

Submission to the Productivity Commission Inquiry

Into

The Relationship Between the Australian Motor Vehicle Smash Repair Industry and the Motor Vehicle Insurance Industry

Volume 1 of 4

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Submitted by:
The Victorian Automobile Chamber of Commerce



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1. Overview

1.1. VACC Constituency

The Victorian Automobile Chamber of Commerce (VACC) has been in existence since 1918, and is the premier and largest association representing small to medium enterprises in the retail, service and repairer sectors of the Victorian automotive industry. VACC's subsidiary the Tasmanian Automobile Chamber of Commerce (TACC), formed in 1930, holds a similar position in Tasmania. VACC's and TACC's membership covers some 5,000 individual businesses in 17 specific business sectors (refer Appendix A1). These businesses directly employ approximately 25,000 people.

VACC has a strong relationship with other Motor Trades Associations in all other States and is formally affiliated with them through membership of the industry peak body, the Motor Trades Association of Australia (MTAA).

The crash repairers have always been a significant sector of VACC's constituency and under the auspices of the Body Repair Division (BRD), the VACC has been in the forefront in assisting this group in endeavouring to solve its problems, as well as setting better standards for the crash repair industry. It was the VACC, who some 15 years ago, led the industry in Victoria by establishing accreditation standards for its crash repair members, and enshrining these standard in a code of practice. Coupled to this was an internal disputes resolution systems designed to investigate consumer complaints against BRD members.

Some 20 years ago VACC was also instrumental in organising relevant stakeholders, including insurers, paint companies, engineers and TAFE Colleges, into forming the Collision Repair Council, whose primary focus was to investigate and establish standards of repair for the Victorian industry. This very valuable initiative eventually failed, as the insurers withdrew their support, and finally walked away.

When the Treasurer, the Hon. Peter Costello announced the "Inquiry Into the Relations between the Australian Smash Repair Industry and The Motor Vehicle Insurance Industry", the VACC was both heartened and bemused. Heartened because after years of discussion with Insurers, and Federal and State Governments alerting them to the difficulties in the smash repair industry, and the potential detrimental impact on consumers, something is finally being done. The bemusement stems from a feeling of 'déjà vu', in that there has already been a thorough inquiry into the industry in 1994-5, by the then Industry Commission, which delivered a raft of recommendations of which very few were acted upon.

In this submission VACC will be identifying numerous industry practices, which it believes are of concern and have a negative impact on the competitive vibrancy of the industry, and the consumer. In particular VACC has identified the inequality in dealings between insurers and crash repairers and the concentration of insurers' powers, which are manifested in low hourly rates, lack of consumer choice and improper control over parts supply and usage.

In making its submission, the VACC intends to be factual and objective, though the Chamber makes no apology in presenting the views from a perspective of crash repairers, their customers, and to a lesser extent, their suppliers.

1.2. Background and Scope of Previous Inquiries

1.2.1. Previous Industry Commission (IC) Inquiry

In March 1995, the Industry Commission published its findings and recommendations, after a wide-ranging inquiry into the “Vehicle and Recreational Marine Craft Repair and Insurance Industries” (Report 43, 15 March 1995). VACC made a substantive submission to this inquiry. The issues identified at the time within the crash repair industry still exist today, though to a heightened degree, primarily because the key recommendations relating to the crash repair sector were never acted upon.

1.2.2. Recommendations from the 1995 IC Inquiry

The Industry Commission of 1995 made 31 recommendations covering a wide range of industry sector issues. It is highlighted that three of the past recommendations specifically addressed issues that continue to form the basis of many of the industries concerns today.

Recommendation 4 “The current time and hourly schedules used for repair quotations should be abandoned....they should reflect true times and costs” (IC Report: p 16)

Recommendation 5 “....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.” (IC Report: p 16)

Recommendation 12 “Repairers and/or insurers should provide consumers with details of all parts used in repair work.”

Very few of the 31 recommendations were ever adopted, let alone the three key recommendations outlined above. (IC Report: p 16)

1.2.3. ACCC Inquiry 2003

After fielding numerous complaints from crash repairers and consumers, the ACCC sponsored two ‘Round Table’ discussions, with relevant stakeholders, including insurers, crash repairers and automotive associations, in July and October of 2002. Neither meeting came to any real agreement, though there was willingness, by the repairer sector, to hold further discussions on the relationships within the industry and the possibility of an industry code. This was matched by a total unwillingness by the insurers to do the same. IAG only attended the first meeting.

1.2.4. Key ACCC Observation and Recommendation

In September 2003, the ACCC published an Issues Paper on the crash repairer industry. The ACCC’s paper, written primarily from a trade practices perspective, found no breaches of the TPA, however, it made a number of insightful observations, comments and recommendations about the industry, which are summarised below:

- “That there is conduct occurring in the industry, which is perceived to be unfair and reasonable”.
- “This conduct may impact on the development of continuing commercial relationships.”
- “The need for smash repairers to be treated in a non-discriminatory manner whether or not they are part of a preferred, or associated, repairer scheme.”
- “That payment should be afforded repairers within 30 days unless there are reasonable grounds”
- “Access for consumers, repairers and insurers to disputes resolution procedures, which include timely and efficient decision making process.”
- “Consumers to be entitled to a reasonable level of choice of repairers without being penalised.”
- “There is scope for greater transparency in the dealings between smash repairers and insurers.”
- “Industry participants should consider the potential application of codes of conduct.”

Despite there being almost 10 years between them, the two inquiries have, in their separate analysis of the industry, identified similar problems and proposed similar solutions, albeit that the ACCC discussion paper also identifies issues and problems that have evolved since 1994, which VACC believes can be directly related to the concentration of market power in the hands of two insurers, IAG and AAMI.

2. The Crash Industry in Victoria

2.1. Increased Competitive Pressure

There has, in recent years, been a significant increase in competition within the automotive insurance sector of the Victorian industry. The outcome has seen a rationalisation of the insurance sector.

These market changes have led to a growth in the services provided to the consumer. Most insurers, irrespective of market size, offer consumer focussed products and services such as ‘lifetime’ no claim bonuses, ‘no fault’ no claim bonuses, accommodation expenses and valet services, to name a few.

Insurers have also introduced and strengthened various business and operating practices including telephone marketing and telephone claims lodgement, a focus on setting up tightly controlled preferred repairer schemes, and in some instances taking a direct involvement in repair facilities.

These competitive pressures have also led to the introduction and expansion of some dubious practices, led in the main by the two market share leaders IAG and AAMI. Three such practices, which are of the greatest concern is the prima facie removal of consumer choice of crash repairer, (particularly its stealthy growth and implementation), insurers dictating the method of repair and the type of parts used, and the lack of transparency regarding both.

The real outcome is that consumers are being steered for the insurers financial benefit and in some instances are not getting their cars repaired in a proper

manner, and repairers are being unfairly treated due to the dominance of the insurers, particularly the two market leaders, IAG and AAMI.

2.2. Rising Levels of Insurer Market Power

Since the demise of HIH and September 11 2001, the general insurance industry has seen a significant speeding up in the restructure and rationalisation of the insurances sector, and this has had an impact on the number of insurers offering motor insurance. Victoria has been particularly hard hit over the past 4 years, as it has seen the number of major providers of motor vehicle insurance decline from 5 (RACV, AAMI, Fortis, CGU and Allianz) to 3 (IAG, AAMI and Allianz). (Refer Appendix A2).

By allowing the acquisition of CGU by IAG, the ACCC has delivered to IAG approximately 50% market share in Victoria and 65% market share in N.S.W. In Victoria today two insurers (IAG, AAMI and their affiliates), control almost 70% of the motor insurance market, and with this concentration of market share comes concentration of market power for which other industry participants including repairers, suppliers and consumers have no effective countervailing power.

It is in fact one of the more interesting ironies that the ACCC would allow an insurer to have such significant market share and hence market power, yet it would never allow an oil company to have similar power, (ACCC's conditions to allow the Caltex/Ampol merger), even though the same consumers (motorists) are affected.

Though the Productivity Commission is not investigating the takeover of CGU by IAG, this approved takeover is significant, because it is IAG that is now flexing the underlying power that it has been given, by taking the lead in implementing policies and practices that are regarded as unacceptable to crash repairers. Practices, which in VACC's view, are also uncompetitive and not necessarily in the consumers' interest.

This is evidenced by the fact that prior to the takeover, CGU customers were allowed choice of repairer, now this is limited to choosing between IAG preferred repairers only. Prior to the takeover, crash repairers doing work for CGU determined the method of repair and the parts used, now they don't. Prior to the takeover, it was the crash repairer who chose the parts suppliers and most subletting arrangements, now they don't, except on limited items. It is VACC's contention that through their significant market power, which is derived from a combination of their huge market share, controlling the consumer by denying real choice, and severely restricting the number of preferred repairers who can service their captured consumers, IAG and AAMI use their market dominance to manipulate and control the crash repair industry.

This power also allows these insurers to arbitrarily determine who enters their exclusive 'preferred repairer group' and who is forced out; how the repair will be done, and in IAG's case, who will supply the preferred repairer with parts and direct sublet services. This has restricted access for many competitive suppliers of parts and services to a market that they traditionally serviced.

Though in the strictest sense of the Trade Practice's Act definition of "misuse of market power" IAG may not be in breach, in reality VACC believes it is certainly abusing that market power, and it is not in the interest of the two most significant stakeholders, the consumer and the repairer.

2.3. Impact on Victorian Crash repairers

In general, the Victoria crash repair industry is characterised by declining levels of work, repairer overcapacity, (a significant number of whom are marginal operators), rising complexity of repairs, declining crash repairer returns, skill shortages, and a decreasing number of insurers coupled with an increasing reliance on insurers for business.

2.3.1. Declining Crash Repairer Numbers

Since the last IC Inquiry in 1995, VACC calculates that the number of crash repairers, in the Victorian market, has declined from 1791 in 1996 to 1544 in 2004. It should be noted that it is difficult to determine the exact numbers, as there are numerous crash repairers, who operate on the fringe of this industry and could not be classed as 'genuine' crash repairers, but are included for national statistical purposes.

Crash repairer membership, of the VACC, has grown from 595 in 1994, to 738 in 2004. The VACC believes that this growth is due to the growing turmoil in the industry and the fact that the crash repairers have nowhere to turn in their constant battle for equity with the major insurers. VACC efforts, in setting standards for the industry through its own accreditation and code of conduct programs, has also been a contributing factor in increasing VACC member numbers.

Insurers continue to claim that the main reason that there are so many problems in the industry is that there are too many repairers chasing too few jobs. In their submission to the ACCC (ACCC Issues Paper, p6), the insurers have tried to justify the Australian scenario by comparing Australia with the USA and the UK.

Though, at face value, the insurers may have a point, it should be recognised that significant demographic differences exist between Australia, USA and the UK. In particular, the dispersed nature of Australia's regional population and the existence of crash repairers in outlying, small and sometimes isolated communities, would easily distort the averages as presented by the insurers.

VACC's prognosis is that unless the problems, including the behaviour of insurers is modified, the numbers of crash repairers will continue to diminish at a rate and depth that, in the not too distant future, will result in a shortage of competent repairers. This is a situation that has been reached in the UK, which is suffering from the exact same problems as the Australian industry.

The narrow cost-driven approach to repairs, as exemplified by the IAG and AAMI approach, has seen many good body repair businesses placed in financial jeopardy, to the point where even preferred repairers can potentially face financial ruin. (Appendix B1 ref. Interview 6)

2.3.2. Skill Shortage

An unintended consequence of the manipulated rationalisation process, which is controlled by the insurers, has been the forcing out of skills from the industry, at a time when the Victorian industry is already in the grip of a skills shortage. Anecdotal evidence suggests that many skilled

employees of crash repairers, who have been forced to downsize, are choosing to seek jobs outside the industry rather than work in the current insurer repairer schemes, which carries with it the perception of a pressure cooker working environment, based on meeting ever increasing performance targets, and the constant conflict of doing the job properly, as against just getting the vehicle out the door.

In addition, the industry is finding it difficult to attract apprentices. Some of this is due to general factors such 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.

Whilst some insurers have introduced incentives to support apprenticeship programs, these are superficial remedies at best when the long term staffing level requirements for this industry are considered.

2.3.3. Rationalisation on Economic Grounds

The VACC fully understands that rationalisation, in the crash repair industry, may take place as part of normal economic activity. However, it is very concerned that rationalisation, in the Victorian crash repair industry, is not happening based on normal economic processes, based on business efficiency, service and convenience to customers, and quality of repairs. IAG and AAMI, capitalising on their significant market share, have chosen to restructure the industry in a manner to their liking that is heavily weighted towards driving their costs down, rather than taking a balanced approach to the overall effectiveness of the repairers, and most importantly, the needs of the consumer. These two companies are forcing rationalisation based purely on their own business needs.

"Competition in the industry is mainly based on price and to a lesser extent quality, a situation exacerbated by the dominance of insurance companies". (IBISWorld, p7)

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.

IAG and AAMI, by controlling the flow of available work through their 'no choice' and steering policies, and the arbitrary restrictions of the current preferred repairer schemes, is distorting the market place and is creating additional barriers to entry, and thus stifling true competition.

2.3.4. Conflict between Insurers and Repairers

As larger insurers flex their market power and limit the flow of work to fewer crash repairers, the outcome has seen a significant rise in the level of conflict between the two industry sectors. This conflict has increased further since this was originally identified as a problem in 1995 (ref IC 1995: p 3), as the speed of the rationalisation process and the rise in importance of being part of the major insurers' preferred repairer schemes to maintain workflow, has added to the crash repairers' problems.

Given that the industry is characterised by a high level of interdependence between the two sectors, some tension can always be expected. It is this interdependence and the fact that some 75% of work is provided by the insurance sector, (IBISWorld: p 6), that has exacerbated the adversarial relationship between insurers and repairers. Insurers readily allege that repairers have poor work practices, are inefficient, perform poor quality work, and indulge in malpractices such as substituting second-hand parts for new parts and billing for new ones, (IC Report 1995, p4) They also allege that the industry has a significant criminal element. To a number of insurers, this has been the justification used to put in place highly restrictive preferred repairer schemes, as seen today.

On the other hand, repairers assert that the insurers indulge in unfair practices such as, denying them work by directing business to their preferred network, manipulation of the quotation system, 'tow-out', payment unrealistic hourly rates and jeopardising quality and safety, for which the repairer is responsible by making through compromising their repair quality. Repairers also believe that insurers utilise the large disparity in business size and therefore market power to economically coerce repairers. (IC Report 1995, p3).

Repairers maintain that the criminal element in the 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.

Some friction between the parties is understandable as the relationship does have a fundamental conflict of interest. The intention of the insurers is to maximise returns for shareholders and for management to meet bonus targets by driving down the cost of repair, whilst repairers in turn seek to maximise their returns.

VACC contends that, whereas some levels of animosity between insurers and repairers will always exist, the growing levels of conflict, brought about by the unfettered practices of the major insurers, is choking the effectiveness of the industry, and causing uncertainty and mistrust amongst vehicle owners.

2.3.5. Key Issues – A Victorian Perspective

From VACC's perspective, there are a number of fundamental issues that continue to plague the industry, most of which stem from the perennial central issue which is the relationships between the crash repairers, the

insurance companies and the customers. In summary, they are as follows:

- Concentration of market power in the automotive insurance industry, and whether the current structure of the sector provides opportunities for abuse of such market power

The growing number of practices by some insurers, particularly the market leaders, which are restraining trade and include:-

Removal of consumer choice of repairer.

Steering of consumers away from their preferred repairer to the insurers' preferred repairer.

The limited number of preferred repairer outlets and the control of these outlets by insurers.

Control of suppliers of parts and direct sublets.

Quality of repairs including:-

Insurers directing the method of repair.

Insurers determining which parts are to be used.

The experience, knowledge and ability of insurance company assessors in determining methods of repair, for which the repairer carries the duty of care.

Transparency in the arrangements between insurers and repairers.

Transparency in the documentation and brochures provided to consumers, including the limitation of choice and insurance company right to determine the method of repair.

Recognition that crash repairers have built their own customer base.

2.3.6. Hopes for this Inquiry

VACC and its crash repair members' most fundamental desire is that the Productivity Commission (PC) recognises that the crash repair industry, as it stands, 'is broken and needs fixing'. Like the previous inquiry in 1995, it is VACC's hope that the recommendations of the PC are positive and effect real change. However, more importantly it is imperative that the recommendations are acted upon and that the insurers be compelled to comply with any recommendation that they may feel is adverse to them but beneficial to the industry. In specific terms VACC is seeking the following:

- The right for consumers to choose their repairer, if they so desire, without intimidation, financial penalty or reduction in service levels.
- Independent and speedy disputes resolution procedure for consumers, insurers and repairers.
- The establishment of a code of conduct to regulate the relationship between insurers and crash repairers.
- The removal of the current 'funny times, funny money' quotation system and replace this with a quotation system that is open,

transparent and cannot be manipulated by either the insurers or the repairers.

- Transparency in insurer brochures, documentation and ancillary paper work, that clearly stipulates to consumers service levels, quality of repair undertakings and details of all parts used in the repair, including whether they are new genuine, new non genuine or recycled (used) parts.
- Insurer's methods of repair to be consistent with those specified by the vehicle manufacturers, with particular emphasis on maintaining the damaged vehicle's original passive and dynamic safety characteristics.
- Access to all necessary intellectual property and information from all manufacturers so that the repair of the motor vehicle can be performed in the proper and appropriate manner.
- Establish a national accreditation scheme for crash repairers, based on the crash repairer having the necessary equipment and competencies to undertake repairs for which they have been engaged.
- Insurance company preferred repairer schemes to be open to all crash repairers who meet a transparent and consistent criteria. Furthermore, any criteria weighting should address issues of competencies and quality of repairs, not price.
- Prompt payment by insurers to all crash repairers irrespective of the relationship the crash repairer has with the respective insurer.
- 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.

3. "The appropriateness and transparency of criteria used by insurance companies to confer 'preferred smash repairer' status on smash repairers".

3.1. The transparency with which such status is conferred on (and removed from) individual repairers

3.1.1. Preferred Repairer Schemes

Preferred repair schemes, have been in existence for many years, in one form or another. The development of approved repairer networks brought with them a perception that these schemes were beneficial to all in the crash repair sector, including the consumer. The truth however, is significantly different and their introduction and ongoing existence, particularly the most recent iteration by IAG, forms the basis of many of the industries problems and concerns.

In Victoria the three main insurance companies, (IAG, AAMI, Allianz) have all chosen to operate a network of preferred repairers to whom that insurer will recommend insurance customers. However, there are significant variances in the approach of the insurers in Victoria.

IAG – Currently in Victoria, IAG with 50% of the market has 105 Preferred Smash Repairers (PSRs). These PSRs are categorised into three levels gold (the lowest priced operators), silver and bronze. The higher the grading the more work you get. PSRs can readily be moved between categories depending in the movement in their average cost of repair. Little is known of IAG's methodology in calculating this average cost, even by PSRs, other than it does allow for jobs that are high and low outliers. In a worst-case scenario, a PSR can be relegated to an Approved Smash Repairer (ASR) status, if they cannot maintain their low cost average. IAG maintains that there are criteria, other than costs however, the weighting of the criteria to become a PSR is unknown.

The IAG PSR system is supplemented by ASRs. In Victoria there are currently around 500. These repairers are not preferred repairers and do not normally have work directed to them. However, an ASR is able to have work authorised should a customer seek out their business.

AAMI - With 20% of the Victorian market, AAMI has a network of 175 preferred repairers. AAMI claims that anyone can apply to be one of their preferred repairers. The selection criterion seems to be based more on location and work availability in that location.

There does not appear to be any definitive criteria and the contractual arrangements are not unnecessarily arduous. AAMI directs as much work as possible to its preferred repairers. Indeed it has been AAMI's stated position that they only wish to insure customers who accept that AAMI will select the repairer. This, however, is not prominent in their Product Disclosure Statement (appendix A3, excerpt from AAMI PDS Page 36)

Allianz - With approximately 5% of the market Allianz has a network of 35 preferred repairers whose selection is predominately geographically driven. There are no arduous contractual obligations and Allianz only directs consumers to its preferred repairers, if the consumer asks.

Whilst VACC and its members are not against insurance company preferred repairer schemes, they do not necessarily agree with the insurers that they are competitive and provide significant benefit to consumers. The major concern is that these schemes, since their inception, have been used more as manipulative tools to control the repairer and improve insurer profits (refer Appendix A4 on IAG profits/Share price), as much as they have contributed to any improvement in efficiency of repairers and quality of repairs.

VACC believes that preferred repairer status should be conferred on any repairer who can meet the criteria. Whether or not the repairer remains in the system should then depend on agreed and open performance criteria, which would include such factors as repair efficiency, quality of repair and customer service, and not just cost reduction.

3.1.2. Transparency of Selection of Preferred Repairers

Despite insurers claims to the contrary, the current criteria and the process by which preferred repairers are selected is not open and transparent. Insurers do not always make the precise details widely available, nor the weightings attributed to those criteria. Matters of equipment, quality and experience are not always clearly detailed. This

information is generally only disclosed to repairers once the repairer has been selected to become part of the insurers' network.

Whilst on face value, insurers maintain that repairers are selected for their quality of work, service and efficiency, this is often only a façade, as the underlying reason for preferred repairer selection is focussed more on who can guarantee the lowest cost of repairs for the insurer. The most blatant example of this arises in the IAG PSR contract that requires an ongoing reduction in repair costs. IAG's establishment of their ASR network further reinforces this. The main criterion taken into account to be given an ASR is an agreement to charge out at \$23.00 per hour and to have the on-line assessing system.

The fact that cost control plays a significant factor in a preferred repairer's selection is also not made obvious to the consumer, whose natural assumption would be that their insurer's primary focus would be quality of repairs and customer service.

For many repairers the issue of being part of a preferred repairer system goes to the heart of their on going business viability. In the case of IAG (50%) and AAMI (20%) who control 70% of the market, for a repairer not to be part of their network means that the repairer is technically precluded from quoting for 70% of the work available. Significant impositions are placed on non-preferred repairer and their clients if they want to access this market. Based on IAG's and AAMI's own numbers in Victoria, on a prima facie basis, some 18% of crash repairers have been selected to do 70% of the available work.

IAG's take-over of the CGU Group exacerbated the issue of transparency; as this was accompanied by a ruthless restructure of the RACV, NRMA and CGU preferred repairers in Victoria. Many repairers, who were deemed suitable before the takeover, had their preferred status arbitrarily terminated, or at best were offered an ASR. The lack of genuinely transparent selection criteria, and the very limited numbers that gain entry to these schemes, is of fundamental concern to VACC.

Recommendation - That the selection criteria for insurer preferred repairer schemes be totally transparent in every detail and that access to such schemes to be open to all crash repairer who meet the standards.

3.1.3. Preferred Repairer Contracts

Over the years, VACC's members had very little concern over the preferred repairer contracts they had entered into with the respective insurers. This all changed with IAG's take-over of CGU, and the ensuing shake out.

As part of the restructure program for its preferred repairer schemes, IAG introduced two levels of contracts with its repairers, Preferred Repairer Scheme (PSR) and the Associated Repairer Scheme (ASR).

VACC has concerns with several aspects of preferred repairer agreements, the most common issues being the low contract hourly rate, and the repairer having to provide a lifetime guarantee, even though the insurer makes the promise. Furthermore, the situation of limited tenure on these contracts with the significant investment required by repairers is of concern. In VACC's view, repairers who build a substantial portion of their business on the basis of holding a preferred contract with an insurer,

should be offered far greater security of tenure. Given the level of investment, growing capital intensiveness and commitment required, a minimum tenure for a preferred repairer arrangement should be five years with an option for another five years.

In addition, contracts offered should be less intrusive and insurers should not have the ability to arbitrarily and unilaterally make amendments to operating standards, without the consent of the repairer involved and without the repairer being in fear of breaching their preferred repairer contract.

As stated earlier, there have been few if any complaints from members about the preferred repairer agreements of the other major insurers AAMI and Allianz. It is IAG's PSR Agreement, however, which is the most worrying.

Recommendation - Preferred repair contracts should have a minimum tenure of five years with an option for another five years. Contracts offered should be less intrusive, into the financial affairs of the repairer, and the insurers should not be allowed to make unilateral amendments to operating standards, should not be allowed without the consent of the repairer involved and without threat of breaching their preferred repairer contract.

3.1.4. The PSR Agreement

This contract is regarded as heavy handed and unconscionable, and if allowed to continue brings with it long-term detrimental implications for the crash repairer, and also for the consumer (refer Appendix A5). VACC has not had the document tested legally, as other State associations have done that. From its knowledge, VACC does make the following observations:

The positive aspects of the PSR Agreements are:

- Ability for repairers to draw work from a greater area.
- Vehicle owners come with a perception that their insurance company is looking after their interests.
- More consistent workflow for the repairer.
- Repairers fed work from 50% of the available market.
- Repairers are able to commence repairs sooner by self-assessing and not required to quote or wait for authorisation for any extras.
- Superior payment terms.

The negative aspects of the PSR Agreement are:

- Onerous performance conditions for repairers including requirements for relentless cost cutting, irrespective of the impact on the business and the cost of doing business.
- The 'take it or leave it' nature of the contract, allowing virtually no room for negotiation or local conditions.
- Loss of control through overly intrusive in terms, conditions and access to repairer's financial information and business practices.

- Significant increase in administration and control, (some repairers have had to employ extra administration people to cover this for no increased remuneration).
- Lack of choice with direct sublet repairs and restricted buying and allowable mark ups on parts.
- Poor hourly rates given the quality expectations and unrealistic times for Remove & Replace (R&R) items and paint.
- Outdated repair times used for quoting on modern complicated vehicles.
- Unrealistic goals.
- Requirement for repairers to outlay large sums on equipment and training to meet high standards of repair, with no margin to cover these expenses.
- Rules changed regularly with no communication to and with the repairers.
- Lack of security as it is a 12-month contract that can be terminated with 90 days notice or if there are three breaches (determined exclusively by IAG), with no recourse to appeal the decision or disputes resolution process.
- Increase in operational cost including investment in on-line imaging equipment and administration.

To VACC's knowledge virtually all members, who sought independent legal advice, were advised that they should not sign the PSR agreement. Unfortunately, due to the large volume of work that IAG controls in Victoria, many crash repairers signed the contract, against the advice given.

VACC does acknowledge that some existing PSRs currently are relatively happy with the trade-off between the onerous nature of the contract and the volume of work they receive from IAG.

However, a number of PSRs, contacted by VACC, have indicated that they have concerns of meeting future cost requirements, and believe they will eventually fall down the scale, from gold to bronze, until they 'hit a brick wall'. At this point, the good repairers will then need to decide whether they will compromise their quality or leave the system. One such repairer has already made this choice (refer Appendix B1, interview 6)

It should be noted, that the larger the investment a crash repairer has made in his facilities and staff, and the larger reliance the repairer has on work being sent to them by IAG, the sooner the conflict between quality of repair and maintaining the highest PSR rating occurs, as preference in work allocation is always given to highest rating PSR (gold).

Given the focus under the PSR Agreement, on constant costs reduction, a repairer that requires a high work flow, because of high capital investment and low margins, will inevitably have to make a choice on quality of repairs methods, or go broke.

3.1.5. ASR Agreements

The ASR contract is largely taken up by repairers in an endeavour to be in a position to maintain service to customers who come directly to them but are insured by IAG. This is predominantly to avoid the steering activities

otherwise referred to in this document. This is in contrast to PSR's where customers are actively directed to the PSR repairers. ASRs cannot display the IAG preferred repairer sign, as this is exclusive to PSRs.

The repairer performance plan is entirely related to costs and the repairer must accept \$23.00 per hour for work undertaken. Repairers who partake in the system have their financial records checked on each repair and IAG advises on how various components of the account compare with other businesses. For instance, the average amongst participating repairers might be that 35% of the overall repair cost is taken up by parts. Therefore, if one repairer had an average higher than 35% then it is suggested that the repairer needs to look more closely at their cost in providing parts.

3.1.6. Supply of Parts and Sublet Arrangements

Over the years some insurers have attempted to control more tightly the crash repair supply chain by taking direct control over sublet arrangements, and the supply of parts. Most insurers after experimenting with this have now walked away from directing their preferred repairers to particular suppliers. IAG, however, has not only remained in this activity, but has also tightened and expanded its control over the supply of parts and subletting arrangements.

This IAG policy, which is documented in the IAG PSR Agreement, specifically states (section 44) that the preferred repairer is required to source parts from an IAG Preferred supplier (refer Appendix A5). In VACC's opinion there is a strong element of third-line forcing in this arrangement, and it is currently having a detrimental affect on a number of automotive industry sectors in Victoria, viz, the automotive recyclers, radiator and air-condition repairers, windscreen suppliers, mechanical repairers and suspension repairers.

In the case of the supply of recycled (second-hand) parts, this activity has been sub-contracted to a single supplier. It is VACC's understanding that this supplier also receives preferential treatment from IAG, by having exclusive rights to all IAG's written-off vehicles. Other recyclers have virtually no access to this market and given, that IAG has 50% of the market, these recyclers are excluded from bidding for a significant number of written off vehicles. This situation is clearly restrictive and anti-competitive. The impact on this industry sector has been significant, (refer Appendix A6). It is also VACC's understanding that IAG has instructed its PSRs that if the nominated preferred parts recyclers cannot supply the part, then the repairer must use new parts (refer Appendix A6).

The radiator repair sector is suffering a similar fate and there has been wide impact on this sector, (refer Appendix A27). Towards the end of 2003 IAG sought tenders for the supply of radiator parts and services for their PSR and ASR networks. The outcome was that, of the 25 shops supplying radiators and services to IAG PSR/ASR crash repairers, in the greater Melbourne area, prior to the introduction of this system, only 5 remain as suppliers to IAG's PSR/ASR shops.

The key negative outcomes of this action has been:

- Business relationships have been forcibly destroyed.
- Service levels to panel repair businesses have dropped.

- Radiator repairers have been forced to lay off staff.
- Radiator repairers have also lost the supply to IAG repairers for non-IAG work because of the inconvenience of using more than one supplier.

It should be highlighted that prior to the IAG arrangements, many of these same radiator repairers were paid by a direct sublet arrangement with the insurer, to ensure no loadings were added to the account by the panel repairer. The full impact of IAG's policy can be best illustrated by the affect this has had on a particular VACC member, (refer Appendix B2).

Currently, IAG's preferred supply arrangements cover recycled parts, windscreens and radiator parts and repairs. However, VACC understands that IAG is now looking to expand their preferred supply arrangements to include auto electrical items and original parts. It is believed that this has been put on hold until this current inquiry has been concluded.

In both these cases, IAG's interference in the market has had detrimental and damaging impact on long-term small businesses and in so doing it has also substantially lessened genuine competition.

On a final note, VACC also has concerns that when it comes to determining whether a part supplied by a preferred supplier is fit for its intended purpose, as the repairers are at the mercy of the preferred supplier. However, the ultimate liability rests with the repairer as a matter of duty of care. Given the PSR Agreement stipulates the preferred method of repair (RACV Motor Insurance policy, p 54, and the parts that are to be used, this approach overrides the repairer's expertise, particularly as insurance assessors refuse to sign off on the parts and sublet services supplied, under the insurer's direction).

Recommendation – Selective preferred supplier arrangements should be disbanded and all suppliers of goods and services to repairers should be able to compete on fair equal terms.

3.2. Measures to ensure that market arrangements, including 'preferred smash repairer' status, do not compromise quality and safety.

Whilst the average consumer can appreciate the advances in automobiles by way of vehicle appointments and safety improvements, such as seat belts and air bags, few can comprehend the extent and complexity of the underpinning technology, in the hidden active and passive safety features, contained in a modern motor vehicle.

The technology and sophistication that exists today in the "every day family vehicle" outstrips that of highly priced, high performance vehicles of only 10 years ago. Moreover the interplay between a vehicles component parts and overall vehicle safety and strength continues to grow. Where a windscreen was once just that, a windscreen, it is now a structurally integral part of the vehicle, affecting the safety aspects built into the vehicle such as roof strength. The quality of this component, whether it be the thickness of the glass, the way it is bonded to the vehicle, or the finishes applied to the bonding surfaces, all impact on how a vehicle will behave in a collision or roll over after it has been repaired.

Similarly, a vehicle's steering relies on all the steering and suspension components being positioned correctly, which in turn requires that all the

mounting positions on the vehicle's body be in precisely the right position. Even a simple issue such as headlight alignment relies on the headlight mounting points being correctly located in the vehicle.

As the complexity of motor vehicles grow so does the requirement for vehicle repairers to have access to the necessary intellectual property that informs them of the detailed specifications of how a vehicle is manufactured, and therefore what is necessary to return the vehicle to its pre-accident condition.

3.2.1. Protection of Consumer's Investment

The consumer, by taking out insurance on their vehicle is primarily doing so to protect an asset. If the vehicle is stolen or damaged the insurance is in place to reinstate the vehicle back to its pre-accident condition, without compromising the safety features and value of the vehicle. In repairing a consumer's vehicle, it is the duty of the repairer to ensure this is done. This, however, can be compromised by the insistence of an insurer to only pay for a certain standard of parts or a particular method of repair, both of which they determine, but for which they do not accept accountability.

In the interests of protecting a consumer's investment and their vehicle's safety features, it is imperative that repairers have the opportunity to utilize their professional expertise to reinstate a vehicle. The quality of the vehicle should not be compromised to achieve savings for insurers.

Given the complexity of today's motor vehicles the method of repair can be considerably more involved than in years gone by. To improve vehicle safety and reduce emissions vehicle construction has become more complex, systems are more computerized and integrated and new stronger and lighter metals are used to make vehicles more fuel efficient and safe.

The impact of this on the crash repairer is that appropriate and specific methods of repair for modern vehicles are absolutely fundamental to maintaining the integrity of the vehicle. Steels that should not be heated, joints that should be bonded not welded, components that should not be pulled or stretched all limit the options on repairing vehicles, which in some cases may mean there is only one correct way to perform a repair.

This is clearly a matter that remains a professional issue for the repairer and should not be compromised by just focusing on cost.

3.2.2. Insurer Directives on Repair Methods

Where the repairer is often compromised is via the direction given by the insurer. In an endeavour to reduce repair costs, insurers, via their assessors, will instruct a repairer to amend a method of repair (refer Appendix B3).

These amendments, which in most cases are purely driven by cost, affect the repair of the vehicle by limiting the repairer's ability to return the vehicle to its pre-accident condition. Whilst this may in some cases affect the vehicle's value, in more serious areas this has the potential to affect safety. Insurers have not set any standards on how vehicles should be repaired. The only forum, in Victoria, in which the insurers participated, was the Collision Repair Council, from which they eventually walked away.

Insurers, for their part, have claimed that they receive very few complaints from consumers about the quality of repairs, and use this excuse as

justification for their practices. The truth is that many, if not every consumer would not have a clue as to whether a car has been properly repaired structurally or not. Some only find out once they have had another accident (refer Appendix B4) or if the repair has been so bad that they have sought an independent view, (refer Appendix B5).

The best person to decide how to repair a vehicle properly is the crash repairer, and it is the repairer who should determine appropriate repair methods. One must question the qualifications of an insurer, or their assessors, to dictate on how a vehicle should be repaired. This brings into question the role and qualifications of assessors, which will be addressed in section 3.2.6.

Recommendation - A dispute resolution be put in place to adjudicate in the event that there is a dispute, between the insurers or their representatives and crash repairers, over the appropriate method of repair.

3.2.3. Use of Non Genuine New Parts (Parallel Parts)

As stated previously, insurers, in an endeavour to control repair costs are using their market power to directly control as many aspects of the repair process as possible. As well as trying to determine the lowest cost method of repair, they are also endeavouring to determine the quality of the parts used in that repair.

VACC recognises that the move to parallel parts by insurers is closely linked to the high price being charged for genuine new parts, and in this matter it shares the concerns of the insurers. It is important that it is understood that these high prices have very little to do with the retailers (car dealers) and everything to do with the pricing policies of the manufacturers and importers

As parts make up a significant portion of a vehicles repair bill, insurers have targeted this area as one for potential savings. This gives rise to two issues; the appropriateness of the parts the repairer has been directed to use, and the transparency in advising the consumer what parts have been used in the repairs.

Firstly, there is the issue of the growing use of parallel parts (non genuine new parts). These are often manufactured to a lesser standard than genuine part and may not even meet Australian Standards. The use of these parts has become a contentious issue within the industry and has even split the major insurers.

IAG is a standout supporter of parallel parts and encourages their use. IAG has even undertaken a campaign to try and justify the use of these parts, on the basis that there is no perceptible quality difference between these parts and the genuine parts, save the manufacturers' name.

On the other hand, AAMI and Allianz are against the use of these parts and, in fact, would prefer to use recycled parts as these at least meet Australian Standards.

The affect on the consumer can vary from a slight reduction in the value of their vehicle to a significant influence on the structural integrity and safety of their vehicle. What is more disconcerting is that IAG repairers are actively encouraged not to divulge to the consumer that their vehicle has been repaired using parallel parts.

VACC acknowledges that some repairers, because of the cost pressures placed on their business through low hourly rates, or simply unethical practices, do include parallel parts in the repair and charge out for new genuine parts. In either event this activity, including the use of aftermarket parts, should not be condoned, particularly if the parts utilised do not meet Australian Standards, are not fit for purpose, or devalue the consumer's vehicle. (VACC inspected a Mercedes Benz that was fitted with an aftermarket ignition system and mufflers designed for a Commodore).

In the matter of appropriate use of parts in crash repair, the consumer has every right to expect that the basic premise of the repair/insurance undertaking has been fulfilled, i.e. to return the vehicle to its pre-accident condition. More importantly, the consumer has the right to know precisely what parts have been used in the repair process and this should be made clear in writing at the time the consumer collects their vehicle.

As a minimum, insurers should set out undertakings in their Product Disclosure Statements, setting out the categories of parts to be used and the consumer should acknowledge this. So long as this undertaking is followed in the quoting and subsequent repair process, then at least there is a level of transparency, afforded to the consumer.

Recommendation - The use of non genuine new parts not to be used unless these parts 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.

Recommendation – The type of parts used in the repair must be disclosed to the consumer.

Recommendation - The Productivity Commission undertakes a thorough investigation into the pricing policies of manufacturer's and importers of genuine new parts.

3.2.4. Use of Recycled (Second Hand) Parts

The use of recycled parts in crash repairs has given rise to considerable debate within the industry, more on emotion rather than fact. Clearly, recycled parts have a place in crash repair, however, what is of concern is the circumstances surrounding the use of such parts and their appropriateness in the repair being undertaken. This raises two very important issues; whether the use of such parts is fit for the intended purpose and will properly return the vehicle to its pre-accident condition, and consumer awareness.

The obvious motivation for the use of recycled parts is the available savings over using a genuine new part. If a repairer can source a recycled part that matches the make and model being repaired, this makes good sense, as it represents a saving in the cost of repair, whilst still returning the vehicle to its pre accident condition. Recycling of suitable parts also has a greater good to the community from an environmental perspective, and should be encouraged.

The insurers have different approaches. IAG, despite its policy on parallel parts appears also to be driving its preferred repairers to use more recycled parts.

AAMI has an open policy of using genuine parts only whilst the vehicle is under warranty, whereas IAG provides the repairer with a financial

incentive to use recycled parts, particularly if virtually new (less than 3 years) recycled parts are available. Also consideration needs to be given to the fact that some manufacturers offer longer warranty periods on corrosion protection (up to five years) and this is becoming more common with modern vehicles. The repair process and use of recycled parts should not undermine this, or any other warranty, provided by the manufacturer.

In the first instance, AAMI's policy of using genuine new parts whilst the vehicle is under warranty seems most sound as it categorically protects the consumer under a warranty situation. However, the matter can become more complex as it could be argued that the consumer is equally well protected if a genuine recycled part from a virtually new vehicle that has been written off is used.

As with parallel parts, the other issue is transparency and the need to ensure that the consumer has been fully informed at the time of taking out their vehicle insurance policy, and at the time of repair, that recycled parts will be used in repairs and that this is consistent with the consumers understanding and expectation. It is VACC's view that insurers' use of recycled parts policy should be clearly and prominently noted in insurer's Product Disclosure Statement. In addition repairers should be bound to declare what recycled parts have been used in the repair.

There is also the issue as to when to use recycled parts and who determines their 'fitness for use'. Put simply, VACC maintains that the repairer is best placed to decide if a recycled part is the best alternative for the intended repair. 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. By way of example, if a repairer uses a new panel, application of the paint is a relatively straightforward process. In contrast, when using a second hand panel the labour involved in preparing the panel for painting is considerably more and this is rarely considered in cases where the insurer insists on the use of a recycled part.

Given that a number of insurers require repairers to provide a lifetime warranty, it is incongruous that on the one hand insurers insist on recycled parts being used, whilst on the other, they expect the repairer to warrant the repair for a lifetime. Even more so, when the major insurers are pressuring repairers to use exchange parts for bumper bars and headlights, which may not meet appropriate specifications.

Recommendation - All parts used in crash repairs should be excluded from any the lifetime warranty provisions made by the insurer, and that any warranties that do apply are consistent with those given by manufacturers or parts suppliers.

Recommendation – With the growing use and importance of recycled parts in the crash repair industry, proper guidelines covering the quality of the part and their fitness for purpose should be established.

Recommendation – A nationally agreed accreditation system, for the recycling industry, should be established to better control the dismantling, recycling and identification and quality of parts used in crash repairers.

3.2.5. Access to Intellectual property

VACC has, since 1960, disseminated technical information to its members. Over recent years, it has become more and more difficult for our technicians to research technical information and this has had a severe impact on small businesses, including crash repairers and those businesses, which do sublet work, (automotive electrical, power steering and air conditioning etc).

Members of the crash repair sector are, in particular, feeling the pressure of being starved of critical repair information. Crash repairers are being expected to repair damaged vehicles, to pre accident condition, without having access to the correct repair procedures, or the materials used by the OEM in the original manufacturing process. Consequently, the potential for the vehicle to be repaired to a lesser standard of quality is substantial, which not only may compromise the repair, but could also potentially puts the vehicle occupants at risk.

VACC's Technical Department goes to great length to acquire information pertaining to the correct crash repair procedure. However, what VACC and its individual crash repairers are finding is that the information is either incorporated, as part of an entire set of workshop manuals, which are very expensive, or the information is simply not available.

Bonding materials, which are being used more often in vehicle manufacture is another case in point. Currently, the OEM's do not endorse the aftermarket body adhesive products being used in the industry. This raises two issues, the issue of warranty entitlements given that most new vehicles carry a 5 year anti-corrosion warranty and the issue of quality and ongoing guarantee that the product used to adhere the primary structure is of the same quality as the original product, which is ADR compliant and roadworthy.

For some time VACC has been endeavouring to get support from the manufacturers through their peak body the Federal Chamber of Automotive Industries (FCAI), with no real success (refer Appendix A7).

3.2.6. Role and Qualifications of Assessors

The role of assessors working for, or on behalf of, insurance companies is the cause of much concern in the crash repair industry. Traditionally, this role has been performed by experienced individuals whose main purpose was to protect the consumer by ensuring that repair standards were being maintained, at a competitive price, and that the repairer was not overcharging or indulging in other fraudulent behaviour at the insurers' expense.

However, this is not their purpose today. 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. This type of behaviour is further exacerbated by the fact that many assessors employed by insurers have had very limited experience in actually repairing a vehicle.

In a competitive quoting situation (two or more quotes), the winning quote, on a like for like basis, should be the amount paid for the rectification of that vehicle. An assessor should not then take the lowest quote, go to the repairer and further reduce the quote, and then withhold authorisation until the revised quote is accepted. This is not the market setting the price through fair competition.

This approach by assessors is also not protecting the consumer by upholding proper standards of repair, as in many cases these inexperienced assessors are making determinations on methods of repair and the quality of the parts to be used. In such circumstances, given the hold insurers have over their preferred repairers, a repairer cannot easily stand up to the insurer for fear that the workflow will be reduced or cut off. For those few who do stand up to the assessors, the insurer attempts to have the consumer move the vehicle to another more compliant repairer or threatens the consumer with “cash settlement”, (refer Appendix B6).

What is very clear is that insurance company assessors are not there to uphold repair methods and protect the consumer's interest by undertaking checks and balances in the process, but rather they simply act as a loss adjuster or cost reducer for the insurer. This role is reinforced by at least one insurer (IAG), who operates an incentive program whereby their assessors are paid a monthly bonus of 0.5% on the total amount by which they have reduced repairer quotes. How can this be a fair basis to conduct business? Regardless of how fair and competitive the repairer's quote is, the assessor, backed by the power of an insurer that controls 50% of the market in Victoria, has a personal financial incentive to drive the cost of repairs down, with no regard being given as to how this would affect the quality and integrity of repairs, which should be the insurers first priority, (refer Appendix A8,).

As vehicles and repair methods become more complex, so the role of the assessor becomes more significant and so does the need for the assessor to be up to date with current repair methods and vehicle specific requirements.

In the best interest of consumers and the industry, standards need to be put in place to ensure that assessors have the appropriate skills, experience and knowledge to properly undertake their role. VACC maintains that this can only be achieved via a licensing system for assessors, coupled to an independent disputes resolution process to adjudicate over matters of dispute, particularly methods of repair. Assessors should also be held accountable for their decisions, and lose their licence if they continue to get it wrong. Today there is no such accountability as assessors are not required to, or refuse to, sign off on repair methods and use of parts that they have instructed the repairer to use. Under duty of care it is the repairer that is liable even though the assessor has determined the key aspects of the repair. A parallel can be drawn with Electrical Inspectors who also review matters that potentially affect safety issues and they need to be licensed. If assessors are requiring particular repair methods be used, they may be impacting on vehicle safety matters.

Recommendation - The industry (insurers, repairers and assessors) should determine develop and implement a set of standards for the licensing of assessors and a code of conduct to manage assessors operational behaviour.

3.3. The scope for nationally agreed criteria to qualify for 'preferred smash repairer' status

3.3.1. National Standards to reflect Repairer Capability

Currently, the whole issue of standards is a confusing one for the consumer. We have one State with a licensing regime, 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.

The rising levels of technology and complexity, in today's motor vehicle and the manner in which this impacts on the ability of the crash repairer to perform the work properly, also needs highlighting.

Starting with the paint finish. Today's paint finishes are all two-part paints that are made up of a myriad of paint bases and tinters to create the correct colour. To be able to properly mix and apply these paints the crash repairer must have a properly constructed and ventilated paint mixing room, a properly enclosed and ventilated spray painting booth and spraying equipment and a baking oven. Some of the other major capital items deemed essential to properly repair a damaged modern vehicle include:

Jigging and measuring equipment \$65000

Welding equipment (inverter welders) \$25000

Panel straightening tools \$25000

Pulling (major straightening) equipment \$28000

Hoist \$8,000

Paint baking oven \$60,000

What is suggested here, without attempting to provide an exhaustive list, is that there are some basic items of capital equipment, some of which is expensive, that is required for proper repairs to be effected on modern motor vehicles. The absence of the correct equipment in a repair facility may preclude some repairers from undertaking certain repairs, but more than likely it leads to repairers using inappropriate repair methods, which could negatively impact on a consumers vehicle. An obvious example is that without a modern inverter welder, the correct welding process on certain metals used in modern vehicles cannot be achieved.

Australian consumers should be able to expect that no matter where they have their crashed vehicle repaired, the repairer must at least have an appropriate level of equipment to undertake the repair in a proper manner and without compromising the safety of the consumer's vehicle. This can

achieved by setting some national standards and ensuring that no one can claim to be a crash repairer unless they meet the minimum equipment standards

Similarly, repairers and their staff need to keep their skill sets and knowledge up to date in order to stay abreast of the technology in new motor vehicles. Part of this process is having ready and open access to car manufacturers intellectual property, so that the repairs can be done in accordance with the manufacturers specifications. The other part is ongoing training for staff in the industry, and to record that training in some form so tradespeople' credentials can be vetted. These matters will be discussed in more detail in a later section.

3.3.2. Current Victorian Situation

Currently, Victoria mirrors the national scene in that there is no universally accepted set of binding standards for the crash repair industry covering premises, equipment levels, or standards of repair. From a consumer perspective there is no single identifier to help them make an informed decision on whether or not a crash repairer has the necessary equipment to perform the specific repairs that need to be undertaken, especially when it comes to modern cars and accidents of a higher severity.

Insurers have with some success capitalised on this vacuum by convincing the motoring public that their preferred repairers set the highest standards of repair, though this submission has already demonstrated that the insurers' focus is primarily on cost reduction.

Car manufacturers have also tried to assist the consumer by setting up networks of approved crash repairers to undertake repairs on their particular brand of vehicle and that these repair were done to the manufacturers exacting standards. This was mainly done by the luxury end of the car market, (Jaguar, Range Rover, Benz, BMW etc). We now see manufacturers of the average family car, such as Subaru, endeavouring to do the same, because of concerns over quality of repairs, (refer Appendix A9).

VACC, through its Body Repair Division, has also tried to provide the consumer with a level of comfort by setting its own standards with a code of conduct, so that the consumer can be confident that those displaying the VACC accreditation sign have the necessary equipment to conducted body repair work. Areas covered by VACC's accreditation program include trade-qualified staff, workshop tools and equipment, safety equipment and the general presentation of premises. The accreditation also seeks to ensure that members are aware of the wider range of obligations, including OH&S, Dangerous Goods and EPA requirements. (refer Appendix A10)

All these 'approved', 'preferred' and 'accredited' systems, though endeavouring to help the consumer, have also led to the consumers confusion. Consumers, who take their cars to VACC or car manufacturers accredited repairers that are not insurer-preferred repairers, are often advised by the insurer that these repairers are not approved, with an implication that they are not capable of effecting the repairs.

What is needed, on a national basis, are uniform standards which take into account, appropriate equipment level for work being undertaken,

repairer skills, business viability, and the probity of the business owner. In addition, these standards should encapsulate any OH&S and EPA compliance matters (refer Appendix A11).

Consideration should also be given to a tiered structure for the identification of a repair shop that reflects the necessary tools, equipment and employee skills set needed to conduct certain types of vehicle repairs. Coupled to this should be a national code with a demerit system whereby crash repairers could lose their license to operate.

Whatever the final outcome, a national uniform set of standards would provide consumers with a level of confidence that the repairs being conducted on their vehicle are done utilising the correct equipment and in a manner, which will return their vehicle to its pre accident condition.

Numerous industries work under similar arrangements, particularly where matters of safety and structural integrity are concerned, (eg building industry, plumbers, electricians). VACC believes that a licensing regime will only add costs to those operators who currently operate at the fringe and want to remain in the industry. Most crash repair shops would readily comply. Similarly, there would be no substantial impact on barriers to entry as the setting up of a fully compliant and properly equipped crash repair shop is already in the order of \$750,000.

3.3.3. Need for Licensing of Premises

By bringing crash repair premises into an industry-licensing regime, the industry will benefit 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. Employees benefit as they would be working in an environment that protects their health and safety, and the public in general would benefit as the waste from the crash repair process, some of which is toxic, is properly treated and disposed.

There are crash repair businesses that deliberately choose to avoid meeting their OH&S and EPA compliance responsibilities in order to minimise their cost and thereby gain a competitive advantage. This is not true competition and the only way to stop this is through a licensing and inspection regime. These requirements would not cause the majority of businesses any concern or increased costs, as most already comply.

It is envisaged that licensing of premises would also encompass any existing requirements relating to:

- Local laws and regulations
- Parking requirements
- Council permits
- EPA requirements
- Trade waste agreements
- Triple interceptor and washing facilities
- Correct bunding for hazardous waste spills
- Waste monitoring

Furthermore, it is envisaged that matters, which affect consumer safety on premises would also be addressed:

- Provision of customer facilities
- Provision of a customer reception/waiting area
- Customer toilet access

Whilst considering physical aspects of the premises it would also be appropriate to consider employee facilities such as the lunchroom and amenities. Given the acceptance of the need to have customers on the premises, it is also suggested that Public Liability and business insurance with a minimum cover of \$10 million be included as mandatory aspect of premises under a licensing regime.

Recommendation - That a national licensing regime for body repairer premises be developed.

3.3.4. Need for Licensing of Individuals

Tradespeople

The issue of standards cannot only be addressed by looking at levels of equipment in isolation. The quality of the personnel using the required equipment also has a significant impact on the repair outcome.

To ensure that licensed businesses can provide the levels of service expected, it is necessary that employees engaged for specific purposes hold a trade certificate or documented experience relative to the field of endeavour. Such areas would include Panel Beaters, Spray Painters and Mechanics. It is also envisaged that a method for recognition of prior learning be implemented, together with a need to undertake ongoing training so that repair skills and knowledge match the technology of the vehicles to be repaired.

To assist licensed businesses identify tradespeople who have attained various skill levels, it is proposed that a Tradesperson Skills Passport system be introduced, in which relevant training and certification can be recorded. As an alternative, individuals with particular skills could be separately licensed as is done in a number of other industries (eg. air conditioning, taxis, and tow trucks (in Victoria)). The passport has the potential to enhance the existing trades certificate arrangements and become the industry standard for the recording of any relative training

Such a system could assist in better determining a defined career path for an employee and could greatly assist in attracting new people to, and retaining existing tradespeople, in the industry.

Recommendation - That tradespeople employed in the crash repair industry be licensed and passbook system be developed to record the qualifications and training undertaken by the trades people.

Business Owners

In any small business, the owners of the business are ultimately responsible for the culture and practices within the business. Crash repairer shop owners are no different and consequently they are ultimately responsible for the practices and quality of the repairs produced by their business.

The licensing of the owner, and thereby the premises, would re-enforce the need for crash repair shop owners to instil and maintain ethical practices, and maintain a base level of professionalism. It is envisaged that a simple Code of Practice (refer Appendix 12) for owners would be incorporated into the licensing process. A breach of the code could be seen as a breach of the licensing regime and as such sanctions would need to apply. Ultimately, ongoing failure to act in accordance with the code, or criminal or fraudulent behaviour, may result in the loss of a license to operate. This concept is common in a number of areas of business in Victoria such as tow trucks, taxis, driving instructors, day care centres and nursing homes, and though it would attract some additional costs, such costs would not be onerous, particularly if it was industry wide and mandatory.

VACC has no objection to incorporating a "Fit and Proper Person" probity check as part of the licensing regime for business owners. It is recognised that, though small, there is an 'undesirable' element in the industry, some of whom participate in stealing and rebirthing vehicles, or are involved in other criminal activities and these people need to be weeded out. In addition, VACC sees this probity check also targeting individuals who are in the business of going broke on a regular basis, leaving mainly other small businesses holding hundreds of thousands of dollars of debt, whilst the owners start a new crash repair business in another suburb.

Requiring a probity check may seem unrealistic to many, however, given the safety issues, the opportunity for fraudulent action and a need to minimise any criminal element, it is believed that such a check would go along way to addressing a number of concerns about operators in the industry.

It is acknowledged that there is an inherent cost in any licensing regime, but if this provides consumers with an industry that has higher ethical behaviour, improved quality of repairers and trust, then the benefits outweigh the costs. For too long the public interest test has focussed too narrowly on price and it has failed to realise that the benefits to the consumer cover a much broader spectrum. Licensing in the crash repair industry is one such benefit, which will also bring with it economic benefits through a higher skilled workforce and reduced fraudulent activity, and improved consumer service.

VACC has been advised by the Insurance Council of Australia (ICA), IAG and the Victorian government that they are all, in principle, in favour of licensing for the crash repair industry, as is the VACC. VACC also believes that the respective State Motor trades Associations are best placed to assist in the establishment and ongoing administration of such a licensing regime.

Recommendation - A national system be established to licence business owners, in the crash repair industry.

3.4. Any measure 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.

3.4.1. Transparency of Quotation Process

Not all quotation procedures are the same for each insurer. Listed below are the processes used in Victoria, by the major insurers including any nuances known to VACC.

IAG

First and foremost before any quotes are written, IAG will first attempt, wherever possible, to steer the consumer to one of their own repair facilities, secondly to a PSR or if that cannot be achieved, an ASR. For repairers outside that three-tiered group, if a customer fights vigorously to stay with a chosen repairer, then the consumer is likely to be cash settled and thereby forfeits any insurer provided warranties.

PSR/ASR

- PSRs can commence repair without authorisation or submitting a quote
- With ASRs, IAG only requires the repairer to submit one quote and this will be assessed online and adjusted as IAG sees fit.
- Quotes are required to be written out in accordance with a times manual and utilising the rates that are contained in the PSR/ASR contracts (\$23.00/hour).
- Where specified, parts must be obtained through suppliers contracted by IAG. Such suppliers cover aspects including radiators and air-conditioning systems, windscreens and suspension components.

AAMI

- Quotes can be provided in dollars, as AAMI do not specify an hourly rate.
- A minimum of two quotes are required, one of which must be from a AAMI preferred repairer (non AAMI preferred repairers only have the opportunity to quote if the insured strongly requests they be considered or they are a special client).
- In gaining the two quotes, AAMI often require vehicles, made unroadworthy by an accident, be driven to repairers to obtain quotes.
- The lowest quote wins. However, the winning quotes, usually goes to the AAMI preferred repairer, and often does not deliberately included 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.
- In the unusual event that a non-AAMI repairer wins the quote the repairer is still, at their cost, required to pick up and deliver the vehicle to the AAMI assessment centre.

- Regardless as to the market determining the lowest price through seeking competitive quotes, AAMI still assesses and reduces the winning (lowest) quote.
- AAMI assessors check the vehicle regardless of the repairer before it is returned to the owner at the assessing centre.
- There is an inconsistency in AAMI's quoting process, some jobs requiring one quote, some two quotes, some more than two quotes and in the case of third party work no quotes.
- AAMI offers selected repairers, or drops off third party work to selected repairers as means of off setting the low rates they are paid for AAMI work. The frequency with which this happens varies.

Allianz

- Has a one quote system but closely monitors the repair process through either face-to-face visits by assessors or through on –line arrangements.
- Initial assessments take 2 – 3 days, however, once the job is underway assessors can be called out virtually on demand.
- Quotes accepted in dollars, with no times required to be shown.

Zurich

- Two quotes required unless the repairer is a preferred repairer (preferred status only gained via interview).
- Zurich Insurance insists on copies of all parts invoices for items used in repairing the vehicle, adding to cost and administration time.

The quotation process, used by most insurers, is a remnant of by-gone days when various quotes were obtained, which detailed the work to be performed and the price, so that a consumer could make a decision on who should be employed to do the work. What exists now is far removed from the original intent. Rather than providing a customer with a clear understanding of what is to be done to the vehicle and at what price, quotations have evolved into a 'type of game' of quotation manipulation by both insurers and repairers. The basis of this manipulation comes from the deliberate inaccuracy in scoping the repair and the use of inaccurate times, (sometimes from different sources), and fixed hourly rates. Hence the industry phrase, "funny times funny money".

Addressing the insurers use of the system first, it is plainly obvious to all that the dollar figures per hour paid by insurers for vehicle repairs are unsustainable. Still there is a perpetuation of this charade as companies such as IAG imbedded the \$23 / hour figure in both their PSR and ASR contracts (refer Appendix A5). This is then calculated out against repair times, which either IAG have published on their website, or the MTA times depending on the practice in each State. Given variables such as skill, equipment and overheads, how can fixing hours and fixing rates possibly fit across such diverse circumstances? There is no relationship with this practice and genuine competition.

If a repairer purchases a piece of equipment that allows a repair task to be performed more rapidly, the only way they can be compensated for the

investment is to extend the hours required to greater than actually required. If the quote was to be written in a transparent manner, the repairer should be able to quote “real “ hours and make a charge for service that is commensurate with skills and equipment utilised together with an appropriate apportionment for overheads relative to that business. It then befalls the repairer, as a businessman, to balance investment and skills against timely delivery and quality of repairs against the market.

Quotations should be created on a like for like basis. If any role for an assessor is considered, it should be to ensure the scope of repairs is consistent in comparing quotes. It is accepted that two different repairers may quote different repair methods, however, if the assessor is to play any part it should be to assess if either method of repair can return the vehicle to its pre accident condition. Only quotes, which can achieve such an outcome, should be considered in selecting the repairer.

Furthermore, if the process of competitive quoting is the method of using the market to determine the appropriate value for repairs, there should be no scope for an assessor to then further reduce the quote, by making arbitrary alterations before returning it to the repairer. This practice ignores the mechanisms of the free market acting to achieve the best possible price, but rather exemplifies the abuse of market power by some insurers to artificially drive the price down, for the insurers gain and at the repairers expense, (refer Appendix B7).

For some jobs, because of the severity of the damage, or the complexity of the vehicle, giving a meaningful quote would be very difficult. For such jobs the only way to properly proceed to dismantle the vehicle and then complete a quote. This does not easily lend itself to competitive quoting and VACC believes that a managed repair process between the insurer and repairer should be used in such cases. This the current practice used by Allianz with considerable success.

Recommendation – Quotations should be created on a like for like basis, and the method of calculation of the quote other than outlining the agreed scope of work to be done need not be shown. The assessor should not amend the winning quote unless the scope of works is mutually changed.

Recommendation – A ‘managed repair’ should be used for those repairs that are virtually impossible to quote on until the vehicle has been fully disassembled.

3.4.2. On – Line Assessing

On-line assessing on face value does have some benefits. It utilises modern technology to speed up the quotation, assessment, authorisation and therefore the repair process, which is good for the consumer, and it assists in keeping clear records of the repair process. However, there are a number of concerns that undermine what has the potential to be a productive move forward for the industry.

The best way to analyse the potential pitfalls is to look at the IAG approach, as it is the most widely utilised on-line assessing system in Victoria. The first concern is that to have access to IAG’s on line system the repairer must agree to a PSR or ASR contract, which includes the acceptance of the \$23.00 hourly rate. Despite this and disenchantment

with many other aspects of the PSR/ASR contracts, many repairers have signed on because without it IAG will not assess or authorise work with lengthy delays.

On-line assessments are often achieved within 24 hours, where as other repairers are unable to get an assessor to visit for weeks. The obvious problem for the repairers is that the consumer either agrees to being steered to a PSR/ASR approved repairer, or they wait without a vehicle for a substantial longer period of time. Given society's dependence on the motorcar, this puts the non-PSR/ASR and their client at an enormous disadvantage. Add to this IAG's 50% market share in Victoria and the enormous proportion of available repair work this represents, repairers have no real choice.

There is also the question of the competence and skill of the person assessing the job at the other end of the line, and on what basis are alterations being made. This proposal has already raised concerns about the competency and skill of insurance assessors. On-line assessing lends itself to further abuse, if proper operating standards are not set.

The final matter is one of cost. Technology is expensive, and the fast paced manner in which it evolves quickly makes existing systems redundant. Insurers at their whim can insist that repairers continuously update their systems. As this is always at the repairers expense, constant updating can place a significant burden on any business, and for the reason outlined above, it again leaves the repairer vulnerable to manipulation by the insurer. In IAG's case all their contracts are for 12 months and can be terminated at 30 days notice. To insist that repairers continue to invest in insurer specific computer systems under such circumstances is oppressive.

3.4.3. Steering of Consumers

It bears repeating that even though many policyholders do not question the lack of choice of crash repairer. Those that do have preference of crash repairer that is not the same as that of their insurer find themselves being subjected to various forms of persuasion and intimidation, in order to be steered to an insurance company preferred repairer. The two major insurers that act in this manner are those that hold the largest market share in Victoria, namely IAG and AAMI.

The techniques used by insurers, in many cases, border on the unethical, and though it is difficult to prove in every case the incidences are of a regular and widespread nature to indicate that it is a systematic and deliberate approach by the insurers.

The business model of IAG and AAMI is based on control; control of the their policy holders, control of their preferred repairers and control over the allocation of work flow to those preferred repairers. In order to meet their cost goals, and business objectives, these two companies use this control to drive the maximum volume of available work to their preferred repairer networks. Consequently, these two insurers make a considerable effort to ensure that their policyholders are steered to the insurers' preferred repairer networks.

The very first part of this steering commences with the insurers' marketing advising consumers to "call us first following and accident". Once that call

is made the insurer starts to direct activities. Some will commence a claim over the telephone, whilst the insured is still at the accident. Even before the vehicles have been towed clear of the accident scene, the vehicle is directed to an insurers preferred repairer or their holding centre, robbing the consumer of any choice. Such action also compromises the consumer's right to take a Third Party Recovery Action against the party at fault.

The more sinister steering activities undertaken by some insurers consist of the following practices:

- Using a method of implied denigration of other repairers, eg; 'your choice is not an approved / preferred repairer' and 'their work cannot be recommended / guaranteed'. The interpretation being that the non-preferred repairer has questionable skills, when this is clearly not the case, (refer Appendix A13 and B8).
- The insured can be offered an incentive by way of, 'if you go to 'xyz repairer', they can start tomorrow, otherwise you might have to wait'. Where consumers have insisted on their rights to choose a repairer, that consumer has been penalised by a systemic delaying process.

On a number of occasions, clients of crash repairers have sought to pursue their right to have their vehicle repaired by their own preferred repairer. This has been challenged on a number of occasions, particularly by AAMI, and the matter was heard before the Magistrates Court in Victoria, (refer Appendix B8).

Recommendation - That the practice of steering a consumer, in any form, away from their own choice of repairer if they have one, to an insurers preferred repairer be prohibited.

3.4.4. Third Party Recovery

It is in the insurer's interest that it minimise or intervene in any Third Party recovery action because Third Party Recovery repairs are often more expensive for the insurer, as the repairer can quote in real time and real money, and the insurer of the at fault party does not have the right to interfere in the quotation process.

AAMI sees intervening in this process as an opportunity to reward their preferred repairer members, and uses third party work to offset the low amounts AAMI pays for their own work. VACC has been advised of cases where, after the consumer has rung the insurance company (usually by a mobile phone) and advised of the details of the accident, the insurance company then asks to have the mobile phone handed to the other party who they then attempt to influence into using their repair network, thus removing the chance of a Third Party Recovery Action being taken against them.

Through the Transport Act 1983, the Victorian Government restricted towing operators attending accident to offering only towing and vehicle storage services. This was done so that the consumer had time to leave the scene and consider their options. The legislation is written so as to preclude all parties from attending an accident scene and offering anything relating to vehicle repairs. VACC's interpretation of AAMI's

activities and others, such as Motor Care, is that it is against the law, but proving this has been virtually impossible, (refer Appendix B9).

The steering of consumers away from their first choice is not an issue that is restricted to just Victoria, or Australia. This is an issue that is causing great concern in the UK and has caused so much concern within the crash repair industry in the USA and Canada that legislative steps have been taken in both these countries to ban the steering of consumers once their choice has been made.

Recommendation – Insurers, or their agents, be prohibited from making any contact or utilising any personal information gained from an accident report, to try steer a third party consumer to a insurer preferred repairer.

3.4.5. Cash Settling

The practice of cash settling is a particularly intimidating mechanism by which insurers frighten consumers into agreeing to move their vehicle to the insurer's referred repairer network. This practice, which insurers use on an arbitrary basis, (refer Appendix B3 taxi example), is, in reality, a financial threat against the consumer as the so-called 'final payout figure' offered does not always reflect the true repair cost, thus leaving the insured potentially financially exposed. This vulnerability forces the insured to accept the insurer's choice of repairer, (refer Appendices B8 & B10).

- In many cases where a cash settlement is offered the insurer often advises the client that future insurance with that company may be declined. This may impose an additional financial burden on the consumer, as when they seek insurance with other Insurers, they need to declare that another company has previously refused them insurance.

4. Financial relationships between smash repairers and insurance companies

4.1. The rates paid by insurance companies for smash repair work

4.1.1. Hourly Rates Analysis

The issue of the hourly rate paid by insurers for crash repair work is the most divisive and contentious issue within the industry, except perhaps for the issue of consumer choice. Since 1991, and to this day, the hourly rate paid to crash repairers by insurers has not increased (refer Appendix A14).

In analysing the data, it can be seen that for the period between March 1994 and March 2003, increases in underlying costs have risen from approximately 25% for electricity through to approximately 114% for commercial insurance cover. In Victoria, these costs do not take into account the additional environmental and OH&S costs that have been incurred in the previous 12 months to meet strengthening Victorian Government compliance in these areas. (Appendix A15)

The other interesting aspect is the low nature of the hourly rate particularly in light of the growing complexity of the work carried out, compared to other automotive industry sectors (refer Appendix A16).

Notwithstanding the fact that these rates have not changed for 15 years, an interesting aspect of the fixed hourly rates paid by insurers is the apparent similarity between the insurance companies' rates within Victoria. VACC believes that there is a similar pattern in each State. (refer Appendix A17).

4.1.2. Hourly Rates and Investment Requirements

The ability of VACC to make any definitive contribution to the financial situation facing crash repairers in Victoria is severely hampered due to a lack of any reliable cross-industry data. Organisations such as FMRC/CCH and some paint companies do collect financial data on the crash repair industry. However, as with most small business related surveys, the participants tend to be from the higher end of business operators and this tends to skew the results. Consistent and reliable cross-industry financial data is virtually impossible to secure.

In addition, the short time available to make a submission precluded VACC from undertaking any meaningful primary research in the financial state of crash repairers. For this reason VACC's analysis will be more of an overview, and less in depth than it would like.

Notwithstanding this, evidence suggests that international comparisons prove that the Australian crash repair industry is by far the most efficient, with a production efficiency ratio of 139% compared to the USA at 94% and UK at 78%. This efficiency rate is not something that just appeared out of the blue, as the Australian crash repair shop has had to constantly trim its operation to meet the growing demands of insurance companies, the motorist and the auto manufacturer, (refer Appendix A18).

At the same time technology in the motor industry is constantly improving. These improvements mean new repair methods, which require new tools, improved skills and equipment. If repairers are not able to keep up with the equipment level required, or their staff lack the necessary skills, then there is a limitation to the type of vehicles that the repairer can repair. Attempting to repair certain vehicles, without correct equipment and appropriate skills, could possibly compromise the safety of the vehicle or, at the very least, diminish the re-sale value of the consumer's vehicle.

Crash repair shops in Victoria are at the crossroads in 2004. They are at a stage, where it is not possible to run their operation any leaner and it is not possible to lift the efficiency significantly higher, without substantial investment.

With increasing costs in labour, materials, new equipment and maintenance, also new demands by Occupational Health and Safety and environmental requirements, a lift in the hourly charge out rate is the only way to resolve this ever worsening situation.

Fundamental to any businesses' ability to exist in the long-term, is its ability to generate sufficient returns so that the business can invest in the future. By insurers setting an arbitrary low hourly rate, they effectively reduce the ability of repairers to make adequate returns for the long-term viability of their business. This practice may benefit insurers and their

shareholders, (refer Appendix A4), but it does not benefit the consumer and smash repairer.

In addition, as mentioned before in a previous section, repairers desperate to make proper returns, are forced to manipulate the quotation process in a manner, which borders on being fraudulent, in order to generate sufficient profit from an insurance company job, to maintain viability.

The long-term economic wellbeing of this industry cannot be sustained given that substantial efficiencies have been extracted out of this industry sector over the last 10 years, by insurers paying artificially low hourly rates for insurance work, particularly as around 75%-80% of all crash repairer work is insurance work.

It is not only the low hourly rate, which is affecting the ability of the repairer to make a viable return. While insurers have kept these rates down they have also implemented practices, which have eaten into the repairers' other revenue generating opportunities. Insurers, particularly those with the largest market share have also 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.

This situation has to be rectified in some manner, but is difficult to achieve whilst there is a significant disparity in relative bargaining power. Though open to the possibility, VACC has doubts about the ability of collective bargaining to succeed in this industry due to its size, fragmented nature and the lack of any real long-term solidarity in this group. The only other option is to codify the relationships and practices within the industry, in such a manner that will allow repairers to make a return and therefore provide better service and repairs to the consumer.

4.1.3. Lifetime Warranty

One of the marketing ploys used by insurers is to offer their customers lifetime warranty on repairs undertaken by their preferred repairers. It may be easy to assume that the cost of the guarantee is in fact borne by the insurance company. However, in most cases, it is the repairer who is obliged to honour the warranty. This is a clever marketing ploy, which assists the insurers to circumvent the problem of possible substandard repairs, forced on the repairer by either overriding the proper repair methods or by seeking continued cost reductions.

There are some variances in the way insurers approach lifetime warranty.

IAG

In the case of IAG (market leader), in their PSR agreement it clearly states "they" (the repairers) will be responsible for the repairs. Conversely this same insurer exerts continual cost-reduction pressures on the business, which potentially can compromise job quality. The lifetime warranty offered is effective only for the period the vehicle is owned by the insured, as future owners are unlikely to be made aware of such coverage. Generally speaking, the warranty does not stay with the vehicle for its "life", as the warranty is not transferable with a change of ownership of the vehicle.

AAMI

The AAMI lifetime guarantee requires that the repairer covers the first three years, with AAMI assuming the responsibility for remainder for the guarantee. The AAMI product disclosure statement states "the repair of your car will be guaranteed for the life of the car" (AAMI PDS p 38).

Allianz

Whilst Allianz does not specify any lifetime guarantee on repairs in there dealings with repairers, there is a general expectation that "reasonable guarantees will be provided by the repairer.

The concept of lifetime warranty in itself raises significant questions that ultimately place additional cost pressures on the repairer. First and foremost, the insurer arbitrarily is asking the repairer to give warranty on workmanship and parts that, in most cases, far and away exceeds the original warranty offered, by the manufacturer of the parts or the supplier of ancillary products used in the repair process.

When a customer purchases a new vehicle, the manufacturer warrants all the parts in that vehicle for the term of the warranty period, which is consolidating around the 2 to 3 year period. On new genuine parts supplied to repairers, the warranty offered can vary, but general industry acceptance is that this is around 12 months from the date of purchase. Similarly, suppliers of non-genuine parts and paint companies provide limited warranties on their products. With this in mind, it is untenable that insurers can offer their customers lifetime warranty, let alone, impose the obligation on the repairer.

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.

In addition, in cases where a preferred repairer has undertaken the initial crash repair and the work done is unsatisfactory and the consumer insists on the work being done at their personal preferred repairer, it has been known for the insurers to pay the claim and then present the bill to the original repairer (refer Appendix Chaplin). Only in very limited cases, where the preferred repairer has gone out of business, does the insurer bear the cost of the lifetime warranty.

This whole process has two key influences. Firstly, it disguises the true cost of repair within the preferred repairer network and secondly, it potentially increases the costs which the repairer is forced to bear. This is particularly onerous in situations where insurers choose to determine the scope, method of repair and the parts to be used, in the first instance and which may be at odds with the scope, method of repair and parts used originally determined by the repairer.

4.2. The timeframes provided to smash repairers by insurance companies to consider and make an informed decision on contract offers

4.2.1. IAG Approach

VACC's only experience with contract offers has been the alleged pressure tactics used by IAG in signing up its preferred repairers. VACC was so concerned at the consistency and breadth of the complaints that it convened a meeting with IAG's subsidiary in Victoria to complain about their action. IAG dutifully denied using such tactics (refer Appendix A19).

The anecdotal evidence persists and members are still concerned about the non-negotiable nature of the contracts and the take-it-or-leave-it approach, particularly as many of the repairers rely heavily on IAG directing work to them. Without this work they would most likely not survive.

4.3. The time taken by insurance companies to pay smash repairers for completed work.

4.3.1. Late Payment Trends

The late payments of commercial debts by insurers to smash repairers, has been the subject of investigation, research and a submission to Government by VACC on behalf of members. The research commenced in the year 2000 to quantify the size and nature of the problem, and it was found that crash repairers were genuinely disadvantaged by the payment policies of insurers many of whom dragged their payment out to beyond the usual commercial terms of 30 days. Early surveys of members showed that in many instances payments were made beyond 45 days and some insurers were more likely to pay late than others.

Some insurers, showed interest in this research, and improvements were noted. However, over a period of two years, and especially following the introduction of the Goods & Services Tax in July 2000, it became clear to smash repairers that the impact of late payment on cash flow could be very costly, if not fatal, to a small business left waiting for payment for work done, parts supplied and a job completed some 6 weeks earlier.

Senator Stephen Conroy (ALP) introduced a Private Members Bill into Parliament that sought to provide a statutory right for small business to charge penalty interest rates on overdue amounts. This proposal was similar to the successful Better Payments Program legislated in the UK and followed a European Union model (refer website <http://www.payontime.co.uk>). A Senate Committee was then established to hear evidence on Senator Conroy's Late Payment of Commercial Debts Bill. Unfortunately, this Bill has now lapsed. VACC supported Senator Conroy's Private Members Bill, and also included a payments clause in the Draft Code of Practice.

VACC has since amended the methodology of collecting information from members and in February 2004, introduced the "Insurer Payments to Repairers Audit" (IPRA), (refer Appendix A20).

The IPRA study provides compelling evidence of a problem with late payments by insurance companies to crash repair businesses. Around one in four invoices are paid later than standard trade payments terms of

30 days, while the slowest 10% of payments by insurers take 49 days or more.

Late payments stifle the cash flow of crash repair businesses, causing financial hardship, in what is a highly competitive industry, and it is another mechanism by which the insurers can control the crash repairer.

Insurance Industry participation in the *Automotive Body Repair Industry (Fair Dealing) Code of Conduct* would be an effective means of moving forward on the late payments issue. The draft Code, section 15.1, outlines terms of invoice payment as:

- a. Payment by an Insurer to a repairer should be within 21 days from the confirmed receipt date of invoice.
- b. If it is the Insurer's practice to have the invoice approved by an assessor prior to payment then the approval should be within 48 hours of receipt of the invoice or a notice of dispute is to be issued.
- c. If payment is not received within 21 days of the invoice date, after expiry of a further 10 days the repairer should look to increase the invoice cost by 2.0% per month to reflect the additional administration and cash flow costs.
- d. If the insurer settles the invoice by EFT within 3 days of invoice production with no additional formalities, a discount of up to 2.0% could be negotiated if both parties agree to the terms.

The Code of Conduct and terms of invoice payment above, have been presented to all insurance company CEOs requesting that they enter into discussions with a view to participating in the code. To date, none have agreed to participate.

However, Allianz Insurance has included its own commitment to pay in its Claims Promise and the arrival of Electronic Funds Transfer from insurer bank accounts to smash repairer bank accounts, has improved payments for repairers.

VACC's position remains that big business, including insurers, has the capability and systems that allow them to ensure prompt payment. If they fail to do so, they should be penalised. It is not the penalty that we seek, but rather a prompt payment in the first instance.

It is worth noting that the Victorian Government has committed to make payments within 30 days, in all its commercial dealings (refer Appendix A21). It is VACC's view that big business should follow the lead of Governments and cease to discriminate against small business through the weight of their financial power.

5. Arrangements for consumers to have reasonable choice in the selection of repairers.

5.1. The Issue of Consumer Choice of Repairer

The issue of choice of repairer has become one of the fundamental issues facing consumers and crash repairers today. The importance of denying consumers choice, is further heightened when considered in conjunction insurers market share and the selective nature the preferred repairer schemes, which have themselves become fundamental to insurers' plans for the crash repair industry. Simply, the conjunction of these factors significantly reduces competition in this

industry sector. By controlling the supply (number of preferred repairers) and demand (repair work) the large insurers with their significant market conditions, control the market and there is no effective process in place to counter act that control.

The issue of denying choice of crash repairer also transgresses the principle of the rights of repairers to develop and hold their own customer base, which in many cases have been built up over years and, in some cases, generations. For any small business, a regular client base forms the basis of their long-term viability and the goodwill of their business. Repairers would argue that their customer bases are more hard fought and loyal than the insurers', who regularly see consumers change companies for small differences in premiums.

Current practices by the two major insurance companies, IAG and AAMI, by not offering choice to consumers challenges this basic business right, and potentially destroys all goodwill the business 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. (Appendix B12).

In essence, a motor insurance contract is a contract that indemnifies the policyholder against theft, loss caused by third parties or damage to the insured vehicle or a third party vehicle. The insurers hold out that the insured is therefore the insurer's client, whereas the crash repairer believes they also have rights over the client.

Under the Insurance Contracts Act, (Section 54), the only qualification imposed on freedom of choice of the consumer, is the obligation that the selection of a repairer of the consumer's choice, cannot financially disadvantage the insurer.

Insurers continually claim that their customer research indicates their clients are happy with their particular preferred repairer scheme and the 'valet system'. The difficulty with this research is, its lack of independence. It is interesting to note that in a customer satisfaction index study done in the USA by J D Power and Associates, which is the recognised market researcher in the automotive sector of the USA, their research showed that consumer satisfaction is higher when the consumer selects its own crash repairer (refer Appendix A22).

The question needs to be asked that if IAG and AAMI have so much faith and belief in the superior offering of their respective 'no choice' repair systems, why are they worried about giving the consumer choice. The real answer is that this policy has nothing to do with consumer satisfaction. It is all about leveraging the control these insurers have over consumers to extract better financial return, main.

Recommendation - Consumers should have the right to choose between the insurers' 'valet system' and selection of their own personally preferred repairer. In the case of the latter, the insurer should respect the consumer's decision and the insurer should be restrained from indulging in any activity, or implementing any financial impost, which would dissuade the consumer from going to his or her own repairer.

5.2. Choice of Repairer Offerings

Consumers in Victoria have been significantly impacted by the restructure of the motor insurance industry in Victoria. Some 3 years ago, the predominant insurers in the Victorian motor insurance sector (Fortis, CGU, RACV) offered consumers choice of repairer, with only AAMI and its associated companies, offering no choice. In quick succession, Fortis was taken over by CGU and then CGU was taken over by IAG. With that move, CGU clients and those who were previously Fortis clients came under the influence of IAG policy, which saw the prima facie removal of choice of repairer. The situation for Victorian motorists now is that around 70% do not have choice of repairer.

However, matters are not that simple. In the case of AAMI, it clearly offers its consumers no choice and neither does some of its associates, (Australian Pensioners Insurance, Vero, Australian Alliance), and yet Shannons Insurance and Just Cars Insurance, who are also associates, do offer their clients choice. AAMI, when challenged, maintains that it does offer choice, however, for most AAMI insured this is just a choice to nominate another repairer to quote, not a choice that involves genuine assessment and authorisation to repair. Also, if you happen to be a large client you may be allowed choice.

In the case of IAG, consumers do have a choice between the IAG preferred repairers and some may have some access to broader choice if their preferred repairer happens to be an IAG (ASR). VACC understands like AAMI, IAG will allow choice outside its PSR/ASR network depending on the standing and size of the client (refer Appendix B3).

The insurers can therefore argue that they do offer choice, however, the key point VACC would like to make is that for the great majority of the motoring public in Victoria prima facie choice is not available.

It is recognised by VACC, that many consumers are more than happy to allow their insurer to take complete control over the repair process of their motor vehicle (eg the valet system). The converse to this also holds true in that consumers may wish to choose a crash repairer of their own choice because of some previous relationship, recommendation or convenience.

5.3. Transparency of Insurer Policies and Disclosure

With the restructure of the motor insurance industry in Victoria, and the stealthy implementation of no choice policies by some insurers, it has come to light that 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, (eg CGU clients). In fact many consumers only find out when they have an accident.

For many consumers, the insurance of their motor vehicle, is a 'grudge purchase' and because many consumers do not regularly use the service of a crash repairer (once every 7 years), it can be safely assumed that those consumers would not diligently peruse each section of their insurance contract. They would be more inclined to look at their renewal premium and simply pay it.

This approach is not lost on the insurers, and it is significant that references to choice in IAG's and AAMI's motor insurance policies (and their associated companies) is usually euphemistic and found towards the back of the policy document, (AAMI's policy document, p 36, Appendix A3). In addition, insurers are less than candid when it comes to advising consumers about their respective policies on methods of repair and parts that will be used in the repair. (It must be

acknowledged that AAMI does have a transparency policy on parts used and clearly specifies this in their documents).

Perhaps the greatest single example of the double standards used by insurers, with respect to providing a clear a message on whether the consumer has choice or not, can be best illustrated by comparing the television commercials of AAMI and its associated company, Shannons Insurance.

In the Shannons advertisement, the consumer is clearly advised that they have choice of repairer. However, in any AAMI advertisement, there is no clear announcement by AAMI that the consumer does not have choice of repairer. A similar situation can be found when visiting their respective websites.

Insurers claim that their current level of disclosure meets the requirements of the Financial Services Reform Act (2001), however, VACC does not believe the level of disclosure goes far enough, particularly when compared to the levels of disclosure provided by banks on their financial services).

Recommendation - All insurers advertisements and promotional materials should state in an obvious, clear, unambiguous and readily understood form, whether or not the consumer has a genuine choice of repairer or not. It should also be a requirement for this information to be stated as part of any telemarketing campaign, identified on all premium renewal invoices, and be placed at the front of, or on the cover page of any policy documents.

6. The extent, adequacy and independence of dispute resolution systems between the smash repair industry, insurance companies and consumers.

6.1. Current Situation

6.1.1. The Insurers

The current dispute resolution procedures offered by the main insurance companies and the industry dispute resolution system offered through the IEC do not adequately address the types of disputes that arise in relation to the repair of crashed motor vehicles.

In the case of dispute resolution processes offered by the insurers, one of the most notable failure of these is that they do not carry any genuine independence in assessing the complaint. They are predominantly internal reviews, which are highly unlikely to deliver an outcome that contradicts the decision taken by another department, within the organisation. 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. In addition, these complaints are not always dealt with in a speedy manner.

6.1.2. The Insurers Enquiries and Complaints (IEC)

In the case of the IEC process, the system is simply not geared to handle disputes for this industry sector, as it does not currently deal with disputes between insurers and repairers. It only deals with disputes with policyholders. There is no mechanism to handle quotation disputes between repairer and insurer.

Notwithstanding the above, the IEC process, in VACC's experience, is also incredibly cumbersome and slow. In one particular case, it took the

IEC nine months to adjudicate on a \$132 dispute regarding the replacement of a car aerial (refer Appendix A23).

6.2. Preferred Characteristics of a Dispute Resolution Process

Because motor vehicles are, for most consumers, regarded as a necessity and the need to put them back on the road quickly after an accident it is essential that any disputes resolution procedure has the following characteristics:

- It must have the capability to adjudicate on the insurer/repairer/consumer disputes.
- The process involved is a speedy one in which the whole matter can be heard and adjudicated within 48 hours (2 working days).
- The dispute resolution process must be genuinely independent.
- It must have staff with capabilities to handle the disputes in question.
- It must have deterrent element in order to minimise frivolous and vexatious claims.
- Penalties for repeat offenders must apply.

6.2.1. Adjudication of Quotation Disputes

For a disputes resolution to have any meaning in the industry it must be able to adjudicate on quotation disputes between insurers and repairers. This is particularly the case where there is a discrepancy on substantial matters with respect to the scope of the repairs needed to repair the vehicle to its pre-accident state.

6.2.2. Adjudication of Appropriateness of Repairs

It is VACC's contention that the importance of identifying and clarifying the appropriate scope of works goes to the heart of quality repairs and therefore there must be an appropriate mechanism to challenge the appropriateness of such repairs.

One of the main areas used by insurers to secure work into their preferred repairer systems is to manipulate the quotation system whereby their preferred repairers deliberately leave out less obvious repairs, in order to secure the cheapest quote. Once the repair has been secured by the preferred repairer, a system of supplementary invoices is permitted whereby the true nature of the repairs can be undertaken, or the full range of repairs are not undertaken at all, to the consumer's detriment.

A mechanism to challenge such behaviour to ensure that genuine competitive quotes, based on like for like repairs, needs to be put in place.

6.3. Additional Requirements

6.3.1. Lodgement fee

VACC understands that a proper dispute resolution procedure, encompassing requirements outlined above, brings with it a cost and a potential for parties to make frivolous claims within the system. In order to screen these claims, it is suggested that any complainant would need to

pay a substantial lodgement fee (\$500), prior to the case proceeding. If the complainant is successful, the party against whom the original complaint was made should refund this fee. This system would be available to insurers, consumers and repairers for the purpose of bringing complaints regarding the crash repair process.

6.3.2. Binding Outcome

The dispute resolution body should have the power to make final and binding decisions and there should be no right of appeal. Failure to comply with any decision, particularly by crash repairers or insurers, should bring with it substantial fines.

6.3.3. De-merit System

In a previous section of this proposal, VACC has argued for national standards that include licensing and as part of this disputes resolution process, a de-merit system should be introduced whereby constantly offending crash repairers should be issued with de-merit points, and that once a pre-determined number has been reached, the license to operate as a crash repairer should be revoked for a period of time (not unlike de-merit points against driver licences).

In the case of insurers, where a particular insurer consistently is brought to the dispute resolution process because of issues regarding method and quality of repairs and is found to be at fault, then along similar lines de-merit points should be issued at the attainment of a particular total, a substantial (\$50,000) fine and undertakings should be imposed on the respective insurer.

7. Tasmanian Perspective (APPENDIX C)

7.1. Specific Issues

In general the crash repair industry's greatest concern, in Tasmania, is it's financial reliance on insurance companies who, in the main, show no concern for the future and viability of the body repair businesses. Whilst TACC acknowledges the right of the insurance industry to maximise their return on shareholders funds, TACC has grave concerns that the insurance industry has overstepped the mark, as in TACC's view the insurance industry's conduct towards the repair industry in Tasmania, which is made up of small and micro businesses, has become predatory.

The costs of operating a body repair business, over the last ten years, have increased significantly, particularly in relation to labour, superannuation, materials, OH&S and environmental compliance, location and capital costs.

Over the past ten years the accrued consumer price index amounts to approximately 30%, however the insurance industry has not amended its individual hourly rates to compensate body repairers (refer Annexure A).

More specifically, the experiences and relationships of Tasmanian crash repairers are similar to those of the mainland states, and are highlighted below.

7.1.1. Alteration of Repairers Quote

It is a regular occurrence for TACC crash repairers to be advised, by an insurer, that they have won a job and are authorised to commence the repair. Subsequent to that advice the insurer, their agent or assessor

advises that the quote has been amended based on the insurers scale of fees. If the repairer submits their invoice based on the original quote the assessor refuses to authorise payment of the invoice. Subsequently the repairer is forced to accept the alteration or not be paid.

7.1.2. Steering the Customer to Preferred Repairer

It is commonplace for a consumer to be “steered” away from their choice of repairer, by the insurer to the insurer’s preferred repairer. Often this process leaves the customer with the impression that the repairer of their choice may be dubious. If that does not work the insurers make it difficult, for the consumer, by delaying assessment and paper work. They also make it difficult for the repairer by slowing the approval of the final invoice and payment (refer Annexure B)

7.1.3. Cash Settlement of Customer

Should the customer insist on using a non-preferred repairer then the insurance company may have the vehicle assessed and a cash offer made to the customer, thus avoiding costs for unforeseen items and the provision of a warranty.

7.1.4. Insurer Organised Direct Sublets

While the financial relationship between insurer and repairer is strained, there has long been an understanding that the repairers gained their income on each repair from a combination of their labour and a mark up on parts and sublet work.

In recent years, insurers have negotiated exclusive and direct arrangements with sublets, such as windscreen specialists, cutting out or reducing the capacity for the repairer to make a margin on the sublet. As a result, the effort of the repairer is unchanged, but income is reduced. Apart from the reduced income, the sublets usually have an expectation that they will perform their task at the repairer’s premises in their own time, thus interrupting the repairer’s work process.

7.1.5. Slow Payment of Invoices

Given the high financial turnover of the crash repair industry, slow payment of invoices by the insurers has a significant and detrimental financial impact on small businesses. To make ends meet many body repairers have found it necessary to factor their creditors to maintain their cash flow, (refer Annexure C)

7.1.6. Insurer Directs a lesser Method of Repair than Quoted

This is an issue that normally relates to vehicles where there is extensive accident damage and the insurer’s preferred repairer generally performs the work.

The repairer will have examined the vehicle and determined that extensive replacement and repairs were necessary. Subsequently the insurer’s

assessor has directed the repairer to undertake a lesser repair, possibly with non-genuine or second-hand parts. In most of these cases the repairer concedes to the insurers demand to preserve the preferred repairer status. In almost all cases, the consumer would not be consulted or informed of the compromised repair (refer Annexure D)

7.1.7. Insurer Requires Assessment to be conducted on-line

Over the last ten years there has been considerable consolidation in the insurance industry, subsequently there are now less insurers in the automotive industry and limited representation in most of regional Australia. In Tasmania, many insurance companies are not represented. Along with this, many functions in the insurance industry are now outsourced and processes centralised out of the State.

One consequence of this process has been the introduction of on-line assessments. On-line assessment requires the repairer to undertake some of the work previously done by the assessor, but without remuneration. The repairer is required to document the claim to the insurer, including customer, vehicle and accident details and electronically submit this information with digital photographs and the quote to the insurer for assessment and approval to undertake the repair. The end result is that employed and independent assessors are no longer engaged and the repairer is required to undertake the additional work without remuneration. Of course the insurer makes substantial savings.

7.1.8. The Crash Repair Industry's Incapacity to Invest

There is a well-documented skills shortage in the automotive industry, particularly in relation to crash repair and spray painting.

Whenever questioned why the crash repair industry has not kept pace with training the answer is always that they cannot afford to make the investment. This comment is reflective of the poor financial situation most repairers find themselves in, which is a consequence of the inequitable relationship between insurers and repairers, and the ensuing poor returns.

7.1.9. Insurers refusing to pay repairers the 4% allowance on parts

Tasmania, as a regional area, bears the additional cost of transport and reduced competition for the wholesale of components. Some years ago the insurance industry "threw" the Tasmanian repairers "a bone", by allowing them a mark up of 4% over the industry list price of parts acquired for a repair. In recent years the insurers have gradually withdrawn this allowance and now only two insurers continue to pay. This is further exacerbated in circumstances when the insurer will only pay the list price or their scheduled price for an item and the actual cost to the repairer is greater than the list price. Thus the repairer is out of pocket (refer Annexure E).

7.2. Conclusion

The Tasmanian body repair industry is made up of 165 businesses, the vast majority being classed as micro businesses, on average, employing less than 5 staff.

The 165 repair businesses rely on around 10 insurance companies for the majority of their work. This relationship has given the insurance industry exceptional power over the crash repairers in Tasmania, who have not been able to defend themselves. TACC contends that the insurers have abused that unequal relationship, over many years, to the detriment of the crash repair industry and consumers from both a financial and quality of repair viewpoint.

All efforts to encourage the insurance industry to deal with repairers in a more equal manner have failed, and TACC sees the only recourse being government intervention to control the insurance industry and strengthen the hand of repairers. This may take many forms amendments to the Insurance Contracts Act and/or the Trade Practices Act. However, TACC's preferred mechanism is a Mandatory code of conduct as proposed by the VACC and AMBRA.

8. The Code

8.1. Draft Automotive Body Repair Industry (Fair Dealing) Code of Conduct (Code)

VACC over many years and in consultation with, crash repairers, Victorian Government, representatives from consumer groups and the ACCC developed the Code (refer Appendix A24), as a means of stabilising the relations and practices within the industry. VACC gained in principle support for such a code from these stakeholders including crash repairers nationally, through endorsement by the Australian Motor Body Repairers Association. Insurers were also invited to participate and support the Code but virtually all declined, (refer Appendix A25).

The Code provides a mechanism to address a wide range of industry concerns, many of which have been identified in this submission. Moreover the solutions offered by the Code parallels the scope of issues being investigated by the Productivity Commissions Inquiry.

The Principles of the Code include issues of fairness, integrity and industry image. The Code calls for high standards of honesty between the repairer and the insurer with particular emphasis on dealings with the policyholder. Clearly these matters fall within the issues of transparency raised by the inquiry.

Under the Code the repairer is specifically called upon to carry out repairs in a safe, timely and professional manner that are consistent with predetermined standards and manufacturers warranty conditions.

Furthermore the Code specifically requires that quotations not be fraudulent or misleading, collusive or intentionally incomplete. The Code makes it incumbent on the repairer to supply, when requested, all relevant documentation and should rectification be required, such rectifications are carried out in accordance with predetermined standards.

As discussed in our submission the Code also requires that repairers must use appropriate equipment and trained personnel to maintain adequate accounting records and provide tax invoices in accordance with insurers reasonable requirements.

The Code calls for insurers commitment and undertakings to:

- Not unreasonably refuse a repairer the opportunity to quote or reject a quote unreasonably.
- Provide a repair contract that notes claims and excess details, assessed allowances for labour, parts and paint for each repair, together with any sublet details and payment terms.
- Be consistent with the contract of repair when providing information to the policyholder.
- Not move a policyholder's vehicle without their knowledge and ensure a policyholder knows what to do in the event of a complaint. (To assist VACC members with this issue vehicle release forms have been developed. Appendix A xx)

The Code requires transparency with respect to the selection criteria for repairers for 'preferred smash repairer' status. Matters of disclosure in relation to the accreditation contract, fair contract terms and clear processes for termination are also addressed.

As we have already noted, VACC believes consumers must be fully and clearly informed and the Code seeks to ensure that consumers are so informed, both orally and in writing, on a range of issues, including:

- the nature of the Repair;
- any requirements relating to the repair specified or imposed by the Insurer
- the nature or quality of the parts to be used in the repair
- the time to be taken for the repair
- procedures for payment for repair work
- the provision of any guarantees or warranties relating to the repair
- procedures for internal and external dispute resolution within the insurance and repair industries
- selection criteria and the terms and conditions of repairer approvals must be in writing, and be made available to any policyholder or repairer upon request

8.2. Mandatory Code

It is noted that the desire of the Federal government is for some form of voluntary code to form the basis of trying to manage the industry's problems going forward. The VACC would clearly like to state that if this is the only option it will be fully supported, however, it would be remiss of VACC not to mention that in its opinion and that of its members, anything less than a mandatory code would be optimistic folly.

Since the Code has been floated, it has become apparent that there is a very negative attitude among the insurers to its adoption. In fact the ICA has come out against the Code and advised its members the Code is not in their best interests. It should also be noted that the insurers steadfastly chose to ignore the recommendation of the previous inquiry, and given their publicly stated opposition to any code, there is nothing to suggest that they will not do the same or at best agree to a code and then frustrate its operation.

One only has to look to international experience to see that some form of mandatory arrangement will be required to ensure that the insurers comply. In the USA, the land of 'laissez faire', thirty-eight states have found it necessary to legislate in order to control the behaviour of insurers and protect consumers. California recently decided to strengthen their legislation to better cope with the problems (refer Appendix A26). Canada has followed the same path. The only English speaking countries that have not are the UK and Australia, and both those crash repair industries are in a difficult state with very similar problems (BRIC Submission, p1). To assume that the behaviour of insurers in Australia would behave any different to their counterparts in other countries would be somewhat naïve.

VACC understands that the Code may have to be 'nationalised' and is of the belief that its national body, MTAA, has undertaken to do this. VACC commends the Code to the Commission as an excellent starting point to address the matters raised by this inquiry.

Recommendation - The draft mandatory Code as presented, and allowing for 'nationalisation', is accepted as the basis for implementing a fairer and more equitable relationship between crash repairers, consumers and insurers.

9. Summary

The crash repair industry in Victoria is in a parlous state. Issues and practices that were identified during the IC inquiry still exist today. These problems have been added to by the significant market power held by the two major insurers IAG and AAMI, whose combined market share is 70%.

These insurers have both used the policy of denying consumers choice to leverage this market power to control the consumer, the crash repairer and the suppliers to the crash repairers. This combination has created an uncompetitive situation in Victoria, where only the selected few are able to access the vast majority of crash repair work.

The ability of the consumer and the repairer to counter act the actions of the insurer is limited. For the repairer the inequality in the size of the firms makes it impossible to stand up to the insurers' tactics. The consumer faces difficulties indirectly through lack of transparency in documentation and directly through lack of choice of repairer, potentially inappropriate repairers and being intimidated to use insurer preferred repairers.

The culmination of this is a decline in consumer confidence in the crash repair system and difficulty for repairers to do the repairs, in a manner that they believe is the most appropriate. Add to this the low returns by crash repairers and you have an industry that is facing a bleak future.

VACC believes that the only way to secure the industry's future is to regulate the relationships and practices in the industry through a mandatory code of conduct.

10. Summary of Recommendations

3.1.2 Transparency of Selection of Preferred Repairers

Recommendation: That the selection criteria for insurer preferred repairer schemes be totally transparent in every detail and that access to such schemes be open to all crash repairers who meet the standards.

3.1.3 Preferred Repairer Contracts

Recommendation: Preferred repair contracts should have a minimum tenure of five years with an option for another five years. Contracts offered should be less intrusive, into the financial affairs of the repairer, and the insurers should not be allowed to make unilateral amendments to operating standards, should not be allowed without the consent of the repairer involved and without threat of breaching their preferred repairer contract. Contracts should also be negotiable.

3.1.6 Supply of Parts and Sublet Arrangements

Recommendation: Selective preferred supplier arrangements should be disbanded and all suppliers of goods and services to repairers and the insured should be able to compete on fair and equal terms.

3.2.2 Insurer Directives on Repair Methods

Recommendation: A dispute resolution be put in place to adjudicate in the event that there is a dispute between the insurers or their representatives and crash repairers, over the appropriate method of repair.

3.2.3 Use of Non Genuine New Parts (Parallel Parts)

Recommendation: The use of non genuine new parts not to be used unless these parts 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.

Recommendation – the type of parts used in the repair must be disclosed to the consumer.

Recommendation: The Productivity Commission undertakes a thorough investigation into the pricing policies of manufacturers and importers of genuine new parts.

3.2.4 Use of Recycled (Second Hand) Parts

Recommendation - All parts used in crash repairs should be excluded from any lifetime warranty provisions made by the insurer, and that any warranties that do apply are consistent with those given by manufacturers or parts suppliers.

Recommendation – With the growing use and importance of recycled parts in the crash repair industry, proper guidelines covering the quality of the part and their fitness for purpose should be established.

Recommendation – A nationally agreed accreditation system, for the recycling industry, should be established to better control the dismantling, recycling and identification and quality of parts used in crash repairers.

3.2.6 Role and Qualifications of Assessors

Recommendation - The industry (insurers, repairers and assessors) should determine develop and implement a set of standards for the licensing of assessors and a code of conduct to manage assessors operational behaviour.

3.3.3 Need for Licensing of Premises

Recommendation - That a national licensing regime for body repairer premises be developed.

3.3.4 Need for Licensing of Individuals

Recommendation - That tradespeople employed in the crash repair industry be licensed and passbook system be developed to record the qualifications and training undertaken by the trades people.

Recommendation - A national system be established to licence business owners, in the crash repair industry.

3.4.1 Transparency of the Quotation Process

Recommendation – Quotations should be created on a like for like basis, and the method of calculation of the quote outlining the agreed scope of work to be done, need not be shown (refer Appendix B13)

Recommendation – A ‘managed repair process’ should be used for those repairs that are virtually impossible to quote on until the vehicle has been fully disassembled.

3.4.3 Steering of Consumers

Recommendation - That the practice of steering a consumer, in any form, away from their own choice of repairer, if they have one, to an insurers preferred repairer be prohibited.

3.4.4 Third Party Recovery

Recommendation – Insurers, or their agents, be prohibited from making contact or utilising any personal information gained from an accident report, to steer a third party consumer to a insurer preferred repairer.

5.1 The Issue of Consumer Choice of Repairer

Recommendation - Consumers should have the right to choose between the insurers' 'valet system' and selection of their personally preferred repairer. In the case of the latter, the insurer should respect the consumer's decision and the insurer should be restrained from indulging in any activity, or implementing any financial impost, which would dissuade the consumer from going to his or her own repairer.

5.3 Transparency of Insurer Policies and Disclosure

Recommendation - All insurers advertisements and promotional materials should state in an obvious, clear, unambiguous and readily understood form, whether or not the consumer has a genuine choice of repairer or not. It should also be a requirement that this information be stated as part of any telemarketing campaign, identified on all premium renewal invoices, and be placed at the front of, or on the cover page of, all policy documents.

8.2 Mandatory Code

Recommendation - The Draft Mandatory Code as presented, and allowing for 'nationalisation', is accepted as the basis for implementing a fairer and more equitable relationship between crash repairers, consumers and insurers.

11. Appendices

11.1. VACC General Appendices (A1-A26)

11.2. VACC Strictly Confidential Appendices (B1- B12)

11.3. TACC Strictly Confidential Appendices C

12. References

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