection process, are trained constantly and kept up-to-date with new methods of repair (trans., p. 46). IAG also said that it has strict criteria for the selection and ongoing training of assessors, many staff are certified at level three and four in the certificate for insurance financial services and that its assessors attend a technical training centre which also undertakes global research for car manufacturers (trans., p. 24). Insurers also said their assessors learn on-the-job as they engage with vehicle repairers and investigate damaged vehicles on a daily basis, and are kept up-to-date with developments in vehicle design and technology and repair techniques.

The relationship between repairers and assessors is clearly commercial, sometimes harshly so. In an industry where repairers may be preparing several quotes per day all year, disputes are inevitable. And there will be times when assessors act inappropriately. However, there is a legitimate role for assessors to play — insurers need to check quotes to avoid paying more than they need to for repairs and to ensure that the quality of the repair is appropriate. Indeed, because consumers want to be reassured that their damaged vehicles are being looked after properly, insurers have a strong incentive to employ qualified and competent assessors and to ensure that they are sufficiently trained and their skills kept up-to-date. Underpinning this is a clear line of accountability: assessors are employed by, and responsible to, insurers. While many who argue for licensing in fact seek a major role for independent assessors, the role of assessors as representatives of insurers is, and will remain, a central part of current motor vehicle insurance arrangements. Any regulatory requirement for independent assessors would involve an additional layer of decision-making and cost, on top of what is otherwise a normal commercial responsibility. It also needs to take account of the very real risk, which is probably quite high in this industry, of eventual ‘capture’ of independent assessors by either insurers and/or repairers, thereby compromising their independence.

The Commission is not convinced that there would be clear benefits to the broader community from a requirement to license assessors. Moreover, the effects of any government-endorsed licensing regime would depend upon the fine print: it would require debate as to the form that licensing should take — what qualifications and experience would be seen as sufficient, what the processes for licensing should be and so on. In any case, the clear difference in the market power of insurers and repairers means that licensing of assessors may have little or no real impact on the prices paid for repairs nor the returns to repairers.

---

One area of disputation, discussed earlier, was that assessors may direct the method of repair to be used, but have no responsibility for the end result: it is the repairer that currently remains liable for any subsequent problems. However, the Commission's recommendation that insurers take responsibility in writing for quality and safety where the assessor has directed the repair method and/or the quality of parts to be used may ease tensions a little between repairers and assessors and further reduces any case for assessor licensing.

FINDING 3.7

*Although the Commission has not examined national licensing issues in detail — such as the possible national licensing of repairers and assessors — it is far from clear that such requirements would bring net advantages to the community.*

---

## 4 Financial and commercial relationships

### Key points

- The adequacy of the hourly rates currently paid by insurers for repair work clearly forms an ongoing point of contention in the relationship between repairers and insurers. Taken in isolation, these rates fail to reflect the current costs of repairers. However, hourly rates need to be examined in conjunction with the broader system of quotation and payment of which they represent only part.
- The ‘funny time, funny money’ system of quotation should be abandoned.
  - If times and hourly rates are used in any of the cost elements specified in quotes, they should be realistic times and realistic rates.
  - Significant materials, including paints, parts and consumables, should be separately costed and not included in hourly rates.
  - If a PSR agreement specifies an hourly rate, that should be a realistic rate agreed to by the repairer.
- Taking the broader consumer and community interest into account, little further prescriptive action is warranted to address cost pressures on repairers. In particular, there is no justification for regulating for an industry standard hourly rate or for imposing industry standard hours.
- Where insurers and repairers adopt, by agreement, standard times and/or standard rates, this should not preclude further genuine price negotiation on individual jobs. Any such standard times and rates should be realistic. They should be adjusted over time to reflect such things as changes in vehicle design, developments in repair technology, reasonable productivity and efficiency improvements, as well as unit cost changes.
- The ACCC should continue to monitor insurer quoting practices against the appropriate provisions of the TPA. As well, any industry-wide code should require insurers to agree that, where competitive quotes are sought, the quotation process should be fair and transparent.
- An insurer should only require a repairer to guarantee the work it actually performs, and then only for an agreed reasonable time. Further, a repairer should not be required to guarantee parts or paint for a period longer than the manufacturers’ own warranties.
- The provision of a short ‘cooling off’ period within any industry-wide code may provide an acceptable and low cost safeguard mechanism for repairers entering into PSR contracts.
- There is little evidence to suggest that the current arrangements in relation to timeframes for quoting are creating problems in the commercial interactions between repairers and insurers.
- Provision in an industry-wide code for minimum payment terms of a reasonable period (such as 30 days or less) where work is not in dispute would improve certainty for repairers in relation to invoice payment.

---

As noted in chapter 2, insurers and smash repairers have strong financial and commercial links. The present chapter reports on the nature of these links, with specific consideration given to the rates paid by insurance companies for repair work, the time allowed by insurers for contract negotiations, and the timeliness of payment by insurers.

First, however, the chapter provides a brief overview of the current systems employed by insurance companies to obtain quotes from repairers, and examines recent trends in repairer prices, costs and productivity.

## **4.1 Current price-setting arrangements**

Repairers obtain a majority of work on the basis of ‘quotes’ lodged with insurers. The quotation process therefore plays a central part in the relationship between repairers and insurers.

### **Quotation systems**

Different approaches are used by insurers towards establishing prices for repair work (box 4.1).

One major point of difference concerns how many repairers are required to quote on repair jobs. Some insurers, such as Allianz and Suncorp, generally permit a single repairer chosen by the consumer to perform the repair work, subject to the involvement of an assessor. AAMI requires two competing quotes before authorising the commencement of work. Depending on the circumstances (see box 4.1), IAG may require more than one quote.

Further, while some insurers, such as Allianz and Suncorp, allow relatively unrestricted scope in relation to who quotes for repair, others, such as IAG and AAMI, tend to restrict the ability of non-preferred repairers to obtain work.

Another point of difference concerns the latitude accorded to repairers in defining the scope of works. In the AAMI system, for example, the two repairers quoting are able to independently define the scope of works in competing with each other — AAMI then chooses the most ‘complete and competitive’ quote. In contrast, in some parts of the IAG system, prior to obtaining competitive quotes, assessors define the scope of work required.

---

#### **Box 4.1      Quoting systems employed by the major insurers**

##### **Allianz:**

- allows consumers relatively unrestricted choice in relation to repairers;
- has 157 preferred repairers;
- does not use a competitive quoting system. The repairer chosen by the consumer is generally permitted to perform the repair work, subject to the involvement of an Allianz assessor;
- utilises a 'traditional' field model for the assessment of quotes. The damaged vehicle is considered by assessor and repairer together on-site at the chosen repairer's workshop. Open quotes on repair jobs are also permitted within the Allianz 'managed repair' process — total repair costs are not finalised until the vehicle is completely inspected by both parties; and
- does not currently use an electronic quoting system.

##### **AAMI:**

- permits non-preferred repairers to quote on repairs should a consumer request this, but reserves final choice in relation to which repairer performs the work;
- has 556 preferred repairers and 16 customer service centres across Australia for driveable smash repairs;
- uses a two-quote method for obtaining repair quotes — quotes are provided on a competitive basis from two repairers, one of which may be nominated by the consumer and one of which must be a preferred repairer. In this system, repairers nominate the scope of work required, so each may in effect be quoting for different work;
- assessors choose the most 'complete and competitive' quote. AAMI permits quoting variations, or 'supplementaries', whereby the chosen repairer may be permitted to expand the scope of work after repairs have commenced and attain higher payments; and
- does not use an electronic quoting system.

##### **Suncorp:**

- allows consumers relatively unrestricted choice of repairer. Where customers nominate a specific repairer that is not part of the preferred network, Suncorp will invite the repairer to submit a quotation which is reviewed by a company assessor. It stated that 95 per cent of such quotes are authorised after normal negotiation between the repairer and assessor (sub. 12, p. 6);
- has around 600 preferred repairers. Where preferred repairers are used, Suncorp approaches them to quote on vehicles that are lodged at assessment centres;

(continued next page)

---

#### Box 4.1 (continued)

- requires only a single assessed quote before work commences. Open quotes are permitted, whereby the total costs are permitted to change over the course of the repair process; and
- preferred repairers submit quotes via an electronic network. A system of electronic quotes and photographic repair portfolios is also employed by preferred repairers in regional areas.

#### IAG:

- permits choice of repairer, subject to significant restrictions (chapter 5);
- has 838 preferred and 1300 associate smash repairers across Australia;
- currently employs a number of different quotation systems which can vary across regions and according to whether a repairer is a PSR, ASR or non-preferred repairer:
  - in metropolitan NSW and Victoria, IAG currently use a digital system to assess ASR repairs and authorise quotes. Under this system, smash repairers can take digital images and describe the damage to a car, and send it to IAG assessors through a system called On-line Repair Management (ORM). A scope of work is developed by the assessor based on the images and the description of the damage and the repairer's quote;
  - in Queensland, SA and WA, IAG employs a Web-based Repair Management Model (WRM) that allows PSRs and ASRs to provide tenders for smash repair work via the Internet. In this system, IAG assessors photograph and assess the vehicle and prepare a scope of work prior to placing details on the Internet, and multiple repairers then may tender to perform the defined work. IAG has indicated that it intends to roll the WRM system out across Australia during 2005; and
  - uses the more traditional field model of assessment for non-preferred repairers.

Sources: Allianz (sub. 20), AAMI (sub. 19), Suncorp (sub. 12) and IAG (sub. 8, trans., p. 15).

## Basis of quotation

Although AAMI focuses on the total quoted price, many other insurers require quotations to be built up from a number of separate cost elements: removing and replacing parts (R&R); parts supply; repair of parts and components (also known as 'repair and align') and paint. The percentages of each of these elements in any total repair job will vary. One industry estimate of the average cost components for a 'typical' repair shop is outlined in table 4.1. Other estimates point to, for example, a higher percentage of parts in total repair costs.

---

**Table 4.1      Approximate average cost share of work elements**

<i>Process</i>	<i>Approximate average share %</i>
Repairs	24
Remove & replace	12
Refinish/paint	23
Parts	40
Other	1

*Source:* Stuart (2004, p. 8).

Many quotes are built up on the basis of hours (that is, units of time) and hourly rates (that is, unit prices).

- Manuals are available which provide standard times required for repairers to perform some of the aforementioned segments in a repair job, in particular the R&R and paint segments.
- These are formulated by a diverse range of groups domestically and internationally, including automotive paint companies and the Thatcham Institute of the United Kingdom.
- In Australia, standard times developed by the MTA of New South Wales and by IAG are often used in quoting. Generally, insurance assessors will compare a repairer's quoted time estimates to one of these manuals.
- Separate hourly rates are generally applied to the R&R, repair and painting segments. These rates may cover both the cost of labour and the consumables and materials required to complete a given repair segment. Paint rates, for example, include both the labour costs and the cost of paint materials.

## **4.2 The rates of payment set in the quoting process**

The rates paid by insurance companies for smash repair work form a key part of the current inquiry's terms of reference. There are several aspects to this issue:

- the current level of the hourly rates and movements in these rates over time;
- problems with the system of time schedules and hourly rates employed by some insurers, in particular caused by the practice known as 'funny time, funny money';
- the extent to which there is currently a cost squeeze on repairers as a group (relative to productivity gains);
- the fairness of competitive quoting processes; and
- the specific cost implications for repairers of repair guarantees.

---

## Hourly rates

Many individual repairers and repairer groups claimed that the hourly rates currently paid by insurers for repair work were uneconomically low. They claimed that rates have not been adjusted over time and have therefore failed to keep pace with the large number of cost changes faced by repairers (see below).

### *Participants' comments*

The use of hourly rates has been common within parts of the industry for many years. For example, AAMI stated that the introduction of the times and rate manual approach, and the debate over the adequacy of this system, dates back to the 1960s (sub. 19, p. xii).

A range of evidence was presented on the hourly rates currently paid across different regions of Australia. The VACC, for example, suggested that hourly rates in Victoria for 'repair' work presently range from \$20 to \$25 per hour. As an example, the MTAA presented a list of hourly rates for repair labour and paint labour currently paid by IAG and specified within the contracts it signs with PSRs (table 4.2).

**Table 4.2 Hourly rates paid by IAG**

State	Labour rates/hour	Paint rates/hour	
		Solid	Three-layer
Victoria	\$23.00	\$40.90	\$47.50
New South Wales	\$30.90	\$49.30	\$68.80
South Australia	\$28.00	\$47.00	\$54.50 (pearl)
Western Australia	\$26.20	\$40.60	\$51.35 (pearl)

Source: MTAA (sub. 15, p. 28).

Detailed evidence on current hourly rates was also provided by the MTA of Western Australia (sub. 16, app. 10.2). Allianz also presented a schedule of the hourly rates it currently pays (sub. 20, att. A).

Several submissions provided information about the adjustment of rates over time. The VACC, for example, suggested that hourly rates had remained unchanged since 1991, contrasting this with an increase in the CPI over a similar period of over 30 per cent (also see below).

Many repairers also commented on the increasing difficulties in covering current costs due to this lack of adjustment. For example, one repairer stated:

---

It is very difficult to stay afloat due to the current hourly rates that are imposed by the insurance companies. What other industry has managed to survive without an increase in 10-15 years in today's economic climate? (conf. sub. C.16, p. 1)

The MTA of Western Australia stated:

Prevailing hourly labour rates paid by insurers in the Perth Metropolitan area are about \$26, whilst the estimated cost of operating a viable smash repair business is in the range of \$60-\$90 an hour ... there has been no substantial change for over 10 years to the very low hourly rates paid to smash repairers. (sub. 16, p. 3)

Several participants suggested that hourly rates should be regulated by government and indexed annually to the CPI.

A number of submissions focused on the potential anticompetitive implications of the relatively uniform hourly rates across insurance companies. One repairer commented that:

The hourly rate ... has been dictated to repairers by insurance companies. Collusion within the larger companies has kept it to an all-time low and smaller companies have followed on. (conf. sub. C.24, p. 3)

However, the ACCC has previously considered such claims. It has noted that, while evidence of an agreement on prices could raise restrictive trade practices concerns under the TPA, very little substantive evidence had been provided to it on this matter (ACCC 2003a, p. 14).

In responding to claims about low hourly rates, several insurers emphasised that the hourly rate forms only one part of the basis of payment, and suggested that a broader focus was needed in considering current rates of payment for repair. For example, Allianz stated:

... it is not possible to assess the adequacy of current payments to repairers by looking at hourly rates in isolation. Relatively low hourly rates are offset by relatively generous times allowed to undertake repairs. (sub. 20, p. 12)

RAA Insurance stated that it:

... has always only required one quote. This is then discussed in collaboration with the repairer to an agreed estimate/figure. All adjustments are made in discussion with the repairer. We regard our hourly rate as a base and the final repair account is generally accepted without problems. (sub. DR47, p. 4)

In relation to the hourly rates specified within its PSR agreements, IAG stated that these:

... are realistic, taking into account a range of factors. Furthermore, this rate is only one part of a complex estimate process that repairers use to justify their 'bottom line' costing of a job. (sub. DR32, p. 9)

---

Suncorp also stressed the need to consider the overall price structure for repair work, and suggested that repairers also earn a significant margin on the cost of parts fitted to vehicles (sub. 12, p. 6).

## *Conclusion*

The adequacy of the hourly rates currently paid by insurers is clearly an ongoing point of contention with repairers. Taken in isolation these rates appear to be completely inadequate to cover the current costs of repairers. However, hourly rates cannot be considered in isolation from the broader basis of quotation and payment, of which they represent only one part. More specifically, where insurers utilise a system of hourly rates, the total payment for a given repair job is determined by the *combination* of hourly rates and quoted times. Further, changes in repairer costs, prices and productivity, also need to be considered in assessing the financial situation of repairers. These matters are discussed within the following sections.

### FINDING 4.1

*Viewed in isolation, the hourly rates currently paid by insurers for repair work do not reflect repairers' costs. However, they need to be examined in conjunction with the broader basis of quotation and payment of which they represent only part.*

## **'Funny time, funny money'**

The practice of quoting fictitious times for repair is known commonly in the industry as 'funny time, funny money' (FTFM). This generally involves repairers (with the full knowledge of insurers) inflating the estimated hours taken within the 'repair' segment of a given job to try to compensate for both the relatively fixed times within other segments (R&R, paint, parts supply), and for what they may perceive as uneconomically low hourly rates of payment in the 'repair' or other stages including R&R.

Allianz contended that this practice has declined in application:

The market share of insurers using FTFM as a mechanism to arrive at repair price, that is, those that offer choice of repairer, is ... likely to be less than 30 per cent. (sub. DR38, p. 12)

However, evidence presented to the Commission shows that IAG, as well as Allianz and Suncorp, continue to negotiate and adjust quotes on the basis of 'hours' and 'hourly' rates. Hence, FTFM remains widespread as a basis of negotiation.

---

From a repairer's viewpoint, the extent to which the use of FTFM is effective in adjusting the bottom line may have recently decreased. A large number of submissions from repairers indicated that, while 'hourly' rates have remained stationary for a considerable amount of time, insurers often have tightened the 'funny hours' segment of repair jobs in recent years (see below).

### *Participants' comments*

While many repairers supported a move away from the FTFM system, some insurers advocated its retention.

Repairers focused on four main problem areas in discussing FTFM:

- the accuracy of hourly rates in reflecting the cost of work (discussed in the previous section);
- problems with the accuracy of times manuals;
- the possible role of FTFM in squeezing repairer returns; and
- transparency issues.

One common claim made in submissions was that the current times manuals contain large inconsistencies and errors. Several submissions discussed the large differences in time estimates between the MTA and IAG times manuals commonly used in Australia. For example, one repairer stated:

All insurers recognise the MTA times manual with the exception of IAG who compile their own times which are, on the whole, consistently lower than the MTA times. (conf. sub. C.95, p. 3)

In explaining its views about times manuals, another repairer suggested:

All estimates are prepared on a time value controlled by the insurance company. These times are allocated on a new undamaged motor vehicle which is disassembled and reassembled on the factory floor and in factory conditions ... It is much easier to dismantle an undamaged vehicle than one that has impact damage. (conf. sub. C.28, p. 3)

Other repairers suggested that current times manuals have failed to keep pace with the large number of new car models introduced in Australia each year, and with changes in repair methods and technology.

A number of repairers suggested that the continued use of FTFM may have itself contributed to the cost squeeze currently being experienced by repairers. One argued:

---

Repair times are the only times we have some control over. Their so-called ‘funny money’ deal on repairs is where we quote higher to obtain a decent hourly rate. And most of the time, these are adjusted back e.g. if we quote 10 hours they will adjust it back to 8 hours. (conf. sub. C.28, p. 3)

Several participants suggested that, within the FTFM framework, it is not surprising that repair quotes are perceived and treated by insurers more like ambit claims than fair and reasonable quotes developed through a considered assessment of the necessary repairs and the costs involved.

Transparency issues were also raised. One view was that FTFM introduces a level of subjectivity into the broader business processes of repairers which is not conducive to sound commercial practice. BMW Australia stated:

We believe this could be the only service/repair industry where initially quoted labour costs/repair times are significantly at odds with both reality and the eventual outcome. (sub. 5, p. 2)

In a similar fashion, one repairer suggested:

This must be the only industry in the world where you falsify hours needed to try and relate it to the true hourly rate needed to run your shop. (conf. sub. C.33, p. 3)

The transparency of assessments was also seen to be undermined because the misquoting of times taken to perform certain repair segments is accepted as standard practice. For example, the MTA of Queensland argued that:

The existence of a fabricated time versus rate ... situation makes the interpretation of a quotation near impossible to those outside the industry. (sub. 7, p. 15)

One confidential submission illustrated this point. It described how the owner of a damaged car had objected to, and taken legal action over, being charged for part of the cost of repair at a ‘real’ rate when he knew the insurer was paying for the remaining costs at a ‘funny’ rate (conf. sub. C.72).

Solutions to the above problems, generally involving a move away from the FTFM system, were suggested by repairers and their representatives. For example, the MTAA recommended:

... that current various quotations systems be reviewed and that a more appropriate arrangement, based on the actual cost of doing business, be introduced. (sub. 15, p. 29)

The VACC supported this position and recommended:

... the removal of the current ‘funny times, funny money’ quotation system and [its replacement] with a quotation system that is open, transparent and cannot be manipulated by either the insurers or the repairers. (sub. 14, pp. 8–9)

---

However, in response to the Commission’s draft report, the VACC also pointed out that:

... it should be acknowledged that many crash repairers, insurers and independent assessors are reluctant to move away from this system because it has been part and parcel of the industry for a significant time. (sub. DR40, p. 5)

Many submissions from repairer groups argued for a switch to a ‘real time, real money’ system based on accurate time quotations and industry-wide hourly rates that better reflect the current costs of repair.

Insurers had differing views on the merits of FTFM and possible alternatives. IAG stated that it:

... would support a move to a system that more transparently identified the components of the total cost of a repair. However, this would only be truly effective — especially in terms of greater clarity for consumers — if it were the case for all smash repairs and smash repairers.

We suggest that the Insurance Council of Australia and the Motor Trades Association of Australia investigate jointly options for arrangements that would more transparently identify components of a total repair cost that could be applied to all smash repairs and all smash repairers. (sub. DR32, p. 9)

But AAMI suggested that:

... the proposal that a real time and rate approach can be developed is fundamentally flawed. Moreover, the universal application of any such approach would be tantamount to price fixing for repairs and would be detrimental to not only consumers, but also efficient repairers. If times and rates are to be used by some insurers they should broadly reflect reality. (sub, 19, p. xii)

Suncorp and Allianz both claimed that FTFM is a workable system that provides repairers with a beneficial incentive to repair damaged components rather than replace them with new parts. Suncorp stated:

Suncorp recognises the published MTA labour rates as the normal benchmark for allowing units of time to undertake specific repair activities. However, our assessors work closely with the repair industry to achieve a balance. Generally, we would prefer to allow additional labour in repair work to avoid the expensive alternative of fitting replacement parts on cars unnecessarily. (sub. 12, p. 6)

Allianz claimed the following benefits of FTFM:

- increased profitability and viability for repairers, stating that average profits from repair segments exceed those applying to other elements;
- a reduction in the overall costs of repair — Allianz said that in its experience ‘average repair costs are considerably higher in countries that have adopted a “real time, real money” approach’ (sub. 20, p. 18); and

- 
- better environmental outcomes as more vehicles are subject to repair and reuse. Allianz suggested that it writes off around 8 per cent of vehicles in Australia. In Germany, by comparison, where ‘real money, real time’ operates, around 25 per cent of vehicles are written off by the company (sub. 20, pp. 17–18).

Several insurers that use FTFM, including Allianz, Suncorp and RAA Insurance, emphasised that it is used as a flexible negotiation tool with which to arrive, through cooperation between insurer and repairer, at a final price for repairs.

### *Conclusion*

In competitive markets, prices reflect both demand and supply conditions. And supply, in turn, reflects costs of production (including some margin for profit). Thus, prices in such markets reflect costs.

However, in the market for smash repairs, the FTFM system, where still used, results in prices which may fail to efficiently reflect repair costs.

- FTFM distorts the comparison of cost between different repair methods. For example, it could bias a job in favour of replacement parts, rather than panel beating, or vice versa.
- Inclusion of significant materials costs, such as paint, in hourly ‘labour’ rates could provide an inducement for repairers to cut down on the quality of materials used.
- FTFM enhances the ability of insurers to use their negotiating strength to place downwards pressure on price irrespective of repairers’ costs. As a system of ambit claim, it is subject to manipulation by both insurers and repairers, with the latter especially vulnerable.
- Finally, serious negative transparency effects that detract from the commercial relations between insurers and repairers are apparent. This lack of transparency is also a problem for consumers and for other third parties including repairers that are not involved in FTFM, competing insurers who eschew the system and government regulators.

In response to the Commission’s draft report, Allianz reiterated its view that FTFM represented an accepted and flexible method for arriving, via negotiation, at a final price for repair:

... [FTFM] is simply a basis for negotiation that uses well-known and understood parameters. (sub. DR38, p. 13)

In the Commission’s view, however, alternative quotation systems using more realistic times and rates could form the basis for negotiation while avoiding the

---

inherent problems of FTFM in distorting repair methods, favouring lower quality materials and reducing the transparency of quoting outcomes. Allianz itself acknowledged that FTFM:

... has problems in terms of transparency, albeit mainly for those not involved in the insurance and repair industry and experienced in its operation. ... It may well be ... that the lack of transparency of FTFM does not meet modern standards and expectations and has had its day. (sub. DR38, p. 19)

Allianz also stated that in moving forward it:

... is committed to seeking an acceptable alternative to FTFM. Allianz can advise that it is commencing a process of consultation with repairers on possible alternatives to FTFM. (sub. DR38, p. 21)

In view of the problems with FTFM, the Commission considers that a necessary step towards clarifying the nature of returns in the repair industry and improving commercial relations between repairers and insurers is the abandonment of FTFM. Further, it would enhance effective competition between repairers.

- In its place, insurers and repairers should be free to select whatever method of quoting best suits their individual requirements — whether that be, for example, single line quotation or itemised quotations based on repair times and hourly rates.
- However, where times and hourly rates are used in relation to any of the cost elements specified in quotes (including remove & replace, painting, and repair), they should reflect realistic times and rates. Further, where hourly rates are used, they should not include within them the cost of materials, such as paint, or significant consumables. These measures would ensure that quotes reflected, with greater accuracy, the actual cost of repair work required to be undertaken.
- Where a preferred repairer agreement specifies an hourly rate, as some currently do, that should also be a realistic rate rather than a *fictitious* industry standard rate.
- A transition towards realistic times and rates would require both a reduction in times (depending on the current level of ‘overstatement’) and an increase in rates when compared to those currently observed within FTFM quotes. (A number of repairers and repairer representatives suggested that rates may need to be adjusted significantly, from current levels of approximately \$20 to \$30, to realistic rates within the possible vicinity of \$50 to \$75 or more, depending on such factors as location, tools and equipment available, staff numbers, competence and experience.)

---

The Commission acknowledges that considerable change will be required within sections of the industry in moving from an FTFM system. In this regard, for example, Suncorp stated that:

... any move to dismantle the system must be done very carefully and will take considerable time to do it properly. (sub. DR37, p. 2)

Nevertheless, in the Commission's view, any industry-wide code should provide that times and rates, where used, should be realistic times and rates agreed by insurer and repairer (see below). However, the Commission acknowledges that a transitional period may be required.

#### FINDING 4.2

*Insurers and repairers should abandon the 'funny time, funny money' system of quotation.*

- *If times and hourly rates are used in any of the cost elements specified in quotes, they should be realistic times and rates.*
- *Significant materials, including paints, parts and consumables, should be separately costed and not included in hourly rates.*
- *If a PSR agreement specifies an hourly rate, that should be a realistic rate agreed to by the repairer.*

## **A cost squeeze?**

### *Evidence*

As noted above, the hourly rates paid by insurers for repair have remained relatively static over the last ten years or so. As well, there is evidence that there has been downwards pressure on the 'funny' hours that can be claimed when quoting for work. In combination with increased costs, this has squeezed repairer returns.

The VACC provided information to suggest that over this period general repairer costs have increased substantially (table 4.3). Data provided by the MTAA, which lists a broad range of new costs applicable to smash repair, also supports claims of large cost increases over the past 10 years (box 4.2).

Further, recent changes in the supply of parts and the use of subcontractors has apparently reduced repairer returns. In this context, the VACC stated:

Insurers, particularly those with the largest market share have ... introduced direct sublet arrangements for windscreen, mechanical repairs, recycled parts etc, depriving the repairer the opportunity to mark up the price even though they still have to make all

the arrangements. Capping of margins on new parts and directing repairers to use lower value parts, either recycled or parallel, again shaves their margin. (sub. 14, p. 34)

**Table 4.3      Changes in cost**

<i>Cost item</i>	<i>% Change March 1993 to March 2003</i>
Insurance	113.9
Paint	78.0
Workcover	71.0
Wages	54.0
CPI	29.8
Electricity	25.9
Charge-out rate	0.0

*Source:* VACC (sub. 14, app. A15).

Several repairers emphasised the increasing transactions costs they must bear in relation to sub-contracting arrangements. For example, one repairer stated:

Windscreens O'Brien are still carrying out work on the repairers premises and using their tools, power, faxes, telephones etc. and the repairer does not get reimbursed for any of it. (conf. sub. C.84, p. 6)

The MTA of Queensland placed particular emphasis on the transport costs borne by repairers in relation to sub-let work:

For example, a vehicle that has been involved in a collision often requires repairs that cannot be undertaken by the smash repairer, i.e. air-conditioning system re-gas, wheel alignments, suspension repair etc. ... Insurers will then expect to pay repairers no more than [cost] for this service, regardless of vehicle make, model or the physical location of the panel shop. The same situation is relevant to the other previously mentioned sub-let repairs. ... Surely a margin on top of the sub-let repair should be allowed for associated handling and transportation of the vehicle to and from the supplier's place of business. Some insurers allow no margin. (sub. 7, p. 11)

Many repairers have responded to this cost-price squeeze, and other broader factors such as the reduced severity of accidents and increased capital requirements (chapter 2), by increasing their productivity — AAMI, for instance, presented the Commission with confidential survey data which suggests that significant increases in repairer productivity occurred over the period 2001 to 2004. The MTA of the ACT also stated:

The enforced rationalisation on the industry has had the effect of forcing all within to achieve unprecedented levels of productivity and proficiency to ensure survival ... business owners have sought assistance from materials suppliers, professional consultants and industry associations in this process. (sub. 25, p. 7)

---

#### **Box 4.2      Suggested recent cost increases for repairers**

The MTAA outlined an extensive range of cost items which, it claims, have escalated in the last ten years. These are spread over four main categories, and are claimed to apply to average repairer businesses of six to ten employees.

##### **OH&S compliance**

Total annual costs for this category are estimated to have risen by \$69 041 per annum over the last ten years. This includes items such as:

- extra equipment and maintenance costs, including items such as newer spray booths of larger size, modified to incorporate new heating requirements (\$24 000 per annum); booth filters and belt filters (\$6000 per annum for two booths) and air wash hoods (\$2880 per annum);
- fire and explosion proof paint mixing rooms (\$3000 to \$5000 per annum);
- personal protective clothing and equipment (\$8046 per annum);
- electrical costs for heating booths (\$9600 per annum);
- environmental costs and licences, including disposal and other costs (\$5340 per annum).

##### **Costs of improved health monitoring**

Total costs are claimed to be \$6350 per annum, including:

- lung function and air sampling tests (\$2500 per annum);
- face masks, ear plugs and gloves (\$1710 per annum);

##### **Increased demands on smash repairers by insurers**

This category relates to claimed demands imposed on repairers by insurance companies to invest significant capital to gain pre-entry for PSR status, and is costed at \$10 700 per annum. This incorporates costs of OH&S and environmental systems implementation, repair licence fees etc.

##### **Increased administrative costs**

This category, costed by the MTAA at \$143 920 per annum, includes:

- increased office staff required (\$82 000 per annum); and
- quoting/estimating software and hardware and associated services such as Broadband and smash (parts) links (\$26 600 per annum).

*Source:* MTAA (sub. 15, pp 15–18).

## **Conclusion**

On the basis of available evidence, it does appear that repairers are currently subject to a cost squeeze. Further, a focus by insurers on repair price reduction clearly underlies much of the ongoing disputation between repairers and the insurer sector.

---

However, broader factors are also impacting on the viability of the industry. These include changes in accident numbers and severity, and changes in capital requirements connected to new car design, new materials and new repair technology. While there has been a productivity response within sections of the industry, further rationalisation can be expected.

A squeeze on costs has been common across many industries within the Australian economy in recent years as microeconomic reform has exposed firms to greater competition. In this respect, the squeeze on repairer costs reflects pressure on insurers to improve shareholder returns in the very competitive insurance market. While the transitional difficulties experienced by segments of the repair industry are apparent, the ultimate beneficiaries of the resulting efficiencies in the insurance and repairer industries will be consumers particularly and the broader community more generally.

Nevertheless, the changes to quotation arrangements discussed above and other measures proposed in this report should permit repairers to ensure that the quotes they provide are more reflective of their costs than under the FTFM arrangements. Beyond this, however, there is little justification for further specific prescribed action that could be reasonably taken to address current cost pressures on repairers generally.

More specifically, there is no justification for *regulating* for industry standard minimum hourly rates or prices, or for *imposing* standard hours for repair jobs, in an attempt to alleviate current cost conditions. This does not mean that individual insurers and repairers or, indeed, insurers or repairer groups, should be prevented from adopting standard times or standard rates as a basis for negotiation of individual quotes, provided that both times and rates are realistic rates and are adjusted over time to reflect such things as changes in vehicle design, developments in repair technology, reasonable productivity and efficiency improvements, as well as unit cost changes.

FINDING 4.3

*Taking the broader consumer and community interest into account, little further prescriptive action to address cost pressures on repairers is justified.*

- *In particular, there is no justification for regulating for an industry standard hourly rate or for imposing industry standard hours.*

FINDING 4.4

*Notwithstanding finding 4.3, where insurers and repairers adopt, by agreement, standard times and/or standard rates, this should not preclude further genuine price*

---

*negotiation on individual jobs.*

- *Any such standard times and rates should be realistic. They should be adjusted over time to reflect such things as changes in vehicle design, developments in repair technology, reasonable productivity and efficiency improvements, as well as unit cost changes.*

## **Fairness of competitive quoting processes**

Several repairers and repairer groups considered that the quoting processes used by some insurers were unfair and possibly anti-competitive. Two specific areas of concern were:

- the alleged practice of insurers and their assessors routinely accepting the lower quote in a two-quote ‘competitive’ system and subsequently negotiating down the price; and
- the absence of repair specifications and ‘like for like’ quoting within the two-quote system as currently employed by AAMI and Western QBE.

The former alleged practice involves insurers attempting to lower the price of repairs, while the latter allegation involves insurers retrospectively accepting higher prices so as to favour particular repairers.

### *Participants’ comments*

The practice of routinely negotiating down further the lowest price was alleged by a number of individuals, repairers and repairer representatives. For example, Mr Frank Cottonaro stated:

AAMI ... would call for two competitive quotes, and once they determined who the cheapest quote was, they on top of that would then assess the costing down ... To actually get two people or three people to compete and then physically adjust the costs after that I think is extremely unfair. (trans. p. 210)

And the VACC stated:

Regardless as to the market determining the lowest price through seeking competitive quotes, AAMI still assesses and reduces the winning (lowest) quote. (sub. 14, p. 28)

In responding to such claims, AAMI suggested that:

There are many legitimate reasons for adjustments to a quote that on first consideration may appear to be more competitive ... the assessment process is much more complex than simply looking at the bottom line and awarding work accordingly. (sub. DR50, pp. 13–14)

---

To support this point, AAMI provided the following list of factors that may play a part in the readjustment of quotes:

- whether the quotes submitted are truly competitive (cover quoting is not uncommon – particularly when quotes are obtained outside the Customer Service Centre environment);
- repair method changes are sometimes required – and as we’ve stated we believe it is not only the insurer’s right, but also its responsibility, to ensure repairs are carried out in accordance with policy and warranty provisions;
- new parts may be changed to recycled parts should this be appropriate given the age and condition of the vehicle;
- damage that is not consistent with the accident description may be disallowed;
- incomplete quotes and incorrectly added quotes may be altered; and
- parts quoted may be changed in line with policy safety considerations. (sub. DR50, p. 14)

Repairers also considered that the two quote system as currently employed by some insurers is unfair because of the absence of repair specifications and ‘like for like’ quoting — competing repairers therefore had to compete both on price and on the scope of works to be performed. A particular point of contention was that this practice allowed a competing repairer to quote low in the initial bidding process by using an incomplete scope of works, win the job, and then retrospectively raise the actual price paid to perform the work, often with the tacit approval of the insurer. For example, one repairer stated:

AAMI’s policy booklet states that they will authorise repairs to the most complete and competitive quote. However, I have spoken to insurance company ‘approved’ repairers who advise that when they go to holding yards, they provide only a rough estimate in an attempt to ‘capture’ a job. They then attempt to collect supplementary costs on completion of the job, which are sometimes not even sighted by the insurer and approved ... Clearly this process is not all about competition. It is just manipulation of the two-quote process to suit the insurer and repairer participating in these practices. Obviously, the repairer who quotes the vehicle thoroughly and correctly is disadvantaged. (conf. sub. C.59, p. 4)

The VACC also stated that within the AAMI system:

The lowest quote wins. However, the winning quote usually goes to the AAMI preferred repairer, and often does not deliberately include a complete scope of repairs. Once the job has been won as the supposed lowest quote, AAMI will allow supplementary quotations to be made to the original quote. (sub. 14, p. 27)

As a possible solution, one repairer suggested that:

... where insurers demand multiple quotations on a competitive basis, it must be pre-conditional that insurers provide a precise scope of works in order that a meaningful

---

like for like comparison is achieved and that the non-preferred repairer's quotation is not exploited as the method by which the preferred repairer is crunched and the non-preferred repairer not deprived of the opportunity. As with any tendering process in almost any other industry, those tendering must tender on a like for like scope of works. (conf. sub. C.67, p. 5)

Similarly, the VACC also recommended:

For those insurers who require more than one competitive quote, that these quotes are based on 'like for like' scope of work and the ability for repairers to provide complete and competitive quotes. (sub. 14, p. 9)

In defending its use of a two-quote system against such claims, AAMI pointed to the benefits of enhanced competition between repairers in reducing repair costs (sub. 19, p. 9). It also stated:

Understandably, the ongoing requirement to maintain an efficient business and submit competitive quotes in order to secure work is not a pressure that all repairers favour. Some would rather a return to a one-quote environment. (sub. 19, p. 41)

In responding to allegations that winning bidders were permitted by insurers to adjust quotes upwards after securing a job, AAMI stated:

Allowing a practice to exist that would often result in work being authorised to a repairer who would ultimately charge more than the losing repairer simply does not make sound commercial sense. If this were the case AAMI would not be enjoying the superior cost management benefits our system has consistently delivered over many years. (sub. DR50, p. 10)

AAMI also refuted the suggestion that its quoting processes ensure that its preferred repairers inevitably succeeded when quoting against non-preferred repairers. It estimated that in metropolitan areas, where AAMI PSR networks operate, approximately 10–15 per cent of authorised repairs are performed by non-PSR repairers, while nationally this figure is approximately 25 per cent (sub. DR50, p. 14).

## *Conclusion*

In the Commission's view, the above claims by repairers and insurers centre on two key issues:

- the inherent efficiency of the alleged practices; and
- the fairness with which insurers apply the competitive quotation system.

In regard to efficiency, negotiating with the lowest bidder in a competitive bidding system is observed in other areas of the economy. Where properly used to clarify

---

the scope of work and deliverables, such negotiations can be beneficial for both parties. Further, a requirement that insurers must provide a precise repair specification to competing bidders, prior to the commencement of quoting, may increase repair costs and the total time taken to complete repairs. It is also possible that it could reduce incentives for repairers to use innovative and more cost-effective repair methods. Competitive quoting based on both the scope of work and price can therefore assist the insurer to choose a repairer that best meets its requirements.

However, such practices can be unfair depending on the circumstances in which they are applied and undermine confidence in the competitive quoting process. For example, were lowest quotes always adjusted downwards as a matter of routine, or were particular repairers or categories of repairer (in particular those without preferred repairer status) always to lose out in the bidding process, irrespective of the merit of their quotes, it would be disingenuous for insurers to claim that their systems are genuinely competitive. As well, efficiency and transparency would suffer as both insurers and repairers resorted to ‘gaming’ the quoting process — with, for example, repairers deliberately inflating initial quotes in the expectation that insurers will inevitably adjust them downwards.

The Commission has no evidence to clarify the extent of any such unfair practices. As noted, AAMI has strongly disputed the claims as they apply to its quoting processes. However, there is clearly a continuing role for the ACCC to monitor all insurers’ quoting practices against the appropriate provisions of the TPA. As well, in the Commission’s view, any industry-wide code should require insurers to agree that where competitive quotes are sought the quotation process should be fair and transparent.

FINDING 4.5

*The Australian Competition and Consumer Commission should continue to monitor insurer quoting practices against the appropriate provisions of the Trade Practices Act. As well, any industry-wide code should require insurers to agree that where competitive quotes are sought the quotation process should be fair and transparent.*

## **Cost of providing guarantees of repair quality**

### *Background and key issues*

Several insurers offer ‘lifetime’ guarantees on repair work (see box 4.3). These generally provide for a process of re-repair, by either the original repairer or another

repairer of the insurer's choice, should the repairs initially performed on a vehicle be of poor quality.

**Box 4.3 Who pays the cost of lifetime guarantees?**

IAG offers a lifetime guarantee for work performed by its PSRs and ASRs. In relation to this guarantee, IAG stated:

IAG companies, under the NRMA Insurance, SGIO and SGIC brands and the joint venture IAG has with RACV, offer a lifetime guarantee on all authorised repair work by a PSR or ASR. Under the IAG Choice of Repairer option, authorised repairs by any repairer will carry a lifetime guarantee and is transferred with ownership of the vehicle.

The relevant IAG insurer is liable under the guarantee to the customer. Under the PSR and ASR Agreements the repairer is liable to IAG for defective repairs. IAG will generally seek to recover the cost of honouring the guarantee from the repairer who undertook the repairs.

If the repairer ceases to trade or refuses to fulfil its contractual obligation to IAG for rectification of repairs, IAG manages rectification at its own cost to make sure the customer receives the fulfilment of the promise under IAG's guarantee. (sub. DR51, p. 6)

AAMI has a lifetime guarantee on work performed, regardless of whether the repairer is part of its preferred network or not:

AAMI guarantees all repairs it authorises, whether the repairer is an AAMI repairer or not. AAMI's Lifetime Repair Guarantee remains in place even if the vehicle is sold and applies after the repairer's guarantee expires. Copies of all guarantees are given to every customer at the completion of repairs. (sub. 19, p. 28)

AAMI also contended that:

AAMI's Lifetime Guarantee is AAMI's guarantee, and is not imposed on our repairers. We expect repairers to warranty their work for the term of their individual guarantee, after that AAMI is responsible for all costs involved with reworks. (sub. 19, p. 35)

Suncorp provides a lifetime of vehicle guarantee, also regardless of whether the repairer is preferred or not. Suncorp stated that repairers have a normal three year guarantee with Suncorp and that beyond this period it bears the costs of guarantee:

The repairer incurs the cost of rectification work where it falls within the guarantee they provide. Outside of that, Suncorp incurs the cost. (sub. 12, p. 7)

Allianz require repairers to provide 'reasonable guarantees' on workmanship, and to guarantee parts for an equivalent period to that provided by the manufacturer. Allianz provides a further guarantee to the insured on workmanship, over and above that provided by the repairer, for the duration of ownership of the motor vehicle.

*Source:* IAG (sub. DR51), AAMI (sub. 19), Suncorp (sub. 12) and Allianz (trans., pp. 39–41).

Repairers expressed concern about the implications of such guarantees, arguing that they are forced to bear their costs, largely without recompense from insurers. The MTA of Western Australia, for instance, stated:

With many such warranties being 'for life', associated contingent expenditure can constitute a significant liability. (sub. 16, p. 3)

---

The VACC also focused on the cost implications of lifetime guarantees:

Lifetime warranties underestimate the true cost of the repair of the motor vehicle and increase the costs that the repairer has to bear. In such cases, before any insurer could champion that their business model is helping reduce the cost of repair, they would need to add back those costs that are borne by the repairer. (sub. 14, p. 35)

One repairer stated:

... the insurance companies pay for guarantees provided to the customer by the insurance companies. However, they then collect it back from their at fault 'recommended' repairer once the final cost has been agreed to by the insurer. Net costs to the insurance companies is nil. The only time the insurance companies will incur the costs is if the repairer they have authorised goes broke or closes. This would be very rare indeed. This is also used as a way of controlling their 'recommended' repairers and work flow arrangements with the repairer. (conf. sub. C.59, p. 4)

The latter claim, that insurers use lifetime guarantees on work as a means to steer customers towards preferred repairers, is largely a choice issue and is considered in chapter 5.

Several submissions expressed concern that the terms contained within such guarantees extend beyond what is reasonable. For example, one repairer stated:

A lifetime warranty is longer than the manufacturer's warranty, yet repairers are forced to offer a lifetime warranty. It would be logical and fair that a warranty is equal to a manufacturer's warranty. Many repairers feel, that if the insurance companies are advertising this, then they are the ones who are to warrant lifetime warranties. (conf. sub. C.46, p. 2)

As discussed in chapter 3, insurers frequently impose on repairers requirements about the use of parts or repair methods. In this regard, BMW Australia stated:

... we note that such arrangements invariably place all the onus on the repairer, with no evidence of formal support or ongoing endorsement from the insurer. This is ironic and would appear inappropriate given (a) the potential influence of the insurer on the manner in which the repair is effected, and (b) claims regarding 'ownership' of the customer and the repair by the Insurance industry in general. (sub. 5, p. 2)

Some repairers also claimed that the true nature of their liability in relation to such guarantees is not stated clearly when they enter into repair contracts with insurers.

In supporting the use of lifetime guarantees, several insurers pointed to the incentives they provide for repairers to perform high quality repairs. For instance, Western QBE suggested that:

The awarding of a lifetime guarantee for the completed repair work provides an added incentive for the repairer to ensure repairs are completed correctly, and provides a level

---

of assurance to the customer that should anything go wrong in the future that they have some recourse in having the matter rectified. (sub. 18, p. 7)

While many repairers did not distinguish between insurers in their comments on warranties, the information in box 4.3 indicates that, of the major insurers, IAG alone has a policy of passing on all lifetime warranty costs to repairers — AAMI and Suncorp both said that they bear the longer-term costs of guarantee, as does Allianz.

### *Conclusion*

In the Commission's view, there are several aspects of the current arrangements for repair guarantees where improvements could be made. In particular, the repairer:

- should only be required to guarantee work that it actually performs, and then only for an agreed reasonable time; and
- should not be required to guarantee parts or paint for a period longer than the manufacturer's own warranties.

Some transparency issues were also raised in relation to such guarantees — for example, with several insurers the lifetime guarantee is transferable upon sale of the repaired vehicle, but it appears likely that this fact is rarely disclosed to the purchaser by the seller. Considerable uncertainty was also apparent within submissions by repairers about who pays for guarantees, despite several insurers asserting that the bearer of liability is clearly stated within their policies.

However, beyond the above points, the details of any guarantee on repair quality offered to consumers and the shares of the resultant costs are matters for commercial negotiation between individual insurers and repairers.

#### FINDING 4.6

*An insurer should only require a repairer to guarantee the work it actually performs and then only for an agreed reasonable time. Further, a repairer should not be required to guarantee parts or paint for a period longer than the manufacturers' own warranties.*

## **4.3 Timeframes provided to smash repairers on quoting and contract offers**

The terms of reference require the Commission to report on the timeframes provided to smash repairers by insurance companies to consider and make an

---

informed decision on contract offers. In interpreting this reference, two aspects were considered, namely:

- the time accorded to repairers by insurers to consider PSR and other trade related contracts; and
- the timeframes accorded to repairers in considering quotes for repair.

In relation to the first issue, several submissions called for a defined time period for PSR contract considerations to be included within an industry-wide code. The MTAA stated that:

... it would be appropriate for an industry-wide code to include provisions relating to the timeframe repairers are given to consider PSR contracts and to include a provision providing a cooling-off period. (sub. DR41, p. 6)

The VACC suggested that:

Whilst some PSR contracts contain easy exit clauses, this may not be available in all PSR contracts. Therefore, repairers should be afforded the opportunity to ‘cool off’ in a similar manner as is provided via the Franchising Code of Conduct. (sub. DR40, pp. 12–13)

The provision of a short cooling off period within an industry wide code may provide an acceptable and low cost safeguard mechanism for repairers entering into PSR contracts. Provided it was of a reasonable duration, and did not impact upon an insurer’s need for timely resolution of contract negotiations, such a cooling off provision may go some way towards allaying repairer concerns about such matters (chapter 6).

In regard to the second issue of quoting timeframes, the Commission notes that recent changes in the relationship between repairers and insurers, in particular the increased use of preferred repairer schemes, combined with changes in technology such as online quotation, have resulted in significant increases in the speed of quotation and price setting processes. Indeed, some insurers, such as AAMI, rate the performance of its preferred repairers in adhering to explicit quoting timeframes.

However, few comments were received in relation to this issue.

FINDING 4.7

*The provision of a short cooling off period within any industry-wide code may provide an acceptable and low cost safeguard mechanism for repairers entering into PSR contracts.*

*There is little evidence to suggest that the current arrangements in relation to timeframes for quoting are creating problems in the commercial interactions between repairers and insurers.*

---

## 4.4 Time taken by insurers to pay repairers

A further area of difference of view between repairers and insurers concerns the timeliness of payment by insurers for completed repair work. Repairers claimed that payments are often late and are sometimes used as a means of ‘disciplining’ repairers. It was also claimed that such late payment is not generally the result of a dispute over repair quality. Insurers, on the other hand, claimed that late payment is the exception rather than the rule, and that their payment records are good.

### *Participants’ views*

The VACC claimed that it has received ‘consistent reports’ from smash repairers over the past five years or so about late payment by insurance companies for repair work:

Body repairers tell of their despair at cash flow crises as they pay for parts, labour costs, overheads and GST instalments, while waiting for overdue payments from large and comparatively resource rich insurance companies. (sub. 14, app. A20, p. 5)

A 2004 survey by the VACC of payment times found that, for the repairers who responded to the survey, three-quarters were paid within 30 days while 10 per cent took 49 days or more to settle. Only 1 per cent were subject to dispute. The mean duration was 24 days (and the median was 18 days). The survey also showed differences in the time taken to settle invoices for preferred and non-preferred repairers (box 4.4). The significance of this survey is open to question, however, given the very small number of respondents relative to the total size of the smash repair industry.

Within its submission, the MTA of Queensland also cited :

... numerous examples of late payments to repairers that are outside ‘preferred repairer’ networks. One member has provided evidence of a payment that took eight months from IAG on an invoice that wasn’t in dispute. Others have numerous examples of payments later than 60 days from a range of insurers. (sub. 7, p. 18)

Several submissions from repairers also focused on specific cases of very late payment.

However, insurers claimed that most invoices are paid within commercially reasonable timeframes. Allianz reported that a recent audit of 4768 repairer accounts concluded that 84 per cent of its payments are made within 15 days, while 94 per cent are paid within 30 days. It stated that a large proportion of payments delayed beyond 30 days are due to repairer invoicing errors:

---

#### **Box 4.4 VACC survey of payment times**

The VACC undertook a survey in 2004 of the time taken for insurers to pay repairers. It was sent to 650 repair shops, of which 65 responded, providing information on 1352 invoices sent to insurers. Of these invoices:

- three-quarters were paid within 30 days;
- 85 per cent were paid within 39 days;
- 90 per cent were paid within 49 days;
- 5 per cent took 67 days or more to settle;
- the mean duration was 24 days (median 18 days); and
- the median value of all non-factored invoices was \$1414 and the mean was \$2089.

Only 1 per cent of this sample of invoices was disputed.

The survey also showed differences in the time taken to settle invoices for preferred and other repairers:

- The median time taken by insurers to settle invoices was 15 days for preferred repairers and 21 days for other repairers.
- The difference between the means for the two groups was larger at 19 days and 29 days.

The difference between the medians and the means is explained by a larger proportion of late payments made to non-preferred repairers. The slowest 5 per cent of invoices with preferred repairers were settled in 57 days or more, compared with 81 days or more for non-preferred repairers.

*Source:* VACC (sub. 14, app. A20, p. 5).

... the problem of repairers putting in incorrect invoices is significant. In virtually all cases, these 'errors' favour the repairer. To address this, Allianz has found it necessary to employ a team of eleven parts specialists to check for errors in repair invoices. This measure resulted in savings of around \$2 million in 2003. (sub. 20, p. 18)

Suncorp stated that it currently pays electronic invoices within a maximum of 5 days from date of receipt and paper invoices within a maximum of 14 to 15 days (sub. 12, p. 11).

AAMI suggested that it:

... is committed to paying all repairer invoice within 14 days. AAMI ... conducts regular internal audits to monitor payment performance. Confidential Attachment 3.5 provides an example of AAMI's most recent internal audit. By any standard the result is exemplary. (sub. 19, p. 40)

IAG indicated that:

- 
- as at September 2004, 81 per cent of PSRs had payment terms of 24 hours;
  - ASRs using the Online Repair Management (ORM) system received payment within 14 days, while those ASRs not using this system received payment within 21 days; and
  - 100 per cent of ORM payments occur via an automatic payment system with 86 per cent of these payments made without human intervention. The remaining 14 per cent of payments in this system are work listed and paid within 48 hours (unless disputed) following the matching of the invoice with the authorised payment (sub. 8, p. 27).

Several submissions from both insurers and repairers focused on the desirability of including minimum payments terms, such as 30 days or less, within an industry-wide code. For example, Allianz stated:

If it comes to something like 30 days as a standard, we have that in our corporate code. I would think that other insurers either have it in their corporate code or pay within that time anyway and we wouldn't see any problem with putting that as a feature of a corporate code. (trans., p. 36)

The MTAA stated that:

... while [it] does not advocate that the Code should mandate payment terms for all insurers it should require that insurers disclose to repairers what their payment arrangements will be (sub. DR41, p. 7).

A number of submissions received in response to the Commission's draft report stated that the performance of insurers in relation to payment times has improved recently and that contention over this issue may be diminishing as a result. The Victorian Government, for example, stated that in relation to recent payment times 'there have been improvements in the industry' (sub. DR43, p. 2). The VACC also stated that:

Given the improvement in the payment record by most insurers, since this matter was first raised publicly by [the] VACC there seems, on the surface, no need to prescribe minimum payment terms. This is provided, of course, that insurers continue to maintain their current payment terms. (sub. DR40, p. 6)

## *Conclusion*

As in other industries, there will be occasions when payment times are unsatisfactory. However, it would appear that payment times are at least acceptable commercially in the vast majority of cases.

While a differential in payment times between repairers of preferred status and those without such status is somewhat apparent, this could be expected given their

---

closer commercial relationships with insurance companies, and their greater integration into electronic frameworks for invoice payment.

Provision in any industry-wide code for minimum payment terms of a reasonable period (such as 30 days or less) where work is not in dispute would, in the Commission's view, improve certainty for repairers in relation to invoice payment while according with the current payment practices of major insurers. Such a provision would also be consistent with the minimum payment terms that are currently provided by several major insurers within their corporate codes of conduct.

FINDING 4.8

*Provision in an industry-wide code for minimum payment terms of a reasonable period (such as 30 days or less) where work is not in dispute would improve certainty for repairers in relation to invoice payment.*

---

## 5 Choice for consumers

### Key points

- The nature and extent of available choice of repairer varies significantly among insurers and policies.
- The benefits and costs of choice differ between and among consumers, insurers and repairers.
  - But mandating greater choice would have significant costs for insurers generally and for those repairers that currently operate successfully under PSR arrangements. Depending on the arrangements for passing on the costs of greater choice, many consumers could also be disadvantaged.
- Consumers wanting choice of repairer can choose a policy from one of the several insurers offering that choice. On this basis, consumers have restricted, but reasonable, choice of repairer.
  - Consumer choice of repairer should not be mandated.
  - ‘Anti-steering’ measures should not be introduced.
- Insurers should enhance their operating procedures to ensure that consumers taking out policies and making claims are clearly and accurately informed about the provisions for choice in their insurance policies.
  - Insurers should not attempt to dissuade consumers from exercising their available choice options by making misleading, inaccurate or unjustified comments about the quality or timeliness of repair of non-preferred repairers.

In a broad sense,<sup>1</sup> insured vehicle owners — referred to in this chapter as ‘consumers’ — are the customers of the insurers, rather than of the smash repairers. Thus, even though the provisions of many insurance contracts do allow consumers to have a say in the choice of repairer, consumers are not legally entitled to choice of repairer except within the bounds of those contracts.

As discussed further below, many repairers and their representatives considered that available consumer choice of repairer had been significantly eroded in recent years. Many considered that expanding the scope for consumer choice was an issue of fundamental importance. Indeed, several called for consumer choice to be mandated

---

<sup>1</sup> See *Australian Automotive Repairers’ Association (Political Action Committee) Inc v Insurance Australia Limited (formerly NRMA Insurance Limited)* [2004] FCA 700.

---

under an industry-wide code of conduct — the VACC saw this as a mechanism for limiting the market power of insurers (sub. DR40, p. 10).

It is understandable that many repairers, especially those adversely affected by PSR arrangements through loss of work or lower prices, favour greater consumer choice. However, although choice brings benefits, including to consumers, it is not costless, even for repairers. Thus, in assessing whether current choice is ‘reasonable’, regard must be had to both benefits and costs.

## 5.1 Current arrangements and choice

No insurer allows unfettered consumer choice, irrespective of the cost of repair. Consumer choice is always subject to the willingness of the insurer to pay the chosen repairer the amount it requires to undertake the work.

But within the bounds of that constraint on consumer choice, insurance firms provide some repairer choice as a feature of their motor vehicle policies. For example, according to the relevant policy/product disclosure documents of the major insurers:

- AAMI ordinarily obtains two ‘independent, competitive’ quotes from repairers of its choosing. The customer, however, can choose a repairer to provide one of the quotes. AAMI itself will then select the repairer that has submitted the ‘more competitive and complete quote’. AAMI provides a ‘lifetime’ guarantee. (AAMI 2004, pp. 37–8)
- Allianz appoints a motor vehicle assessor if the vehicle needs to be inspected before repairs are authorised. There appear no restrictions in the policy document about choice of repairer, possibly other than a stipulation that towing will be paid to the ‘nearest repairer, place of safety or any other place which we agree to’ (Allianz 2004a, pp. 8, 29). A guarantee of repair work applies for the duration of vehicle ownership (trans., pp. 39–41).
- With IAG, from November 2004, a ‘choice of repairer’ policy option has been introduced on new or renewed NRMA, SGIO and SGIC policies. Consumers can elect to choose their smash repairer for an additional premium (sub. 8, pp. 41–2). A lifetime guarantee is provided under that option.

Under the revised ‘standard’ policy arrangements which operate from November 2004, IAG selects the repairer. However, ‘consumers will still be able to choose a repairer from the IAG preferred smash repairers nominated by the relevant IAG insurer. [Consumer] preference can be taken into account when IAG determines the successful repairer’ (information supplied by IAG, 4 November 2004). A lifetime guarantee applies.

---

Under existing policies which will continue to operate until they expire in the period up to November 2005 (using NRMA's NSW policy documents as a guide), IAG advises the customer of a suitable repairer or repair centre. The customer may choose to have the vehicle repaired at another repairer. In this case, IAG will decide whether to pay the customer what it would have cost it to repair the vehicle at one of its preferred repairers; pay the customer a 'fair and reasonable cost' to repair the vehicle at the customer's nominated repairer; or authorise and pay for the 'fair and reasonable cost' of repairs at the nominated repairer. Only if the customer uses a repairer of IAG's choice, will the workmanship for repairs be guaranteed (by the insurer) for the life of the vehicle. (NRMA 2004, p. 62)

- Suncorp arranges for the vehicle to be repaired by one of its recommended repairers — alternatively the customer can choose a repairer. The company is entitled to inspect the vehicle and/or move it for another inspection before repairs begin. A lifetime guarantee applies to repairs authorised by Suncorp. (Suncorp 2004, pp. 26, 28)

QBE, RACQ and RAA Insurance also provided details of their procedures. Western QBE, which caters to the direct personal insurance market, reserves the right to nominate the repairer to be used. But, in most circumstances, two quotes are sought from repairers, one of which may be from a repairer of the consumer's choosing (sub. 18, p. 6). RACQ 'will support a client's decision to use a repairer suitable to their personal preference' (sub. 6, p. 15). Although it recommends that its customers use a repairer approved by the RAA (ie the South Australian motor club), RAA Insurance provides 'complete freedom of choice' including the right to go to a non RAA approved repairer (sub. DR47, p. 3).

Thus it is apparent that the nature and extent of available choice varies significantly among insurers. Subject to an overriding constraint of required authorisation, choice of repairer appears to be:

- largely unrestricted, as in the case of Allianz, Suncorp, RACQ and RAA Insurance, and under the IAG's new choice of repairer option;
- almost entirely at the discretion of the insurer, as for AAMI, Western QBE and IAG's revised 'standard' policies; or
- subject to significant restrictions as under existing 'standard' IAG policies.

Many consumers would easily understand the policy documents as they are expressed in 'plain English'. Indeed, the *Financial Services Reform Act 2001* requires insurers to provide full, plain language disclosure of insurance policy cover, benefits, terms and conditions (ACCC 2003a, p. 18). However, consumers submit a claim only every seven to eight years on average, and many will have

---

changed their insurer over such a period. Thus, unless the policy provisions for choice are specifically drawn to their attention on lodging an insurance claim, and described clearly and accurately, then for many consumers those choice options would be effectively restricted in practice.

Further, the VACC claimed that in view of the restructure of the motor insurance industry in Victoria and ‘the stealthy implementation of no choice policies by some insurers’:

... many consumers are truly ignorant of the fact that the status of their policies has changed and where they previously had choice, now they do not ... (sub. 14, p. 39)

Many individual repairers, and their representative organisations, considered that some insurers misrepresented available choice:

False and misleading information used against our company instantly affects its reputation which we have been tirelessly working towards building and achieving. (conf. sub. C.34, p. 2)

The term used by IAG to describe non-PSR as non preferred or unauthorised repairers when clients discuss their accident claim details has a definite connotation of their work not being up to insurance company standard. (conf. sub. C.95, p. 2)

Repairers’ sentiments generally are summarised by the comment from the MTA of Queensland:

Insurers rely on consumer’s ignorance and indifference to achieve their objectives in relation to directing work to their ‘preferred repairer’ networks. Those consumers that insist the vehicle be repaired at their chosen repairer are either browbeaten into changing their minds or are continually informed of the consequences should they continue with their choice. The most common line used by insurers is ‘That repairer is not one of our “preferred repairers”. We cannot guarantee the quality of the repair if you take your vehicle to that repairer.’ This inference on the inability of the repairer to carry out quality repairs will often cause a consumer to change their mind and relent to the undue pressure being brought to bear upon them by an insurer. (sub. 7, p. 16)

The MTA of Western Australia contended that:

In reality, vehicle owners are consistently told by insurers that they themselves must either make personal payment for any cost differential in repair quotations, or else use the repairer stipulated by the insurer. (sub. 16, p. 6)

IAG commented that:

If ... a customer nominates a repairer they would like to use who is not a PSR or an ASR, IAG will explain the process that will be followed and the benefits of using a PSR or ASR. If the customer still wishes to use their chosen repairer IAG will take steps to implement the relevant process. (sub. 8, p. 40)

---

AAMI noted that ‘it is not seeking to insure a customer who wants to select their repairer when they have an accident’ (sub. 19, p. 38). It suggested that its customers clearly understand its policies about choice:

The extremely low level of complaints (and absence of cancellations) would suggest the overwhelming majority of our customers are clear on the terms of the policy they have bought. (sub. 19, p. 38)

Several insurers provide so called ‘valet’ or case manager services to consumers. These ‘leave everything to us’ services can provide important help to consumers dealing with the consequences of a motor vehicle accident. But where insurers dealing with claims strongly promote these services and their preferred repairers, downplaying repairer choice, many consumers may be unaware of their capacity to choose a repairer if they opt not to accept that help.

Even if consumers are aware of the policy provisions about choice, the exercise of such choice may involve significant downside or risk for the consumer. In the case of IAG, for example, the amount payable in respect of a repair undertaken by a repairer not nominated by it has been effectively limited to what it regards as ‘fair and reasonable’. This might be below what the customer would need to pay to exercise that choice. Indeed, if the consumer insists on using such a repairer, the insurer may well pay the ‘fair and reasonable’ amount directly to the consumer. The consumer would then need to take responsibility for all repair arrangements. The policy may be cancelled if the consumer cannot demonstrate to the insurer that satisfactory repairs have been undertaken.

Further, when such an independent repairer is used, the benefit of the lifetime guarantee from the insurer is lost (but this might be replaced by some form of guarantee from the repairer).

## **5.2 Benefits and costs of choice**

The terms of reference request the Commission to report on arrangements for consumers to have ‘reasonable’ choice in the selection of repairers. This issue, of course, needs to be assessed in the context of the markets for insurance and smash repair, recognising benefits as well as costs. The assessment needs to consider the differing interests of consumers, insurers and repairers. And it needs to recognise that the interests of the individual consumer, insurer and repairer do not always accord with those of the group.

---

## Consumers

The Australian Consumers' Association (ACA) commented that most consumers prefer to allow their insurer to manage a repair job:

Most consumers are happy, in fact prefer, to let their insurer manage the repair. When non-choice of repairer first appeared in the consumer motor insurance market ACA research indicated some considerable dissatisfaction with the insurer that introduced that policy. More recent research indicated that this is no longer an issue for most consumers in assessing satisfaction with their insurer. (sub. DR31, p. 2)

Insurers also generally considered that the vast majority of consumers were not concerned about choice of repairer. AAMI, for instance, commented that 'while the repair sector continues to claim that "choice of repairer" is of key concern to the insurance-seeking consumer, the evidence does not support this contention' (sub. 19, p. 45). And the Insurance Council of Australia stated that:

ICA members advise that a high percentage of consumers ask their insurance company for advice on where to take their vehicle to be repaired. This suggests that most consumers do not have a fundamental concern about choice of repairer. (sub. 17, p. 10)

There are no comprehensive data about the proportion of consumers exercising choice of repairer (although the proportion of non-PSR repairs provides some relevant information — see chapter 3). Suncorp noted that about 40 per cent of its customers nominate their choice of repairer (sub. 12, p. 8). However, this figure is likely to underestimate the percentage of consumers actively exercising choice with this firm, which offers fairly unrestricted choice. As Suncorp said, 'We believe that by relying on us to manage the process, [consumers] have made an informed choice' (sub 12, pp. 8–9).

IAG noted that 92 per cent of customers indicated they were satisfied with the work of its preferred repairers (sub. 8, p. 40). However, this statistic reveals little about the proportion of IAG customers that actively exercise choice rather than just accept IAG's recommendation of preferred smash repairer. Of course, even if more consumers were aware of and actively considered their available choice of repairer options, it could be expected that a significant majority would still accept IAG's recommendation.

Indeed, there would be little reason for many consumers to choose a non-preferred repairer, even if choice options were more expansive through the insurance sector generally. Many consumers would feel that:

- the insurer is better placed to ensure quality of repair, given its better knowledge of the smash repair market;

- 
- arranging repair should be part of the insurer's service package for which premiums are paid; and
  - features such as valet services, case management and lifetime guarantees are helpful and valuable.

When there are sound reasons to do so, of course, consumers do exercise choice. In a vast range of service and product markets, consumers choose on the basis of perceived value for money. Even within the insurance market, they discriminate effectively between insurers on the basis of product offerings and prices — QBE noted that the motor vehicle insurance market is 'particularly sensitive to price' (sub. 18, p. 6). And, even within the bounds of a particular company's product offerings, consumers often choose to pay a higher price to obtain additional benefits, such as use of replacement vehicles, extended towing and higher contributions towards the costs of returning home after an accident. But it is instructive that, to date, only about five per cent of IAG's customers have chosen, on policy renewal, the additional cost 'choice of repairer' option (trans., p. 10) — suggesting that choice of repairer is not valued highly by consumers generally.

In summary, greater choice would enhance the opportunity for individual consumers to select repairers that they consider are most likely to meet their particular needs and preferences. But for consumers exercising choice this would impose both the transactions costs of searching for an acceptable repairer and the possibly higher risks of poor quality or unsatisfactory service — costs and risks currently largely borne by the insurer.

Further, even though certain individual consumers might benefit from greater choice, the impact on consumers as a group might well be adverse. As noted below, insurers could face greater costs which would be passed on to consumers. Unless this pass on is restricted just to those consumers who do exercise choice, as in IAG's 'choice of repairer' option, the vast majority of consumers who do not wish to take advantage of increased choice would be disadvantaged.

## **Insurers**

If there were no additional costs involved, an individual insurance company would presumably completely free up its customers' choice of smash repairer. This would assist the firm to retain existing customers and to attract new customers at the expense of other insurers. (Of course, this marketing advantage would be diminished or lost if competing insurers were also to significantly increase their available choice.)

---

But there would be significant costs involved with extending choice. The advantages of preferred smash repairer arrangements for an insurer lie not just through marketing, but also through cost economies arising from ‘centralisation’ of repair work and better control of quality (chapter 3). Suncorp, for instance, considered that it benefited from ‘reduced average repair costs for work undertaken by preferred repairers’ (sub. 12, p. 9). If, through increased choice, consumers were to direct increased volumes of work to other repairers, these cost advantages would be lessened. Insurers then would face increased costs from any productivity losses in the repairer sector arising from loss of any economies of scale and specialisation and reduced pressure on repairers to cut costs.

Administrative overheads would also rise — for example, more assessors could be needed to monitor the greater number of repairers chosen. Unless those consumers exercising choice were themselves required to take responsibility for, and bear the costs of, dealing with the repairer and monitoring repair quality, insurers would also incur higher costs in monitoring the quality of work of a greater number of ‘outsourced’ repair jobs.

IAG’s recently introduced choice of repairer option illustrates the costs for insurers of offering greater choice. The required additional premium, according to IAG, takes the following factors into account:

- weighted average repair cost for a preferred smash repairer or associate repairer versus the non-accredited repairer;
- cost of offering a lifetime guarantee on the repair work of a preferred smash repairer or associate repairer versus the non-accredited repairer; and
- claims administration costs (eg increased assessing costs) (sub. 8, pp. 41–2).

The VACC considered that the additional fee could be charged at the time of the accident rather than upfront:

... the \$70 fee would not unduly disadvantage the consumer if such an option was presented to consumers at the time of the accident. (sub. DR40, p. 8)

However, as insureds claim on average only every seven to eight years, the additional fee under that procedure would be in the order of \$500, not the \$70 suggested by the VACC — equivalent in effect to a substantial increase in a policy’s excess.

In the context of repairer proposals for anti-steering legislation, AAMI presented its views of the likely adverse effects of measures which limit or preclude the right of insurers to select or guide consumer choice of repairer (box 5.1). It commented that: ‘It would be easy to scoff at this scenario or consider it melodramatic, however,

---

Australia’s own [past] experience, as well as insights from the US [in regard to anti-steering legislation], suggest otherwise’ (sub. 19, p. vi).

**Box 5.1      AAMI’s views on the consequences of limiting or precluding insurer involvement in the choice of repairer**

AAMI’s views on the possible consequences of limiting or precluding insurer involvement in the choice of repairer are set out below.

- Many repairers would quickly activate inducements and involvement with tow trucks as the primary and most effective mechanism for securing accident repair work. Much of the focus would move away from shop efficiency (cost and quality), a positive dynamic under the current structural change, towards capturing repair work and securing the highest possible price for that work.
- Those repairers that had committed to delivering competitive costs and a quality service, built relationships with insurers through preferred supplier type arrangements, and generally invested in their business, would find their business model was no longer relevant.
- The cost of inducements and tow trucks would be passed on in the form that the cost of repairs and premiums would increase.
- The increased prospect of securing repair work would directly undermine State Government policies designed to overcome the unruly and inappropriate behaviour that has been associated with tow trucks and at accident scenes.
- No longer ‘responsible’ for repairs, insurers would dismantle or detune their frameworks designed to lift or maintain quality. Lifetime guarantees would be removed. And insurers would be likely to move to cash settlement. This would leave the repair process entirely in the hands of the customer, who typically has no knowledge of smash repairs. The Government would find itself responsible for quality issues having to introduce frameworks to protect consumers.

*Source: AAMI (sub. 19, p. vi).*

Insurers facing such higher costs could be expected to pass them on, largely to consumers through higher premiums. At the extreme, repair costs could rise so much that insurers routinely cash settle, as suggested by AAMI — in turn, disadvantaging many consumers further.

## **Repairers**

Several of the repairer representative bodies argued for greater consumer choice in the selection of repairer. For example, the MTA of Queensland considered that ‘consumers should be able to select a repairer of their choice without being put under pressure by insurers to use a “preferred repairer”’ (sub. 7, p. 18).

---

The VACC commented that removal of choice adversely affected many repairers who had built a customer base over many years:

... denying choice ... also transgresses the principle of the rights of repairers to develop and hold their own customer base, which in many cases have been build up over years and, in some cases, generations. (sub. 14, p. 38)

Many individual repairers in their confidential submissions, both before and after the Commission's draft report, also emphasised the adverse impacts on them of reduced consumer choice:

... [our] customers have been bullied into taking their damaged vehicle to [another repairer], even when our customers tell the claims department they want their vehicle repaired [in our panel shop]. (conf. sub. DR114C, p. 1)

... if there are no safeguards in place for consumers and business to rely on repeat business and consumer choice, the opportunity for further abuse and manipulation ... by large corporate insurers will lead to those businesses ceasing to exist ... (conf. sub. DR116C, p. 6)

The MTAA considered that:

The best way to promote a strong and vibrant smash repair sector that best meets the needs of insurers and consumers is through competition. Increased competition is only delivered through increased choice which results in improved productivity and lowest possible market prices. (sub. 15, p. 32)

Clearly, the views of the MTAA are at odds with those of insurers such as AAMI (box 5.1). In the Commission's view, it is difficult to see how mandating choice would lead to 'improved productivity' in repair and the 'lowest possible market prices'.

- As the *total* volume of work coming into the sector will be largely unaffected by greater consumer choice, what one repairer gains in volume, another will lose. To some extent, work is likely to move from preferred smash repairers to those who currently operate without that status. Indeed, the confidential submissions from many non-preferred repairers clearly reflected an expectation that they would gain work if consumer choice was greater.
  - The Commission acknowledges that many efficient repairers may operate without PSR status. Nevertheless, to the extent that PSR status accurately reflects the insurers' assessment of repairer cost efficiency in the context of their particular business needs, this movement of work is likely to lower the average cost efficiency of repair work. As noted above, any such redistribution of work could reduce both economies of scale and pressure for increased productivity.

- 
- Consequently, moving work from preferred repairers to non-preferred repairers is likely to increase prices for repair, rather than lead to a reduction — reflecting increased average costs and a weakening of the insurer’s ability to apply downward price pressure as consumers themselves select their own repairers.

Thus, while greater consumer choice may well enhance the fortunes of a particular section of repairers, it could come at the expense of other repairers that operate efficiently and effectively under present arrangements. As one confidential submission from a repairer satisfied with the current arrangements for choice noted:

... many repairers are struggling. We believe this is a consequence of poor business decisions in the past. We do not think it fair that external changes now be applied to our industry to their benefit and our expense. (conf. sub. C.98, p. 4)

### **5.3 Is there ‘reasonable’ choice?**

As noted above, many repairers and repairer groups called for consumers to be allowed greater choice of repairer. Often, their call was simply for insurers to reduce pressure placed on consumers to choose preferred repairers and reduce obstacles placed in the way of consumers wishing to choose non-preferred repairers. Some called for an industry code of conduct (chapter 6) which would include provisions facilitating consumer choice of repairer. For example, the MTAA recommended the introduction of a mandatory code of conduct to ‘clarify the customers’ ability to choose their repairer’ (sub. 15, p. 3). Some repairers, including the MTA of Western Australia (sub. 16, p. 8), called for the introduction of anti-steering legislation, similar to that which applies in some states of the United States. The Small Business Development Corporation (SBDC) of Western Australia was concerned that ‘consumer choice has been eroded unnecessarily — to the detriment of consumers and repairers alike’ (sub. 10, p. 3). It called for greater transparency in the selection criteria for preferred repairer schemes and consideration of an appeal mechanism for repairers and/or an independent vehicle assessment where an insurer disputes a quote from a non-preferred repairer (sub. 10, p. 4).

Insurers, in contrast, supported their current arrangements for choice, pointing to the advantages for consumers of preferred smash repair arrangements. For instance, IAG commented that ‘customers receive quality repairs and customer service, and the advantage of not having to seek multiple quotes’ (sub. 8, pp. 39–40). Similarly, AAMI commented that:

It is targeting those customers that accept that AAMI will obtain competitive quotes, manage their repairs and in the process provide them with various benefits. (sub. 19, p. 38)

---

Some insurers, including AAMI and Allianz, considered that all consumers have the option to choose an insurer that offers choice of repairer. According to Allianz:

As long as insurers are transparent with policyholders about whether they offer choice of repairer, all policyholders have a choice of repairer by virtue of the fact that they can choose an insurer that offers choice if they value such sufficiently high enough. (sub. 20, p. 9)

As noted above, providing greater choice is likely to benefit some consumers and repairers. But enforcing greater choice will have significant costs for insurers generally and for those many repairers that currently operate successfully under the PSR arrangements. Further, depending on the arrangements for passing on the costs of greater choice, many consumers could also be disadvantaged.

In the current market environment, insurers compete strongly to provide consumers with products that are attractive to them. It can be argued that, in such a competitive market, the range of insurance products available implicitly illustrates the judgments which insurers make about product features that consumers value, including choice. Thus, insurers apparently have judged that many consumers — indeed, the vast majority — are prepared to forgo some choice in favour of convenience, through valet services or preferred repairers for example, or just for lower premiums.

Nevertheless, some products and some insurers offer more choice than others — indeed, the nature and extent of repairer choice offered by insurers varies widely. Thus, three of the four largest insurers have judged that there is a ‘market’ for greater choice of repairer, and cater for that segment of demand. As noted above, the standard policies of Suncorp and Allianz offer choice and, from November 2004, IAG offers choice of repairer for an additional premium.

No doubt, given the highly competitive insurance market generally, insurers would further expand choice options if they considered that would increase their market share or profits. This was recognised by the Victorian Government which commented that:

To the extent that the preferred repairer schemes are unable to accommodate the different needs of certain groups of consumers, we might expect to see the evolution of alternative types of insurance schemes to accommodate niche markets. An alternative type of hybrid scheme is one which charges different premium levels: for example, one level for customers who do not want a choice of repairer and another, higher premium level for those customers that do want a choice. (sub. 26, p. 14)

Similarly, the ACA commented that while it ‘does not think that insurers should be required to provide ... choice’, it believed that ‘it is likely there will always be a demand for this and that some insurers will cater to that market’ (sub. DR31, p. 2).

---

In reaching a conclusion about the reasonableness of available choice, the Commission has noted the considerable degree of choice already available to consumers in arranging their motor vehicle repair insurance, including the ability to choose policies that offer choice of repairer. Consumers can fairly readily change their insurer or their policy type, usually without loss of no-claim bonus, albeit with possible implications for multipolicy discounts — the ICA indicated that its research showed that each year about one-third of consumers actively consider changing their smash repair insurer (trans., p. 160). The Commission has also noted that insurers are free to expand their range of policy offerings to include provisions for greater consumer choice, where they judge that offers a profitable business opportunity.

FINDING 5.1

*Consumers wanting choice of repairer can choose to insure with one of the several insurers offering that choice. On this basis, consumers have restricted, but reasonable, choice of repairer.*

Some overseas jurisdictions enforce anti-steering requirements — indeed, some go further and prohibit PSR arrangements and even insurer ownership of repair shops. The Commission has found little analysis of the advantages and disadvantages of such measures as they operate in practice.

However, in the Commission's view, forcing greater consumer choice on the insurance industry, in the Australian context, through the anti-steering measures requested by some repairer groups, or through other similar measures, would be a costly step. Apart from increasing costs for insurers and consumers, it would adversely affect the structure and operating economies of the repair sector itself — through greater repairer fragmentation, lower scale and reduced incentive for productivity improvement. It is highly likely, given the available choice already available in the Australian market for smash repair insurance, that the costs of such measures would significantly exceed any benefits.

FINDING 5.2

*Governments should not mandate consumer choice of repairer.*

- *In particular, 'anti-steering' measures should not be introduced.*

There is little evidence to suggest that the current policy documents are unclear or incomplete in their provisions about choice. Nevertheless, as the MTA of Queensland, for example, noted 'consumers ... are often not aware of many aspects of their policy before becoming a policyholder' (sub. 7, p. 18). The ACA considered

---

that ‘it is important that insurers fully disclose the policy of no choice of repairer at point of sale’ (sub. DR 31, p. 2).

In the Commission’s view, insurers should not be prevented from explaining the advantages and disadvantages of the various options available, including the benefits of their ‘valet’ services, case management and preferred supplier systems. But if insurers do not clearly and accurately explain the policy options to consumers making claims, or make unjustified comments about the work quality of non-preferred repairers (see above), their behaviour could be considered unfair and misleading. A similar conclusion also applies to explaining policy provisions for the use of parts and for guarantees (chapters 3).

The Commission considers that insurers could, at little cost, enhance their procedures to ensure that consumers are explicitly made aware of their rights of choice, if any. For example, insurers could require that: policy choice provisions are clearly and accurately explained to consumers taking out policies and when making claims; and obtain and record customer agreement that such explanations have been provided and understood. Some insurers already do so, but there would be advantages from the adoption of such procedures more widely. Relevant provisions could be included in an industry-wide code of conduct (chapter 6).

FINDING 5.3

*Insurers should enhance their operating procedures to ensure that available options for choice of repairer are clearly and accurately explained to consumers taking out policies and making claims.*

FINDING 5.4

*Insurers should not attempt to dissuade consumers from exercising their available choice options by making misleading, inaccurate or unjustified comments about the quality or timeliness of repair of non-preferred repairers.*

---

## 6 Dispute resolution and codes of conduct

### Key points

- The existing internal consumer dispute resolution systems of the individual insurers appear to be working adequately. Further, there is no evidence that the systems of the General Insurance Enquiries and Complaints Scheme for resolving consumer disputes are not broadly appropriate, nor that the Scheme is not sufficiently independent.
- There is no evidence of any significant deficiencies in the procedures for resolving disputes that arise directly between consumers and repairers.
- There are many serious issues of dispute between insurers and repairers concerning fair trading, transparency and efficiency. Many are industry-wide or matters that individual insurers have been reluctant to address in corporate codes of conduct. There are only limited options available to address these issues. The development of an industry-wide code of conduct offers a cost effective way forward.
- Any industry-wide code should:
  - focus on insurer-repairer relationships;
  - not explicitly encompass insurer-consumer or consumer-repairer relationships;
  - specify ‘minimum standards’ in matters of fair trading, process and transparency;
  - avoid *undue* interference in the commercial relationships between individual insurers and repairers; and
  - not prevent individual insurers developing their own codes consistent with, or building on, the industry-wide code.
- Dispute resolution procedures under an industry-wide code should avoid *undue* interference in the commercial relationships between insurers and repairers and, in particular, avoid provisions which could have anticompetitive consequences.
- Provided that the scope and content of a code follow principles outlined in this chapter, the benefits for the community as a whole are likely to outweigh the costs, even if the code is mandatory.
  - In the absence of voluntary agreement on an industry-wide code between insurers and repairers within six months from release of the Government’s decision on this report, a code should be developed and mandated under the Trade Practices Act.

---

The terms of reference ask the Commission to report on the extent, adequacy and independence of dispute resolution systems between the smash repair industry, insurance companies and consumers. This is discussed in this chapter, in the context of the more general issue of the nature and extent of codes of conduct which could apply. With the apparent inability of insurers and repairers to agree on a voluntary industry-wide code of conduct in the past, this chapter gives consideration to the question of a mandatory code declared under the Trade Practices Act.

As participants' comments focused on the vast majority of repair work which is arranged through the insurer, the chapter concentrates on the relationships between consumers and insurers and between insurers and repairers. However, as some work is arranged directly between consumers and repairers, the chapter also briefly covers dispute resolution in this instance.

## **6.1 Disputes between consumers and insurers**

Individual motor vehicle insurers have their own procedures for dealing with complaints from consumers. These procedures are generally spelt out in the policy documents. Although the details differ among insurers, resolving complaints is usually a staged process involving:

- an attempt to resolve the issue within the corporate area of the insurer immediately responsible for dealing with the consumer;
- referral of the problem to a 'specialist' area within the firm responsible for dealing with disputes; and
- finally, if the preceding two steps do not resolve the issue to the customer's satisfaction, reference to the external General Insurance Enquiries and Complaints Scheme (IEC).

The IEC, which is independent of individual insurance companies but funded by the insurance industry, covers a broad range of general insurance types, including motor vehicle insurance, generally in respect of retail consumers and small business. It is a national external dispute resolution body approved by the Australian Securities and Investments Commission (ASIC), the financial services regulator. Before approaching the IEC, consumers are required to take up the complaint through the relevant insurer's internal complaints mechanism.

After a consumer submits a complaint to the IEC, information from the consumer and from the relevant insurer is examined by an IEC case manager, who will initially try to resolve the dispute. If that is not possible, the dispute is sent to an independent decision maker who will decide the dispute and give reasons in writing

---

— an Adjudicator determines disputes of \$5000 or less, a Referee decides disputes where fraud is alleged and the Panel determines all other disputes.

This industry-wide body is generally free to consumers. Its decisions are not binding on consumers, but are binding on insurers where the amount does not exceed \$120 000. The IEC deals with two types of dispute: claim disputes and non-claim disputes (box 6.1).

In performing its functions, the IEC is responsible for the administration of the General Insurance Industry Code of Practice, as well as for dealing with complaints about code breaches. This code is a self-regulatory code, approved by ASIC, that aims to ‘raise the standards of practice and service in the insurance industry’. While the code is technically voluntary, all insurers offering general insurance to consumers must subscribe to a code of practice approved by ASIC — and this code is the only one so approved. Among other things, the code specifies that each member (ie each insurer subscribing to the code) must have an internal dispute resolution process and must participate in the IEC. The code is currently being reviewed under the auspices of the Insurance Council of Australia (chapter 2).

In relation to motor vehicle insurance (including third party) for 2003-04, there were nearly 10.5 million policies, 1.3 million claims and about 5800 disputes (IEC 2004a, table 10). The dispute rate is thus considerably less than one per cent. The majority were settled at the individual insurer level — in that year, only 630 new claim related complaints about motor vehicle insurance were received by the IEC (IEC 2004a, table 3). There are no published IEC data about the proportion of claim related complaints relating to repair quality, although AAMI noted that the IEC ‘averages approximately one complaint per month in relation to repair quality’ (sub. 19, p. 50). Only 397 code of practice related matters were received by the IEC in 2003-04 across all categories of general insurance (IEC 2004a, p. 11).

In terms of the appropriateness and effectiveness of the current IEC arrangements, the MTA of Queensland commented that:

Unsubstantiated claims from policyholders indicate little success in having disputes involving quality of repairs or rectification resolved by the IEC. A process whereby consumers have redress should they be unsatisfied with the findings of the IEC needs to be put in place. (sub. 7, p. 19)

Inevitably, however, irrespective of the nature and extent of the dispute resolution procedures available, some disputes will remain unresolved. Adding yet another layer of appeal to the existing three-layer arrangement already in place would not change this outcome. In any case, complainants who are not satisfied with the outcomes of the IEC process still have the right to pursue their complaints through the courts.

---

### Box 6.1      **Types of dispute handled by the IEC**

The IEC deals only with disputes between complainants and insurers who were members at the time the complaint arose and:

- (a) if the dispute is a claim dispute, the claim under the insurance contract is for a total amount not exceeding \$290 000; or
- (b) the claim does not exceed \$3000 for third party claims; or
- (c) if the dispute is a non-claim dispute and involves a claim for compensation, the total amount of compensation does not exceed \$290 000.

A claim dispute includes but is not limited to:

- (a) the interpretation or application of an insurance contract; or
- (b) the member's liability to indemnify the applicant; or
- (c) the amount of any claim; or
- (d) delay in payment.

A non-claim dispute may relate to but is not limited to:

- (a) a member's sales and marketing conduct in the provision of a financial service; or
- (b) advice about a general insurance product; or
- (c) changes to premium and no claim bonus or risk rating assessments having regard to the premiums, rating and usual practices of the insurer excluding disputes about rating factors and weightings the insurer applies to determine an individual's base premium which is commercially sensitive information; or
- (d) the failure to offer insurance or to only offer insurance on non-standard terms; or
- (e) the cancellation of an insurance contract that has not been cancelled in accordance with the Insurance Contracts Act, 1984; or
- (f) disclosure issues; or
- (g) the service or handling of a complaint by a member; or
- (h) any other dispute to which the member has agreed to refer to the Scheme.

The IEC does not apply to a non-claim dispute that is solely about a member's:

- (a) commercial judgment or policy; or
- (b) assessment of risk; or
- (c) the level of premium; or
- (d) rejection of an insurance proposal, except where the dispute is that the proposal was rejected indiscriminately, maliciously or on the basis of incorrect information.

*Source:* IEC (2004b, pp. 9–10).

Several participants complained about slowness in the IEC procedures — according to the VACC, the IEC process is ‘incredibly cumbersome and slow’ (sub. 14, p. 40). It commented, however, that it ‘is happy to accept that the existing arrangements

---

adequately cater for disputes between consumers and insurers' (sub. DR40, p. 13). For its part, the Commission has not attempted to assess the IEC's administrative arrangements.

FINDING 6.1

*The existing internal consumer dispute resolution systems of the individual insurers appear to be working adequately. Further, while the Commission has not assessed the General Insurance Enquiries and Complaints Scheme's (IEC's) administrative arrangements, there is no evidence that the IEC's systems are not broadly appropriate, nor that the IEC is not sufficiently independent.*

## **6.2 Disputes between consumers and repairers**

A significant minority of work is contracted directly between the consumer and repairer, including some non-insurance work (chapter 2). Disputes in respect of this work can be progressed in a number of ways, including: direct negotiation between the parties; through motor repairer regulatory bodies such as the Motor Vehicle Repair Industry Authority (MVRIA) of New South Wales; through state-based consumer affairs departments under fair trading arrangements; and action in the small claims tribunals and the courts more generally.

There are no comprehensive data available about complaints made directly to such bodies about smash repair work. But judging from correspondence submitted in evidence by AAMI, the numbers are very low (sub. 19, attachment 1.10).

FINDING 6.2

*There is no evidence of any significant deficiencies in the procedures for resolving disputes that arise directly between consumers and repairers.*

## **6.3 Disputes between insurers and repairers**

Conflict, disagreement and disputes have characterised relations between repairers and insurers for many years. As illustrated in previous chapters, there is disagreement about a wide range of matters including: many aspects of preferred smash repairer arrangements, consumer choice, quotation systems, which types of parts to use, repair methods, warranties and rates and terms of payment. Overall, this has led to an adversarial environment between the industries, characterised by high levels of mistrust.

---

In contrast to arrangements for dispute resolution between insurers and consumers, however, there is no generally available external and independent mechanism for examining disputes that cannot be readily resolved between insurers and repairers. Nevertheless, three of the four main smash repair insurers have published dispute resolution procedures under which complaints from repairers can be reviewed (box 6.2). The codes of AAMI and Allianz, but not that of IAG, extend to repairers outside their PSR networks. IAG indicated that it was reviewing its code to ‘assess how it can be improved after being in operation for one year’, and that it was considering extending its code to cover ‘a review of the process followed that results in an enterprise not being appointed as an IAG preferred supplier’ (sub. DR51, p. 5).

There are no comprehensive data about the number of disputes that are not resolved between insurers and repairers and progress further to ‘external’ arbitration. But judging from IAG’s October 2004 comment that its external dispute resolution committee had dealt with only two cases (sub. 8, p. 44), the total number is likely to be very low.

However, this does not necessarily mean that there is no issue of concern — first, as noted, not all insurers provide such ‘external’ dispute resolution procedures; second, because of the insurers’ strong influence over their future livelihoods, many repairers may be prepared to raise a dispute only informally, if at all; third, those existing procedures are in any case unlikely to be able to resolve disputes arising from company-wide or industry-wide practices, such as quotation systems for example.

## **Views of repairers about current dispute resolution arrangements**

While insurers generally argued in support of their current dispute resolution arrangements, repairers contested their adequacy.

The MTAA considered that a number of currently operating corporate codes ‘failed to address the concerns of both the body repair industry and the motor vehicle insurance industry and thus to address repairer concerns’ (sub. 15, p. 25). In particular, it alleged shortcomings in the codes of AAMI and IAG. In regard to IAG’s code, for instance, the MTAA listed a number of issues:

... failing to consider the interests of the policy holder; the absence of capacity for any negotiation by repairers themselves or their associations; the lack of capacity for any nomination of representatives or nominees of repairers to the internal or external dispute resolution procedures and the lack of capacity for clauses to be discussed, negotiated, contested or in any way changed or reviewed. (sub. 15, p. 25)

---

**Box 6.2      Examples of insurer mechanisms for resolving disputes with repairers**

AAMI's Code of Practice, which applies to all repairers having dealings with AAMI, sets out: standards of conduct for AAMI and repairers; 14 day payment terms; a procedure for response to repairer applications; AAMI's disclosure commitment — claims and repair processes; repairer consultation provisions; dispute resolution procedures; public reporting provisions; and contact details for the code Executive Director. (sub. 19, p. 29)

Allianz has developed the 'Allianz Claims Promise — Customer Choice of Repairer' as a corporate code governing relations between it and repairers that are not Network Repairers. It sets out: the rights of customers to choose their own repairer; a requirement that repairers only use parts that comply with Australian design rules; a commitment to pay all correct invoices within 30 days; and the introduction of clear limits on the life of repairers' guarantees of their work. It also contains internal and external dispute resolution mechanisms. For external dispute resolution, Allianz uses the Australian Commercial Disputes Centre. This centre is also used as the external disputes resolution mechanism for its Network Repairers, under their service level agreements. (sub. 20, p. 19)

IAG's Code of Practice complements and does not replace its contracts or arrangements with its preferred suppliers. It provides access for preferred smash repairers to a dispute resolution procedure. In this regard, a three stage process is encouraged: first to a local manager; second to an internal dispute resolution committee; and finally to an external dispute resolution committee. The latter committee comprises former ACCC Small Business Commissioner, Mr David Liebermann, and former New South Wales Small Business and Consumer Affairs Minister, the Hon. Wendy Machin. The committee makes recommendations to the IAG Executive, Personal Insurance. Disputes with non-accredited repairers are not covered (but see text): '... the issue of a dispute resolution between IAG and a customer's chosen repairer is not a business interest nor concern of IAG'. (sub. 8, pp. 44–5)

Suncorp commented that it 'does not have a formal dispute resolution scheme in place for managing disputes with its repairers. This is because in more than 20 years of operation, there has been no evidence of any systemic problems that would indicate a need for a dispute resolution scheme'. (sub. 12, p. 9)

Further, the MTAA commented that repairers have constantly reported to it that 'there is no process for repairers to resolve any disputes that they may have with their insurer about quotes or the awarding of work' (sub. 15, p. 29).

The Victorian Government considered that:

For repairers, the lack of a formal, centralised, consistent process when disputes arise over quoting and method of repair can affect their working relationship with insurers and jeopardise the quality of repairs. (sub. 26, p. 22)

---

In commenting on the ‘Claims Promise’ recently adopted by Allianz, the MTAA stated that ‘although [it is] most welcome, [it] is of limited consequence in a market dominated by other, larger insurers’ (sub. 15, p. 26).

The Small Business Development Corporation of Western Australia advised that it shares the concerns of repairer groups that:

... the corporate codes which currently exist do not specify standards for repairers, have inadequate dispute resolution systems and fail to provide guidance on customer service. (sub. 10, p. 11)

Some state-based automotive traders’ bodies considered that existing dispute resolution procedures favoured the insurers. For instance, the MTA of South Australia claimed they ‘tend to favour the insurer, neglect the consumer and penalise the repairer’ (sub. 22, p. 4). Similarly, the MTA of the ACT considered that ‘insurers codes have a very detectable bias in their favour’ (sub. 25, p. 5).

And the VACC claimed that ‘the most notable failure’ of the dispute resolution processes offered by insurers is that they ‘do not carry any genuine independence in assessing the complaint’ (sub. 14, p. 40). Further:

If any outside ‘experts’ are sought to adjudicate they are usually in the pay of the insurance company, thereby mitigating the candour of their decision. (sub. 14, p. 40)

Despite such claims, however, there is no solid evidence that the existing individual firm dispute resolution arrangements unfairly favour insurers at the expense of repairers. Further, they are likely to assist to resolve disputes in particular circumstances. Nevertheless, because of their limited scope and coverage, it is clear that these existing arrangements are not capable of dealing with a number of the underlying causes of the considerable ongoing friction between the two industries.

## **Options for change**

Past proposals to address such concerns have focused on the development of an industry-wide code of conduct, incorporating dispute resolution procedures. Indeed, as noted in chapter 1, state and federal ministers have agreed to support a ‘national solution to problems in the smash repair and general insurance industry, at a minimum, through a voluntary, industry-wide code’. And the Federal Government has signalled that it will consider ‘a stronger regulatory response, should a voluntary code not be satisfactorily progressed’.

Many common interest groups, groups of firms and indeed, broad industries, have developed codes of conduct (also known as codes of practice) to govern aspects of their commercial behaviour towards other industry participants, customers and/or

---

suppliers. Such codes supplement or, in some cases, replace codes otherwise adopted by industry participants on an individual basis. These ‘industry-wide’ codes are generally taken up on a voluntary basis without legislative or regulatory backing. The TPA makes provision, however, for both voluntary and mandatory codes. (As well, state and territory jurisdictions can legislate mandatory codes in particular circumstances.) Codes may require authorisation from the ACCC where there are competition issues under the TPA (box 6.3).

#### **Box 6.3      Codes of conduct and the ACCC**

##### **Anticompetitive provisions**

Where industry codes of conduct contain provisions which are potentially anticompetitive, it is necessary for authorisation to be sought from the ACCC. Authorisation provides immunity from legal action under the competition provisions of the Trade Practices Act (TPA). Authorisation can be granted if it can be demonstrated to the ACCC in a public process that these provisions provide net public benefits.

##### **Voluntary codes**

An industry code of conduct can be declared under the TPA as a voluntary code of conduct. In this instance, participation is voluntary, but the ACCC can take action against signatories for breaches of the code.

##### **Mandatory codes**

The TPA provides a legislative framework for the prescription of industry codes of conduct as mandatory and for the ACCC to take action against breaches of such codes.

The Franchising Code of Conduct provides an example of such a mandatory code — this commenced as a mandatory code on 1 October 1998. The Code governs relationships between franchisors and franchisees in a number of areas including provisions for disclosure of material by the franchisor to the potential franchisee and provisions for dispute resolution. Under the latter provisions, issues that cannot be resolved between the franchisor and the franchisee can be referred to external mediators.

There are only few instances of codes which have been mandated under the TPA. These include the franchise code of conduct (box 6.3). As noted above, the General Insurance Industry Code of Conduct which covers the relationship between insurers and consumers is ‘virtually’ mandatory, but falls under the provisions of the *Australian Securities and Investments Commission Act 1989* and the *Insurance Act 1973*.

The term ‘voluntary’ is somewhat misleading, because once a firm subscribes to a code, it would be bound to comply with the provisions of that code. It does have the

---

initial choice, however, of whether or not to join such a code. Further, depending on the provisions of the code, it would be able to unsubscribe. In contrast, all firms in the industry would have to comply with a mandatory code, even if they did not wish to do so.

### *Participants' views*

Some participants modified their views about the merits of introducing an industry-wide code and whether such a code should be voluntary or mandatory during the course of this inquiry.

In their initial submissions, repairer groups strongly supported the adoption of an industry-wide code on a mandatory basis. The MTAA believed that:

... a number of particular issues [including a dispute resolution mechanism; the preferred smash repairer schemes; and community benefit] remain outstanding and ... require attention and resolution through a mandated code. (sub. 15, pp. 33–4)

Together with other repairer groups, the MTAA supported the mandatory adoption of the particular code of conduct, prepared by the Australian Motor Body Repairers Association, known as the Automotive Body Repair Industry (Fair Dealing) Code of Conduct (ABRICC, October 2004). The objectives of this code are listed in box 6.4. In addition, the VACC called for a 'de-merit' system whereby 'constantly offending' repairers and insurers would accrue demerit points, ultimately leading to suspension of a repairer's licence or, in the case of an insurer, to a substantial fine (sub. 14, p. 42).

The Victorian Government supported a national voluntary code of conduct. It considered that the code should contain performance indicators to measure its effectiveness and that:

If, at the end of a specified period of time it is found that the parties are not complying with the code, then serious consideration should be given to making the code mandatory under the Trade Practices Act 1974. (sub. 26, p. 2)

The Commission's draft report gave preliminary support to a mandated code if a voluntary code could not be agreed within a specified reasonable time. In response, repairers continued to argue for the code to include provisions for consumer choice of repairer and procedures for resolving individual quotation disputes. However, even though some scepticism was expressed about the chances of voluntary agreement with insurers (for example, by the MTA of Queensland, sub. DR44, p. 6, and the MTA of Western Australia, sub. DR39, p. 5), some repairer groups supported an attempt to negotiate a voluntary code. The MTAA noted that the Insurance Council of Australia (ICA) has accepted an invitation to meet for

---

preliminary discussions — this was described as a ‘positive first step’ by the MTAA (sub. DR41, p. 5). It suggested that:

... a suitable maximum period for negotiation of a voluntary code would be that negotiations be finalised by 30 September 2005 with a commencement date of 1 January 2006. (sub. DR41, p. 6)

**Box 6.4 Objectives of the ABRICC code**

The objectives listed in the ABRICC code are as follows:

- (a) promote public confidence in the conduct of the motor vehicle insurance and repair industries;
- (b) recognise the interests of policyholders;
- (c) recognise policyholders as having relationships with repairers and insurers;
- (d) promote informed and effective co-operative relationships between policyholders, repairers and insurers based on mutual respect and open communication;
- (e) facilitate fair competition among repairers and insurers;
- (f) implement efficient, quick, accessible and transparent dispute resolution processes for issues arising between complainants and insurers; and
- (g) achieve continuous improvement in the standards and systems of insurers and repairers.

*Source:* Automotive Body Repair Industry (Fair Dealing) Code of Conduct, clause 1.2.

The VACC suggested that a ‘reasonable’ time for the negotiation of a code should be six months from the date of release of the Commission’s final report (sub. DR40, p. 11).

Insurers initially supported their current arrangements and argued against any need for an industry-wide code. For instance, RACQ stated that:

Complaints or disputes arising from smash repairs are managed through an internal complaints management process. This process is transparent and equitable. (sub. 6, p. 16)

QBE argued that any industry-wide dispute resolution scheme for smash repairers ‘is likely to be ineffective as such complaints are as a result of the systemic issues facing the smash repair industry’ (sub. 18, p. 10).

Allianz initially considered that as an industry-wide code would have to be ‘pitched at a high level of generality and principle’, it would be ‘unable to respond to the specific concerns repairers might have with a particular insurer’ (sub. 20, p. 21). It considered that an individual corporate code could, on the other hand, be ‘tailored to

---

address in detail the specific concerns that arise with an individual insurer's approach' (sub. 20, p. 21).

In its pre-draft report submission, IAG stated that it was opposed to any form of industry-wide code with the smash repair industry:

Individual insurers through their own relationships and processes and the existing legislative and regulatory environment are addressing issues raised by smash repairers. (sub. 8, p. 46)

While Suncorp stated that its first preference was for individual insurers to retain the ability to develop their own codes, it stated that it would provide 'in principle support' for an industry-wide code 'on the proviso that the code related to the core components of the relationship between insurers and repairers' and did not attempt to 'wind back the preferred repairer scheme' (sub. 12, p. 10).

After the draft report, major insurers modified their position of outright opposition to an industry-wide code into one of conditional support for a voluntary code, depending on its scope and content. The ICA notified the Commission:

... of a major change in policy and in the insurer industry position. Based on the Preliminary Findings of the Draft Report [the] ICA has changed its long-standing opposition to the development of a voluntary Code. (sub. DR54, p. 1)

It suggested a code could be completed in calendar year 2005 (trans., p. 166). Individual insurers variously nominated times ranging from six months to a year or more in total to develop and agree on a code.

Clearly, the scope and content of an industry-wide code will be crucial to whether agreement can be obtained on a voluntary basis and, indeed, to whether benefits exceed costs.

## **The case for an industry-wide code**

The case for an industry-wide code needs to be considered in a broad benefit–cost framework, taking account not only of the particular needs of insurers and repairers but also the interests of consumers and of the community more generally. Consideration needs to be given to the possible loss of flexibility a code can involve, as well as to administrative and compliance costs.

Many of the serious issues of dispute between the two industries have been discussed in detail in the preceding chapters of this report. Their nature varies: some concern the efficiency of operation of the insurance and repairer industries, some relate to transparency and others could be generically described as matters of 'fair

---

trading'. Overwhelmingly, they stem from a lack of trust and cooperation between the two industries.

The considerable friction between insurers and smash repairers going back many years has inevitably reduced sector efficiency. Both time and resources are wasted in disagreement. In such an adversarial environment, it is impossible to develop the trust or cooperative relationships that underlie efficient business, as in other industry sectors. The effects are not confined to insurers and to smash repairers, but are experienced also by consumers and by the wider community. There is evidence that these problems and the underlying tension between the two industries have worsened in recent years, as smash repair insurance has concentrated into four major groups, with a consequent increase in insurer power.

There are only a limited number of options to address these issues.

- Continue to rely on the current practices and procedures of insurers, including their individual corporate codes of conduct, where they exist. However, many of the contentious issues are either industry-wide in nature, or deal with matters that individual insurers have been reluctant to address in those codes. Further, the present arrangements have not prevented a deterioration in relationships between repairers and insurers in recent years. Problems may continue to worsen under this option.
- Adopt prescriptive legislative or regulatory means such as 'anti-steering' provisions, licensing requirements or constraints on PSR arrangements. While these might be welcomed by some repairers, they would open up a whole new range of problems, imposing high costs on insurers, consumers and, indeed, on many repairers themselves.
- Take action in a broader context: for example, through amending the Trade Practices Act. Such possibilities have ramifications extending well beyond the insurance and smash repair industries and are thus, in the Commission's view, beyond the scope of the present inquiry.
- Develop an industry-wide code.

In the Commission's view, particularly given the major differences in negotiating strength between insurers and repairers, there is *prima facie* justification for the development of an industry-wide code of conduct as a cost effective means of dealing with the problems and tension. But a firm conclusion can only be reached after *detailed* consideration of scope and content, as not all issues of dispute between the two industries are appropriate for inclusion in a code.

Finally, consideration also needs to be given to whether any industry-wide code should be voluntary or mandatory, taking into account any additional impacts on

---

firm flexibility and additional administrative and compliance costs likely to be associated with a mandatory code.

FINDING 6.3

*The nature of the many serious issues of dispute between insurers and repairers varies: some concern fair trading, some transparency and some efficiency. Many are either industry-wide in nature or concern matters that individual insurers have been reluctant to address in corporate codes of conduct. They may only be capable of cost effective resolution through an industry-wide code.*

### **Scope and content of an industry-wide code of conduct**

As noted above, many repairers considered the provisions of the ABRICC code were appropriate for an industry-wide code of conduct. The MTAA considered that this code, using principles of transparency, accountability, competition, collaboration and community benefits, would:

... set the basis for positive and strong working relationships between insurers and repairers to produce an environment where both parties can address their responsibilities towards consumers, by proposing guidelines to regulate the relationship between repairers and insurers. (sub. 15, p. 34)

AAMI, however, considered that it:

... sought to distort or preclude genuine competition by: frustrating insurer's efforts to be involved in the repair process; and entrenching the 'right' of a repairer to repair a car regardless of the terms of the policyholder's insurance contract. (sub. 19, p. 75)

Allianz described that code as 'highly intrusive, burdensome and anticompetitive' (sub. DR38, p. 6).

And IAG objected that the VACC/MTA code would:

... require insurers to open their commercial dealings to all smash repairers, regardless of whether those repairers are accredited or not, effectively rendering preferred repairer networks and the benefits they deliver obsolete ... [and] require insurers to provide at least two years' notice to terminate a preferred smash repairer agreement, regardless of the availability of work or the insurance business needs. (trans., p. 8)

Similarly, the ICA commented that it had resisted previous proposals for a code because:

... they were really seeking to impose an artificial ... climate that would protect the smash repairers against normal economic rationalisation. (trans., p. 164)

---

The Commission has not given detailed consideration to the provisions of the ABRICC code. Some provisions appear relevant for an industry-wide code, but others are inappropriate. For instance, the code appears to be founded on the premise that the insurers' current arrangements are anticompetitive — however, the ACCC has found no evidence to this effect, although insurers clearly have substantial negotiating strength. Further, it extends beyond matters of transparency and the promotion of fair trading into provisions which could have a significant effect on the distribution of smash repair work among repairers and on prices paid.

- It codifies what effectively would be a right for consumers to choose a repairer to repair their vehicles.
- The ABRICC 'dispute resolution' procedure for individual quotations could require insurers to authorise repairs at particular repairers, irrespective of their willingness to do so (for example, because of price).

Such provisions are likely to have anticompetitive consequences.

### *Scope*

The Commission considers that any industry-wide code of conduct should focus on the relationships between insurers and repairers. In some aspects, for example in regard to participation in preferred smash repairer arrangements, the code should also encompass dealings between insurers and those repairers with which there is no PSR contractual relationship.

But the Commission would argue against extending such a code to aspects of the insurer-consumer and consumer-repairer relationship:

- given the discussion in chapter 5, it would be inappropriate to include provisions for compulsory consumer choice of repairer in any new code;
- the already operating industry-wide code of practice for general insurers and the operation of the independent IEC provide an avenue for resolution of consumer disputes with insurers; and
- the relationships between repairers and consumers are dealt with through jurisdictional-based arrangements, such as consumer affairs departments and fair trading tribunals, as well as through the ACCC.

### *Content*

In broad terms, any industry-wide code of conduct needs to focus on issues of fair trading, process and transparency. As well, it should establish transparent and independent dispute resolution procedures. As far as possible, a code should not

---

unduly limit insurer and repairer flexibility. For example, while the code could require that insurers publish selection criteria for awarding PSR status, it would not specify what the criteria should be — in this way, fair trading and transparency would be enhanced, but insurers would remain free to adopt criteria which best meet their individual business needs. The code in effect would specify minimum requirements in these areas, while leaving insurers and repairers free to build on, or ‘better’, those conditions in individual corporate codes.

To illustrate these principles, the Commission’s draft report listed provisions that could be included in an industry-wide code, as well as aspects of the insurer-repairer relationship that should be excluded. Participants variously supported or opposed the Commission’s preliminary views on scope and content and suggested a number of modifications. Discussion of the substantive issues is covered in the previous chapters of this report — for example, chapter 4 covers matters relating to FTFM, cooling off periods for PSR contracts and minimum payment terms.

In response to participants’ comments, the Commission has revised some of its preliminary views. The following modified listings incorporate these changes. As in the draft report, these lists are not necessarily exhaustive.

#### *Desirable code inclusions*

- Matters relevant to PSR arrangements, including requirements to:
  - notify opportunities to apply for PSR status;
  - disclose selection criteria (but not a requirement for industry-wide criteria);
  - provide a ‘cooling off’ period for repairers to consider PSR contract offers;
  - provide that PSR tenure should not automatically cease on transfer of business provided probity and prudential concerns are met; and
  - specify that if an hourly rate is included in a PSR contract then it should be a mutually agreed rate.
- Matters relevant to quoting for work and payment, specifying:
  - that times and rates, where used, should be realistic times and rates agreed to by insurer and repairer (as noted in chapter 4, some transitional period may be necessary in the full implementation of this provision);
  - that paint, parts and significant consumables should be separately costed rather than included in hourly rates;
  - where competitive quotes are sought, that the quotation process should be fair and transparent;

- 
- that insurers should fully disclose their terms of payment to repairers; and
  - minimum terms of payment where work is not in dispute (for example, 30 days or less).
  - Matters relevant to quality and safety, and guarantees, including requirements:
    - designed to ensure that where an insurer specifies the repair method and/or the quality of parts to be used, the insurer accepts responsibility in writing for the quality and safety consequences of its specifications (although the repairer would retain responsibility for the quality of its own workmanship); and
    - to restrict the guarantee liability of a repairer to work it actually carries out, and then only for an agreed reasonable period — a repairer should not be required to guarantee parts or paint for a period longer than the manufacturer’s warranty.
  - Matters relating to consumer choice, including requirements for insurers:
    - to clearly and accurately explain repairer choice options to consumers when taking out policies and making claims;
    - to avoid making misleading, inaccurate or unjustified comments about the quality and timeliness of repair of non-preferred repairers; and
    - to clearly and accurately explain to consumers their policy provisions relating to the use of parts and to guarantees.
  - A transparent and independent external dispute resolution mechanism (see below).

### *Code exclusions*

An industry-wide code of conduct would intrude into the commercial relationships between insurers and repairers. This is inevitable, given that the purpose of a code is to help overcome some longstanding problems in those relationships. Nevertheless, any code should concentrate on matters of fair trading, process and transparency, and avoid provisions which would *unduly* intrude into the normal commercial relationships between insurers and repairers. Achieving an appropriate balance between code inclusions and exclusions is a matter for judgment — but, of course, any anticompetitive provisions should be avoided.

In line with these considerations, an industry-wide code should not attempt to specify or regulate, on an industry-wide basis, matters such as:

- minimum hourly rates or prices (but see section 4.2);

- 
- ‘standard’ hours for repair jobs (see section 4.2);
  - types of parts to be used;
  - industry-wide PSR selection criteria and/or weightings for PSR criteria;
  - compulsory choice of repairer;
  - requirements to spread work among repairers; and
  - particular conditions of guarantees.

#### FINDING 6.4

*Any industry-wide code should:*

- *focus on insurer-repairer relationships;*
- *not explicitly encompass insurer-consumer or consumer-repairer relationships;*
- *specify minimum standards in matters of fair trading, process and transparency;*
- *avoid undue interference in the commercial relationships between individual insurers and repairers; and*
- *not prevent individual insurers developing their own codes consistent with, or building on, the industry-wide code.*

#### *Dispute resolution procedures*

A transparent and independent external disputes resolution process would form an essential central part of any industry-wide code of conduct. This is particularly so, given the large number of repairers outside PSR arrangements. However, as with any code itself, not all of the issues of dispute between repairers and insurers are appropriate for reference to those disputes procedures. Further, the complementary internal dispute resolution procedures of individual insurers should be encouraged.

AAMI commented adversely on some of the matters listed by the Commission in its draft report as suitable for external dispute resolution. For instance, while it commented that:

AAMI accepts that a repairer should be able to challenge an insurer’s compliance with the code as it relates to transparency of the agreed processes and adherence to the minimum requirements ... (sub. DR50, p. 7)

it did not consider that issues of ‘selection or non-selection for PSR status’ and ‘work quality’ should be covered (sub. DR50, p. 7).

Certainly a major area of coverage of the dispute resolution procedure would be disputes about breaches of the industry-wide code of conduct itself.

- 
- This would include disputes about whether an insurer had fairly applied its own procedures for selection and non-selection of repairers for PSR status, for monitoring performance under PSR contracts, and for termination or non-renewal of such status. But the Commission agrees with AAMI that the code should not cover the validity of an insurer's judgments about such issues, provided that its procedures had been applied correctly.

But the Commission does not fully agree with AAMI's comment about coverage. Although the Commission envisages that this mechanism would be established under the code, in the Commission's view it should not be restricted just to disputes relating to matters *covered* by the code — it could be used wherever it offered a cost effective way of resolving relevant disputes between repairers and insurers. However, as with an industry-wide code itself, dispute resolution procedures should avoid *undue* interference in the commercial relationship between insurers and repairers and, in particular, avoid areas which could have anticompetitive consequences.

Many disputes arise between repairers and insurers about individual repair jobs. In the Commission's view, in line with the above principles, some categories of job related dispute could appropriately be dealt with under the resolution procedure, but others should be excluded.

- It would be appropriate for the dispute resolution procedure to deal with disputes arising *after* a job had been contracted to a particular repairer, including disputes about whether a repairer had completed work as agreed, whether work was of adequate quality, and about whether payment had been made as agreed. Similarly, disputes about whether the insurer or repairer should pay the cost of rectification for work under guarantee could be appropriately included.
- However, it would be inappropriate to include individual disputes related to the awarding of a particular contract job to a particular repairer — this would excessively interfere in commercial relationships, with possible anticompetitive consequences. Thus, disputes about choice of repairer for a particular job, about the scope of work required, repair methods to be utilised, the types of parts to be used and price should be excluded. (The Commission's proposal in relation to insurers taking greater responsibility for the quality and safety consequences of their requirements should prevent some of these types of dispute — section 3.4.) But broader disputes about whether quotation processes were fair and transparent — that is, whether the code of conduct had been breached — would be appropriately covered by the disputes mechanism.

Various administrative models are possible. IAG envisaged a number of insurer-specific 'independent' bodies should deal with disputes (trans., p. 22). The Commission considers that a single regime, rather than a series of insurer-specific

---

mechanisms, is likely to involve lower administrative and compliance costs and have the advantage of greater perceived independence.

There are also various alternatives to finance the cost of the process — for example, the unsuccessful party could bear the full cost, or it could be shared between repairer and insurer. (Although some participants expressed views on these issues, they have not been fully canvassed during this inquiry.) Insurers and repairers should generally, however, be required to attempt to resolve problems through corporate-specific dispute resolution procedures before accessing the external mechanism.

#### FINDING 6.5

*The coverage of dispute resolution procedures established under an industry-wide code need not be restricted to disputes about breaches of the code itself.*

- *But those procedures should avoid undue interference in the commercial relationships between insurers and repairers and, in particular, avoid provisions that could have anticompetitive consequences.*

### **Voluntary or mandatory**

In the draft report, the Commission noted that an industry-wide code developed in accordance with the restrictions on scope and content outlined above would clearly focus on issues of fair trading, process and transparency. The Commission commented that, on this basis, it might be expected that insurers would look more favourably on an industry-wide code than previously. And that, although its scope and content might disappoint repairers, they might regard such a code as better than relying on existing corporate codes alone.

In response, as noted above, insurers collectively have changed their attitude towards a voluntary industry-wide code, and are now offering conditional support, depending on its scope and content. Although many repairers reiterated support for a mandatory code including provisions for consumer choice and individual quotation dispute resolution, the MTAA and some other repairer groups supported, or did not strongly oppose, giving further time to attempt to develop a voluntary code. These developments confirm the Commission's view, expressed in its draft report, that voluntary agreement between the two sides might now be easier to obtain than in the past.

However, for almost 10 years, insurers and repairers have been unable to agree on an industry-wide code. This might be seen largely as an argument about the appropriate scope and content of a code, rather than its existence. But the significant

---

difference of views between insurers and repairers about scope and content remains. Thus, although discussions between insurer and repairer groups have been foreshadowed (as noted above), voluntary agreement between the insurers and repairers appears far from certain.

Comments made by the ICA at the public hearings suggest insurers may now intend to develop a voluntary industry-wide code of conduct, even if repairer agreement cannot be reached:

... our understanding of a code, whether it's voluntary or mandatory, is a code that applies to insurers not to the repairers. It deals with the insurers' issues. (trans., p. 168)

And IAG commented that 'voluntary codes of conduct can operate just as effectively as mandatory codes where they have the support and commitment of its members and the industry's leaders' (sub. DR32, p. 11).

As with a voluntary code, the case for a mandatory code must also be set in a benefit–cost framework. But the assessment of a mandatory code must necessarily be more rigorous — indeed, existing government policy has spelled out a specific framework (box 6.5). This is because, at least in principle, and as noted by some participants, a mandatory code is more likely to reduce the flexibility of insurers and repairers to respond according to their needs, to add to compliance costs, and to impose external administrative costs on the community generally — thus affecting the balance of benefits and costs.

In commenting on the potential additional costs of a mandatory code, IAG stated:

- Mandatory industry codes of conduct can create compliance burdens and additional costs for industry participants ...
- Voluntary codes of conduct avoid the overly prescriptive nature of mandatory codes; and
- Voluntary codes of conduct provide an industry with the flexibility to provide greater choice in the market and respond to the dynamics of the environment. (sub. DR32, p. 11)

Of those making submissions, only AAMI approached the question of a mandatory code through an assessment of current industry practice against the government criteria. It considered that: there is no demonstrable market failure; there is no relevant stated social policy objective; and there is no evidence of significant irremediable deficiencies in an existing self-regulatory or quasi-regulatory regime (sub. 19, p. 75).

In the Commission's view, although the insurance sector is highly concentrated and the major insurers clearly possess significant negotiating strength, there is no evidence of market failure in the current relationship between insurers and repairers.

---

Mechanisms such as preferred smash repairer arrangements, provisions for consumer choice of repairer and lifetime warranties are not indicators of market failure — rather they reflect attempts by insurers and repairers to improve efficiency and effectiveness — and there are parallels in many other industries. Although some participants such as the VACC believed that repairers are ‘certainly abusing ... market power’ (sub. 14, p. 4), as noted in chapter 1, the ACCC has found no evidence of market behaviour by insurers that warrants a regulatory response under the TPA.

**Box 6.5 Prescribed codes of conduct**

Current government policy provides that the relevant Minister will only consider initiating a proposal for prescription of a code of conduct if:

- the code would remedy an identified **market failure** or promote a **social policy objective**; and
- the code would be **the most effective means** for remedying that market failure or promoting that policy objective; and
- the **benefits of the code to the community as a whole** would outweigh any costs; and
- there are **significant and irremediable deficiencies** in any existing self-regulatory regime — for example, the code scheme has inadequate industry coverage or the code itself fails to address industry problems; and
- a **systemic enforcement issue** exists because there is a history of breaches of any voluntary industry codes; and
- a range of self-regulatory options and ‘light-handed’ quasi-regulatory options has been examined and **demonstrated to be ineffective**.

The policy also provides that industry codes of conduct should not be formulated in a way that is anticompetitive. It states that the Minister will not be prescribing significantly anticompetitive codes.

*Source:* Hockey (1999).

Nevertheless, the Commission sees scope for an industry-wide code of conduct to address the serious issues of dispute between repairers and insurers which affect not only fair trading and transparency, but efficiency as well. Moreover, as noted above (and in chapter 1), all Australian governments support action to improve the relationship between repairers and insurers, at a minimum through a voluntary code of conduct. Governments have signalled that regulatory action could be taken if such a voluntary code cannot be agreed. It can therefore be argued that a relevant social policy objective has been articulated — centering on the promotion of fairer trading between insurers and repairers for the benefit of the community.

---

Further, the magnitude of any extra costs consequent on a mandatory code is open to question in the context of these industries:

- Given that the scope and content of the code defined by the Commission would focus on ‘minimum’ requirements in regard to fair trading, process and transparency, any additional loss of flexibility between a ‘voluntary code — involving at least the main insurers — and a mandatory code would be minimal.
- As a mandatory code is likely to extend across many more insurers than a voluntary code, there would certainly be additional compliance costs incurred. Suncorp noted that ‘any code necessarily requires the development of robust systems to achieve, monitor, report on, and maintain evidence of, compliance’ (sub. DR37, p. 3). However, these additional costs could be relatively small given the scope of the code envisaged. Further, as all insurers would be bound by a mandatory code, the costs of securing and maintaining insurer commitment to a voluntary code would be avoided.
- A voluntary code could be pursued by agreement between insurers and repairers, or just between the insurers themselves. Alternatively, it could be declared under Part IVB of the Trade Practices Act, as would a mandatory code. Administrative costs under all these approaches are likely to be similar.

### *Weighing up*

In the Commission’s judgment, *provided* that the scope and content of a code follow the principles outlined above and avoid *undue* interference in the normal commercial relationship between insurers and repairers — and, in particular, avoid provisions that are inherently anticompetitive — then the benefits for the community as a whole of an industry-wide code of conduct are likely to outweigh the costs, even if mandatory.

The most desirable outcome is for voluntary agreement to be reached between insurers and repairers collectively about the particular provisions of the code, consistent with the Commission’s views about scope and content. In contrast to a voluntary code agreed just among the major insurers, agreement between repairers and insurers would promote joint ownership of, and commitment to, the code, and its associated dispute resolution procedures. In particular, agreement to the code by the repairer representative organisations would help to reassure individual repairers that the code was a genuine attempt by insurers to improve their relationships with repairers and that the associated dispute resolution procedures were independent and transparent.

Depending on its scope and content, an industry-wide code voluntarily agreed to by insurers only could potentially deliver worthwhile benefits provided that at least the

---

four main insurers were to join. However, the breadth of an insurer-developed code, and the commitment of the major insurers to it, might well be less than under a jointly agreed code in respect of which repairers have a role in ensuring compliance. Further, even if such a ‘unilateral’ voluntary code was declared under the Trade Practices Act, repairer suspicion and mistrust might well increase or continue, rather than reduce. From this viewpoint, such a code might be counterproductive in the longer term.

Nevertheless, final judgment about the adequacy of scope, content and insurer coverage of an insurer-developed voluntary code, and about repairer reaction to any such code, cannot be made at this stage. In the Commission’s view, the Australian Government would need to assess these matters in deciding whether or not to proceed to a mandatory code.

A mandatory code developed in accordance with the Commission’s views on scope and content might not entirely satisfy either side. But, in terms of improving relationships between repairers and insurers, it would have advantages. In particular, repairers would be assured that all insurers would be bound by a code and that compliance would be independently and objectively monitored. Further, mandating the code might increase individual repairer confidence in the independence and transparency of the dispute resolution process. In the Commission’s view, this approach, while not as attractive as a voluntary code agreed between insurers and repairers is preferable to a code developed only by insurers.

In summary, the Commission considers that the Australian Government should facilitate and promote the development and implementation of an industry-wide code of conduct as soon as practically possible.

Changes in insurer and repairer positions since release of the draft report confirm the Commission’s initial view that a specified reasonable time should be allowed to seek voluntary agreement between the two industries on an industry-wide code. As noted above, a range of views were expressed about what was ‘reasonable’. The Commission considers that a period of six months from release of the Government’s decisions on its final report would be appropriate. The total time to reach agreement would be longer, of course, given that discussions commenced on a voluntary code early in 2005. Voluntary agreement would be signified, in the Commission’s view, by agreement between at least the four major insurers and the national body representing repairers, that is the MTAA.

The Commission considers that, if voluntary agreement between insurers and repairers is not reached within this time, a code should be mandated under the provisions of the Trade Practices Act.

*Provided that the scope and content of an industry-wide code follow principles outlined in finding 6.4, the benefits for the community as a whole are likely to outweigh the costs, even if the code is mandatory.*

## RECOMMENDATION 6.1

***The Australian Government should facilitate and promote the development and implementation of an industry-wide code of conduct in respect of the relationship between insurers and repairers as soon as practicable.***

## RECOMMENDATION 6.2

***The industry-wide code of conduct should include:***

- ***Matters relating to preferred smash repairer (PSR) arrangements, including requirements to:***
  - *notify opportunities to apply for PSR status;*
  - *disclose selection criteria;*
  - *provide a ‘cooling off’ period for repairers to consider PSR contract offers;*
  - *provide that PSR tenure should not automatically cease on transfer of business provided probity and prudential concerns are met; and*
  - *specify that if an hourly rate is included in a PSR contract then it should be a mutually agreed realistic rate.*
- ***Matters relating to quoting for work and payment, specifying:***
  - *that times and rates, where used, should be realistic times and rates agreed to by insurer and repairer;*
  - *that paint, parts and significant consumables should be separately costed rather than included in hourly rates;*
  - *where competitive quotes are sought, that the quotation process should be fair and transparent;*
  - *that insurers should fully disclose their terms of payment to repairers; and*
  - *minimum terms of payment where work is not in dispute (for example, 30 days or less).*
- ***Matters relating to quality and safety, and guarantees, including requirements:***
  - *that where an insurer specifies the repair method and/or the quality of parts to be used, the insurer accepts responsibility in writing for the quality and safety consequences of its specifications; and*

- 
- *to restrict the guarantee liability of a repairer to work it actually carries out, and then only for an agreed reasonable period — a repairer should not be required to guarantee parts or paint for a period longer than the manufacturer’s warranty.*
  - *Matters relating to consumer choice, including requirements for insurers:*
    - *to clearly explain repairer choice options to consumers when taking out policies and making claims;*
    - *to avoid making misleading, inaccurate or unjustified comments about the quality and timeliness of repair of non-preferred repairers; and*
    - *to clearly explain to consumers their policy provisions relating to the use of parts and to guarantees.*
  - *A transparent and independent external dispute resolution mechanism.*

RECOMMENDATION 6.3

*The code should not attempt to specify or regulate, on an industry-wide basis, matters such as:*

- *minimum hourly rates or prices;*
- *‘standard’ hours for repair jobs;*
- *types of parts to be used;*
- *industry-wide PSR selection criteria and/or weightings for PSR criteria;*
- *compulsory choice of repairer;*
- *requirements to spread work among repairers; and*
- *particular conditions of guarantees.*

RECOMMENDATION 6.4

*If voluntary agreement cannot be achieved between insurers and repairers — that is, between at least the four major insurers and the national body representing repairers (the Motor Trades Association of Australia) — within a period of six months from release of the Government’s decision on this report, the Australian Government should develop a code of conduct in accordance with the above findings and recommendations, and the code should be mandated under the Trade Practices Act.*

---

# Findings and recommendations

## Industry rationalisation (chapter 2)

### FINDING 2.1

*Ongoing rationalisation in the smash repair industry can be expected. This reflects actions by insurers to reduce costs as a means of enhancing shareholder returns and containing premiums for consumers, as well as a range of ‘external’ factors, including: increased capital requirements due to changes in vehicle technology; a possible decline in the incidence and severity of motor vehicle accidents; more stringent occupational health and safety, and environmental requirements; and difficulties in attracting skilled labour.*

## Preferred smash repairer (PSR) arrangements (chapter 3)

### FINDING 3.1

*Industry-wide nationally agreed PSR criteria should not be established as their disadvantages are likely to outweigh any advantages.*

### FINDING 3.2

*Selection or non-selection for PSR status and removal or modification of such status can have a significant effect on a repairer’s business. Insurers should provide greater transparency in such aspects as PSR selection criteria and notification of opportunity to apply for PSR status to reduce uncertainty and improve relationships between the two industries.*

### FINDING 3.3

*Provided probity and prudential requirements are met, insurers should not automatically terminate PSR status on sale or transfer of a repair business. Insurers should allow a trial period of six months with the new owner.*

### FINDING 3.4

*When consumers take out a new policy, or make a claim, insurers should clearly and accurately explain the provisions about the use of replacement parts required to repair accident damage.*

---

FINDING 3.5

*Insurers that specify the repair method and/or the parts to be used in any particular repair job should do so in writing and accept responsibility for the quality and safety consequences of those requirements. The repairer should continue to accept responsibility for the quality of its workmanship in response to the insurer's specifications.*

FINDING 3.6

*There is no clear evidence of a systemic safety issue related to PSR arrangements. While quality is harder to assess, insurers and repairers face strong incentives to ensure that repair quality and safety appropriately meet the needs of their customers.*

FINDING 3.7

*Although the Commission has not examined national licensing issues in detail — such as the possible national licensing of repairers and assessors — it is far from clear that such requirements would bring net advantages to the community.*

## **Financial and commercial relationships (chapter 4)**

FINDING 4.1

*Viewed in isolation, the hourly rates currently paid by insurers for repair work do not reflect repairers' costs. However, they need to be examined in conjunction with the broader basis of quotation and payment of which they represent only part.*

FINDING 4.2

*Insurers and repairers should abandon the 'funny time, funny money' system of quotation.*

- *If times and hourly rates are used in any of the cost elements specified in quotes, they should be realistic times and rates.*
- *Significant materials, including paints, parts and consumables, should be separately costed and not included in hourly rates.*
- *If a PSR agreement specifies an hourly rate, that should be a realistic rate agreed to by the repairer.*

---

FINDING 4.3

*Taking the broader consumer and community interest into account, little further prescriptive action to address cost pressures on repairers is justified.*

- *In particular, there is no justification for regulating for an industry standard hourly rate or for imposing industry standard hours.*

FINDING 4.4

*Notwithstanding finding 4.3, where insurers and repairers adopt, by agreement, standard times and/or standard rates, this should not preclude further genuine price negotiation on individual jobs.*

- *Any such standard times and rates should be realistic. They should be adjusted over time to reflect such things as changes in vehicle design, developments in repair technology, reasonable productivity and efficiency improvements, as well as unit cost changes.*

FINDING 4.5

*The Australian Competition and Consumer Commission should continue to monitor insurer quoting practices against the appropriate provisions of the Trade Practices Act. As well, any industry-wide code should require insurers to agree that where competitive quotes are sought the quotation process should be fair and transparent.*

FINDING 4.6

*An insurer should only require a repairer to guarantee the work it actually performs and then only for an agreed reasonable time. Further, a repairer should not be required to guarantee parts or paint for a period longer than the manufacturers' own warranties.*

FINDING 4.7

*The provision of a short cooling off period within any industry-wide code may provide an acceptable and low cost safeguard mechanism for repairers entering into PSR contracts.*

*There is little evidence to suggest that the current arrangements in relation to timeframes for quoting are creating problems in the commercial interactions between repairers and insurers.*

---

FINDING 4.8

*Provision in an industry-wide code for minimum payment terms of a reasonable period (such as 30 days or less) where work is not in dispute would improve certainty for repairers in relation to invoice payment.*

## **Choice for consumers (chapter 5)**

FINDING 5.1

*Consumers wanting choice of repairer can choose to insure with one of the several insurers offering that choice. On this basis, consumers have restricted, but reasonable, choice of repairer.*

FINDING 5.2

*Governments should not mandate consumer choice of repairer.*

- *In particular, ‘anti-steering’ measures should not be introduced.*

FINDING 5.3

*Insurers should enhance their operating procedures to ensure that available options for choice of repairer are clearly and accurately explained to consumers taking out policies and making claims.*

FINDING 5.4

*Insurers should not attempt to dissuade consumers from exercising their available choice options by making misleading, inaccurate or unjustified comments about the quality or timeliness of repair of non-preferred repairers.*

## **Dispute resolution and codes of conduct (chapter 6)**

FINDING 6.1

*The existing internal consumer dispute resolution systems of the individual insurers appear to be working adequately. Further, while the Commission has not assessed the General Insurance Enquiries and Complaints Scheme’s (IEC’s) administrative arrangements, there is no evidence that the IEC’s systems are not broadly appropriate, nor that the IEC is not sufficiently independent.*

---

FINDING 6.2

*There is no evidence of any significant deficiencies in the procedures for resolving disputes that arise directly between consumers and repairers.*

FINDING 6.3

*The nature of the many serious issues of dispute between insurers and repairers varies: some concern fair trading, some transparency and some efficiency. Many are either industry-wide in nature or concern matters that individual insurers have been reluctant to address in corporate codes of conduct. They may only be capable of cost effective resolution through an industry-wide code.*

FINDING 6.4

*Any industry-wide code should:*

- *focus on insurer-repairer relationships;*
- *not explicitly encompass insurer-consumer or consumer-repairer relationships;*
- *specify minimum standards in matters of fair trading, process and transparency;*
- *avoid undue interference in the commercial relationships between individual insurers and repairers; and*
- *not prevent individual insurers developing their own codes consistent with, or building on, the industry-wide code.*

FINDING 6.5

*The coverage of dispute resolution procedures established under an industry-wide code need not be restricted to disputes about breaches of the code itself.*

- *But those procedures should avoid undue interference in the commercial relationships between insurers and repairers and, in particular, avoid provisions that could have anticompetitive consequences.*

FINDING 6.6

*Provided that the scope and content of an industry-wide code follow principles outlined in finding 6.4, the benefits for the community as a whole are likely to outweigh the costs, even if the code is mandatory.*

---

## The Commission's recommendations

### Dispute resolution and codes of conduct (chapter 6)

#### RECOMMENDATION 6.1

*The Australian Government should facilitate and promote the development and implementation of an industry-wide code of conduct in respect of the relationship between insurers and repairers as soon as practicable.*

#### RECOMMENDATION 6.2

*The industry-wide code of conduct should include:*

- *Matters relating to preferred smash repairer (PSR) arrangements, including requirements to:*
  - *notify opportunities to apply for PSR status;*
  - *disclose selection criteria;*
  - *provide a 'cooling off' period for repairers to consider PSR contract offers;*
  - *provide that PSR tenure should not automatically cease on transfer of business provided probity and prudential concerns are met; and*
  - *specify that if an hourly rate is included in a PSR contract then it should be a mutually agreed realistic rate.*
- *Matters relating to quoting for work and payment, specifying:*
  - *that times and rates, where used, should be realistic times and rates agreed to by insurer and repairer;*
  - *that paint, parts and significant consumables should be separately costed rather than included in hourly rates;*
  - *where competitive quotes are sought, that the quotation process should be fair and transparent;*
  - *that insurers should fully disclose their terms of payment to repairers; and*
  - *minimum terms of payment where work is not in dispute (for example, 30 days or less).*
- *Matters relating to quality and safety, and guarantees, including requirements:*
  - *that where an insurer specifies the repair method and/or the quality of parts to be used, the insurer accepts responsibility in writing for the quality and safety consequences of its specifications; and*

- 
- *to restrict the guarantee liability of a repairer to work it actually carries out, and then only for an agreed reasonable period — a repairer should not be required to guarantee parts or paint for a period longer than the manufacturer’s warranty.*
  - *Matters relating to consumer choice, including requirements for insurers:*
    - *to clearly explain repairer choice options to consumers when taking out policies and making claims;*
    - *to avoid making misleading, inaccurate or unjustified comments about the quality and timeliness of repair of non-preferred repairers; and*
    - *to clearly explain to consumers their policy provisions relating to the use of parts and to guarantees.*
  - *A transparent and independent external dispute resolution mechanism.*

RECOMMENDATION 6.3

*The code should not attempt to specify or regulate, on an industry-wide basis, matters such as:*

- *minimum hourly rates or prices;*
- *‘standard’ hours for repair jobs;*
- *types of parts to be used;*
- *industry-wide PSR selection criteria and/or weightings for PSR criteria;*
- *compulsory choice of repairer;*
- *requirements to spread work among repairers; and*
- *particular conditions of guarantees.*

RECOMMENDATION 6.4

*If voluntary agreement cannot be achieved between insurers and repairers — that is, between at least the four major insurers and the national body representing repairers (the Motor Trades Association of Australia) — within a period of six months from release of the Government’s decision on this report, the Australian Government should develop a code of conduct in accordance with the above findings and recommendations, and the code should be mandated under the Trade Practices Act.*

---

# A Participation in the inquiry

## A.1 Meetings and visits

AAMI

Allianz Australia Insurance

Australia Competition and Consumer Commission

Australian Automotive Repairers Association

Consumer Affairs Victoria and the Victorian Department of Innovation, Industry and  
Regional Development

Insurance Australia Group

Insurance Council of Australia

Motor Trade Association of Western Australia (videoconference)

Motor Traders Association of New South Wales

Motor Trades Association of Australia

Suncorp Metway

Victorian Automobile Chamber of Commerce

The Commission also held discussions with some smash repairers on a confidential basis.

## A.2 Public submissions

<i><b>Name</b></i>	<i><b>Sub. No.</b></i>
AAMI Ltd	19, DR50
Acorn Car Hire	3
Allianz Australia Insurance Ltd	20, DR38
Hon. Peter Andren, Federal Member for Calare	21
Australian Automotive Repairers Association	24
Australian Consumers' Association	DR31
Auto Parts Recyclers Association of Australia Inc	2
AutoPOLIS	DR33
Hon. Barry Bishop MLC	DR42
BMW Group Australia	5

---

<i><b>Name</b></i>	<i><b>Sub. No.</b></i>
Drawline Pty Ltd	4
Federal Chamber of Automotive Industries	29
Insurance Australia Group Ltd	8, DR32, DR51
Insurance Council of Australia Ltd	17, DR54
Insurance Council of New Zealand Inc	DR53
Kerry Panels	DR45
Lumley General Insurance Ltd	11
Malcolm Monaghan	DR48
Motor Trade Association of South Australia Inc	22, DR52
Motor Trade Association of Western Australia (Inc)	16, DR39
Motor Traders Association of New South Wales	27, DR36
Motor Trades Association Incorporated — New Zealand	9, DR34
Motor Trades Association of Australia	15, 28, DR41
Motor Trades Association of Queensland	7, DR44
Motor Trades Association of the Australian Capital Territory	25
QBE Insurance (Australia) Ltd	18
Quinn & Quinn Lawyers	DR30, DR35
RAA Insurance	DR47
RACQ Insurance Ltd	6
Recovery Association of WA Inc	13
R.J. Crash Repairs Pty Ltd	23, DR49
Small Business Development Corporation (Western Australia)	10, DR46
Steve Kennedy Auto Repairs	1
Suncorp Metway Ltd	12, DR37
Victorian Automobile Chamber of Commerce	14, DR40
Victorian Government	26, DR43

---

### **A.3 Confidential submissions**

As well as the public submissions listed above, the Commission has accepted 130 submissions on a commercial-in-confidence basis, because they contain information about the dealings of individual repairers with insurance companies (chapter 1).

---

## A.4 Public hearing participants

---

<i>Date</i>	<i>Participant</i>	<i>Transcript page no.</i>
<b>Sydney</b>		
31 January 2005	Insurance Australia Group	3 — 25
	Allianz Australia Insurance	26 — 41
	Suncorp Metway	42 — 53
	Motor Traders Association of New South Wales	54 — 80
	Australian Automotive Repairers Association Political Action Committee	81 — 93
	Parraweena Smash Repairs	94 — 102
	Wales Truck Repairers	103 — 108
	Quinn and Quinn Lawyers	109 — 114
	Callaghan Collision Centre	115 — 118
	Maroubra Automotives	119 — 127
<b>Melbourne</b>		
3 February 2005	VACC	129 — 159
	Insurance Council of Australia	160 — 169
	AAMI	170 — 190
	Kerry Panels	191 — 202
	Claims Made Easy	203 — 214
	Lustre Panels	215 — 219
	Malcolm Monaghan	220 — 222
	Parkes Body Works	223 — 227

---

---

## References

- AAMI 2004, Comprehensive Car Insurance Policy Product Disclosure Statement, for NSW/ACT, downloaded from [www.aami.com.au](http://www.aami.com.au), September.
- ACCC (Australian Competition and Consumer Commission) 2003a, *Discussion of the relationship between the Australian motor body/smash repair industry and the general insurance sector*, Issues Paper, September.
- 2003b, *Smash repairers/insurance issues paper published*, media release MR 203/03, 19 September.
- Allianz 2004a, Allianz SureCover Plus Motor Insurance Policy Document (Product Disclosure Statement), downloaded from [www.allianz.com.au](http://www.allianz.com.au), September.
- 2004b, *Allianz cautiously welcomes smash repair inquiry*, media release, 31 August.
- APRA (Australian Prudential Regulation Authority) 2003, *Selected Statistics on the General Insurance Industry, Year ending June 2002*, Sydney.
- 2004a, *APRA Insight 2<sup>nd</sup> Quarter 2004*, Sydney.
- 2004b, *APRA Insight 1<sup>st</sup> Quarter 2004*, Sydney.
- 2005, *Quarterly General Insurance Performance, September 2004*, Sydney.
- Australian Transport Safety Bureau 2003, *Road Fatalities Australia*, November.
- 2004, *Road Deaths Australia, December 2004*, Canberra.
- Costello, P. (Treasurer) 2003, *Commonwealth Government response to the review of the competition provisions of the Trade Practices Act 1974*, downloaded from [www.treasurer.gov.au/tsr/content/publications/TPAResponse.asp](http://www.treasurer.gov.au/tsr/content/publications/TPAResponse.asp).
- FCA (Franchise Council of Australia) 2004, Small Business Ministerial Council Meeting, outcomes downloaded from [www.franchise.org.au](http://www.franchise.org.au), September.
- GAO (United States General Accounting Office) 2001, *Motor Vehicle Safety: NHTSA's [National Highway Traffic Safety Administration] Ability to Detect and Recall Defective Replacement Crash Parts is Limited*, Report to Congressional Requesters, GAO-01-225, January.
- Hockey, J. (Minister for Financial Services and Regulation) 1999, *Prescribed codes of conduct*, Policy guidelines on making industry codes of conduct enforceable under the Trade Practices Act 1974, May.

---

—— (Minister for Small Business) 2004, *Smash repairer protection*, media release, 11 August.

IBISWorld 2003, *Smash Repairing in Australia*, G5323.

IC (Industry Commission) 1995, *Vehicle and Recreational Marine Craft Repair and Insurance Industries*, report no. 43, Canberra.

ICA (Insurance Council of Australia) 2004, 'Consumer benefit paramount in smash repair inquiry', *Media Release*, 23 August 2004, Sydney.

IEC (Insurance Enquiries and Complaints Ltd) 2003, *2003 Annual Review*, downloaded from [www.iecltd.com.au](http://www.iecltd.com.au), September.

—— 2004a, *2004 Annual Review*.

—— 2004b, *Terms of Reference*, The General Insurance Enquiries and Complaints Scheme, downloaded from [www.iecltd.com.au](http://www.iecltd.com.au), September.

ISC (Insurance and Superannuation Commission) 1997, *Selected Statistics on the General Insurance Industry*, September.

NRMA 2004, Motor Insurance Product Disclosure Statement and Policy Booklet, for NSW/ACT/Qld, downloaded from [www.nrma.com.au](http://www.nrma.com.au), September.

Roberts, K. 2004, *The Challenge Ahead: New Vehicle Technology and its Effect on the Accident Repair Industry*, The Motor Insurance Research Repair Centre, Thatcham, United Kingdom.

Stuart, G. 2004, 'Gross Profits', *Paint and Panel*, May/June, p. 8.

Suncorp 2004, Motor Vehicle Insurance Product Disclosure Statement, downloaded from [www.suncorp.com.au](http://www.suncorp.com.au), September.

Thomson, M. 2004, Victorian Minister for Small Business, *Victoria fixes deal for national smash repairers and insurers code of conduct*, media release, 28 July.

Trade Practices Act Review 2003, *Review of the Competition Provisions of the Trade Practices Act*, Report of the Trade Practices Review Committee (Sir Daryl Dawson, chairman), Canberra.