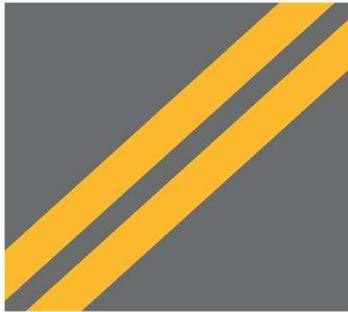


MTAA



MOTOR TRADES ASSOCIATION OF AUSTRALIA

SUBMISSION TO THE

PRODUCTIVITY COMMISSION

***INQUIRY INTO THE RELATIONSHIP BETWEEN THE
AUSTRALIAN MOTOR VEHICLE SMASH REPAIR INDUSTRY AND
THE MOTOR VEHICLE INSURANCE INDUSTRY***

OCTOBER 2004

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Summary and Solutions

It has been almost a decade since the Industry Commission handed down its report on motor vehicles, towed vehicles and marine craft repair industries and related repair industries and little has been achieved in resolving the problems that were identified then. MTAA believes that the recommendations of that review were an important part of improving competition and efficiency in the smash repair sector. Unfortunately, despite the sound rationale behind the recommendations and the best efforts of MTAA, there has been little progress made on implementing the recommendations of that Inquiry. For this reason, MTAA is please to be able to provide a submission to this important Inquiry.

In responding to the Productivity Commission's Issues Paper, MTAA has chosen to focus on four key areas that we believe need the most urgent attention and resolution. These areas are as follows.

Preferred Smash Repairer (PSR) and Associate Smash Repairer (ASR) status

The growth in the extent of insurers who use PSR and ASR schemes is of concern to MTAA. While the Association is not opposed to the use of PSR and ASR schemes, the structures of the current models are unfair. It is vital to the best interest of consumers that the relationship between insurers and repairers is transparent and competitive. The current PSR and ASR schemes are opaque in terms of the way that they operate and MTAA believes that this leads to a lessening of competition in the smash repair sector, and results in undue hardship on smash repairers.

Repair times and hourly rates

The ability of a business to price its products and services according to its costs and the dynamics of the market is critical for any business. However, in the body repair sector insurers are responsible for setting repair times and hourly rates. These rates and times differ between insurers and differ in the method used for quoting on repairs. MTAA backs concerns raised by the body repair sector that the hourly rates do not reflect the 'real' cost of doing business and the repair times to not reflect the 'real' repair times involved and the impact of this is that the viability of the repair sector is declining. MTAA is recommending two proposals, the first is a mandatory code of conduct to set guidelines for the relationship between insurers and repairers, and the second is that current quotations systems be reviewed and that a more appropriate arrangement, based on the actual cost of doing business, be adopted by repairers and insurers.

Freedom of choice

As a result of insurers' PSR and ASR schemes, the ability for consumers to determine their repairer of choice has been greatly diminished. This has an impact, both on the consumer and the body repair sector. A loss of choice removes the consumer from the repair process; a process which the consumer should be involved in to ensure that the repairs meet the needs and requirements of the consumer. Secondly, to ensure vibrant repair sector competition it is important that customer choice be allowed to promote improved productivity. MTAA has recommended the introduction of a mandatory code of conduct to clarify the customers' ability to choose their repairer.

Code of Conduct

The key recommendation of MTAA in this submission is the establishment of a mandatory code of conduct to establish the guidelines to govern the relationship between and set the rights and responsibilities of both the insurer and repairer. MTAA has actively worked towards the establishment of a code of conduct for over the decade since the release of the Industry Commission's report with little success. To date, the insurance industry, through the Insurance Council of Australia has not accepted the need for an industry wide, mandatory code of conduct. It has rather favoured the establishment of individual codes of practice by insurers. MTAA believes that the only way forward to resolve the relationship tensions between insurers and repairers is the introduction of a mandatory code of conduct.

Changes to the Trade Practices Act

While the Association recognises that the Federal Government has already proposed a number of changes to the *Trade Practices Act*, including the introduction of collective bargaining notification process for small business and amendments to sections 46 and 51AC, and these amendments are mostly welcome, MTAA does not believe that the proposed amendments will, on their own, resolve many of the serious issues raised in the Terms of Reference of this Inquiry. MTAA considers these issues to be critical to the operations of the smash repair sector and believes that the Federal Government's amendments should be taken further with the introduction of a mandatory code of conduct

MTAA welcomes the opportunity to provide a submission to this important review and looks forward to developing positive solutions to the problems plaguing the industry and identified in this submission. The positions presented in this submission have been prepared in consultation with all of its Member bodies and represents the views of the motor body repair sector. All of the positions presented are submitted with a view to improving competition levels in the industry to ensure the best outcome for policyholders.

1. Introduction

1.1 *The Motor Trades Association of Australia*

The Motor Trades Association of Australia (MTAA) is the national peak body for the whole of the retail, service and repair sectors of the Australian automotive industry. The Association is a federation of the motor trades associations and the automobile chambers of commerce in each state and territory as well as the Service Station Association Ltd (SSA Ltd) and the Australian Automobile Dealers Association (AADA). The Association is an unlisted public company having limited liability. The Members of MTAA Federation are:

The Australian Automobile Dealers Association (AADA)
The Motor Trades Association of the ACT (MTA ACT)
The Motor Traders' Association of NSW (MTA NSW)
The Motor Trades Association of the Northern Territory (MTA NT)
The Motor Trade Association of South Australia (MTA SA)
The Motor Trades Association of Queensland (MTA Q)
The Motor Trade Association of Western Australia (MTA WA)
The Service Station Association Limited (SSA Ltd)
The Victorian Automobile Chamber of Commerce (VACC) [incorporating the Tasmanian Automobile Chamber of Commerce]

The Association's affairs are directed by a Board on which each of the Member bodies is represented. The role of the Association is to:

- raise awareness in the community of the trade's significant contribution to Australia's economy through its more than \$88 billion turnover and its employment of over 250,000 Australians;
- convey and promote to governments the interests of the trades;
- promote improved working relationships and practices with motor trades' unions;
- provide information about the trades on behalf of the Members of the Association, to governments, the public and the trades' employees;
- work with governments in planning the future of the retail motor trades and their role in the economy and other areas of national planning;
- extensively enhance training and to develop work opportunities within the trades in co-operation with education and training authorities, the unions and government generally; and
- promote and enhance the reputation of the trades with their customers as well as with the general public.

Under its Memorandum and Articles of Association, MTAA also has a number of Affiliated Trade Associations (ATAs) which represent particular aspects or activities of the retail motor trades. All of the following ATAs are represented nationally, as national entities, by MTAA:

Australian Motor Body repairers Association (AMBRA)
Australian Motorcycle Industry Association (AMIA)
Australian National Radiator repairers Association (ANRRA)
Australian National Towing Association (ANTA)
Australian Service Station and Convenience Store Association (ASSCSA)
Australian Tyre Dealers and Retreaders Association (ATDRA)
Automotive Repairers Association of Australia (ARAA)
Automotive Transmission Association of Australia (ATAA)
Engine Reconditioners Association of Australia (ERA of A)
Farm Machinery Dealers Association of Australia (FMDAA)
National Brake Specialists Association (NBSA)
National Heavy Vehicle repairers Association (NHVRA)
National Rental Vehicle Association (NRVA)
National Steering and Suspension Association (NSSA)
National Vehicle Airconditioning Association (NVAA)

The range and depth of the activities of the membership of the Association can be seen from the following list of recognised trades, skills and tasks in our sector of the automotive industry:

Air Conditioning Technicians	Dynamometer Operators
Auto Electricians	Engine Fitters
Automotive Accessory Retailers	Engine Performance Specialists
Automotive Dismantlers	Engine Reconditioners
Automotive Engineers	Exhaust System Specialists
Automotive Glass Fitters	Farm Machinery Dealers
Automotive Parts Cataloguers	Fuel Injection Specialists
Automotive Radio and Stereo Specialists	Gas Fitters
Automotive Service Managers	Hire and Rental Vehicle Operators
Automotive Trimmers	Marine Automotive Engineers
Automotive Upholsterers	Motor Boat and Marine Dealers
Automotive Transmission Specialists	Motor Cycle Dealers
Battery Makers and Reconditioners	Motor Cycle Mechanics
Body Builders	Motor Mechanics
Brake Specialists	Panel Beaters
Car Alarm Fitters	Petrol Pump Attendants
Caravan Dealers	Radiator repairers
Car Dealers	Spray Painters
Car Salesmen	Tow Bar and Trailer Fitters
Car Wash Operators	Tow Truck Operators
Chassis Builders and repairers	Truck Builders and Operators
Commercial Vehicle Body Fabricators	Tuning Specialists
Detailers	Tyre Fitters
Diesel Engineers	Tyre Retreaders
Diesel Injection Technicians	Wheel Alignment Specialists

1.2 Interest in this Inquiry

MTAA's interest in this Inquiry arises naturally from its representation of automobile dealers, mechanical repairers and body repairers through their membership of the various state and territory motor trades associations and automobile chambers of commerce. These various state and territory bodies represent directly all of the different classes of trades concerned with the ownership and operation of motor vehicles. MTAA sees considerable value in having this matter examined by an independent statutory authority and thus welcomes the decision to hold an inquiry and equally the opportunity to express its views and experiences in that regard.

MTAA's submission will address as comprehensively as possible the issues raised by the Productivity Commission in its Issues Paper. In preparing this submission MTAA has sought the views of all of its Member bodies. While these views are comprehended in this submission and are therefore put forward mutually by MTAA, a number of our Members have also expressed an intention to submit separate presentations in their own right to directly address issues specific to their particular jurisdictions. MTAA fully supports the initiatives of its Members in this regard and believes this will assist the Commission to properly canvas the diverse issues under consideration in this Inquiry.

The central issues of this Inquiry are motor vehicle body repairs and the relationship between the repairers, the insurance companies and the customers. Should it become clear during the course of the Inquiry that issues affecting our membership require further clarification, we will as necessary, provide additional information and views.

Collision damage is an unusual event for most motorists and the trauma they experience may well be exacerbated by the need to pay the excess, the loss of a no-claim bonus and the loss of the use of their vehicle, sometimes for a lengthy period. The vehicle may tend therefore to seem to be out of the owner's control and in the hands of strangers such as insurance companies, towing operators, assessors and repairers.

The arguments which follow are designed to inform the Commission of our broad objective and desired outcomes for the body repair sector and which we would believe will provide significant micro-economic reform for this and a number of related industries. We hope that the careful consideration given to the issues addressed by this submission is of some assistance to the Commission in its deliberations and the National Secretariat of MTAA stands ready to offer any further assistance that may be required of it.

1.3 Structure of the Market

1.3.1 Repairers

The Association regrettably reports that there is surprisingly little statistical data collected on the retail motor trades; even less than in past years. As such, it is difficult to accurately quantify the contribution of the body repair industry to the Australian economy.

Body repairers provide a range of services including body repair work, the acquisition of parts, painting, towing and salvage operations. Competition in the body repair sector is intense. Generally speaking reduced speed limits, red light and speed cameras and improved vehicle technology are thought to have reduced the number of vehicle collisions. While the factors listed have improved road safety, the number of collisions has in fact increased slightly between 1999 and 2003, in part as a result of the increased number of vehicles on the road and the extended number of kilometres travelled by motor vehicles¹. However, recent anecdotal evidence suggests that the number of accidents has declined since 2003. In 2003/04, sector revenue is estimated to have grown to almost \$4 billion dollars as a result of higher vehicle usage; with real growth of 1.9 per cent². This situation has arguably been intensified by the dominance of insurance companies in the industry and their sometimes competing priorities and responsibilities.

The industry is dominated by (and expected to continue to be dominated by) insurance companies, which account for 75 per cent of revenue in the industry, and demand is primarily from Comprehensive and Third Party Property Insurance policyholders.³ The remainder of industry revenue comes from private payment work and people with Third Party Insurance cover only.⁴

Previously there have been few barriers to entry, New South Wales being an exception to that rule. In that jurisdiction, body repairers are required to be licensed, a process which includes site approval, utilisation of prescribed equipment and employment of suitably qualified tradespeople.

However, the escalating dominance of insurers and 'preferred smash repairer' (PSR) schemes is increasing the difficulty for existing and new businesses to maintain or acquire a share of their local market and for new businesses is in effect presenting repairers with a barrier to entry. The issue of PSR schemes is dealt with in more detail later in this submission.

There are increasing demands on the industry in terms of technology and skills which have in turn placed increasing downward pressure on repairer returns. The advent of front-wheel drive vehicles, baked enamel and two-pack paint drying technology and on-board computers have forced repairers to invest large sums of money in expensive equipment and labour force re-skilling.

Tighter environmental standards and more stringent workshop requirements relating to occupational health and safety have forced body repairers to invest substantial amounts of capital in their businesses. While MTAA does not argue against the merits of such standards, employers having a clear obligation to provide a safe workplace and the reduction of environmental pollutants, meeting these requirements comes at a substantial cost. Increasing pressure is also being felt in terms of skilled labour availability. Industry returns, dictated as they are by insurers, have remained relatively low. Consequently, wages have also remained comparatively low and the industry has had a difficult time recruiting apprentices and attracting potential employees.

¹ IBISWorld Pty Ltd, *G5323 – Smash Repairing in Australia*, 21 September 2004, pp. 5.

² *Ibid*, pp. 4.

³ *Ibid*, pp. 6.

⁴ *Ibid*, pp. 6.

Potential systemic solutions, other than labour rates, for the recognised skill shortages in this sector are currently being considered.

Repairers also face expected occupational health and safety and environmental requirements that are likely to increase exponentially the cost of staying in business. In light of the expense of investment in fume and dust exhausts, paint booths, and repair measuring systems industry sources speculate that a shop would require between eight and nine tradespeople to generate the volume to justify continuing to operate.⁵

According to AAMI, in 2002 there were 5,038 body shops and 9.7 million passenger vehicles, amounting to 1,925 vehicles for every body shop.⁶ This figure has been compared with the 4,717 vehicles per body shop in the United States and the 2,453 vehicles per body shop in the United Kingdom to justify the need for rationalisation of the market in Australia. MTAA believes this argument to be seriously flawed as it ignores the unique geographical nature of Australia and the vast distances between towns and cities. For example repairers in rural and regional communities distort the data relied upon by insurers.

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

IBISWorld Pty Ltd provides the following figures in relation to the share of establishments and the turnover of the industry in each state and territory.⁷

<i>Share of Establishments by State and Territory</i>	
<u>Region</u>	<u>Percent</u>
NSW	32.0
VIC	24.0
QLD	21.0
WA	11.0
SA	8.0
TAS	2.0
ACT	1.0
NT	1.0

⁵ *Ibid*, pp. 22.

⁶ AAMI Limited, *Australian crash repair industry issues submission to ACCC round table issues paper*, 2002.

⁷ IBISWorld Pty Ltd, *Op Cit*, pp. 9.

<i>Share of Industry Turnover by State and Territory</i>	
<u>Region</u>	<u>Percent</u>
NSW	40.6
VIC	23.6
QLD	14.7
WA	9.9
SA	7.9
TAS	1.2
ACT	1.5
NT	0.6

1.3.2 Insurers

Over the past decade, the insurance industry has undergone extensive restructuring. This has included the demutualisation of major insurance companies, in particular, the Insurance Australia Group, which formerly traded as NRMA Insurance. Furthermore, the major insurance companies have been involved in a series of mergers and acquisitions, resulting in the emergence of fewer, larger insurers. The centralisation of market power into fewer companies is of concern of MTAA, and the way in which those large companies operate and their imperatives relating to the smash repair sector and their mutual customers is of greater concern. Relevantly, the collapse through fraud of HIH has both accelerated and exacerbated this outcome.

MTAA is concerned that through the process of demutualisation and the centralisation of market power there has been an increased focus on shareholder value at the cost of service delivery standards.

2. History of inquiry into smash repair and insurance

2.1 *The 1994 Industry Commission Inquiry*

On 17 March 1994 the then Assistant Treasurer referred the motor vehicles, towed vehicles and marine craft repair industries and related repair industries to the Industry Commission for inquiry.

The Commission was asked to report on a wide range of issues, including but not limited to:

- insurance company competitiveness, including premiums, loss ratios and expense ratios;
- assessment of repair schedules;
- the cost and quality of repairs;
- the use, cost and effect of different categories of replacement parts including:
 - ‘genuine’ parts usually carrying the trade mark of the vehicle manufacturers and sold through their outlets;
 - parts made by manufacturers of ‘genuine’ parts but marketed by them under their own brand names through normal retail outlets;
 - after market parts (copies) made by firms that do not supply the vehicle manufacturers and may be of lower specification and price; and
 - used parts.
- competition between insurers, between repairers and between towing firms, including the impact of possible arrangements between insurance companies, towing firms and repairers; and
- arrangements and legal processes for determining claims, including the role of loss assessors and the efficacy of complaints procedures available to clients.

MTAA provided a submission to the Commission on behalf of its Member Bodies. That submission dealt with a number of issues that remain in contention today and form a part of this Inquiry, including consumer choice, preferred repairer status, the role of assessors, guarantees and warranties, repair costs, parts and the need for timely dispute resolution procedures. This list is in no way exhaustive and a copy of the MTAA’s submission to that previous Inquiry is at Attachment 1.

The Commission published its Final Report on 15 March 1995. The Report recognised that whilst being interdependent, there existed between the insurance and body repair industries a substantial amount of friction that both sectors accepted impacted on their performance.

The Commission made 31 recommendations. While those recommendations are on public record and need not be repeated here, some are worthy of note in light of the present Inquiry’s focus. Those recommendations are that:

- the internal dispute resolution schemes of insurers would be improved if they were to provide their dispute resolution sections with greater autonomy (*Rec. 1*);

- inappropriate behaviour by insurers should be referred to the Code Compliance Committee, the body proposed to be responsible for sanctioning insurers that breach the Industry Code of Practice (*Rec. 3*);
- current time and hourly rate schedules should be abandoned and quotations should reflect true times and costs (*Rec. 4*); and
- the insurance and repair industries should jointly convene a forum to determine processes needed to establish a code of conduct and a procedure for resolving disputes (*Rec. 5*).

Following the release of the report, MTAA requested a meeting with the Insurance Council of Australia (ICA) to discuss the development of an industry code of practice. ICA responded to MTAA's request by stating that the issue of a code of practice between insurers and body repairers had been canvassed many times and ICA believed it was more appropriate for the separate industries to conform to their own codes. Nonetheless, ICA offered to take up the suggestion with leading motor insurance members. In the near to ten years passed since then, MTAA has received no information as to whether or not this matter was pursued. However it is self-evident that no code ever resulted and problems in the relationship between repairers and insurers have remained and we would argue have intensified in the ensuing period.

2.2 ACCC Roundtable Discussions and Issues Paper

As the relationship between repairers and insurers has continued to deteriorate, involving frequent complaints to the Australian Competition and Consumer Commission (ACCC), the ACCC decided to convene an industry "roundtable" meeting on 16 July 2002. The "roundtable" was widely attended by representatives from independent smash repairers, insurers, smash repair industry bodies (state and national motor trades associations), the Insurance Council of Australia, state and Australian government agencies and a consumer representative.

The "roundtable" concentrated on considering certain issues which had been the subject of ongoing discussion in the industry for a number of years. The issues included:

- who 'owns' the customer;
- customer choice;
- lifetime guarantees;
- liabilities of repairers;
- slow payments;
- adequate repair times;
- preferred repairer schemes;
- parts;
- tendering for repair contracts;
- collective bargaining; and
- the need for an industry code.

Participants agreed to exchange questions and information with a view to developing an issues paper which was to be the focus of discussion at a further meeting and then distributed widely for discussion and comment.

Shortly after, MTAA prepared a submission to the ACCC raising a number of issues and requesting that those issues be included in the planned Issues Paper for the forthcoming “roundtable”. Those issues included:

- insurer disclosures;
- erosion of client base;
- dispute resolution;
- preferred repairer schemes;
- labour and paint rates;
- tender processes for repairer selection;
- rationalisation;
- late payments; and
- total loss and write-offs.

A Second Body Repair “roundtable” discussion convened by the ACCC was held on 31 October 2002.

As agreed at the second “roundtable” discussion, a subsequent discussion was held between MTAA, the ICA and representatives of consumers in December 2002 in relation to issues such as late payments, lifetime warranties, licensing of businesses and repairers, and Authorisations of PSR schemes and dispute resolution. No agreement could be reached on a strategy to solve the ongoing issues between repairers and insurers.

Further, discussions in relation to an industry-wide code of conduct failed to proceed when insurers refused to engage with repairers in discussions on the draft code of conduct prepared by the MTAA. Some insurers have preferred instead to rely upon internal codes of conduct.

3. Social and environmental costs of doing business

Over the years, the community has become increasingly aware of the health and environmental costs of doing business and in the body repair sector, these costs have been quite heavy. In an effort to minimise these costs, governments around the nation have imposed environmental and occupational health and safety legislation and regulation on this sector. MTAA is a strong supporter of the industry's social obligation with respect to its workers, the community as a whole and the environment. However, as a result of the move towards PSR agreements and set rates and times (issues that will be dealt with in more detail in later sections), the body repair sector is increasingly unable to bear the increasing costs of meeting its social obligations at the set prices that are paid by insurers (prices that in some cases have not changed since 1991). In order to appropriately address this issue, MTAA requested the Retail Motor Industry's Federal Industrial Council (FIC) to prepare an overview of the costs borne by repairers with respect to the environment and occupational health and safety (OH&S).

3.1 Overview of increased costs

3.1.1 Summary of sources of cost increases for smash repairers

The following summary of the costs borne by repairers has been prepared by the state-based MTAA Member Associations through the FIC. In relation to the costs to smash repairers in Victoria and New South Wales it would appear that the following four areas cover the main costs increases for smash repairers.

OH&S compliance

Changes in OH&S compliance across all states to reduce adverse occupational health risks, improvements to the standard of spray booths, personal protective clothing and equipment and to meet the standards set in the Codes of Practice developed by the National Occupational Health and Safety Commission (NOHSC) and adopted by the states.

Improved health monitoring

Increased scientific knowledge on the known health effects of exposure to isocyanate-based paints, solvents and the like. (Research funded by NOHSC has recently increased the occupational hygienist and toxicology information dramatically).

Increased usage of OH&S and environmental management systems

Increased demands on smash repairers by insurers for quality, OH&S and environmental management systems in terms of paperwork, reporting and man-hours all of which are critical elements in gaining pre-entry for the repairer approval process.

Insurer related costs

Increased direction by insurers to engage employees on productivity incentives which have substantially increased overhead costs by way of administration, WorkCover claims (for example RSI, manual handling), wage costs and tighter margins to name a few.

3.1.2 Estimate of cost increases for average size businesses

Whilst accepting that each of these four areas represent substantial cost increases to smash repairers, the following is an estimate of these costs based on phone surveys and the assumption that the average smash repairer has been affected by these changes imposed by government and “demanded” by insurers. These costs are set out, in brief, below.

3.1.2.1 Changes in OH&S Compliance

As a result of changes in OH&S legislation across Australia and more importantly in detailed regulations, the following represent additional costs which the industry has faced over the last ten years (assuming an average business size of six to ten employees):

Extra equipment & maintenance costs

1. The introduction of newer spray booths with increased technology has resulted in a cost of between \$55,000 and \$60,000 per booth (assume two booths needed for this size of business). Such costs have increased due to the need to expand booth size to meet productivity and because of changed heating requirements with respect to infrared ovens/gas heating/diesel heating for consistency of baking the modern vehicles and quality of finish. Predicted cost per annum (assuming a five year life) is \$24,000.
2. Assuming reasonable throughput of spray booth/s the cost of changing the booth filter and belt filters (for operators) every 500 hours are \$1,500 per event, which costs \$6,000 per annum for two booths.
3. An additional cost which the body repairers incur is related to the need to have compressed air lines tested for the presence of oil and water vapours once every year – again there are very few companies that specialise in this service and the cost can be around \$900 per year (Victoria). Additional cost can also be incurred in compressor maintenance and replacement of filters on the compressed air lines.
4. Additional OH&S costs are incurred in noise testing once every five years (around \$500 for an Occupational Hygienist) and if there is a noise hazard identified, which there often is in a body repair workshop, there is then a need for all employees exposed to the noise to have a hearing test once every two years (\$60 per employee). (Average \$400 per annum for ten employees in Victoria.)
5. The substitution of more modern air wash hoods for spray painters at a cost of \$1,920 per painter (assume three spray painters for this size of business). Total cost \$5,760 bi-annually (\$2,880 per annum).
6. Electrical testing of all in-house equipment covered by regulation in accordance with set timeframes (varies from six monthly, annually and five-yearly) represents a cost of \$4.50 per item – generally with a minimum of 110-200 items per business – annual cost minimum \$495 per annum.

7. Fire proof cabinets/rooms for bulk storage of flammable liquids and gases – cost average \$2,000-\$10,000 per cabinet and up to (estimate) \$10,000 for fire proof room – annual cost minimum \$400 per annum (allowing five-year depreciation).

Paint mixing rooms

This cost is estimated at between \$15,000-\$25,000 depending on the number of paint systems and of course volumes held and includes substantial costs for meeting Class 1, Zone 1 Flame proof and explosion proof wiring, metal shield and insulation, lighting (wiring cost \$100 per metre for example), all of which were certainly not a requirement or cost to anywhere near that extent ten years earlier. Assuming five year life, annual cost \$3,000 to \$5,000.

Other personal protective clothing, equipment, sanitary & health costs.

The following costs cover standard personal, health and safety equipment for employees – overalls for ten employees at \$6.25 per week each (annual cost \$3,250); hand towels, toilet and other amenities and hygiene requirements costs \$1,200 per annum; tea, coffee, milk and the like; \$2,000 per annum (for employees and limited client consumption); bottled water (3 x \$6 x 52 weeks) - \$936 per annum; sanitary napkin systems - \$660 per annum. Total \$8,046 per annum.

Electrical costs for heating booths

The extra electrical cost for the modern heating systems in spray booths has doubled – in the case of electricity it has risen due to higher tariff levels and for other heating sources, input costs are far greater, for example \$800 is the approximate monthly average cost of gas. Total \$9,600 per annum.

Equipment Maintenance

Four hoists at \$200 for maintenance inspection every six months, totals \$1,600 per annum; and air conditioning maintenance costs \$600 per annum.

Environmental Costs and Licenses

The following environmental costs and licenses were not in place ten years ago due to changes in systems:

1. Disposal of waste thinners (drums previously recycled at no cost) - \$320 per annum; pumping of sump pits - \$800 per annum; (SA) Water costs - \$400 per annum; office paper - \$3,500 per annum (largely due to increased computerisation requirements by insurers and quality checks, increased tax and security bin requirements) – total \$5,340 per annum.
2. Triple interceptor for car detailing areas (\$8,000 to supply & install [assuming a five year life]) plus annual clean up costs (\$500). (Annual cost would be \$2,100)
3. Sludge and wash bay pits – building of such, including area to be guttered, dug and pipes and pit fitted and levels running correctly, costs \$4,000 - \$5,000; the provision of equipment such as pump, piping, filters, tank, sensors and electrical and grates approximately costs \$4,500 - \$5,000. Cost over five years is \$1,800 per annum.

4. Environment friendly plastic repair functions – installation of work station equipment and training - \$3,200. Plastic welding work station and cost of ensuring fitment complies with OH&S requirements such as installation of partitions, benches, vent fans and ducting costs between \$1,000 and \$1,800. Cost over five years is \$880 per annum.

(Total annual costs for this section - \$69,041 per annum)

3.1.2.2 Cost of increased scientific data on health effects

Research undertaken in South Australia, Victoria and New South Wales has confirmed that there is a need for mandatory health testing of spray painters (some states already require this) and to a large extent, panel beaters (in South Australia), resulting from exposure to isocyanates, dusts, solvents and the like.

Recent changes in the manufacture of some of the protective clothing and equipment has been required as isocyanates has been found to be absorbed through the intact skin due to poor quality gloves, protective clothing and equipment. In South Australia for example, the Royal Adelaide Hospital does a full lung function test and air sampling test (work environment) for isocyanate levels to ensure that they are within the standards at a cost of \$250 per employee which translates to approximately \$2,500 per annum for all employees concerned in the average six to ten productive employee environment.

Note: In Victoria, the cost is up to \$600 per employee (for spray painters) for health checks (lung function, skin and blood tests) at preliminary testing, two weeks and six weeks later, then every six months thereafter. As very limited number of medical practitioners perform the tests in New South Wales, Victoria and South Australia, smash repairers have to send employees considerable distances to have these tests done.

In addition, the cost of face masks (assuming three spray painters) is \$70 plus \$40 per filter per month; disposable ear plugs equates to \$1,000 per annum; and suitable gloves; \$600 per annum; and first aid annual maintenance is \$600 per annum.

(Total annual costs for this section is \$6,350 per annum)

3.1.3 Increased Demands On Smash Repairers By Insurers.

By way of introduction, it has been stated by a number of the six to ten employee sized repairers that the demands imposed on them by insurance companies to invest significant capital (as set out below) to gain pre-entry for PSR status, are unreasonable to the extent that insurers also use one to three person operations and impose no such standards or costs on them..

System Costs

Repairer groups are required/encouraged/directed to have quality OH&S and environmental management systems in place to ensure a quality standard of repair. The cost of such systems installed and set up by a consultant is between \$5,000 and \$8,000 per annum and the enormous administrative cost of implementing, maintaining and recording such systems – in man-hours it is estimated to take approximately six months (one off cost for five years equates to \$18,000),

signage, shelving, despatch, processors, line marking and so on, with \$3000 per annum for internal maintenance; that is a total cost of \$6,600 per annum over five years.

The costs of technical repairer licence fees from Thatcham (UK) for body dimensions is \$3,300 per annum, along with underbody measurement requirements - \$800 per annum (then, by contrast, insurers allow small competitors to receive work without requiring them to have these extra technical system costs; thus discriminating between repairers. Specialist tools are required to work on customer models; for example Mercedes/BMW tooling costs up to \$15,000 per model.

(Total costs for this section - \$10,700)

3.1.4 Increased administrative costs (result of insurance & other requirements)

The following is an estimate of the increased administration costs:

In a business of up to ten productive employees (tradespersons, apprentices, trades assistant and so on), the number required in the office used to be two employees ten years ago, it has now increased to four employees – in basic terms two extra clerks at Level Two (basic) with 40% oncosts equals \$82,000 extra per annum.

The quoting/estimating computer packages required by insurance companies have numerous additional costs such as anti-virus software (\$800 per annum), an information technology consultant at \$110 per hour (\$1,000 per month, minimum \$12,000 per annum), cost of running Broadband (\$140 per month) \$1,680 per annum, cost of smash (parts) link - \$440 per annum), cost of upgrading phone system to six lines, for administrative purposes, and being able to operate a productive system as required by insurers - one off cost of \$6,000 or \$1,200 per annum; increased costs of running extra phones (\$800-\$1,200 per month) estimated \$14,400 per annum, supply of computers with six-terminal servers (for Broadband), capital cost \$80,000 over three years, to cope with the paperwork and ensure the tasks are done on time; \$26,600 per annum.

WorkCover costs have increased over time, though it is difficult to quantify from business to business in the short term whilst acknowledging in the long term there will be accelerated physical degenerative problems and higher costs to smash repairers in WorkCover industry rate settings. Individual smash repair costs are, to date, not determined.

(Summary of costs for this section (excluding WorkCover costs which are difficult to estimate) is \$143,920)

With respect to the administration costs, it has been put to the MTAA that they have increased tenfold. The above costings indicate that the suggested tenfold increase seems very plausible.

3.2 Increased cost implications

MTAA believes that the data above provide a suitable, but by no means comprehensive, quantification of the costs of compliance in the areas of environment and occupational health and safety borne by the body repair sector. In a 'real' marketplace the costs of these externalities would be passed through to the consumer, as is appropriate and occurs in almost every other marketplace.

However, under the current PSR systems used by insurers, repairers are often provided a set labour rate and paint rate per hour and are required to follow these set times and rates. In at least one state that MTAA can identify these labour rates have not been adjusted since 1991, well over a decade. Under the current model, the costs of externalities are not able to be passed onto the consumer as would normally be the case. The result of this is that repairers have one of two options to cover the extra costs of operating without passing the cost through. The first option is for repairers to bear these extra costs outright, or the alternative is to attempt to evade the regulations and legislation relating to occupational health and safety and the environment as a means to reduce the cost of doing business. This is not advocated by MTAA, but could be an expected outcome; given the circumstances of the body repair sector.

As mentioned above, MTAA is a strong supporter of the need for its members to meet their social obligations. However the Association believes that they are being forced into a dilemma without any recourse. It is the view of the Association that it is unreasonable and unfair for insurers to set rates and times that are below the whole, real cost of doing business. To continue with the current industry model reduces the ability for the market to react to price signals and therefore reduces competition and productivity.

MTAA believes that, at a minimum, a new line must be added to quotes allowing for repairers to factor in the externality costs of doing business. This is a cost that is borne by all repairers and should therefore be applied evenly across the market and not result in any market distortion.

4 Preferred Smash Repairer arrangements

It is important to note that the information relied on for this section relates to IAG PSR agreement for New South Wales. Anecdotally, MTAA recognises that there may be differences between IAG's PSR agreements in New South Wales and other states, in particular relating to labour and paint prices. It is also acknowledged that other companies have their own preferred repairer schemes in place. However, the most frequent concerns raised with MTAA relate to the IAG PSR and ASR agreements. It is for that reason that this section focuses on IAG. It should be noted however that there is a need to increase transparency in relation to all insurer PSR agreements and their operation across the market.

4.1 IAG PSR and ASR schemes

Businesses within the automotive body repair sector have always worked under subrogation arrangements with motor vehicle insurance companies. The reality is that automotive body repairers are largely dependent on insurance companies for their work and thus their livelihoods due in part to the insurance companies opting for electronic lodgement and the removal of claim forms from the market place. This has of course resulted in a situation where one party (the insurance company) has a substantial degree of market power relative to the small individual automotive body repairer. The difficulties in this relationship were acknowledged by the (then) Industry Commission in its 1995 report on the motor vehicle insurance and repair sector

Over this period of time, insurance companies have also moved towards a streamlined claims process. This streamlined process involves the removal of the policyholder from the process and the introduction of PSR and ASR schemes. The aim of these schemes is to promote the use of insurer approved smash repairers. The rationale, it was said, behind this move was to improve the customer service provided to the policyholder by reducing the involvement of the policyholder in the process, while, at the same time ensuring the quality of the repairs undertaken and to reduce the cost to insurers.

Under the current structure of the relationship between insurers and repairers, most insurers direct their policyholders to PSRs rather than encouraging policyholders to identify a repairer of choice. Most of the major insurers operate a PSR scheme. For some of the major insurers the claims process involves obtaining two quotes from repairers, one of which can be drawn from a policyholder repairer of choice. Often however, the final determination of the contract of work is made by the insurer with little or no allowance being made for the insured's preferences.

These PSR schemes are said to be aimed at streamlining the process for customers and to keep costs down for insurers. It is a scheme where insurers accredit selected repairers and funnel policyholders through to these preferred repairers. Insurer IAG identifies, in a presentation of May 2002, that its PSR scheme has two levels, that of Preferred Smash repairer and Associate Smash repairer. At that time, PSRs received 70 percent of IAG's collision work, whereas ASRs only received 30 percent of collision work. This reflects that 70 percent of the collision work for IAG is being completed by 20 percent of the industry (that is PSRs), while 30 percent of the collision work for IAG is being completed by 80 percent of the industry (that is ASRs). The

highest performing PSRs are favoured with additional work whereas poor performance can cause a PSR to be relegated to the Associate Repairer status. Non-preferred repairers accounted for only one percent of collision work⁸. The selection of new repairers for inclusion in the PSR list is undertaken on a case by case basis.

According to the same publication, IAG's criteria for determining its PSRs are as follows:

- past performance on cost, quality and customer service;
- repair shops equip' (*sic*) levels, capacity to repair all work and customer service area;
- business need; and
- agree to business plan.

These criteria appear to be very broad and ill defined and do not provide much in the way of clarification or transparency in relation to the insurer's determinations as to which repairers are to be included in the list and which are not. The question is what are the factors beyond the criteria of cost and quality that impact on the determination. For example, are geographic location and environmental responsibility and the like considered? None of this is made clear by insurers.

There are serious concerns about the methodology underpinning the determination of IAG PSRs and as to what requirements must be met to achieve that status and the granting of ongoing status. In particular, MTAA has some concerns regarding the current length of contracts. The contracts that the Association has sighted are for renewable one year periods and are not transferable in the majority of cases. In a business environment that is capital intensive and which unavoidably requires medium to long term business planning, it is difficult to conceive that approved repairers can prepare and rely on business plans that could be thrown into jeopardy if their Preferred Status is not renewed. Furthermore, there is no recourse or redress for repairers who have not had their contracts renewed.

In the past, MTAA has raised concerns regarding the tendering process for IAG PSR status across Australia. These concerns relate to the following issues:

1. *Tender process*

MTAA has for some time now, expressed concern at the tender process used by IAG in their PSR scheme. In most cases repairers are forced into a 'take it or leave it' situation by IAG; in effect forcing them to sign agreements, and in the majority of cases, given less than 48 hours to sign, that they may not be happy with just to ensure they get their piece of the pie. As far as the MTAA is aware there is no opportunity for repairers to negotiate on these agreements with insurers. These are 'take it or leave it' offerings.

Furthermore, there have been questions raised as to the practices of insurance company officers where they have been reported to have separately advised individual repairers tendering for Preferred status of benchmark pricing of hourly rates and prices for services and parts that would be acceptable to the insurer; examples of requested benchmarking, such as – booth and bake allowance: reduce to \$80, not the original industry agreed rate of two hours at the applicable paint rate.

⁸ IAG, Short Tail Claims Management Presentation, 15 May 2002

2. *Pricing*

IAG through their PSR scheme have set hourly rates of pay for labour and paint. Given that these rates of pay do not appear to be individually determined and are applied to a large number of body repairers, it has been alleged that this may constitute price-fixing by the insurer.

3. *Individuality of agreements*

From the documents that MTAA has sighted, it would appear that IAG has established a blanket bidding process where repairers tender for work without being able to account for variations in the make and model of vehicles that they may have to work on. Where at present this is done by examining each damaged vehicle and submitting quotations based on evidence and observation, repairers are now expected, in accordance with the “pricing format”, to make assessments in advance by some form of averaging.

4. *Third Line Forcing*

The IAG PSR contracts that MTAA has viewed all contain clauses relating to provision of contractors for work undertaken. These clauses state that the insurer may nominate a preferred supplier or contractor for the supply of parts and services and where this is the case the repairer must provide access to the premises and indeed are required to engage the insurer’s contractor of choice. MTAA believes that this impinges on the rights of the proprietor to manage and operate their business as they see fit. Furthermore it raises serious issues of financial liability where Lifetime Warranties for work carried out are offered on work that repairers are forced to outsource but where they have no control over who undertakes the work or its quality or warrantability.

5. *Termination*

MTAA believes that the IAG PSR agreements that we have sighted are overly lopsided in their allocation of rights and responsibilities, providing for obligations on the repairer but few on behalf of the insurer. The agreement does provide the right for a repairer to terminate the IAG PSR agreement with seven days written notice. However considering that insurance work normally consists of at least half a repairer’s work this is an unlikely prospect. On the other side, an insurer can terminate the agreement with 90 days notice. The IAG PSR agreement also provides for immediate termination by the insurer for anything less than achievement of the performance plan and its notices and targets which while apparently mutually agreed are really plans which appear on the face of the document to be plans and actions initiated solely by the insurer. The termination of such an agreement would be likely to cause significant, if not irreparable, damage to the repairer’s business.

The Productivity Commission should note that the notice period for termination of IAG ASR agreements is 30 days (according to evidence sighted by the Association), this is much less than the 90 days afforded to repairers with IAG PSR status.

6. *Use of parts*

Over the past ten years or so the repair sector has seen a change in insurer policies relating to the use of parts in repairs. This change relates to the distinguishing of permitted uses for Original Equipment Manufacture (OEM) parts, recycled or other new parts.

MTAA has some concerns that insurers are not providing policyholders with 'plain English' expositions as to which class of parts will be used on which cars. This is of concern to MTAA as a primary aim of smash repairers is to repair vehicles with the aim of restoration of economic value, utility and safety; which necessitates that the standards of parts must be judged on an individual, case-by-case basis.

Changes relating to the fitting of non OEM parts and the fitting of second-hand parts in the absence of disclosure to consumers may constitute, we believe, misleading or deceptive conduct.

7. *Lifetime Warranties*

In recent years, there has been a growth in the number of insurers offering lifetime warranties on repair work. This is largely seen as a selling advantage for insurers. However, the financial liability for the lifetime warranty does not rest with the insurer but rather with the repairer as required by the IAG PSR agreements.

This obviously raises serious concerns as repairers are having to carry a financial responsibility for the undertakings of insurers to insureds. Furthermore, in cases where insurers are dictating the use of contractors or preferred suppliers, the repairer is having to carry the liability for the work undertaken by a third party over which it has absolutely no control or redress.

MTAA does not believe that this is an acceptable situation and believes that it must be remedied.

MTAA believes that these PSR schemes, in their current form, are resulting in restrictions on market competition. As loss of PSR status can cause significant financial hardship on the businesses (see Attachment 2: Federal Court of Australia decision FCA 1224; where as a result of the PSR agreement being held with the business owner rather than the business, a smash repair business lost 19% of its trade overnight as a result of the sale of the business and loss of PSR status).

This case highlights a number of significant issues relating to the relationship between insurers and repairer. Primarily, MTAA believes that it shows a deliberate process by insurers to capture the goodwill of a business, particularly through their customer lists. The occurrence of this behaviour is immoral and shouldn't be occurring. Due to the structure of the agreements, most of the negative issues for repairers are not clear at the time of signing, and even if the repairer fully understands the terms of the agreement, it is placed in a situation where it has a non-negotiable agreement and a failure to sign will cause significant financial hardship. Furthermore,

these agreements appear to be open to unilateral change by the insurer. MTAA believes that the terms of these agreements are debilitating and oppressive and result in a loss of business sovereignty and capacity to operate.

Given the volume of work the insurance companies direct to these recommended repairers, many repairers depend on these arrangements for financial viability in the current market. It is not uncommon for a repairer with a PSR agreement with an insurance company to have 30 to 90 percent of its work tied to that particular company. This effectively means that the loss of the agreement (for whatever reason) will lead to the end of the business. Repairers are therefore extremely vulnerable to the pressures placed on them by insurers.

The contracts that repairers are forced to sign with insurers are almost identical to franchising contracts with the exception of the payments that, under a franchise agreement, are required to be paid to a franchisor. In addition, as mentioned above, these contracts rest with the proprietor not the business itself. On this basis, these contracts should be dealt with in the same manner as any franchising contract. The Franchising Code of Conduct greatly assisted in “cleaning up” that sector and establishing standards for all involved; similarly a mandated code of conduct for the smash repair industry should provide similar benefits.

MTAA believes that the prevalence of PSR schemes presents some significant problems to the repair sector and for consumers. On a primary level, the Association believes that it has the potential to reduce freedom of choice for the consumer. While MTAA is not recommending that PSR schemes be abolished we do believe that the relationship, including rights and responsibilities of stakeholders, should be covered under a mandatory code of conduct. Furthermore, the introduction of an industry-specific code of conduct would ensure that all repairers, regardless of whether they are preferred or independent, are able to fully participate in the market and not prevented from doing so by opaque policies of insurers.

Further, it is worth mentioning two other models of schemes. The first is based upon an external agent model. This model is currently utilised by a number of insurance agencies, which use a third party as a kind of agent between insurers and repairers and from the documentation the Association has seen, the agent generates commissions from both the insurer and the repairer involved. While the Association would normally take the position that the market will determine the viability of this type of business model, it would appear that there are a number of problems with its current operations. One such problem is that the agent takes responsibility for the tendering and offering of work but no responsibility for payments. The financial contract, relating to payments, remains between the insurer and the repairer. MTAA is raising this matter to highlight to the Productivity Commission the differing business models that are employed by insurers.

In the other model, Subaru Australia has recently launched its own preferred repairer network. From the information to hand this scheme will operate similarly to that of the insurers. At this stage it is too early to ascertain the extent of the impact that this scheme will have on the market, however it is interesting to note that AAMI has written to the ACCC expressing concern about the impact of this scheme and opposing it.

4.2 Insurance industry dispute resolution schemes

The concept of an industry-wide code of conduct for the body repair and body repair insurance industries is one which MTAA and its members have raised with IAG and other unaffiliated insurers through the ICA on a number of occasions with limited success. To date insurers have shown a reluctance to consider the matter of an industry code of conduct, preferring to rely upon internal corporate codes and initiatives which MTAA would argue have been unsuccessful in preventing the kinds of activity and disputes which form the nucleus of this Inquiry.

MTAA would argue that internal codes by their very nature are potentially self-serving and hence often unproductive. The failure of individual corporate codes to adequately address the concerns of both the body repair industry and the motor vehicle insurance industry and thus to address repairer concerns is illustrated by a number of currently operating codes.

In the recent report by the AAMI Repair Code of Practice Executive Director, the Code Executive Director⁹ highlighted a number of, what are to us, concerning failures, including:

- complaints lodged by subscribing repairers wishing to remain anonymous and those lodged by non-subscribing repairers are disregarded; where they can be, the repairers are so informed and the complaints are not dealt with under the Code;
- only twelve subscribing repairers have made contact since mid-2001, and of those twelve, seven repairers requested anonymity and hence their complaints could not be dealt with formally under the Code (of the five investigated, none of the decisions were overturned); and
- most communication between the Code Executive Director and AAMI related to the interaction and communication between repairers and assessors; the reluctance of repairers to raise issues with either AAMI or the Code Executive Director for fear of repercussions; the assessment process; the practice of downward price adjustments to the winning quotation; inconsistencies in after-repair inspection processes and concerns about the lack of balance between the expectation that repairers comply with all provisions of the Standards and Code and the fact that AAMI staff do not always meet their administrative requirements under the Code. The Code Executive Director noted that those concerns were not “ill-founded” and that they may lead repairers to conclude that “while they are being held accountable for their performance, AAMI is not”¹⁰.

IAG launched its own Personal Insurance Code of Practice in August 2003 which drew criticism from repairers for failing to meet the ACCC’s criteria for a successful code of conduct. Particularly for failing to consider the interests of the policy holder; the absence of capacity for any negotiation by repairers themselves or their associations; the lack of capacity for any nomination of representatives or nominees of repairers to the Internal or External Dispute Resolution procedures and the lack of capacity for clauses to be discussed, negotiated, contested or in any way changed or reviewed.

⁹ Davison, R. Repair Code of Practice 2002-03: Report of Code Executive Director and Response from AAMI.

¹⁰ *Ibid*, pp5.

A recent welcome initiative was the launch of Allianz Australia's Claims Promise – Customer Choice of Repairer Charter. That Charter was described by Allianz as governing the relationship between Allianz Australia and motor vehicle smash repairers and Allianz announced that the initiative was in response to the Issues Paper on the relationship between insurers and motor vehicle repairers prepared by the Australian Competition and Consumer Commission in late 2003.

One of the main points of the Charter was a commitment to the customer's freedom to choose their repairer. Allianz also committed itself to paying repairer invoices within thirty days of receipt. MTAA took the view was that the Charter represented a step forward in relations between Allianz and repairers, though of course reactions over time by customers and repairers will determine whether or not it was correct in that initial assessment.

Unfortunately, the adoption of a Claims Promise such as the one designed by Allianz, although most welcome, is of limited consequence in a market dominated by other, larger insurers. Further, the implementation of that promise and its subsequent effect on the market has yet to be tested. While repairers welcome such initiatives, a solution is needed that attracts compliance by all insurers, and thus affects the entire market.

The ACCC and Federal Government have shown recent support for the development of a voluntary code of conduct for the industry as a minimum step to solving the problems facing the industry. While MTAA is not opposed to the development of a voluntary code of conduct, MTAA believes a voluntary code would not be an effective means of solving industry problems. The Association's preference is for a mandatory code.

Without universal adherence to such a code, the arguable beneficial consequences would be minimal and uneven. While the activities of unscrupulous participants in the market would become regulated, those choosing to remain outside the code would be free to operate without the regulatory fetters imposed upon their competitors and as such the market would likely see the exit of a number of good repairers.

Further, MTAA does not believe that most insurers are in any way committed to supporting the adoption of a voluntary code. Having discussed the matter on a number of occasions with a number of insurers, MTAA has received the universal response that an industry code of conduct is not a solution insurers have any desire to pursue.

In the absence of such support, MTAA believes that a mandatory code of conduct provides the best hope for a solution to the issues confronting the body repair industry.

5. Repair times and hourly rates

5.1 *Real Time/Real Money*

One of the central issues of this Inquiry is the question of quotations for repair work, how those quotations are arrived at and how they are treated by the insurers. At this point it should be noted that MTAA understands that the various insurers in the market operate different systems, not all of which are addressed here. It seems that the two largest insurers, IAG and AAMI, operate different systems, neither of which are perfect and both of which are the cause of some concern for repairers. The role of assessors is different in each system and repairers have expressed concerns about the role that they have in the finalisation of repair quotes.

In addition to the concerns expressed by repairers about various preferred repairer schemes, the question of time and rates allowed by insurance companies for vehicle repairs is a major issue of concern for body repairers.

The issue of ‘funny times for funny money’ was considered by and reported on by the then Industry Commission in its 1995 Report. The Commission reported that *‘The use of “funny” time and hour rate schedules does, however, raise some concerns. It requires that negotiations on repair quotations between insurers and repairers take place in circumstances which both parties know is fictitious. This is an unsatisfactory basis on which to develop business relationships’*. MTAA agrees with the Industry Commission’s concerns about “funny time, funny money”. However, it remains the case that for many repairers there has been no change in the quotation system, despite the reservations expressed by the Industry Commission nearly a decade ago. Indeed as the insurance market has become more concentrated and as labour and other costs have continued to rise, the problems have become more acute.

Fundamental to any business, large or small, is the ability to price its products or services according to its costs and the dynamics of the market in which the particular business operates. However for the body repair sector other ‘rules’ apply; those of the insurance companies.

As stated above, the two larger insurers operate their quotation systems differently. Neither it seems is based on the actual costs of doing business that are faced by the repairer.

As MTAA understands matters, the current arrangements that these two large insurers have in place are as follows:

1. *IAG/RACV*

Under the IAG PSR agreements, repairers are required to ‘sign-up’ to a repair and a ‘remove and refit’ at set hourly rates. These rates for repair labour and paint labour are set out in the table below for Victoria, New South Wales, South Australia and Western Australia.

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

The time allowed for the repair of a damaged vehicle is then based on the 'NRMA Times Manual' which sets out the time that any particular component of a repair should take. MTAA understands that the times allowed in that manual for painting and for 'remove and refit' work are reasonably accurate. The times allowed for repair work are understood to be less accurate and there is likely to be some 'fudging' of hours.

Quotations are done on-line; with the relevant times for the various aspects of a repair job multiplied by the appropriate hourly rate. It has been suggested to us that the role of assessors in this process appears to be largely limited to viewing the on-line photographs of damage, seeking additional photos if necessary and then authorising the work.

Given the very low hourly rates (which have remained unchanged for many years) and a trend to a greater proportion of 'remove and refit' work, there is now considerable financial pressure being placed on body repairers by the IAG quotation system.

Costs of labour and paint continue to rise, but anecdotal evidence is that there has been very little, if any change, in the hourly rates paid by IAG over the last decade. In Victoria for instance, it appears that there has been no increase in the hourly rate paid to crash repairers by IAG since 1991.

2. *AAMI*

The quotation system operated by AAMI is substantially different to that operated by IAG. AAMI operates a two quote system, based on the cost of the whole repair job. Work is generally thought to be awarded to the repairer who submits, on a so-called 'like for like' job, the lowest quote. MTAA understands that AAMI will allow the insured person to nominate one repairer of their choice to provide a quote for work. The final decision on the awarding of the work does though rest with AAMI.

The role of assessors in this process seems to be to ensure that the quotes submitted are the lowest quotes possible. The MTAA National Secretariat has anecdotal reports of assessors reducing quotes put forward by repairers. Some repairers question whether assessors are independent or appropriately trained and indeed whether their role should be more appropriately described as one of "loss adjustment".

This two-quote process appears to have its downside however, in that the system allows the repairer awarded the work to seek approval, after work has commenced, for additional work required (but which did not form part of the original quote). It is thought by some that this process encourages the submitting of incomplete quotations

by some repairers in order to get the work, and then for the true scope of the work to be submitted once AAMI has awarded the contract for the repair.

The MTAA National Secretariat understands these arrangements and the concerns that repairers have with the various systems used by insurers will be addressed in more detail in submissions prepared by individual repairers and MTAA's Member Associations.

Body repairers' frustrations with, in particular, the systems operated by AAMI and IAG and its associates are magnified because of the large market share held by the two companies. As a result of the insurance industry abolishing the use of claim forms many repairers rely on insurance company work to maintain their business throughput. However, the insurers apparent quest to drive the cost of repairs down while repairers are faced with increasing labour and paint costs and other costs incurred through compliance with environmental and occupational health and safety regulation is causing enormous unrest and dissatisfaction amongst repairers.

It is thought by many repairers that insurers are using both the preferred repairer networks and the current quotation/hourly rate arrangements to 'encourage' rationalisation of the body repair network.

MTAA firmly believes that if there is to be rationalisation of the repair sector then that should not be driven or determined by insurance companies. That is a process which, if required, can be quite adequately determined by the market. It is not for the insurance companies to say how many body repairers there should be, or where they should be located.

Body repairers constantly report to their representative associations that:

- the current arrangements for quoting and awarding work are unsatisfactory and economically unsustainable for the repairer network at large; and
- there is no process for repairers to resolve any disputes that they may have with their insurer about quotes or the awarding of work. MTAA would make the point here that the current General Insurance Enquires and Complaints Scheme arrangements are not suitable for addressing and resolving disputes between repairers and insurance companies.

To address those concerns two solutions have been proposed by body repairers. The first is that a mandatory code of conduct with a dispute resolution process be established between body repairers, insurance companies and consumer representatives. That issue is addressed in more detail in section seven of this submission.

The second issue is that the current, various quotation systems be reviewed and more appropriate arrangements, based on actual costs of doing business, be introduced. MTA NSW has developed a proposal for a 'real time, real money' system to be adopted by repairers and insurers. MTAA understands that MTA NSW will address that proposal in detail in its submission to this inquiry. However, the basic proposal is that the current "Times Guides" will need to be replaced with a more accurate guide, that all parts and materials will be able to be

charged separately and that hourly rates will depend on individual repairer's costs of doing business (that is there would not be a standardised hourly rate). MTA NSW's 'real time real money' proposal is as follows:

"It will be necessary to replace the current Times Guides being used in the market place with a new "actual time" Times Guides. This will be a relatively simple task as the multiples currently being used can be readily converted.

Materials such as product (paint), tape, rubbing down paper etc, will be treated the same as parts and added to the quotation as a miscellaneous line item.

OH &S Compliance, Trade Waste Management costs etc will also be entered as a miscellaneous line item.

To ascertain the appropriate charge out (shop rate) repairers will use figures provided by their accountant / financial advisors, paint companies or simple formulas supplied by their Trade Associations.

Paint and material rates can be provided by the appropriate paint company, being mindful of the amount of product and material necessary to perform the relevant job function or alternatively from information available from overseas organisations such as the Thatcham Research Centre.

Thatcham Times are accepted by all leading insurance companies in the UK and are based on real time – real money with a formula for material usage based on the particular product required and the area of the panel to be repaired and painted."¹¹

MTAA believes that the current systems for repair quotations and the lack of any process to resolve disputes pertaining to quotations are the cause of a significant amount of distrust between repairers and insurers.

If relations between repairers and insurers are to be restored to a point where each side recognises that both parties have a significant and important role in the insurance sector in meeting the needs and requirements of insured parties then greater transparency and dispute resolution, at a minimum, are required.

MTAA notes that a number of its Member bodies have made independent submissions to the Productivity Commission Inquiry and that some of these submissions make reference to the issue of rates and times allowed by insurer. While each of the individual submissions deal with the issue of rates and times in a different manner and differ with regards to suggested solutions, the core facet of this discussion relates to the unfair nature of the current arrangement on motor body repairers, and of the need to address that matter. They are also a sign of the significant frustration in the market place.

¹¹ Body Repair Division Committee of the Motor Traders' Association of NSW.

6. Freedom of choice

6.1 *Current environment*

Freedom of choice relates to policyholders' freedom to choose the repairer that they would like to repair their vehicle. This choice may be based on a wide range of factors including long term business relationships, cost, and quality and customer service. Fundamentally, an increased level of choice encourages increased competition which results in improved productivity levels, efficiency and quality of repairs.

As discussed above, there has been a shift by insurers away from independent repairers towards their PSR schemes. This change in repairs under insurance has little proven benefit to the customer as assessed by criteria such as reduced premiums and quality of repair as a result of these schemes. MTAA believes that there may be efficiencies for insurers in streamlining the claims process, however at the end of the day these systems reduce consumer choice. The problem is that many consumers do not realise this until after they have had an accident. Whatever advantages may exist, customers are faced with the withdrawal of choice in the determination of their repairer.

MTAA understands that while most insurers will allow policyholders to identify a repairer of choice they also attach a range of "penalties" if the repairer contracted to undertake the work is an independent repairer. Anecdotal evidence suggest that these "penalties" can include cash payouts and policy cancellations, time delays in approval for work, time delays in final assessment resulting in delays in the release of cars, loss of Lifetime Guarantees on repairs and delays in payment to the independent repairers.

Furthermore, there are serious questions relating to which party is regarded as the customer. Is the customer the insurer or the insured? In the case of insurance companies that utilise a PSR scheme incorporating a valet service and customer service centre, it is clear that the insurer assumes the role of the customer not the insured. This removes the relationship between the repairer and the insured. MTAA believes that in all cases the insured must be viewed as the customer so that the insured is involved in the process of repair. This would promote improved relationships between all parties as a result of transparency and information flows and ensure the owner of the vehicle is involved in the repair of their vehicle. Indeed repairers have traditionally considered and identified their customer as being the insured.

The advent of vehicle service centres and valet services have contributed to the loss of freedom of choice for the insured. Insurers advise the insured to drop their vehicle off at one of their centres and the vehicle is processed from there, separating the insured from the process. While there will be customers that are happy to have this process taken care of for them, the choice to participate in this process must be clearly outlined to the customer. In September 2004, California enacted legislation to prohibit programs such as concierge (or valet) services from operating in that State. In addition the legislation clearly defines an automobile repair "customer" as the "person presenting a motor vehicle for repairs" and specifically states that the "customer" shall not mean an insurer involved in a claim that includes the vehicle being repaired. This will, in

effect, prohibit customers from dropping off their cars at repair centres and allowing the insurer to assume the role of the customer and make all the critical repair decisions, including where the car is to be repaired¹². The Bill Analysis used in California outlines some of the practices utilised by insurers in that state to ‘steer’ claimants to preferred smash repairers. These methods included:

- emphasizing the “benefits” of having the work done at a repairer which has a direct, preferred relationship with the insurer;
- benefits of using the preferred repairer included “no waiting for an adjuster” and a “guarantee of all work”; and
- implications that the consumer’s preferred repairer is inferior to the insurer’s preferred repairer by using phrases such as “your shop didn’t make our preferred list”; intending to erode the consumer’s confidence in their chosen repairer, and making statements such as “if you take your car to that shop we cannot guarantee the work” or “if you take your car to that shop we won’t be able to get an adjuster out for at least a week, but if you go to our shop they can start the repairs immediately”.¹³

MTAA is aware that it is alleged that similar tactics have been used by insurers in the Australian market to steer consumers towards insurer’s PSR schemes.

MTAA believes that insurers should be promoting a system that is about choice and vehicle safety. The best way to promoting a strong and vibrant smash repair sector that best meets the needs of insurers and consumers is through competition. Increased competition is only delivered through increased choice which results in improved productivity and lowest possible market prices.

¹² Collision Week, *CA Passes Law Prohibiting Concierge Type Programs*, 01 October 2004
[<http://www.collisionweek.com/>] 08 October 2004

¹³ Californian Senate Bill Analysis: SB 511, 05 September 2003, pp. 6-7.
[http://info.sen.ca.gov/pub/bill/sen/sb_0551-0600/sb_551_cfa_20030909_104446_sen_floor.html] October 2004

7. Solutions to current repair sector difficulties / problems

7.1 Code of Conduct

- ***MTAA recommends that the attached code of conduct be mandated across the industry to promote effective and efficient relationships between all stakeholders and transparency in the industry.*** (Attached at Appendix 3)

One of the key recommendations from the 1995 Industry Commission Report on Vehicle and Recreational Marine Craft Repair and Insurance Industries that remains outstanding is that of the establishment of a code of conduct covering matters which impinge on relationships between the two industries (repairers and insurers) and a procedure for resolving disputes between insurers and repairers.

MTAA continues to support the introduction of a mandatory code. MTAA is aware that the insurance industry has adopted a General Industry Code of Practice that establishes a number of guidelines governing the relationship between insurers and policyholders, in particular claims handling and dispute resolution procedures including the General Insurance Enquires and Complaints Scheme. However, MTAA does not believe that this scheme is able to address and resolve the deficiencies currently in the system, for example resolving disputes between insurers and repairers.

MTAA believes that there are a number of particular issues for the repairers that remain outstanding and that require attention and resolution through a mandated code. These include the following issues:

- *Dispute resolution mechanism*

There is currently no mechanism to provide for dispute resolution between repairers and insurers. The relationship between repairers and insurers is becoming increasingly strained and there is a real need for guidelines to codify the rights and responsibilities of repairers and insurers including a disputes resolution procedure to handle disputes between insurers and repairers. MTAA recognises that a number of insurers have already established their own internal dispute resolution procedures and congratulates them for this positive first step. This move demonstrates that the insurance industry recognises the need for these procedures. However, MTAA believes that this process should be standardised across the industry to ensure consistency and certainty, with an independent adjudicator to act as arbiter on disputes, to the benefit of all stakeholders involved.

- *Preferred Smash repairer Schemes*

There has been a move by insurers towards the use specific PSRs. This has caused issues with regards to the transparency of these agreements and the development of a competitive industry. There is an overall lack of transparency in how insurers select which repairer qualifies for PSR status and how insurers make a determination between quotes from PSRs and independent repairers. This lack of transparency could be resolved through guidelines and disclosure provisions contained in a mandatory code.

- *Community benefit*

A mandatory code would provide significant benefits to the community as it would clearly identify the rights of consumers and the responsibilities of insurers and repairers. This includes a commitment to best practice in repairs and high standards and quality of parts and labour and protects the integrity of the smash repair industry. This would protect the high standards of work and customer service that currently exist in the industry and ensure community safety and the resale value of vehicles.

Under a mandatory code, insurers and repairers would be required to commit to high standards of disclosure and integrity in their business and in the service provided to consumers.

Based on these matters, MTAA recommends that the Productivity Commission support the mandated introduction of the attached code of conduct, prepared by AMBRA, in consultation with representatives of consumers.

This draft code contains a number of key principles that should be enshrined to protect all stakeholders and spell out their responsibilities. The principles contained in this code include:

- Transparency
 - Absolute need for transparency through disclosure in all relationships between insurers, repairers and policyholders at all levels
- Accountability
 - Establishment of clearly defined dispute resolution procedures for all parties involved
- Competition
 - Facilitation of consumer choice of service to promote industry competition and productivity.
- Collaboration
 - The use of collaboration to promote the best and most appropriate outcomes for all parties involved
- Community benefits
 - Minimisation of the impact and disruption of smash repairs on the community and to maximise productivity and public perception of the smash repair and insurance industries.

The attached draft code, using the principles outlined above, would set the basis for positive and strong working relationships between insurers and repairers to produce an environment where both parties can address their responsibilities towards consumers, by proposing guidelines to regulate the relationship between repairers and insurers.

The draft code includes the following responsibilities for repairers and insurers.

Repairers must:

- repair cars in a safe, timely and professional manner and not compromise manufacturer warranties;
- not provide misleading quotations or mislead insurers or consumers about their rights; and
- ensure repairs are performed by properly trained staff using appropriate equipment.

Insurers must:

- not limit the opportunity to quote to accredited repairers only;
- specify claims and excess details and the assessed allowances for labour, parts and paint before work begins;
- not demand or pressure a repairer to repair a car in an unsafe or unroadworthy manner or in a manner that compromises the quality of the repair; and
- not remove a customer's car from a repairer's workshop without the customer's permission.

7.2 *Changes to the Trade Practices Act*

The Federal Government has already proposed a number of changes to the Trade Practices Act, including the introduction of a collective bargaining notification process for small business and amendments to sections 46 (misuse of market power) and 51AC (unconscionable conduct). While the Government's proposals are mostly welcome, MTAA does not believe that the proposed amendments will, on their own, resolve many of the serious issues raised in the Terms of Reference for this Inquiry, including late payments, dispute resolution and transparency. In addition, the Government's proposed amendments do not address the issue of choice of repairer for consumers. MTAA therefore believes that it is important that those issues are addressed through other means, including the development and adoption of a mandatory code of conduct for the industry.

7.2.1 Collective Bargaining

During the course of the 2001 Federal election campaign, the Prime Minister announced that the Coalition Government would hold an inquiry into the competition provisions of the Trade Practices Act 1974 (Cth) if it was re-elected. In May 2002, the Government established a Review of the Competition Provisions of the Trade Practices Act ("the Dawson Review") and the Dawson Review Report was released on 16 April 2003, along with the Government's response to that report.

In its report, the Dawson Review Committee recommended the introduction of a notification process for collective bargaining by small businesses in their dealings with big businesses, including a right of collective boycott. The Committee recommended that there should be a \$3 million transaction value threshold for the proposed notification arrangements and that third parties should be able to lodge a collective bargaining notification on behalf of a group of small

businesses. In its response to the Dawson Review, the Government accepted the Committee's recommendations regarding collective bargaining and undertook to introduce a notification process for collective bargaining by small businesses.

More recently, the Senate Economics References Committee has supported the Dawson Report's recommendation regarding the introduction of a notification process for collective bargaining, including a right of boycott, but recommended that the proposed \$3 million threshold for notifications be excluded. In their Minority Report, the Government Members of the Committee supported the Committee Majority's recommendation in relation to collective bargaining. In its response to the Committee's report, the Government also reaffirmed its support for a collective bargaining notification process, including a right of boycott, for small business but declined to remove the \$3 million threshold.

On 23 June 2004 the Treasurer, the Hon Peter Costello MP, announced that the Government intended to introduce legislation into the Parliament to give effect to the Government's response to the Dawson Review. That legislation, the *Trade Practices Legislation Amendment Bill 2004*, was introduced into the House of Representatives on 24 June 2004 and the Bill provided for the introduction of a collective bargaining notification process for small business similar to that recommended by the Dawson Review. However, while the Bill proposed a \$3 million transaction threshold, it did also provide for a higher transaction limit to be set by regulation. The Government acknowledged that a higher limit may be appropriate for businesses with high turnovers and low profit margins, including smash repair businesses.

The Bill was passed by the House on 4 August 2004 and was subsequently introduced into the Senate. However, the Bill had not been debated at the time the Parliament was prorogued on 31 August 2004 and it will therefore lapse irrespective of which party wins the Federal Election on 9 October 2004. Consequently, the Bill will need to be reintroduced into the new Parliament following the Election if it is to become law.

Following the introduction of the Bill into the Parliament, the Australian Competition and Consumer Commission (ACCC) released an issues paper on authorising and notifying collective bargaining and collective boycotts. That paper provided an overview of the matters that the ACCC will consider when assessing applications for the authorisation of collective bargaining or notifications of collective bargaining and collective boycott. The ACCC also provided examples of the circumstances in which it may look on such an application or notification favourably. The sentiments that the ACCC expressed in that issues paper in relation to collective bargaining and boycott were, in MTAA's view, quite negative and appeared to indicate that the ACCC believed that proposed new arrangements would have see little change in its treatment of collective bargaining. If that is indeed the case, MTAA is concerned that the proposed new collective bargaining notification arrangements will not provide a cost-effective or timely alternative to the current authorisation process.

MTAA acknowledges that the proposed collective bargaining notification arrangements, if passed, may assist small businesses in their dealings with businesses that have a substantial degree of market power. However, the proposed arrangements will not address or resolve some

of the most important issues facing participants in the smash repair industry, including late payments, the adoption of appropriate dispute resolution processes and greater transparency in relation to insurers' dealings with both smash repairers and consumers. MTAA therefore does not believe that the proposed collective bargaining notification arrangements will be a panacea for the smash repair industry.

7.2.2 Government Response to the Senate Economics References Committee Inquiry

The Senate Economics Reference Committee recently held an inquiry into the 'the effectiveness of the *Trade Practices Act 1974* in protecting small business'. The Senate Committee tabled its report on 1 March 2004 and that report was not unanimous, with the Australian Labor Party and other Members of the Committee recommending seventeen amendments to the *Trade Practices Act* in their majority report. The Government Senators, in a Minority Report, recommended a smaller number of different and more limited amendments to the *Trade Practices Act*.

The Government's response to the Committee's report largely reflected the recommendations contained in the Government members' minority report. The Government's proposals included:

- the amendment of section 46 to include references to predatory pricing and recoupment and to proscribe the leveraging of substantial market power from one market into another;
- the amendment of section 51AC to increase the threshold in the section to \$10 million and to add unilateral variation to the list of factors that the courts may consider in determining whether a corporation has breached the section; and
- the extension of the jurisdiction of the Federal Magistrates Court to enable it to consider proceedings relating to Parts IVA (unconscionable conduct) and IVB (codes of conduct).

The Government declined to amend section 46 to address the concerns raised by the Australian Competition and Consumer Commission and the small business community following the High Court's decision in *Boral Besser Masonry Ltd (now Boral Masonry Ltd) v Australian Competition and Consumer Commission* [2003] HCA 5 (7 February 2003). That is, that the threshold of a substantial degree of power in a market needed to be clarified.

Again, MTAA notes that neither section 46 nor section 51AC of the *Trade Practices Act* are appropriate mechanisms for addressing issues such as late payments, dispute resolution or the level of transparency in relation to insurers' dealings with both consumers and smash repairers. The proposed amendments will not therefore, by themselves, resolve many of the serious issues facing the smash repair industry. MTAA believes that such issues are more appropriately addressed in a mandatory code of conduct for the industry.

7.2.3 MTAA Small Business Charter of Fairness

One of the highest aims of MTAA, since its inception, has been to secure and maintain a fair trading environment for its members. The suppliers to the retail motor trades, particularly in the petroleum, new motor vehicle dealing, farm machinery dealing and body repair sectors, are large

national and in fact mostly large multi-national companies. Retail motor traders are invariably price-takers and the terms and conditions of their engagement with their suppliers are invariably set by the suppliers. There is little, if any, effective consultation by suppliers as to the terms of supply and/or franchise agreements.

The balance of power in those contractual relationships is vested almost solely with the supplier and in our view the use of that market power is largely unfettered. That is so despite provisions in the *Trade Practices Act* dealing with misuse of market power, unconscionable conduct and the mandatory Franchising Code of Conduct. However in saying that, MTAA does acknowledge that there have been successful prosecutions by the Australian Competition and Consumer Commission for breaches of section 51AC and the Franchising Code of Conduct. However, in the main the successful cases have involved relatively small operators in other sectors and the case law that has developed has been of little assistance to retail motor traders.

As part of its efforts to secure and maintain that fair trading environment, MTAA has developed a Small Business Charter of Fairness. The Charter was first prepared in 2001 and was revised and updated in 2004. The aim of the Charter is to address the unfair and anti-competitive behaviour undertaken by big business in its relations with small business.

MTAA believes that a viable small business sector is essential if Australia is to sustain a competitive market at home and abroad and avoid becoming the plaything of huge corporate cartels. The Small Business Charter of Fairness aims to address unfair and anti-competitive behaviour undertaken by big business in its relations with small business.

For two decades governments have pursued policies aimed at 'opening up' the Australian economy. Tariffs have been reduced, financial markets have largely been deregulated, labour markets have been deregulated, shopping hours freed-up and government businesses corporatised, privatised and forced to compete and national organisations that once provided competitive tension have been demutualised and become public listed companies. This has all been done in the name of competition policy.

However, competition policy has increased the concentration of business in the hands of powerful corporations. It has had the effect of allowing large businesses to absorb some competitors or drive others out of business. In several sectors, large corporations which are often based or owned overseas have expanded inexorably at the expense of small businesses owned by Australian families or Australian proprietors and managers.

MTAA will continue to pursue the strengthening of the Trade Practices Act in the terms of the ten points of its Charter of Fairness. It should be noted that in support of its campaign for a strengthened *Trade Practices Act*, MTAA has convened an informal coalition of like-minded Associations; the Fair Trading Coalition (FTC). The FTC was formed during the course of the Dawson Review of the *Trade Practices Act* and made submissions to that Review and to the subsequent Senate Economics References Committee inquiry into aspects of the Trade Practices Act. The Fair Trading Coalition (which comprises 30 small business associations) has endorsed the Small Business Charter of Fairness.

The Small Business Charter of Fairness is as follows:

1. The introduction of a right for small business to collectively negotiate, including a right of collective boycott.
2. The strengthening of section 51AC (unconscionable conduct) of the Trade Practices Act to proscribe unilateral variation of contracts and the termination of contracts at will without just cause.
3. The strengthening of section 46 (misuse of market power) of the Trade Practices Act to address concerns about the effectiveness of the current provision.
4. The imposition of criminal sanctions for breaches of the price fixing provisions of the Trade Practices Act.
5. An adequately resourced and empowered Australian Competition and Consumer Commission, dealing with:
 - cease and desist orders;
 - a divestiture penalty for misuse of market power; and
 - the creation of a 'small business as consumers division' of the ACCC.
6. The appointment of a Small Business Advocate to ensure that the interests of small business are better represented to the Australian Government.
7. The strengthening of the Franchising Code of Conduct.
8. The public interest should be the sole determining factor in any decision relating to national competition policy.
9. The extension of the jurisdiction of the Federal Magistrates Court to Parts IV and IVA of the Trade Practices Act and the application of the Trade Practices Act to government agencies in all its respects.
10. The Dawson recommendations in relation to third line forcing (that it should cease to be a per se prohibition and should be made subject to a 'substantial lessening of competition' test) should not be adopted.

MTAA believes that the introduction of the ten points of the Charter along with the other matters proposed in this submission (a mandatory code of conduct and more appropriate quotation arrangements) would address many of the concerns of body repairers and would also go some way to redressing the imbalance of market power in the sector.

8 International trends and developments

8.1 *Legislative approaches*

The issues faced by body repairers in relation to their dealings with insurers are in no way peculiar to Australia. Indeed, it is clear that many of these difficulties are faced by body repairers worldwide. While it would be impossible in the limited time and space available to present the Commission with an exhaustive analysis of the state of affairs in the various overseas jurisdictions, MTAA would draw the Commission's attention to a number of countries with similar markets and systems of government to Australia and whose consumers and small business people have similar expectations of those governments. This Chapter includes a brief overview of the problems faced by body repairers in the United States (US), United Kingdom (UK), Canada, South Africa (SA), the European Union (EU) and New Zealand (NZ).

The discussion below focuses on aspects of the disputes in those jurisdictions with parallels in Australia and, where possible, highlights the solutions that have been provided by those governments, both successful and unsuccessful.

8.1.1 United Kingdom¹⁴

The body repair industry shares a number of similarities to its counterpart here in Australia. The insurance sector in the UK is by a wide margin the largest provider of work to the body repair industry in the UK, as it is here. Insurers and the accident managers they use account for 85 per cent of body shop income in the market for the repair of motor vehicles. Due to increased competition in the insurance sector, a number of mergers have concentrated the market in recent years and the number of body shops has, in turn, also declined from 30,000 in 1970 to 5,800 in 2002.

In its 2002 submission to the Office of Fair Trading in the United Kingdom, the Body Repair Industry Campaign (BRIC) identified the following industry issues as being detrimental to the public interest and offered the following recommendations:

Poor quality and potentially dangerous repairs resulting from unrealistic and inaccurate repair times¹⁵

- BRIC recommends that the right of insurers to mandate particular repair estimating software be removed;
- databases of repair times be subject to independent audit; and
- repair estimating software using such databases be subject to independent audit;

¹⁴ ¹⁴ The following information is sourced from the United Kingdom Body Repair Industry Campaign (BRIC), *Submission to Office of Fair Trading*, 25 April 2002.

¹⁵ *Ibid*, pp 15.

The restriction of consumers' freedom of choice in deciding where to have their vehicle repaired and [T]he imposition of additional costs on consumers who choose to have their vehicle repaired by a non-approved repairer.¹⁶

- insurers be required specifically to draw consumers' attention to their right to have their vehicle repaired by their chosen repairer; and
- insurers undertake not to discriminate against policyholders choosing not to make use of an approved facility.

The uneconomically low rates offered by insurers

- The Office of Fair Trading should examine the rates offered by insurers to body shops and question the dynamics of the market that have allowed rates to fall to such uniformly uneconomical levels.

BRIC also identified the following issues and requested that the Office of Fair Trading examine those issues carefully in the interests of consumers:

- insurer pressure on body shops to repair rather than replace, can pose safety threats and lower the vehicle value;
- persistent late or non payment of invoices resulting in financial loss for repairers; and
- damage to the environment resulting from insurers' refusals to pay costs of waste disposal.

8.1.2 Canada

The industry situation in Ontario, Canada offers an interesting insight into address of the prevailing circumstance in Australia.

The *Collision Repair Standards Act 2002* (the Act) provides for industry self-management of the collision, auto body and auto refinishing industry. It authorises a mixed industry advisory board of ten members (four body repairers, four members of the public and two government representatives) to oversee and facilitate the introduction of standards for the industry. The Board recommends to the relevant Minister the accreditation of compliant repairers, and all repairers must be accredited or face substantial fines or gaol time.

The Act requires that consumers have the choice to choose their repairer and includes a mandatory "Bill of Rights" that must be provided to customers which includes information on the customer's right to safe repair, a shop of their choice, advice to the effect that they are not required to use an insurance company's recommended shop (although they can should they so wish), a declaration of whether parts used are OEM or aftermarket and a statement from the shop that the repair has been undertaken in accordance with all of the applicable safety standards.

¹⁶ *Ibid*, pp 16.

A copy of the Act is provided for the Commission's consideration at Appendix 4 to this submission.

8.1.3 South Africa¹⁷

According to the South African Motor Body Repairers' Association (SAMBRA), the sound relationship between the body repair industry and body repair insurance industry has taken a turn for the worst of late for a number of reasons that also resonate in the Australian market. Reportedly insurers, intent on providing their shareholders with growth through savings in cost structures rather than through growth of the market have brought enormous pressure to bear on the motor body repairers' labour rates and parts margins.

Since the advent of 'cheap' insurance in South Africa, SAMBRA reports that the more responsible insurers (and their representative companies) have reacted to their loss of market-share by providing their own brand of 'cheaper' insurance. SAMBRA suggests that this has led to the substandard repair of a number of vehicles. Insurer assessors are also encouraging the use of used or repaired parts to keep the costs of repair down. Repairers, SAMBRA reports, are being forced to cut corners to survive under these conditions. While SAMBRA argues that there is no excuse for the poor repair of a damaged motor vehicle, the nature of the repairer/insurer relationship is such that the insurer is dominant and has the ability to coerce the repairer to accept low repair authorizations.

Insurers in South Africa also operate similar preferred repairer programs as their Australian counterparts under the justification that such practices will ensure they control the quality of the work and attain the lowest repair cost for their customers. This practice excludes hundreds of repairers in that market. SAMBRA reports that the actions of insurers in this regard have quite possibly placed hundreds of small businesses in jeopardy. These repairers, many of whom have invested in the future of the market by attaining SAMBRA's grading status are now faced with loss of work as a result of insurer policies.

Direct billing, where the insurer pays the parts supplier directly and passes on a handling fee, is the latest attempt to marginalise repairers in South Africa. SAMBRA reports that it will be approaching the South African Competition Commission to try to curb this behaviour. Motor dealers have also come out in support of repairers in this matter.

The system that previously existed in South Africa involved protocol agreements with all of the major insurers that regulated commercial parameters and ethical boundaries. Various committees handled administration and although the process was reportedly time-consuming, much was achieved during that period. However, when competition rulings prevented minimum agreed rates from being applied these agreements were cancelled.

The situation now is that insurers are drawing and signing contracts with each individual repairer without consulting SAMBRA and it is predicted that the market will become overly complicated

¹⁷ Information sourced from correspondence between MTAA and SAMBRA.

to do business in, both for repairers and insurers, and will remain so until agreement is reached on a new mechanism to regulate business between the two industries.

8.1.4 United States of America

According to research undertaken by the Automotive Service Association of America, 35 of the 50 states in the United States of America have some form of anti-steering legislation (anti-steering legislation prohibits insurance companies from recommending or “steering” their insured or claimants to a particular collision repair facility). The legislation differs in degree from state to state and deals with issues and matters such as insurers requiring that consumers travel unnecessary distances to have their vehicle repaired, requirements that consumers have their vehicle repaired at certain shops, recommendation of a preferred repairer, pre-inspection price setting, intimidation, coercion and threats of non-payment of claims.

While the form and scope of regulation may vary from state to state, the broad support from a large majority of states for anti-steering legislation evidences wide recognition by regulators of the damaging effects of that conduct on competition and small business viability.

A United States ‘state by state’ summary of anti-steering laws and regulations is attached at Appendix 5.

9. Conclusion

What this submission has outlined is that the problems identified between insurers and repairers by the Industry Commission Inquiry in 1995 remain today. Indeed in a number of areas the problems have been exacerbated over time. MTAA believes it is of critical importance for the repair sector and consumers that real, substantive solutions are recommended by the Productivity Commission and endorsed and introduced by the Government.

MTAA strongly urges the Productivity Commission to recommend the introduction of a mandatory code of conduct. It is only through establishing a transparent and equal relationship between insurers and repairers that the best outcomes for consumers will be realised.

Secondly, MTAA believes that the Productivity Commission should recommend that the current “funny time, funny money” arrangements be abandoned in favour of more appropriate arrangements for quoting for work. These new arrangements should be based on the actual cost of doing business.

The adoption of both of these solutions would go a long way to resolving many of the problems the currently exist between insurers and repairers.

Finally, MTAA looks forward to the opportunity to provide oral evidence to the Commission, if and when the Commission desires.

**MTAA
National Secretariat
Canberra**

15 October 2004