

Motor Trades Association Incorporated - New Zealand

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Smash Repair Inquiry Productivity Commission PO Box 80
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Motor Trade Association Incorporated ("MTA"):

Submission to Productivity Commission Smash Repair Inquiry 1

Introduction

- 1.1 Established in 1917, the MTA is New Zealand's largest association representing motor industry professionals. We have around 4,500 members representing all facets of the industry, from repair workshops, vehicle sales and service stations to specialists in alternative fuels and outdoor power equipment.
- 1.2 The MTA has two major objectives:
 - a. to help our members' businesses succeed; and
 - b. to protect the interests of our members and our members' customers (the motoring public).
- 1.3 To accomplish the first, we provide information to our members about technological developments and changes to the law that affect the industry. We also provide industry training (both technical and business) to increase the skill levels of our members to help them serve the public better. To fulfill our second objective, we act as a lobby group to Government and other agencies on behalf of motorists and our members. We comment on issues affecting our members, the motoring public, and small businesses generally in New Zealand.
- 1.4 Further to John Williams' email to Fleur Knowsley at Kensington Swan on 10 September 2004, we now provide this submission to the Productivity Commission Smash Repair Inquiry (the "Inquiry"). The aim of our submission is to:
 - a. briefly outline the situation in New Zealand;
 - b. to support the Inquiry in its investigation of these important issues; and
 - c. to encourage an examination of the issues raised in the Inquiry by New Zealand authorities.

1.5 In summary:

- a. The MTA supports the examination of the issues arising in the smash repair industry. In particular, the MTA considers that New Zealand authorities should undertake a similar study, drawing on the experiences in Australia.
- b. In New Zealand, the issues faced by smash repairers and consumers are *very* similar to those in Australia. Specific concerns have been raised by repairers with the MTA around pricing rates for labour hours, the presentation of 'take it or leave it' contracts by insurance companies and ineffective (or non-existent) dispute resolution procedures.
- c. The MTA believes that, in Australia, an industry code of practice (preferably mandatory but in the alternative, voluntary) could go a long way to addressing the concerns of smash repairers.¹ In addition, the ability to collectively bargain would help balance the power in the market. In New Zealand, similar measures should be implemented with the appropriate amendments to the Commerce Act 1986.
- d. Lack of transparent criteria for the 'preferred repairer' or 'preferred supplier' agreements is of significant concern and evidence from members reflects the relationship is less than balanced. Closed and non-transparent dealing between suppliers, repairers and insurance companies in the pricing of parts create an "underworld" repair sector that undermines the high standards, professionalism and ethics for the industry. In addition the sector will continue to lose further skills and be unable to train and meet standards. In turn the smash repair sector would become unprofitable, with little or no reinvestment.
- e. The MTA believes consumers are often denied a choice of repairer, which is a fundamental consumer right.
- f. The MTA believes that public safety is being compromised through vehicles being repaired to a substandard level due to pressures placed on repairers. In some circumstances vehicle repairs are being made where vehicles should be written off. "Take it or leave it" insurer contracts are already forcing collision repair and parts supply businesses to operate on margins that impact business effectiveness and efficiencies. Our members are reporting the effect of these contracts will compromise vehicle repair quality and vehicle safety over time as businesses struggle to survive on non-profitable margins.

2 Suggestions for Recommendations

- 2.1 In New Zealand, the relationship between insurers and smash repairers is outlined in a written contract. That contract may, however, include other documents such as a Motor Assessors Manual which contains further detail in relation to the assessment of vehicles and the process. These contracts are often presented as 'take it or leave it' contracts where there is no ability for the repairer to negotiate any of the terms and conditions of the contract. For example, one insurer recently sent contracts to repairers stating "If you wish to be a part of the new [] repairer network, you are requested to sign both copies...".
- 2.2 Insurers are unfairly using their market power in presenting these contracts to repairers and not entertaining any negotiation. This could be prevented by allowing repairers to negotiate collectively with the insurers. This would not significantly increase the red tape - in fact, it may even reduce it because insurers will not have to deal with so many individual repairers.

¹ Such as the Automotive Body Repair Industry (Fair Dealing) Code of Conduct proposed by the Victorian Automobile Chamber of Commerce.

- 2.3 In New Zealand, there is currently no vehicle for the government to implement or enforce an industry code of practice. The MTA believes that there should be provision in the Commerce Act 1986 for industry codes of practice to be developed and enforced as law in New Zealand. In this situation, a code of practice would operate to resolve many of the concerns of repairers, as the Franchising Code of Conduct has done for franchisees in Australia. In particular, specified dispute resolution procedures and information disclosure requirements would benefit all the parties involved.

3 Criteria for 'preferred smash repairer' Status

- 3.1 In New Zealand, there are equivalent schemes to the 'preferred smash repairer' ones. The MTA is aware of one insurance company who is actively developing their 'repairer network' and states that it is "a significant step towards building a sustainable relationship with the collision repair industry". One requirement of being a member of this network is that repairers are required to procure parts through a system established, owned and run by the insurer. This, in the view of the MTA, is likely to reduce competition in the market for part procurement and is an additional restriction on the freedom of repairers.
- 3.2 The MTA believes for the industry to function effectively (i.e. allowing for free and open competition and promoting consumer choice), the nature of the relationship between consumers, insurers and repairers needs to be transparent and free for negotiation. Any scheme(s) that restrict competition and consumer choice undermine the industry's efficiency. The contractual relationship between individual insurance companies and smash repairers should be negotiated on an individual and non-restrictive basis, unless collective bargaining is permitted. We are aware of repairer requests for insurer guideline criteria for these agreements that have been ignored by insurers. Our view is these should be standards-based and all repairers who meet requirements should be allowed access to that scheme.
- 3.3 The MTA believes the industry should record competencies and skills through some form of registration. Accordingly, recognition of training and experience to validate competencies related to consumer protection when dealing with public safety. The insurance industry could recognise this through a validation process.
- 3.4 Non-preferred repairers should not be adversely labelled or actively put-down by insurers or preferred repairers. Customers are being actively diverted from their repairer preference via directed comments from insurers indicating among various reasons that 'preferred' repairers have high quality standards when the reverse is often the case.

4 The Relationships between Smash Repairers and Insurance Companies

- 4.1 Insurance companies are large players in the market and in New Zealand the market has few, large players who have varying degrees of market power. The MTA estimates that the market shares in the motor vehicle insurance industry in New Zealand are:

IAG (State and NZI)	40%
Vero/Axiom	25%
Lumley	20%
AMI	10%
Others	5%

- 4.2 The condensed market leaves repairers open to misuse of market power in relation to the negotiation of repairer agreements and other matters such as payments and disputes.

- 4.3 One example of this is the labour rate in an agreement sent to repairers recently by one insurer. The agreement specified a \$38 labour rate (not negotiable) compared to a normal rate of \$45 for non-insurance jobs and the \$45 labour rate the repairer was receiving under the prior contract (this is a rural example and a small survey indicated normal non-insurer charge-out rates of around \$60). The new rate does not provide a fair rate of return to the repairer. However, because the insurance companies provide a large proportion (in some cases up to 70%) of a repairer's work, the repairer is trapped into accepting a lower rate, rather than not receive any of that insurer's work if they refuse to accept the rate.
- 4.4 Feedback from repairers indicated that these contracts have also escalated administration costs with many repairers conservatively reporting increases of around 10%. In addition, recovery of costs outside the agreement, but part of normal repairer business cost such as rubbish disposal, is disallowed.
- 4.5 The MTA believes that this kind of treatment of repairers is unacceptable and that measures, such as allowing collective negotiations, information disclosure procedures and a code of conduct (as proposed by the Victorian Automobile Chamber of Commerce) would assist in this area. Without intervention, standard of work will be compromised, public safety will be reduced, consumer choice and competition diminished, along with the consequences of an industry sector that goes into decline.
- 4.6 The MTA is willing to provide the Commission with further evidence and notes of specific repairer's experiences if required in the following areas:
- Repair quality
 - Vehicle safety
 - Burden of guarantees (in particular lifetime guarantees) affecting business economics
 - Timeframes for decisions on contracts/terms of payment
 - Declining workforce on minimal wages
 - Poor recruitment opportunities and equipment maintenance issues affecting safety.
- 4.7 The MTA is aware, however, that our members are sensitive to providing details of complaints or issues with the insurer or in the public arena for fear that insurance companies will react adversely against the individual concerned (and because they do not want to breach confidentiality clauses in current agreements). Repairers are in a vulnerable position, where if they do not speak out against the insurer they must continue to accept the terms and conditions set by the insurer, however, if they do speak out, they risk the consequences.
- 4.8 In order to protect its members, the MTA proposes to act as a third party gatherer and distributor of information, revised into generic statements so that the issues can be raised and addressed with insurers and government without individual repairers being at risk of adverse consequences. Some members may be willing to provide further details or appear in person, however, the MTA will not compromise its members or the viability of their businesses by asking them to do so.

5 Arrangements for Consumers to have Reasonable Choice in the Selection of Repairers

- 5.1 As stated in section 1, the MTA is concerned with protecting the interests of the motoring public along with its members and is therefore concerned about the flow-on effects from the treatment of repairers to consumers.

- 5.2 The MTA is concerned that consumers are not provided with a choice of smash repairer, which is a fundamental consumer right. Insurance companies and preferred repairer schemes effectively (if not explicitly) limit the ability of the consumer to freely choose who repairs their vehicle.
- 5.3 In addition, the public safety issue is crucial. If repairers are forced to accept a lower rate for their labour or a lower set number of hours for a job, this provides an incentive to do the job in a quicker and easier fashion, compromising the quality and thus safety of the job. In addition, some insurance companies require repairers to use cheaper and often less suitable parts and material. This is an unacceptable position and insurance companies, the industry and the government should be ensuring this does not occur.
- 5.4 The MTA believes there is considerable scope to clarify the relationship between the consumer and the repairer. In particular, any guarantee which is given and information in relation to the repairs. The MTA supports any measure that provides more information to consumers in relation to their insurance, repairs or ability to select a repairer. These measures would help maintain the consumers' ability to independently chose a repairer.

6 Dispute Resolution Systems

- 6.1 Most agreements between insurers and repairers contain a dispute resolution clause. On the face of it, this is a good outcome, allowing both parties access to negotiation, mediation and, if they are not successful, legal proceedings. However, given the disparity of size and financial strength between the insurer and the repairer, in a situation of negotiation or mediation, the repairer is likely to be forced into a settlement by the concern that they may lose business in the future. This is a further example of where insurance companies may exert their market power producing unfair outcomes. This may be through financial strength (i.e. the repairer may not be able to pursue the matter through to court so the insurer knows if they refuse to settle, the case will be dropped) or coercion into accepting the terms by a threat (even if unspoken) of losing work.
- 6.2 There should be a mandatory dispute resolution system in New Zealand (and Australia) which would allow fast, efficient and low cost access to justice for the parties to the dispute in a forum which gives all parties a fair opportunity to enforce their rights. The ideal situation would be the introduction of a mandatory code of practice for the smash repair industry which would contain dispute resolution procedures. We understand this has worked well for the franchising industry in Australia.

7 Conclusion

- 7.1 The New Zealand experience in the smash repair industry is very similar to that in Australia. Similar concerns have been raised in New Zealand as outlined in the ACCC Issues Paper² on this topic. In order to address the similar concerns, similar actions are required from within the industry and government.
- 7.2 The MTA would like the appropriate New Zealand authority to examine this issue along similar lines as the Productivity Commission is. No doubt, much could be drawn from the Australian experience in this regard. As a result, a code of practice or industry regulation should be implemented to address the issues raised in this submission and by the Inquiry.
- 7.3 We **attach** for your information and as further background to the New Zealand industry, as appendices to this letter:

² Australian Competition and Consumer Commission, Issues Paper, Discussion on the relationship between the Australian motor body/smash repairer industry and the general insurance sector, September 2003.

- a. An article from the New Zealand Herald by Graeme Pope: Cheap repair work a threat to safety, 22 September 2004;
 - b. A rebuttal article from the New Zealand Herald by Chris Ryan: Fly-by-night repairers forced out of business, 22 September 2004; and
 - c. An article from the National Business Review by Kate McLaughlin: AMI in bitter row over crash repairs, 8 October 2004.
- 7.4 The MTA is happy to provide this New Zealand perspective and looks forward to receiving a copy of the draft report in November.
- 7.5 Please do not hesitate to contact me if you would like to discuss this submission or require any further information.

Yours sincerely

Chief Executive Officer

Appendix One: *Graeme Pope: Cheap repair work a threat to safety*

New Zealand Herald Newspaper 22.09.2004 - COMMENT

A luxury car is normally the passion and pride of its owner. Most would expect that should something go wrong, workmanship will restore rather than devalue it. Sadly, that is not always the case because in the world of automotive repair what a car owner pays in insurance premiums and the quality they receive are two completely different things.

The gap between the price to insure a car and what the insurance companies pay for repair claims is growing wider each year.

The insurance industry is trying to "commoditise" car policies, a one-size-fits-all approach that might suit the owners of mid-priced Japanese cars but has major limitations for expensive or exotic vehicles. Nonetheless, last year insurers took a whopping \$968 million in car premiums, an increase of 42 per cent over five years.

Most owners of luxury cars probably do not know the full limitations of their policies. For example, some insurers have lists of preferred suppliers. A survey of insurance companies by Consumer magazine demonstrated this means that customers cannot choose where they go, or that if they opt for a non-preferred supplier, they will have to pay an extra amount.

This is designed to ensure that insurers can cut costs and commoditise car policies regardless of whether the quality of the work is substandard or from a repair shop not authorised by the carmaker.

The insurance industry does not benchmark the quality of repair work to anything but the need to ensure that the number and type of claims do not exceed the premiums. All that matters to it is that a car is repaired to a trade standard and the work is completed cheaply.

Late-model luxury cars are sophisticated in terms of technology and equipment. For example, the latest German cars are so advanced that unless taken to skilled repair shops they cannot be safely repaired.

The chassis on the new BMW 5 series requires specific machinery to straighten it properly if it is damaged. This cannot be done by a repair shop without the right equipment or trained staff. Similarly, some panels on late-model Mercedes contain magnesium and, therefore, must not have intense heat applied when repairing panel damage because of the danger of fire.

Accordingly, only highly skilled and authorised repair shops can do the work to the standard required by leading manufacturers. This means automotive businesses must invest considerable sums in training their staff to the carmakers' standards and buying the correct equipment to do repairs.

Yet if BMW or Mercedes owners tried telling their insurers what repair shops they wanted to use, their requests would often fall on deaf ears. Car owners have little say in the standard of repair work, and repair shops cannot speak to them directly to give them a choice. To do so could result in the insurers taking their business elsewhere.

It is commonplace for insurance assessors to apply pressure, and sometimes blatant coercion, to ensure a repair job is done cheaply. If a repairer is unwilling to compromise on quality standards to secure the job for the price demanded by the insurer, the work is taken elsewhere.

In a competitive market there is always someone who is willing to do a lesser, substandard job, even in some cases where this is potentially dangerous. In most instances, the car owner remains oblivious to how far insurance assessors will go to save costs, even if the work is not of a standard that anyone would ordinarily accept.

Bogging and other ways to "patch" repair vehicles are still carried out, particularly when the imperative of the insurers is to save money wherever possible.

Insurance assessors often strive to save as much cost as they can - even if this means a second-hand part is used, which is probably not always what the owner and the manufacturer might

reasonably have expected. If car owners did have a say in the matter, it is likely their view on what was a sufficient standard of repair would be markedly different from that of the insurance assessor.

The insurers are, however, in the more powerful bargaining position and they use their dominance to dictate when, how, and by whom a car is repaired. Their prevailing attitude appears to be that what car owners do not see cannot hurt them.

The British experience is a good example of what this country needs to avoid. The extreme cost-cutting by insurance companies there meant many repair shops went out of business. However, growing car ownership and the increasing number of accidents have left a shortage of repair shops. Effectively, the insurers have now ended up paying much more (which they pass onto their customers) than ever.

New Zealand needs to address the anomalies between the standards of repair, the premiums paid, and the lack of choice. More importantly, why should motorists finish up with a substandard repair that at best devalues their vehicle and at worst could cause loss of life because insurance assessors are unrealistically reducing costs to get a higher return for their shareholders?

Insurance assessors and companies should be accountable and provide car owners with choice of repairer, fair value and the highest standard of workmanship. This is only reasonable.

The time is overdue for insurers to stop foisting ongoing compromises of safety and standards on unsuspecting car owners in an effort to save costs.

* Graeme Pope is a panelbeater of 25 years' experience.

Appendix Two: *Chris Ryan*: Fly-by-night repairers forced out of business

New Zealand Herald Newspaper 22.09.2004 - COMMENT

Car owners in this country enjoy some of the lowest motor insurance rates in the Western world. We also have one of the most corruption-free of crash repair industries. And we have a regulatory system that requires cars to be safe at all times. They must be regularly inspected and repaired to minimum standards.

All this ensures our motor fleet is kept at the safest possible level for drivers and passengers.

Vehicle owners have a wide range of insurance companies. They have an extensive industry of brokers to help them to get the best possible deals, and direct-selling insurance companies have offices all over the country where experienced staff help people with policy details.

Prices for insurance have increased over the past five years at almost exactly the same rate as the amount insurers have paid out as a result of insurance claims on those vehicles. Insurance premiums last year were \$968 million, a 42 per cent increase from five years ago. But insurers paid an increase of 41 per cent over the same five years, a total of \$917 million. Premiums and claims have risen at almost the same rate. This is a result of strong competition between motor insurers in both pricing and service.

A key issue for insurers is a trusting relationship with crash repair agents who work on their behalf for the customer. In recent years insurers have identified a number of panelbeaters and other repair companies that do not meet the standards they require.

Insurers no longer work with substandard companies. This ensures that cars are safely repaired at all times, and put back on the road with speed, efficiency and cost-effectiveness. The insurance industry, having removed many of the fly-by-nighters from the industry, has begun building trusted relationships with repairers and customers.

Insurers need to operate with recognised repair networks for both commercial and legal compliance reasons. They need to be confident that repairers are adequately equipped and skilled to do varying types of smash repairs. Three-dimensional chassis alignment equipment and paint bake ovens are important for structural repairs and modern paint systems.

There is simply no point in insurers putting unsafe cars back on the road, because within a short time many are likely to be involved in an accident again. Using recognised and trusted repairers provide insurers with the security that repairs are safe and will provide customer satisfaction.

Any dissatisfaction will affect the insurer as well as the crash repairer. Insurers stake their reputation on smash repairers. A good and effective regulatory regime ensures cars that are placed back on the road are safe. Simply put, vehicle repairs must be undertaken safely.

The land transport safety repair rule requires that all vehicle repairs must meet "safe tolerance" and, in practice, requires repairs to be carried out to either manufacturers' repair specifications or the international repair specifications advised by Icar or Thatchem. It is highly unlikely an insurer would ever risk its reputation on an unsafe repair.

In addition, an unsafe repair would be a breach of the transport law. This applies also to late-model and state-of-the-art expensive vehicles.

Once again, there is simply no benefit whatsoever in insurers putting unsafe cars back on the road. Of course, insurers will try to negotiate the best price for repairing a car on behalf of their customer. If premiums rise too high, people will no longer insure and, after all, it is the insurer who is paying for the repairs.

Vehicle owners enjoy some of the lowest insurance rates in the Western world, even when discounting the compulsory bodily injury premiums that motorists in Australia, Europe, Britain and the United States must additionally pay. This is because the insurance industry here has remained efficient and effective.

The industry will not compromise safety and standards on unsuspecting car owners. It believes the time is now right for repair companies that are not up to standard to either get up to scratch or move out of the industry.

Cars are becoming more complex, more technologically advanced and require not only state-of-the-art insurance knowledge of them but state-of-the-art repair companies able to restore them to a safe standard. Those putting their trust in vehicles must have the maximum standards of safety.

On an inflation-adjusted basis, the insurance industry is charging almost exactly the same as it was five years ago and paying out almost exactly the same as it was five years ago.

The industry, however, is now coping with far more advanced motor vehicles, far more advanced technology and greater regulations ensuring the safety of cars on our roads. This is the true measure of success which the insurance industry has had in removing inadequate crash repairers from the industry, and ensuring that when you are insured and your car is repaired, it is done to the best-possible safety level.

* Chris Ryan is the chief executive of the Insurance Council.