

Drawline Pty Ltd

Submission to the Productivity Commission: Smash Repair and Insurance Industry.

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Submission focus

This submission addresses aspects pertaining to 1.a.iv. 'any measures to ensure that non-preferred repairers are treated in a fair and reasonable manner and which improve overall transparency, competitiveness and consumer protection in the smash repair industry'. The submissions focus particularly addresses issues as outlined in 1.d. 'the extent, adequacy and independence of dispute resolution systems between the smash repair industry, insurance companies and consumers.

The main focus of this submission is directed at the practice of general principals of moral and ethical behaviour at senior levels within the insurance industry. It addresses aspects of internal governance; the process involving dispute resolution practices, and includes the present structure available for individual redress towards the outcome of individual grievance appeal processes and their effectiveness. The submission is structured around allegations of unethical practice, senior managements behaviour when grievances are brought to their attention, and inadequacies within dispute resolution systems. For validation purposes the submission is structured around a serious complaint directed towards a major insurance company

In the conclusions chapter this submission will put forward a summary of shortcomings and suggestions aimed at the improvement of internal corporate governance and the mechanical workings of dispute resolution practices within the insurance industry. It is submitted in hopeful anticipation that such ideas may benefit the Commission in its quest to enquire into the relationships and problems that exist between the collision repair industry, the smash repair industry, and stakeholders.

Confidentiality

In the interests of transparency and accountability this submission does not seek protection of any kind by claiming it should be tendered in confidence, in fact it is deemed as desirable that this submission should be placed on the public record.

Industry experience and background

The writer comes with extensive industry knowledge of the smash repair industry with some 38 years experience. The first 30 as a working panel beater and a proprietor of several businesses,

smash repairs, wrecking yards, and exchange plastic bumper and headlamp factories. The latter operated in three states. The last 8 years of activity have been in the training sector operating as a registered private provider, providing training to smash repairers at their own premises by delivering training associated with the upgrading of knowledge and skill in the practice of welding and repairing damaged automotive plastic components.

Training has been conducted in Qld, NSW, ACT, Vic, Tas, and SA. Some 140 smash repair shops with staff numbers in the region of 500 personnel have received tuition. The training has also been delivered to several TAFE institutions within 4 different states. This experience has afforded the writer with an inside understanding of the present state of the smash repair industry. This understanding comes not only by contact with a large cross section of smash repair proprietors, but one that is based on a wide geographical plane as well.

Insurance Industry ethical behaviour

During a 38-year period of industry experience, extensive contact with automotive insurers has from time to time been part and parcel of conducting business. Apart from the normal cut and thrust one expects during the normal course of doing business, the writer has found dealing with insurance companies an experience whereby, on the whole, they have conducted themselves with honesty and integrity.

During a period of several years, commerce entailed close contact with senior management of Australian Associated Motor Insurers (AAMI) within 4 states. The ethical conduct they displayed in all negotiations and dealings has been beyond approach, just as one should expect. Recent experience with Insurance Australia Group Limited (IAG) however has proven to be quite another matter

Alligations against Insurance Australia Group Limited (IAG).

I allege in this submission that IAG have conducted themselves in dealing with myself and my associated companies, Drawline Pty Ltd and Drawline Publishing Pty Ltd, in a manner that is well outside the spirit of the Trades Practice Act 1974. In particular I refer to SECT 51 AB Unconscionable conduct, SECT 51 AC Unconscionable conduct in business transactions, and SECT 53 False or misleading representations. IAG trading as NRMA have plagiarised

intellectual property they gained through negotiations carried out over a 9-month period in 1999, and used this information to formulate and undertake a commercial project. In doing so I allege they have contravened the Trade Practice Act by:

- Blatant abuse of copyright material
- plagiarised a specific marketing program and used it as if it were their own
- projected themselves as a philanthropic corporation by reproducing and distributing material protected by copyright as if it were their own, at no charge
- distributed the copyright material as their own in direct competition against the business of the copyright holder
- projected an image of caring for the environment by distributing material protected by copyright as if it were their own
- claimed to the HIH Royal Commission that they are the creators of a particular initiative, the sole purpose being to assist in enhancing their reputation in the eyes of the Commission, whilst knowing the work is a blatant copyright invasion

The writer also alleges whilst trading as NRMA, IAG have blatantly contravened the copyright Act 1968 Section 132 by selecting picture and text, inclusive with spelling errors, from a 2000 publication belonging to Drawline Publishing Pty Ltd titled The Plastics Fix. The NRMA reproduced the picture on the cover of their 2002 publication titled The Plastics Repair Index as well as the inclusion of text and spelling errors within the body of the work. Blatant copyright infringement by a corporation for profit can constitute a criminal act and is referred to by The Copyright Council, Information Sheet G 52 June 2001 (p. 3), as follows:

In some situations, a copyright infringement may amount to a criminal offence, in which case The Australian Federal Police could be notified. Criminal infringements generally involve the deliberate use of copyright material for commercial purposes.

Chronology of events

1. A training manual was conceived and written by myself in 1996 and called Automotive Industry School of Plastic Welding and Repair. The work comprised 104 pages of text and some 50 or so colour pictures of various repair techniques pertaining to automotive plastic welding and repairs. It was published and distributed from 1996 to 2000, covered by copyright and a copy deposited with the State Library of South Australia in keeping with the Libraries Act, 1982, section 3.5.

2. In February 1999, an expanded version of the Automotive industry school of Plastic welding and Repair Training Manual was written and presented as a Pasteup for correlation and presentation purposes. It was titled Plastic Welding and Repair Training Manual. Copyright notification is clearly stated on the title page as belonging to Drawline P/L
3. In early 1999, I phoned Mr Bill Blackhall, Manager Repair Industry Liasion NRMA, and outlined a business proposal. At Mr Blackhall's request, on 12 March 1999, I posted to Mr Blackhall an outline for the implementation of a specifically designed business plan for collision repair industry training based on the publication of the Paste-up of the plastic welding and repair training manual. Included in the correspondence was a copy of the Paste-up and a number of developed training resources.
4. The business proposal outlined in writing was structured around four significantly created aspects, all-reliant upon each other for the proposed projects success. They are as follows:
 - The publishing of a training manual specifically targeted at the collision repair industry to repair automotive plastics
 - NRMA to have naming rights on the cover
 - distribute the training manual to the collision repair industry free
 - follow up the distribution with a training package for panel beaters
5. At Mr Blackhall's invitation, I attended a meeting at the NRMA premises in Artarmon Sydney on 13 October 1999 to further discuss the business plan. Present at the meeting was Mr Blackhall, Mr Silvio Necco, and one other NRMA representative. The object of the meeting was a presentation by me for a training project to the collision repair industry that evolved around the specifically designed business plan and the publication of the Paste-up training manual. An outline of the financial benefits NRMA would derive from participation in the project were presented in writing and indicated savings of millions of dollars per annum to NRMA in automotive repair claim costs.

6. During a phone conversation with Mr Blackhall in early November 1999, he informed me with words to the effect that I had priced myself out of the market, I was too expensive, and they could pursue other options. During this conversation I drew to Mr Blackhall's attention with words to the effect that Drawline Pty Ltd was the copyright holder of the Paste-up training manual and training resources in his possession and requested he respect such copyrights. Mr Blackhall's replied with words to the effect that no copyright existed as the book had not been published. I assured him that copyright did exist.
7. Several days later I phoned Mr Necco and inquired if there was any possibility of Drawline continuing discussions about the Project. He informed me with words to the effect that NRMA would not do business with Drawline.
8. Upon reflection of all the phone conversations, faxes and correspondence that had taken place since March, a total of 9 months, I formed the view that the NRMA could choose to proceed with their own project based on Drawlines intellectual property, now that they were well armed with the information they had gleaned through the negotiations. With this in mind consideration was given to formally protecting Drawline's intellectual property from abuse.
9. On 11 November 1999, I instructed a solicitor, Mr Robert Brook, to write to NRMA, Mr Blackball, and inform him of Drawline's standing as a copyright holder. The correspondence requested that Mr Blackhall give written assurance that the copyrights would not be infringed or even threatened and to return all documents including the Paste-up manual to Drawline Pty Ltd. (Annexure A).
10. Mr Blackhall did return the manuals by return post with a communique in writing. Although the correspondence pointed out NRMA respect for Drawlines ability to offer training, the request in writing to assure Drawline that its copyrights would not be abused or even threatened was conspicuous by its absence. (Annexure B).
11. On the 10th of March 2000, Drawline Publishing Pty Ltd was incorporated for the purpose of publishing and marketing the paste-up. In May 2000 the manual was published and distributed for sale by Drawline Publishing Pty Ltd. It is titled The Plastics Fix.

12. In June 2000 I spoke to Mr Blackhall and told him of Drawlines publication The Plastics Fix. On behalf of the NRMA he ordered a copy, which was duly sent to the NRMA and invoiced.
13. On 4 April 2003, I saw for the first time a copy of a publication called the Plastic Repair Index a training manual published by the NRMA. Marking on the last page indicated it was published in February 2002
14. I immediately recognised a colour photograph on the cover of the NRMA Plastic Repair Index as one I had personally taken in 1996. This photo of damaged bumper bars has been reproduced from page 192 of the Drawline publication The Plastics Fix (the original artistic work). I also recognised text within the NRMA Plastic Repair Index (the reproduction) as copyright protected work, including some text complete with reproduced spelling errors.
15. A bibliographical research conducted by me revealed press and media releases that support the premise that the NRMA Plastic Repair Index (the reproduction) was a project that plagiarised my specifically designed business plan, referred to in clause 3, and one that was discussed in detail at the meeting on 13 October 1999 with NRMA.
16. The release of the Plastic Repair Index (the reproduction) by the NRMA was and is formulated around the four key business plan aspects designed by me and presented to the NRMA in writing in 1999 (Clause 4).

Particulars:

- The NRMA have published a training manual called The Plastic Repair Index (the reproduction) and targeted it at the collision repair industry to repair automotive plastics
- NRMA have naming rights on the cover
- NRMA distributed it to the collision repair industry free
- NRMA have followed up the distribution with a training package for panel beaters

The colour picture on the cover of the Plastic Repair Index (the reproduction) published in 2002 (Annexure C) is a reproduction of The Bumper Picture that appears on page 192 of the Drawline Publishing Pty Ltd publication titled The Plastics Fix (the original artistic work) published in 2000 (Annexure D).

The Bumper Picture on page 192 of The Plastics Fix (the original artistic work) is covered by copyright, a fact that is clearly marked on the Title Page of The Plastics Fix (the original artistic work). There is no referencing in the Plastics Repair Index (the reproduction) that acknowledges Drawline Publishing Pty Ltd as the copyright holder. The NRMA has never requested permission to use the business and marketing plan that was presented to it during 1999.

17. The NRMA chose to ignore Solicitor Brooks written notification in 1999 that copyrights existed, have plagiarized the afore mentioned business plan as the foundation for their The Plastic Repair Index project, have knowingly reproduced Drawline Publishing's copyright material without permission and in doing so have exercised a contemptuous disregard for the rights the author, Drawline Pty Ltd, and Drawline Publishing Pty Ltd.
18. A submission compiled by IAG was tendered to the HIH Royal Commission titled Appendices to Future Policy Directions Submission to the HIH Royal Commission. September 2002. It contains a reference to the Plastics Repair Index under the heading 'Advocacy: Insurance Australia undertakes a range of public advocacy work, which is aimed primarily risk mitigation. Major initiatives include: '... Plastic Repair Index- helping save the environment;' (p. 8).
19. The submission to HIH by IAG uses the Plastic Repair Index (the reproduction) to help support and project a favourable corporate image to the Royal Commission but does so without consideration to the law of copyright. The Plastic Repair Index (the reproduction) could not exist in its present form had the Plastic Fix (the original work) not been published. The major initiative claimed by Insurance Australia Group is in fact not theirs as it has been plagiarized along with copyright material belonging to Drawline Publishing Pty Ltd.

20. On 20 August 2003 Correspondence was sent to the CEO of Insurance Australia Group (IAG) Mr Michael Hawker drawing attention to alleged copyright infringements of photo and text in the NRMA publication the Plastic Repair Index (Annexure E)
21. 11 September 2003 I received from Mr Hawker a reply by fax denying any copyright infringement had occurred and the NRMA had produced its Plastic Repair Index without reference to any draft or final version of The Plastics Fix (Annexure F).
22. On 27 November 2003 I replied to Mr Hawker's fax. 11 Sep 2003. I asked how, if as he claims, no copyright infringement took place, did a reproduction of the colour photograph on page 192 of the Plastics Fix (the original artistic work) appear on the cover of the NRMA Plastic Repair Index (the reproduction). I also requested an explanation as to how a reproduction of text within the body of their Plastic Repair Index (the reproduction) appears word for word complete with spelling errors? (Annexure G).
23. On 1 Feb. 2004 the writer again requested a reply to correspondence dated 27 Nov. 2004, as no communication had been received. (Annexure H).
24. As at 9 July 2004, no communication had been received from Insurance Australia Group to the correspondence dated 27 Nov 2003 and 1 Feb. 2004.
25. On 9 July 2004 a Statement of Claim No SC 432 of 2004 was filed in the Supreme Court of the Australian Capital Territory between Drawline Publishing Pty Ltd, the Plaintiff, and Insurance Australia Group Limited (Formerly NRMA Ltd), the Defendant.

Summary of events

The implementation of the Plastic Repair Index Project has been a major national undertaking by IAG/NRMA. It has been acknowledged as such in correspondence, press releases, numerous web page promotions, trade magazines and the HIH Royal Commission. Senior personal within IAG who have heralded its release and progress include:

- Mr. Michael Hawker, IAG. Chief Executive Officer
- Rick Jackson, NRMA Insurance, Group Executive Personal Insurance.
- Tony Coleman, IAG Chief Risk Officer and Actuary
- Paul Pemberton, **NRMA** Claims and Assessing Manager
- Wayne Bums, IAG Head of Communications
- Theo Pittas, NRMA Competitive Partnering and Assessing Manager

The Plastic Repair Index has been cited by IAG in their Appendices to Future Policy Directions Submission to the HIH Royal Commission (September 2002 p. 8) by being listed amongst their major initiatives within their range of public advocacy work. This in itself raises the question of IAG's ethical conduct when consideration is given to the blatant copyright infringements within the work of the NRMA Plastic Repair Index. To validate this claim, one needs look no further than the picture on the cover, the reproduced copy from page 192 from within Drawline Publishing's publication The Plastics Fix.

Morality and ethical behaviour

IAG presents in their Appendices to Future Policy Directions Submission to the HIH Royal Commission a detailed account of the organizations corporate governance framework. It is extensive and is based on the principles of honesty, teamwork, meritocracy, transparency and social responsibility. (p. 42). These principals of moral and ethical behavior are held up to the community as the framework within which IAG conduct their affairs.

So strong are these beliefs held by IAG, that they go so far as recommending to the commission that JAG believes it can `... improve the industry and its governance, and enable it to address the concerns provoked by the HIH collapse.'(P. 3). This begs the question, are these principals subjected to the behavior of IAG senior management as well or do they work to a different set of moral and ethical standards? This submission puts forward the proposition that there is a difference between moral and ethical standards IAG presents publicly to those that are practiced within IAG's top management structure.

A critical analysis of the written response by Mr. Michael Hawker, the CEO of IAG, (Annexure F), to the initial notification of the grievance by Drawline Publishing Pty Ltd, (Annexure E), tests the proposition. The Hawker correspondence reveals that the allegations by Drawline were fully investigated and found to be without foundation. One needs look no further than the cover of the Plastic Repair Index to question the Hawker response. The following scenarios test the proposition in more depth.

Scenario 1

The Hawker correspondence states Drawlines grievances were viewed as being extremely serious and a *thorough* investigation was conducted. One presumes this would have taken the form of formally delegating the investigation to the appropriate department. The department would have conducted the investigation and reported back to Mr. Hawker who in turn, and acting prudently on the information within the report that exonerated IAG of any wrong doing, sent the reply explaining so. As a gesture of good faith, and in a friendly manner he also drew attention to section 2002 of the copyright act which addresses the dangers of unjustifiable threats for copyright infringement against an innocent party.

Scenario 2

Mr. Hawker viewed the complaint as one that was of an extremely serious nature and instigated a thorough investigation. When aspects of the complaint were found to be justified (the copied reproduction of the photo on the cover of the NRMA Plastic Repair Index, alone, would contest to that) a corporate decision was decided upon to deny any wrong-doing and threaten the complainant with possible action under section 202 of the Copyright Act, in hopeful anticipation that it would frighten the complainant off.

Scenario 3.

Mr. Hawker did not take the complaint seriously, did not have it fully investigated and decided on his own volition to deny everything and warn of legal action should the complainant persist. This scenario can be discounted on the premise that no CEO of a public company with a standing such as IAG would act in such a casual and reckless fashion.

Scenario 1 holds some credence, however, only until the correspondence from Drawline Publishing dated 27 Nov 2003 (Annexure G) is considered. It asks Mr. Hawker for justification of how, if the NRMA publication The Plastic Repair Index was produced without reference to any draft or final version of the Plastics Repair Index, did the color photograph on page 192 of the Plastics Fix appear on the cover of the NRMA Plastics Repair Index? Mr. Hawker chose to ignore the question and not communicate. This prompted a further request, correspondence dated 1 Feb 2004, (Annexure H) again to no avail, in fact, a response has never been received.

In view of the decision to ignore the two letters from Drawline Publishing requesting some form of justification for the decision that JAG has no case to answer, scenario 2 starts to hold some form of credence. The fact that a public company chooses to ignore correspondence pertaining to such a serious issue also tends to lend support to the proposition. Such conduct takes us to the very heart of this submission and questions the mechanics of grievance appeals processes within Insurance companies, in particular IAG.

IAG is now a colossus within the automotive insurance industry. The power exercised by IAG has become so predominant that it is dictating the shape and future direction the smash repair and insurance industries will take. The same senior management referred to in the examples above is implementing JAG doctrine. One can be excused for coming to the conclusion that the management uses the collective power inherent within IAG as a whole, as being vested within management itself. Absolute power corrupts absolutely [quote unknown]. This can give rise to actions with scant regard to principals of corporate law, and in this case, specifically the law of copyright.

Conclusions

The example of policy and procedures adopted by IAG that are detailed above show a lack of transparency in the methodology employed within their grievance appeal process. There was no evidence of a structured grievance appeals process, no encouragement of dialog to resolve the issue, and no redress available to question their decision. IAG adopted a draconian position that their decision is final and ignored a request for the review of evidence by adopting a policy of

ignoring the correspondence. In such a case the only step available to an aggrieved party with a genuine cause wishing to seek a resolution is litigation.

The prospect of litigation, as the only avenue left to pursue a grievance by an injured party, can be used as a formidable tool to ward off and bury a complaint. The step from being a complainant with a genuine grievance and receiving no satisfaction when the complaint is presented, to entering into litigation to resolve the issue is huge. Small business will almost always walk away from the issue rather than proceed. The chance of beating an insurance company at litigation is truly a David and Goliath struggle. Unless the complaint is absolutely watertight, a plaintiff cannot risk the process. Legal costs can break small business, in some cases, even if they win. The only form of protection for small business to overcome the obstacle of chequebook defense is transparency at the initial stages when the complaint is lodged. At present there is none.

There is danger within a system that allows the powerful to preside over complaints against them by the weak. IAG enjoy such a system as it offers them complete control of the grievance appeal process. This cherished position, inherent within self-regulation, is validated by IAG in their Future Policy Directions Submission to the HIH Royal Commission. Under the heading Corporate Governance Recommendation

Insurance Australia recommends that insurers, rather than regulators, demonstrably align their corporate governance frameworks to support and advance behavior and operations that are sustainable ... (P. 4)

Section3 deals with Corporate Governance, which is at the heart of a soundly operated sustainable business and is central to corporate self-regulation. Self-regulation needs to be in harmony with formal regulation promoting good business practices. (p. 36)

This submission contends that, given the details of the grievance outlined within this document, a foundation for a solid argument exists that senior management within IAG consider IAG policies and procedures are not necessarily guidelines that restrict their conduct. Managements conduct therefore demonstrates IAG does not practice its policy of `... being in harmony with formal regulation promoting good business practice'. This being the case, IAG has not demonstrated its ability to adjudicate over complaints brought against it in a way that, to use their own words `promotes good business practice'.

I submit the insurance industry should be monitored, in particular with reference to its ability to conduct any investigation of complaints against itself, by itself. There needs to be a third party, one that has no vested interest, with power to adjudicate over validated complaints against the practical application of policies and procedures stated by insurance companies. Small complainants should have a vehicle for redress between having a complaint dismissed by insurance companies with the use of their own self-regulating process. A process for external monitoring is required.

The Honorable Justice Owen Commissioner to the HIH Royal Commission in his summary of recommendations lists a raft of suggestions for the regulation of general insurers. Justice Owen holds the view that the Australian Prudential Regulation Authority (APRA) should be subject to extensive changes capable of addressing such issues and considers it '... a matter of urgency, a review of APRA's organisational structure. ... In particular, the review should consider the creation of a specialist team to take primary responsibility for the supervision of general insurers.' Justice Owen goes further by suggesting a development of '... a more sceptical, questioning and, where necessary, aggressive approach to its prudential supervision of general insurers.... '

Such an approach could include the monitoring of grievance appeals processes. Guidelines could be established that may require the registering of copies of formal grievances within an APRA register, whereby they can be monitored for action within a specified timeframe. APRA could also, as a last resort, act as a mediator. Another advantage of such a register would permit the correlation of like matters, a practice that could expose the development of a particular trend. At present there is no such monitoring or cross-referencing. This type of assistance would afford the weak an opportunity of being heard when their complaints fall on deaf ears. Most importantly, it would avail a grieved complainant some form of redress to counteract the practice of a chequebook defence.

This submission has cited a current example of the difficulties associated with lodgement of a grievance, and the problems associated with receiving a fair outcome from the most powerful automotive insurance company in Australia. The example demonstrates the one sidedness of such a process and suggests this is an issue worthy of the Productivity Commissions attention. To this end the writer will happily appear before the Commission should it be deemed helpful.