



MOTOR TRADERS ASSOCIATION OF NSW

**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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1. INTRODUCTION

The Motor Traders' Association of NSW (MTA NSW) unreservedly supports the submission to the Productivity Commission by the Motor Trades Association of Australia (MTAA).

1.1 The Motor Traders' Association of NSW

The Motor Traders' Association of NSW (MTA) was formed on the 16th January 1910 and directly represents the interests of over five thousand (5000) automotive business proprietors in New South Wales who, collectively, employ in excess of eighty thousand (80000) people.

The diversity of the automotive industry represented by the Association can be better understood from the following membership categories.

- (i) Australian Automotive Dealers Association (NSW) Division;
- (ii) New Car Sales;
- (iii) New Truck Sales;
- (iv) Automatic Transmission and Re-builders Division;
- (v) Automotive and Marine Trimmers Division;
- (vi) Automotive Electrical Specialists Division;
- (vii) Automotive Mechanical Repair Division;
- (viii) Auto Dismantlers Division;
- (ix) Body Repair Division;
- (x) Brake & Clutch Division;
- (xi) Commercial Vehicle Industry Association of NSW Division;
- (xii) Engine Re-conditioners Division;
- (xiii) Exhaust Systems Specialists Division;
- (xiv) Farm Machinery Dealers Division;
- (xv) General Trades Division (Membership of this Division consists of Caravan Dealers, Windscreen Fitters, Rental Vehicle Operators and all other Automotive Businesses not elsewhere categorised);
- (xvi) Hire Car and Chauffeur Driven Limousines Division;
- (xvii) Licensed Used Car Dealers Division;
- (xviii) Motor Bus Division;
- (xix) Motor Cycle Industry Association of NSW Division;
- (xx) Parts and Accessories Division;
- (xxi) Radiator Repair Specialists Division;
- (xxii) Rustproofing Specialists Division;
- (xxiii) Steering and Suspension Specialists Division;
- (xxiv) Tow-Truck Operators Division; and
- (xxv) Tyre Dealers and Retreaders Association of NSW Division.

The Association also represents the interests of a number of like industry participants including the Caravan and Camping Industry Association, the Service Station Association of NSW etc.

An initiative of the Association was the establishment of the Automotive Women's Network which recognises the contribution made to the automotive industry by all women.

Association members' are governed by a Constitution and Rules, including a Code of Ethics, certified under the Workplace Relations Act 1996.



A Governing Council and an Executive Board, elected from the ranks of the general and affiliate membership, are charged with the responsibility of establishing and enacting Association Policy on behalf of the members who must, as a condition of membership, embrace the Associations Code of Ethics.

1.2 The Code of Ethics, in part, states;

Part 1 Introduction;

GENERAL

1. This Code of Ethics (“the Code”) has been prepared and adopted by the Motor Traders’ Association of New South Wales (“MTA”).
2. The Code governs the conduct of all MTA members to whom the Code is expressed to apply.
3. Many of the provisions of the Code are a statement of the principles and practices which have been observed by MTA members for many years.
4. *MTA members recognise that fair and genuine competition is fundamental to the service to which consumers are entitled.*
5. The Code demonstrates the high standards adopted by MTA members and the advantages and protection a consumer has in using the facilities and services offered by MTA members.
6. The provisions of the Code may be altered from time to time as the occasion demands.
7. The principles of the Code are intended to be read subject to existing law.
8. In the event of inconsistency between the Code and MTA’s Constitution and Rules, the latter will prevail.

1.3 APPLICATION

The Code applies to all MTA members and has been enthusiastically embraced since its adoption in 1980.

Point four (4) of part 1 above, states “MTA members recognise that fair and genuine competition is fundamental to the service to which consumers are entitled” is the foundation on which all business transactions are conducted.

Members must provide a guarantee, as outlined in Clause 25 above and are obliged to compete fairly and openly with one another, neither hindering nor restricting the consumers unfettered right to select a repairer of their choice.

MTA is held in high esteem by industry participants, Government and consumers due to its longevity of establishment of operation. The Association has built a reputation of protecting the interest its members to ensure a fair and equitable trading environment.



The Association is also a founding member of the Motor Trades Association of Australia – the Federal body which draws together the MTAs' in all states and territories to represent the industry at a national level.

The MTA NSW has, for many years, extended an invitation to the insurance industry to discuss and resolve many industry issues on behalf of its Body Repair Division members. These discussions were generally fruitful and both parties (Insurers and Repairers) were, in the main, satisfied with the benefits delivered to the Policy Holders.

However, in recent times, and predominately since the demutualization of some insurance companies, these invitations have been rejected.

Despite our best efforts to re-open these channels of communication, there continues to be a reluctance on the part of the major insurers to engage in meaningful dialogue to address any issues that are raised, which, in the view of the repair industry, adversely affects Policy Holders.

There has been no forward progress; in fact, it appears that the industry has regressed since 1997.

In closing, the Association is pleased to be in a position to provide, on behalf of its Members and consumers, a submission to this long awaited Inquiry.

James McCall

Chief Executive Officer

October 2004



2.0 Summary of Issues

MTA NSW will focus its attention on the following industry issues; Contracts and Agreements including overseas trends, decline in the intake of Apprentices and the volume of Skilled Labour leaving the Industry and the necessity for the industry to abandon the current fictitious method of preparing repair estimates and introduce Real Time – Real Money.

MTA NSW will also reflect on the detrimental effects to other Industry participants, such as Dealer Parts Suppliers, Mechanical Repair Shops, Auto Electricians, Air Conditioning Mechanics, Wheel Alignment and Front end Specialist.

- **Contracts and Agreements**

MTA NSW will outline in summary a ASR contract, define differences between the Preferred Smash Repairer (PSR), the Associate Smash Repairer (ASR) and that of the Unknown Repairer (UR). We will also show the uniqueness of NSW with having a State Government and Industry recognised Licensing Body know as the Motor Vehicle Repair Industry Authority (MVRIA). Also touch on overseas trends and changes.

- **Employment- Apprenticeships and Skilled Labour;**

MTA NSW will provide evidence to clearly show that there has been a decline of Apprenticeship intake into the industry. We will also provide statistics showing the exodus of Skilled Labour from the industry due to stagnated salary structures (3).

The non-transferability of the Insurance contracts or agreements (clauses stipulated by Insurers) has limited employees' opportunities from purchasing an existing business, also making it difficult to start a new business venture because of the criteria restrictions imposed by the insurer's schemes.

- **Effect on other Industry Participants**

MTA NSW will show how the intense pressure, applied by the insurance companies to keep repair costs to a minimum, has adversely affected other industry participants. These industries segments have stagnated in growth, in some cases, businesses have down sized by reducing staff (3), and in other cases considerable financial losses have been experienced when smash repair shops have had to cease operations because they where no longer financially viable, having lost business due to Preferred Repairer Schemes.

- **Real Time – Real Money**

The issue of “funny time – funny money” was raised as a concern by the *Industry Commission* in their report into the “Vehicle and Recreational Marine Craft Repair and Insurance Industries” which was released in *March 1995*. To date, no attempt has been made to address this important issue or to follow the recommendations of that Industry Commission.

For more than thirty five (35) years the smash repair industry in Australia has been preparing quotations for accident damaged vehicles using a system commonly referred to as “funny time – funny money”. The past five years has seen a change in the attitude of the repair industry to adopt a more honest and open method of preparing a repair estimate in “Real Time – Real Money”, in line with the Commissions findings of 1995.



However, the insurance industry's unwillingness to change to a more *transparent* and *credible* method of preparing repair estimates raises major concerns.

3.0 Interest in this Inquiry

MTA's interest in this Inquiry arises from its responsibility to ensure that all members *and* their customers (being in this instance, insurance policy holders) are treated in a fair and equitable manner when dealing with insurance companies and that representation of automobile dealers, mechanical repairers and body repairers within NSW.

In preparing this submission MTA has sought the views of its Members.

Our interest is to ensure that those we represent are not being driven out of the market through increased pressure by insurance agencies to consistently reduce repair prices at the detriment of quality workmanship and consumer safety.

4.0 History of Inquiry

This Inquiry, for the most part, is the continuation of issues not yet resolved by either sector of the industry (insurers or repairers), going back to the recommendations made by the Commission into the "Vehicle and Recreational Marine Craft Repair and Insurance Industries" 1995.

The regretful message to this Commission is that this has come about again because of the lack of participation in discussion or negotiation by the Insurance Industry or their representing Association, the Insurance Council of Australia (ICA).

The above is evidenced by the current actions of the Insurance Industry and their poor response to the Commission's findings and recommendations of 1995. More recently, July of 2002 and October 2002, when the Australian Consumer and Competition Commission (ACCC) held a national conference of all parties concerned to arbitrate on similar issues to those referred to in the current "Terms of Reference".

The first meeting instigated by the ACCC was because of having received ongoing complaints by Consumers and the Repair Industry. The complaints raised, being the practises of the Insurers. It was apparent at the meeting that the Insurance Industry representatives having stated their position, clearly refused to discuss or negotiate neither a "Mutual National Code of Conduct" nor a *transparent* "Disputes Resolution" formula.

Since the October 2002 meeting, some Insurers have changed their methods, but in the main their methods and practises, in particular those of the Insurance Australia Group (IAG) and the AAMI Group, continue to raise concerns.

The IAG's practises increasingly make it more difficult for both the Consumer, as far as "*freedom of choice of repairer*" without being penalised, and the repairer having to sign an "*Agreement*" to participate at both levels of IAG's Repair Scheme, that is the Preferred Smash Repairer (PSR), Associated Smash Repairer (ASR) and if the repairer chooses not to sign a contract they are deemed to be Unknown Repairers (UR).

AAMI clearly do not give the Consumer a choice or an allowed participation in choosing the repairer or repair process.



All Insurers have introduced new Codes (that for the most part do not meet the recommended guidelines of the ACCC) and/or a PSR or Network Repairer Scheme.

The difficulties faced by both the Consumer and the Repair Industry and the complaints raised by both have been the catalyst for this new inquiry.

5.0 Contracts and Agreements:

5.1 Motor Vehicle Repair Industry Authority:

NSW has a unique advantage over other states in that we have a Repair Industry Licensing Authority which is controlled by the Motor Vehicle Repairers Act 1980. This authority issues licenses not only to TAFE certified individuals who have completed the necessary course, also and very importantly Licenses for repair shops. To obtain a repair shop license the work shop must provide the necessary equipment levels to meet today's repair requirements. The repair shop must also meet with State and Local Government statutory requirements, EPA compliance, Work Cover compliance certificates and employ licensed trades people.

The MVRIA has a clearly defined "*Dispute Resolution Process*" that is available to all consumers (including insurers). The evidence that the repair industry and the consumer have used this process is overwhelming. What is more overwhelming is that the last time an insurer used this independent body was in 1998.

Why? If the insurer lost control in the dispute (not holding the repairer to ransom to these "*Life Time Warranties*" as requested by them) what control would they have?

Statistics provided by the MVRIA indicate that there has been a slight decrease in the number of licensed smash repair shops in NSW over the last 5 years.

However, it should be understood that the vast majority of these shops carry dual licences; therefore the total number of licensed shops for 2004 is approximately 2100.

Year	Panel Beater	Vehicle Painter
2004	2,085	1,900
2003	2,160	2,045
2002	2,189	2,060
2001	2,253	2,108
2000	2,326	2,156

Ironically, most repairers will sign the agreement (even though they are aware that to do so will place the continued financial viability of their businesses in jeopardy *and* against the advice received from their legal advisors). Why? Because they know that IAG will declare them as "unknown repairers" to the repairers own customers and actively canvas those customers and, wherever possible, direct them to another repairer of the insurer's choice.

In essence, repairers believe that they have *no choice* but to sign these agreements, as *draconian* as they might be.



As stated, these contracts are issued on a “take it or leave it” basis with no room for negotiation

Complaints raised by our Members:

- I was not given enough time to read the contract.
- My Solicitor advised me to make changes but they would not accept changes.
- I was only given over night to read it.
- I have to give them a discounted Labour rate.
- I have to discount my invoices by 3-5% quarterly.
- I have to sign or I will not be able to fix my customers cars.
- In order to gain Gold status I have to sign a Business Plan.

5.2 AAMI Group;

AAMI operate what can best be described as a “Repair Management Centre”. The consumer, having had an accident, must, if the vehicle is drivable (that is to say the wheels are turning not necessarily acceptable under statutory roadworthiness requirements), deliver the vehicle to this centre. They are requested to leave the vehicle at the centre and take delivery of the vehicle from centre. It must be pointed out that this only occurs in the drivable or valet section and not the towed vehicle section. What should also be said is that approximately 80 to 90 percent of all claims are drivable.

The process then is that the Consumer is allocated a Claims Consultant, given a cab charge and sent on their way.

What happens next is what should raise concerns to the Commission:

1. The Consumer will not know who will be repairing their vehicle.
2. The AAMI will invite two repairers to write an Estimate on the damage.
3. The AAMI will then look at the more cost competitive (cheaper) Estimate and then proceed to make amendments to reduce the value of that Estimate.

AAMI will insist that they do not just pick the cheapest estimate but industry information clearly states otherwise.

The question here is: Is this truly competition amongst Repairers? Or is this a method used to control the cost of repair and then delete further value off the cost of repair?

While all this is happening the Consumer is unaware who is or where their vehicle is being repaired, or what is actually being completed on their vehicle apart from a generic overview.

How does this system create a Free Market Place and Competition for the Consumer to benefit, if the only Repairers who are estimating in the centre are Invitees only by way of agreement to AAMI?



5.3 Insurance Australia Group (IAG);

The IAG Preferred Repair Scheme is divided into three (3) categories:

1. Preferred Smash Repair; PSR
2. Associate Smash Repairer; ASR
3. Unknown Repairer; UR

This Scheme in particular which is now being rolled out nationally, is the scheme that is causing most concern to the industry. The Criteria itself is not clear the method of choosing or offering who does and does not receive PSR status, has often been sought but has never been forthcoming.

IAG then proceeds to further break down the status of the repair shop by again categorising the PSR Repair Network into four groups.

Gold, Silver, Bronze and Red:

5.4 Preferred Smash Repairer (PSR):

1. **PSR Gold:** This Repair facility can immediately commence repairs on a vehicle with a “blanket” Authority to Commence Repairs by arrangement with IAG. The estimate must be submitted when the repairs are approximately 75% complete. This does, by way of default, assist the consumer by allowing the repairer to commence repairs immediately.

The important issue to consider here is that the anecdotal evidence regarding the total number of PSR Gold level participants is not sufficient enough to provide the level of service as being promoted by IAG to the policy holder, the ACCC and the Commission.

Another advantage Gold PSR has over the lesser categorised PSR is that of their payment terms. The Gold PSR will receive their payment within 24 hours of IAG having received the repairers Tax Invoice.

1. **PSR Silver:** This Repair facility has the right to prepare an estimate, by dismantling the vehicle to completely (accident related area only), but may not commence repairs until it has been inspected through Online Repair Management (ORM) and *Authorised*. The Silver PSR payment terms are different from Gold PSR's in that their payment terms are up to 14 days of IAG having received the repairers Tax Invoice.
2. **PSR Bronze:** Anecdotal evidence would suggest that this is recognised as the step that leads to the “door out of the PSR scheme”. This Repair facility has the right to prepare an estimate by only partly dismantling the vehicle, but not commence repairs until such time as the repairs have been inspected via ORM or onsite inspection and authorised. This is a reflection of the Silver PSR however the payment terms differ here. The terms of payment to a Bronze PSR are up to 28 days from submitting a Tax Invoice.
3. **PSR Red:** This Repair facility has the right to quote a car without dismantling and wait for an inspection via ORM or onsite, then the authority to commence the repair may be issued. This could take as long as three days or more. The payment terms here average 28 days for processing of the submitted the Tax Invoice, let alone payment of the account.



Though it is recognised (but not admitted by IAG) that Bronze and red are the way out of the PSR Scheme, there has been no evidence to suggest that it has ever been used by the IAG as a method into the PSR scheme!

It is evident that the PRS schemes are predominately price driven with Gold, and in some cases, the top level Silver PSR categories are being subjected to pressure to continually reduce repair costs for the insurers benefit.

In the IAG Preferred scheme these Repairers are asked to commit in writing by submitting a "***Business Performance Plan***". These Business Plans are reviewed quarterly and the repairer is set a predetermined target (discount) to deliver a reduction in repair costs to IAG. This they have to achieve by the end of each review period.

These Business Performance Plans deal predominately with the method of repair to be used by the repairer, the type and source of component parts (in some cases non genuine aftermarket imported replica parts being the preferred choice of the IAG). The repairer has been put in a position of "***a take it or leave it***" attitude by the IAG.

Why? Because they are reviewed at the end of each quarter and being assessed as un-competitive (NOT CHEAP ENOUGH), they are told that they did not keep costs down by using the most cost efficient / effective (CHEAPEST) method of repair. They are told that they will be reviewed again within the quarterly period and that they must return this quarters targets (discounts) as well as achieving next quarters targets (Members can provide evidence).

The IAG then starts its aggressive approach to the Repairer with threats such as:

- We will have to bring in our consultant to help you achieve your targets.
- If you do not achieve target next time we will look at demoting your PSR status.
- If you continue not to achieve we will look at demoting you to an ASR (never known to have ever happened).

This is done in writing and is treated by the IAG as a "***Notice of Breach of Contract***". After three breaches they may demote your status or threatened the repairer with removal from the PSR Scheme.

5.5 Associate Smash Repairer (ASR):

1. ASR Gold: Though this category is not publicised it is common knowledge that it exists (Members can provide evidence). In this facility the method for completing work, falls somewhere into the categories between the Silver and Bronze PSR.
2. ASR: This repair facility has no more right than the level afforded to a Red PSR. Their payment terms can exceed in some instances up to 90 days (Members can provide evidence).

The ASR will inform the consumer prior to lodging their claim that the IAG Tele-Claim operator will endeavour to have them move the vehicle to a PSR. They will also inform the consumer of the method that will be used to do that, and that is to infer that the PSR will do a better job and give a Life Time Warranty etc.

The interesting point here is that both the PSR and the ASR agreements clear stipulate that the repairer must issue a Life Time Warranty.



5.6 Unknown Repairer (UR);

When dealing with this facility the consumer is left to their own devices “because” they chose not to take their vehicle to either a PSR nor an ASR, instead a repair shop that refused to sign a contract or was not offered a contract even though they had dealt with the IAG (NRMA) for many years prior to the introduction of such Schemes. In not being offered a contract the IAG state “you did not meet our criteria” however this shop to be there must have met all the necessary requirements as stated previously by the MVRIA.

The question here is: What are IAG’s criteria and what makes them more authoritative than that of the MVRIA licensing requirements?

At an Unknown Repairers work shop the IAG will assess the vehicle on site only, then they will take the quotation back to their office, no discussion or negotiation is entered into with the repair whilst at his premises. The assessor will then having returned to his office, do what is referred to as a “desktop assessment”. This desktop assessment is based on the average to repair such damage, (as having been inspected) according to IAG statistics and then “cash settle” the consumer.

6.0 PSR and ASR Contract Comparison;

IAG’s PSR and ASR agreement are virtually the same, with one notable exception-Clause 15 in the PSR agreement is not replicated in the ASR document. This clause relates to “Preferred Smash Repairer Sign” only

We will, for brevity’s sake, restrict our analysis to the “clauses” that cause the most problems for our members.

Terms in the PSR contracts which are defined in Clause 58, pages 24-29 inclusive, are numbered one number higher because of “clause 15” that does not appear in the ASR contract.

- Clause 3.1 (a), page 1-ASR required to “ensure all repairs are completed in a timely manner with minimal delays”. Neither “in a timely manner” or “minimal delays” are anywhere defined. These performance parameters will always be interpreted by IAG, in a manner favourable to IAG. Clause 3.1 (b) also refers to an ASR communicating with its staff, contractors etc “in a timely manner”- same problem!
- Clause 3.1 (e), page 2-ASR’s must not engage in conduct “likely to bring IAG or any “Joint Venturer or Distributor into disrepute” Again, there’s no definition of what constitutes “conduct likely to bring IAG... into disrepute” so IAG could deem anything they, or one of their Joint Venturers, don’t like as bringing them into disrepute!
- Clause 16, page 7-allows IAG to terminate the ASR Agreement by written notice immediately if, amongst other things, an ASR breaches Clause 3.1 (e).
- Clause 3.1 (k), page 2- Here an ASR is required to ensure that....(IAG) employees, agents and contractors (and employees from any IAG related



bodies corporate are treated “with courtesy and respect at all times”. How can this be measured objectively?

- Clause 5, page 3-The grey area here is, how can any ASR “ensure that any person who operates an Associated Towing Business” plus any employees, contractors or agents of such a business “comply with, amongst other provisions on the ASR Agreement, Clauses 3.1 (b), 3.1 (e) and 3.1 (k) not to mention “all Towing Law”?
- Clause 7, page 3-No IAG Insurer is under any obligation to observe or perform any of the obligations under a Repair Contract under which it is not the Authorising IAG Insurer i.e. the IAG Insurer providing written authorization to the ASR to carry out Smash Repair Work in respect to section 7.2 sub. Section (b).
- Clause 9, pages 4 and 5, relates to performance investigations-where IAG accesses an ASR as “uncompetitive”-(again undefined)! If IAG is of the belief an ASR is charging too much, they can activate this provision.
- Clause 10 relates to the allocation by IAG of Smash Repair Work via “recommendations” to their insured’s. As any such allocation is “in (IAG’s) absolute discretion, they might decide to give one ASR nothing at all-or very little work (particularly likely if they are perceived as uncooperative or does not abide by their requests) and another, a large volume of Smash Repair Work.
- Clause 11, pages 5 and 6-IAG can demand an ASR enter into a Repairer Performance Plan substantially in the form of Annexure B (or any other form they may notify in writing from time to time). This generally specifies performance targets an ASR finds difficult in achieving.
- Clause 12, page 6-IAG can specify “from time to time” the “standards” required of an ASR’s Premises, equipment etc. They could conceivably demand significant capital investment from an ASR to bring his place up to IAG’s lofty standards! These “standards” for the most part are already in place in the workshops because of “respective state” legislation and licensing. IAG’s intention here appears to be to “infer” possible promotion to PSR status
- Clause 12 (3) prohibits an ASR operating from premises other than the Premises without their prior written consent (which they say they won’t unreasonably withhold). This means an ASR can’t move business premises without getting IAG to agree in writing in advance. Clause 12.4 requires an ASR to give IAG 21 days written notice if it intends leasing or licensing or parting with possession of all or part of the ASR’s Premises.
- Clause 16.1, page 7-Any IAG Insurer can terminate the ASR Agreement at any time without having to give a reason by giving the ASR “not less than 30 days written notice”. According to Item 1 of Schedule 1, IAG Insurers are IAG, SGIO, SGIC, CGU and Mutual Community General Insurance. I can perhaps understand the Authorising IAG Insurer maybe wanting a right to terminate in certain circumstances (see Clause 7 comments above), but why the whole lot? In short, these other IAG Insurers want the right to terminate an ASR but



don't want to be liable to perform any of the obligations under a Repair Contract in which they are not the Authorising IAG Insurer!

- **Clause 16.2 (j), page 8-says that if an ASR breaches Clause 41 © or 48 if, in such a way as, “in IAG’s reasonable opinion”, make a Customer’s vehicle unsafe to drive. No comfort whatever should be derived from the words “in IAG’s reasonable opinion”. How can anyone prove IAG have acted unreasonably if, for instance, one of their Customer/Insured’s incorrectly blames a body repairer/ASR’s allegedly shoddy repair for causing, say, steering problems? Will IAG ever investigate their Customer’s allegations and (ever) come down on the ASR’s side? Clause 41 ©, page 16, requires that an ASR ensure all repairs meet acceptable industry standards of quality, and return the vehicle to at least its pre-accident condition (or as close as possible). Clause 48, page 20, relates to the standard of parts to be used by an ASR in effecting repairs. In this regard, have a look at Clause 54, page 22 (Rectifying Defective Workmanship or Materials)**
- **Clause 16.2 (m), page 8 Again a grey area in reference to “Joint and Severally Liable”. How can-and why should-any ASR assume responsibility for the criminal actions of an Associated Towing Business, its employees, company officers, shareholders, contractors and agents?**
- **Clause 16.2, page 8- Appears anti-competitive... This area is a clear indication were IAG uses “assertive/aggressive terminology” and phrasing to control the Repairers business and work flow.**
- **Clause 18, page 9-allows IAG to add or delete as many of the IAG Insurers listed in Schedule 1, Item 1 as they want by simply observing a few simple formalities and then notifying the ASR. In short, an ASR will never know for sure at the start of a contract who he’ll be dealing with at the end.**
- **Clause 22, page 12; this is an attempt at what is known in legal circles as a “force majeure” clause. These clauses are intended to cover situations where contractual performance is impeded by circumstances beyond a party’s control. The concept does not however operate to stop the payment of money e.g. moneys due to an ASR from IAG, and this Clause should reflect that situation**
- **Clause 24.3, page 12-ridiculous. Either this agreement-IAG’s agreement-is enforceable or it is not enforceable. No way would I warrant that it is. If for some reason it isn’t, they can still sue the ASR for warranting that it is!**
- **Clause 25, page 12-an indemnity clause-tough but probably not that unusual**
- **Clause 26, page 12-the assignment clause. Very important on sale of any Proprietors business. This will clear affect the “Goodwill” of any business if the contract is not transferable.**
- **Clause 28, page 14-no obligation to grant a new agreement following expiry or termination (whatever the reason)**
- **Clause 32, page 14-NSW law governs the agreement**



- **Clauses 40 to 57-Terms applicable to each Repair Contract-Many of these provisions are somewhat similar to those preceding Clause 40 but you should still examine them closely from an operational standpoint i.e. is this what should happen in running a successful body repair business? Clause 41.1 (ASR Obligations), 43 (IAG Preferred Suppliers), 46, page 19 (Maximum Charges), 48 (Standard of Parts to be Used in Repairs), 54 (Rectifying Defective Workmanship or Materials), 56 (IAG's Right to Terminate Repair Contracts) and 57 (Assignment of Repair Contracts) seem to me to be of particular significance. The "amble" in these clauses clearly place IAG in the position to dictate any outcome, basically "Total Control". **Attachments 1 & 2****

The above summary of IAG's contracts provides some insight into the assertive and aggressive terms and phrasing used by the IAG, in some case possibly being anti-competitive.

In looking at the processes that govern all repair facilities below Gold status PSR and the contract comparisons how does this scheme benefit the consumer? The process certainly does not allow for the immediate commencement of repairs nor does it benefit in level of service provided to the consumer as is promoted by the IAG to both this Commission and the ACCC. The distinct differences are that a PSR (Gold in particular) will be promoted through Tele-Claims at the time the Consumer lodges a claim, whereas the ASR will not be promoted and attempts will be made by Tele-Claims to steer the consumer to the PSR.

Repairers have become increasingly dependent upon Insurance Companies for their work, particularly since the removal of the Claim Form from circulation and the introduction of "electronic claims lodgement" as well as PSR schemes promoting the use of insurer contracted smash repairers.

The Commission should ask itself "what choice do repairers have?" but to abide by the insurers demands.

The biggest irony is that after having signed these Contracts or Agreements they are *not transferable*. Here again the Insurer has taken charge of the sale of the business by removing their contracted portion of the Goodwill from the sale of the business. Evidence in lobbying (to promote none licensing of assessors) the NSW State Parliament by IAG then known as NRMA Insurance, clearly stated that "the client belonged to the repairer".

The example being a Consumer can have 5 different Insurers that they choose to take up and insure with over a 20 year period, however during that time they will use the same repairer if they are satisfied with the level of service and quality that has been provided in the past, and now its seems only if permissible under their policy document.

It is important to realise that whilst the insurance industry is of the belief that "part of making a profit" is to budget for a reduction in expenditure (to reduce outgoings) by controlling costs, it is conceivable to suggest that the biggest expenditure in their budget forecasting is the repair industry.

The insurance industry is in the business of underwriting risk, that risk is to cover the asset (in this case a motor vehicle) the premium being determined by the type of asset and the drivers' ability.

We would suggest that while this fact remains and the insurance industry considers the repair industry as its greatest expense, rather than a necessity to fulfil the insurers obligations of underwriting risk, under the Insurance Contracts Act (to indemnify...), these "Preferred Repairer Schemes" must be interpreted as no more or less than a cost cutting



mechanism for the benefit of the insurance industry, rather than to provide a benefit to the consumer.

6.1 Life Time Warranties;

IAG's Tele-Claim staff had been instructed to use a specific transcript (Evidence AARA v IAG, Federal Court Sydney, February, 2004), to promote its PSR scheme. The evidence clearly identified (as given by Mr. P. Pemberton IAG's National Assessing Manager), that Tele-Claims operators had to promote the PSR contracted repairer by stating to the consumer that they would not provide a "Life Time Warranty" if they (the consumer) used their chosen repairer, in this instance, an ASR, even though both contracts stipulate that the repairer must offer a "Life Time Warranty".

This has been a contentious issue since having been introduced by IAG. The fact that the IAG is advertising "Life Time Warranty", and yet demand; "the repairer uses the most Cost effective (cheapest) method of repair" is ludicrous to say the least.

What is not recognised is that it is the repairer who is liable for the warranty and not the insurer. The insurer only covers warranty issues, if the repairer is no longer in business or the repairer feels the claim is unwarranted or not relevant to the initial repair.

The inference by the insurer in their advertising campaigns is that they and they alone will extend the "Life Time Warranty". This could be interpreted as being deceptive and misleading.

The fact that the IAG (after pressure bought to bare by both the recent court action and ACCC inquiries) have only recently stopped using this ploy to steer a consumer from an ASR to a PSR, having previously stated otherwise, should sound alarm bells with the authorities as to the intent of IAG.

The important point to remember is that the quality of repairs will suffer exponentially if the insurers continue to drive the industry in this direction!

7.0 Overseas Trends and Outcomes

Statements of "industry over supply", "rationalisation" or "global trends" will be included in other submissions. They may be correct to do so, but the trends they are talking about have been tried and are being dismantled as this Inquiry goes ahead. It has been proven they did not work in the long term. Consumers for the most part, followed by the repair industry, have suffered under these experimental practises.

Now because of complaints raised by both the consumer and the repairers in the United States (US), 46 of 52 states have introduced Anti-Steering Legislation, in summary

"The insurer can not direct by way of offering incentive or bonus a consumer to one facility, with out making that incentive or bonus available to all." Also further to that "an insurer can not hold an interest or have ownership of a repair facility and offer incentives or bonus to use that facility with out offering the same incentive or bonus to use another".

Submissions will probably state the over supply of repairers, those figures like ours are obtained from the same source. If those figures are dissected they will show that there is available for repair per repair shop nationally 37 (5035 repair shops and 9.7 million vehicles) vehicles per week of every year. In Australia because of geographical restraints we have less than 9% of the repair facilities that could handle that volume of repair production. The average repair facility in Australia will range in completion of vehicles repaired on a weekly basis, approximately 14-18 vehicles and as low as 09-12.



8.0 Employment - Apprenticeships and Skilled Labour

Although this inquiry is focussed on the Smash Repair and Insurance Industry; the Association will include in its submission, relevant documentation showing the adverse affect on other Industry participants, as stated in our summary.

The Association and its members have, for many years, been concerned with the number of skilled tradesmen leaving the industry, and, as importantly, the dramatic downturn in the engagement of apprentices to replace those same tradesmen.

The Associations affiliation with TAFE NSW, the Automotive Training Board nsw (ATBn), MVRIA and the Department of Education NSW has enabled us to track, together with the relevant affiliates, the decline in both Skilled Labour and Apprenticeship commencements coupled with Apprenticeship completion percentages.

The following information provided by the ATBn survey clearly identifies some of the “Reasons for the High Wastage Rates of Tradespeople in the Motor Vehicle Repair Industry” and TAFE NSW (TAFE) identifies the downturn in Apprenticeship engagement.

The key questions the survey aimed to address are as follows; Ref page 7.

- “What is the wastage rates from the industry? By age, region, place of employment.”
- “What is the nature of the industry? Size of employers, type of employers, number of apprentices.”
- “Why do skilled people leave? Are there geographical differences, differences by type of employer, age, etc.”

The Association members, for brevity, directed the Association to provide the complete document to the Commission. The purpose of this direction was to ensure that the Commission could examine the survey results in there entirety. Attachment 3

The following information provided by TAFE refers to Apprenticeship levels only. This information has been collated from 1990 up to and including 2004. Attachments 4 & 5

The graph show Apprenticeship enrolments, commencements and completions and indicates the dramatic downturn of apprentices completing their trade courses both in Panel Beating and in Vehicle Painting.

What is peculiar about this information, is that the downturn appears to coincide with the years IAG (NRMA) implemented schemes such as, 1997 - Repair Distribution Centre (RDC) in Wollongong, 1998 to 2000 - Competitive Partnering (CP) and currently – Preferred Repairer Schemes (PSR).

Although the graphs indicate enrolments, commencements and completions of apprenticeships, the main areas of concern are the commencements and completions due to the fact that enrolments may also include apprentices completing previous modules or students enrolling in “short courses”.



9.0 Effects on other Industry Participants

Apart from the information already provided regarding the exodus of skilled labour from the automotive industry and the downturn in apprenticeship completions, insurers, particularly IAG demonstrate an uncanny *arrogance* towards all other sectors of the industry.

The IAG, through their representative Mr A. Body, have implemented a “Preferred Supplier Network”.

Through this Network they are looking to continually add suppliers; currently IAG has in their Network Windscreen Suppliers, Auto Parts Suppliers (Recycled/Used), Radiator Suppliers, Sound System Suppliers, Air-conditioning Mechanics to list but a few.

Now the IAG, are calling for tenders to participate in their “supply chain management program”, they state that *“this could have a profound effect on the structure of the wholesale parts industry (new and recycled) in years to come)”*. They go on to say that the *“supply chain management has the potential to RATIONALISE the number of participants in each of the genuine parts, wholesale distribution channels”*.

This is another demonstration of IAG’s sinister intention to manipulate and take control of another sector of the Automotive Industry. **Attachment 6**

The IAG, in their PSR scheme demonstrate their authority to control the contracted repairers by insisting that they use “Preferred Supplies”. These arrangements have undermined the PSR’s ability to purchase goods and services from their traditional suppliers!

10.0 REAL TIME – REAL MONEY

The following has been prepared in a bid to enlighten *this* Commission as to the inadequacies of the current system of preparing repair estimates.

Earlier Commission inquiries have also identified these inadequacies. However, no genuine commitment has been made until by either party (repairers or insurers), to examine a viable alternative to this system.

It is reasonable to assume that insurers (and probably some repairers) consider the current system adequate.

10.1 HISTORY

For more than thirty five (35) years the smash repair industry in Australia has been preparing quotations for accident damaged vehicles using a system commonly referred to as “funny time – funny money”.

The system was introduced in the mid sixties and relies on quotations being prepared using a method of calculation based on an “agreed” charge-out rate (generally set by the insurer) and a repair time consisting of units of time made up of portions of a 60 minute (referred to by most insurers as “hours”) to arrive at an estimated cost of repairs and has,



until recently, been seen by both insurers and repairers to be an acceptable means by which to arrive at the repair price.

10.2 CURRENTLY

Repairers and work providers are in a vacuum with no apparent mechanism for change to address the inadequacies created by this outdated and farcical system.

The issue of “funny time – funny money” was raised as a concern by the Industry Commission in their report into the Vehicle and Recreational Marine Craft Repair and Insurance Industries which was released in March 1995.

On page sixty nine (69) of their Report the Commission stated:

“The use of “funny” time and hourly 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 upon which to develop business relationships. It also encourages repairers to engage in other practices which impair the relationship between repairers and insurers”

“Other practices” can be loosely defined as creative quoting, value adding and / or ghost repairs (i.e. repairs that are not really there) with both repairers and insurance company representatives being guilty of

Whilst “funny time – funny money” and “other practices” are employed as the basis to prepare repair quotations, there will always be reluctance on the part of the insurance industry to genuinely recognise the necessity to adequately compensate and remunerate repairers.

The Commission went on to say:

“Time and hourly rate schedules which are based on unrealistic times and rates of remuneration are not conducive to sound business practices. They encourage dishonest practices and undermine relationships between the insurance and repair industries. The current schedules should be abandoned. If time and hourly rate schedules are considered to be useful in preparing quotations they should reflect true times and costs”.

As can be seen by the above Commission comments, *the Industry* (repairers and insurers) *lacks credibility* whilst they persist in using the current schedules to prepare repair quotations.

This presents a major dilemma for the industry.

The only sensible answer to this dilemma is to **ABANDON** *funny time – funny money* and **REPLACE IT** with *true times and costs (real time – real money)* as recommended by the Commission.

In other words – Industry Reform



10.3 INDUSTRY REFORM – WHY?

Not only is a lack of industry *credibility* a major reason for reform, the continual insistence by insurers that each and every additional cost associated with a repairers business expenditure be absorbed into the current “hourly rate” requires immediate attention.

Many repairers are now considering leaving the industry due to the unrelenting pressure of conducting a profitable, compliant business. This may result in a “no win” situation for all parties concerned if a reduction in the industries capacity to provide a viable smash repair service is the ultimate outcome.

Insurers and repairers are somewhat dependant upon one another for survival. Both parties need to have long term viable businesses and equitable business relationships for the industry to not only survive, but to continue to provide high quality service to consumers. Therefore one part of the industry (insurers) can not grow and prosper at the expense of the other.

Reform can only be achieved by the realisation that the industry can no longer work under a fictitious system of quoting. It is ludicrous to suggest otherwise.

10.4 EXPENDITURE and PROFITABILITY

Insurers have, for their part, become increasingly efficient in their overall business practices, thereby reducing expenditure and improving their profitability. They have, where appropriate, reduced staffing levels, used electronic technology (internet communication, digital imaging, electronic / telephonic claims management etc) and other methods to achieve their goals. They have increasingly *shifted* some of their administration costs to repairers.

It is now incumbent on repairers who are determined to remain in the industry, providing high quality professional service, to seriously consider their own profitability.

To conduct a modern professional business, to-days repairers;

- Require the latest equipment;
- Must ensure technicians and administrative staff are adequately and continuously trained;
- Must comply with all relevant regulatory legislation; and
- Must ensure their business premises are professionally presented to consumers and insurers.

This necessitates considerable ongoing expenditure.

To further compound the expenditure problems, one only needs to add other statutory obligations such as Workers Compensation, Superannuation and Wage Increases etcetera to the above to realise “cost absorption” is no longer a viable proposition.

Repairers needed to, and have, created efficiencies in a bid to retain the profitability in their businesses. Unfortunately, that profitability is continually being eroded by the unwarranted demands to absorb business expenditure into the current “hourly rate”.



This situation can no longer continue if the industry is to provide a professional service to their customers (consumers and insurers), invest capital to purchase new equipment and facilities and ensure technicians receive training to the standard required to reinstate the damaged vehicles' structural integrity to that demanded by the vehicle manufacturer and relevant statutory authorities.

10.5 ACHIEVING REFORM

The first step in introducing any reform necessitates recognition, and an admission by all industry participants that the current system employed to prepare quotations is fundamentally flawed by way of using fictitious time and money to arrive at a repair price.

Under the current system, negotiated outcomes are often protracted and hostile with both parties (repairers and insurance company representatives) resorting to practices, which when analysed, could best be described as non professional.

It is often stated that neither repairers nor insurers would be able to come to terms with using true times and costs to prepare quotations. However, if one looks at the volume of third party claims being submitted (through third party recovery agents) where the total repair price is based on the actual (real) time to perform the repairs and the shop labour (real money) rate, then one can see that the system has already been accepted by both repairers and insurers and only needs to be expanded to cover all repairs.

It should also be noted that when mechanical, auto electrical or other non panel / paint repairs are performed for an insurance company, the quotation and remuneration are based on true times and money, including a mark-up for parts and materials supplied.

10.6 IMPLEMENTATION & COST

Initially there should be no appreciable increase in the amount of money paid by insurers for repairs, however when increases become applicable, they may be linked directly to the Consumer Price Index as is normal business practice in the majority of industries, including the insurance industry.

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.



There is no logical reason which could be espoused by industry participants to delay the implementation of using true times and real costs for preparing repair quotations / estimates.

10.7 SUMMARY

Integrity, honesty and transparency are the key ingredients required to ensure a sustainable, professional smash repair industry. The implementation of a true time – real cost method of preparing quotations / estimates will provide those ingredients.

IF THE INDUSTRY BELIEVES IT SHOULD BE TAKEN SERIOUSLY BY THE AUTHORITATIVE REGULATORS AND CONSUMERS, THEN THE INDUSTRY MUST EMBRACE THIS CONCEPT AND TAKE ALL STEPS NECESSARY TO ENSURE IT IS IMPLEMENTED AS A MATTER OF URGENCY.

11.0 Recommendations

MTA NSW supports the introduction of a *mandated* “National Code of Conduct”, as nothing less than a mandated Code would be adhered to by both the Insurance and Repair Industries. This, we believe, will be a true and effective way to a Free Market Place and Rationalisation of both industries where appropriate, with the Consumer reaping the benefits.

MTA NSW agrees that in an ever changing environment, with the emphasis on SAFTY being at the forefront and with the improved technology in the construction of today’s motor vehicles, including better braking and handling attributes, more stringent law enforcement, drought, road improvements and traffic flow controls, there has been a reduction in motor claims.

However, the rationalisation of an industry should be governed by those forces rather than “*insurer interference*”! That is why a *mandated* “National Code of Conduct” is imperative.