



## Motor Trades Association of Australia

Commissioner Robert Fitzgerald  
Presiding Commissioner  
Smash Repair Inquiry  
Productivity Commission  
PO Box 80  
Belconnen ACT 2616  
email: smashrepair@pc.gov.au

Dear Commissioner Fitzgerald

The Motor Trades Association of Australia (MTAA) is the peak representative association for the whole of the retail motor trades in Australia. MTAA therefore has a significant interest in the Commission's Inquiry into Smash Repair and Insurance and has previously provided representation to the Commission as well as a substantial written submission. This supplementary submission is intended to build upon the commentary provided in the Association's earlier written submission in reflection of the preliminary findings of the Commission in its draft report on this matter. This supplementary submission is not intended to restate MTAA's position on matters already presented in its original written submission to the inquiry. Therefore the commentary below should be considered in conjunction with MTAA's original submission to this inquiry.

### **REFLECTION ON THE COMMISSION'S PRELIMINARY FINDINGS**

In principle, MTAA is pleased with the preliminary findings of the Productivity Commission as they tend to support MTAA's assertion that there are significant problems and difficulties currently besetting the relationship between insurers and smash repairers. While MTAA considers the approach the Commission has taken in its draft report is positive in its overall tone, the Association still believes that the Commission should strengthen its draft recommendations with a view to providing a robust framework which will secure even greater improvements in the relationship between insurers and smash repairers for the benefit of all in the sector, including consumers.

Below, MTAA has provided a response to the preliminary findings of the Commission and outlines those areas where MTAA believes the Commission should strengthen its recommendations and provides suggested solutions to the identified problems. This response has been framed in the format of the preliminary findings contained in the draft report.

## **INDUSTRY RATIONALISATION**

MTAA does not disagree with Commission's preliminary finding that "[O]ngoing rationalisation in the smash repair industry can be expected"<sup>1</sup>, however it reiterates that any rationalisation must be as a result of vigorous and vibrant competition within the industry rather than a result of commercial behaviour by the insurance industry. A competitive market will ultimately determine the size and nature of the industry.

Further, MTAA rejects the Commission's views of insurers' involvement in the rationalisation process, expressed as "... [rationalisation] reflects actions by insurers to reduce costs as a means of enhancing returns to their shareholders and reducing premiums for consumers..."<sup>2</sup>. While it is certainly true that insurers are forcing costs down in the smash repair industry through the use of unrealistically low labour and paint rates, there is no evidence of any flow-on benefit to consumers through reduced premiums; indeed, while insurers reduce the insured value of cars on an annual basis, insurance premiums typically either remain stable or increase. Furthermore, the Insurance Australia Group (IAG) recently argued, in a notification to the ACCC on its 'Choice of Repairer' Policy Option, that in its view choice of repairer increases the overall costs of repairing vehicles. It should be noted, however that as consumer choice has been eroded over the last decade there has been no apparent corresponding decrease in premiums to reflect the supposed cost saving made by insurance companies.

A competitive market should determine the cost of repairs and the viability of businesses, not the set prices or commercial behaviour of insurance companies, as in MTAA's view this does not deliver real, long-term benefits to the community.

## **PREFERRED SMASH REPAIRER (PSR) ARRANGEMENTS**

PSRs have become a major facet of the smash repair sector and are now a very important part of the ongoing viability of many smash repair businesses due to the quantity of work that these agreements deliver. On that basis, MTAA is strongly supportive of the Commission's preliminary findings that "[P]rovided probity and prudential requirements are met, PSR status should not be automatically terminated on sale or transfer of a repair business. Allowing a short trial period with a new owner would enhance repairer certainty without undue risk to the insurer"<sup>3</sup>. The automatic loss of PSR status is neither appropriate in contractual fairness terms nor beneficial to the sector as a whole, as it results in lower levels of business confidence, which in turn leads to lower levels of business investment and reinvestment in plant, machinery and skills. There is no rational argument for the automatic loss of PSR status and MTAA is pleased that the Commission is supportive of this view. In addition, on the issue of a 'short trial period', MTAA believes that that trial period should be for a minimum of six months from the time the new owner takes full control of the business. This should be introduced with the continuation of the original PSR agreement's benchmarks. If the new owner can

---

<sup>1</sup> Productivity Commission. Smash Repair and Insurance Draft Report (November 2004). Pp. XXXII.

<sup>2</sup> *Ibid.* Pp. XXXII.

<sup>3</sup> *Ibid.* Pp. XXXII.

demonstrate that the benchmarks have been met or surpassed, the PSR agreement should stand. Where a disagreement on the discontinuation of a PSR agreement between an insurer and repairer occurs, the matter should be dealt with promptly by the dispute resolution process established under the code of conduct.

MTAA is pleased that the Commission recognises that the “[S]election or non-selection for PSR status and removal or modifications of such status can have a significant effect on a repairer’s business”<sup>4</sup>. There is a substantive argument for greater transparency in the way that insurers operate their PSR schemes to improve the relationship between smash repairers and insurers.

In its original submission, MTAA did not canvass or advocate for the need for nationally agreed smash repairer criteria as we recognise that insurers are entitled to establish their criteria based upon their individual business and insurance profiles. However, having discussed this matter further MTAA believes that it is appropriate to establish in the code of conduct a set of minimum standards to apply across all PSR networks. MTAA would be pleased to assist in the development of such a minimum set of standards.

Furthermore, MTAA does advocate that every insurer, operating a PSR scheme, should make public their specific criteria for selection of PSRs. This is simply a matter of transparency in the way that insurers operate their PSR schemes and MTAA is not advocating that the criteria must be standard across all insurers. MTAA recommends that the Commission should require every insurer operating a PSR scheme to make public the specific selection criteria required for obtaining PSR status.

MTAA supports the Commission’s preliminary finding that “[W]hen consumers take out a new policy, or make a claim, the provisions about the use of parts should be clearly and objectively explained”<sup>5</sup>. It has been a long held principle of MTAA that all relevant and important aspects pertaining to the sale of goods or services should be provided in clear, precise plain English to consumers. In addition, MTAA supports insurers carrying the financial burden for their lifetime guarantees and agrees that it is reasonable that repairers carry the warranty burden for the quality of the repair work they undertake in accordance with statutory requirements and timeframes.

MTAA also believes that the Commission should recognise and reflect in its findings that there are alternate PSR schemes operating through third-parties; as in for example the case of MotorCare. This model operates with MotorCare as a contracted third-party between the insurer and repairer. In effect, MotorCare replaces the insurer as the customer in the relationship with the repairer and takes a commission for the work undertaken. MTAA believes that this business model should be included in the Commission’s findings to ensure that this is not used as a loophole by insurers to circumvent the Commission’s recommendations.

---

<sup>4</sup> *Ibid.* Pp. XXXII.

<sup>5</sup> *Ibid.* Pp. XXXII.

Finally, the Commission should recognise throughout its findings that there is a power imbalance between insurers and repairers. Due to the difference in market power between the two sectors, the Commission must ensure this is appropriately reflected in its findings, in particular to promote greater equity between the two sectors.

#### **FINANCIAL AND COMMERCIAL RELATIONSHIPS**

MTAA is extremely pleased that the Commission has found that “...*the hourly rates currently paid by insurers for repair work do not reflect repairers’ costs*”<sup>6</sup>. In MTAA’s view this is an important recognition that insurers have not been allowing repairers to recoup the reasonable costs of repairs. The Commission’s preliminary recommendation that ‘real time, real money’ should replace the current system of ‘funny time, funny money’ will allow for greater competition to enter the market. The current system of ‘funny time, funny money’ has negatively impacted on the market by setting unrealistically low labour and paint rates across the entire sector, which has the potential to reduce the quality of repairs and has not benefited consumers through a decrease in policy premiums as none have been forthcoming. Instead, the introduction of ‘real time, real money’ will enable competitive quoting to occur which will drive competition in the market; leading to improved efficiency, innovation and productivity levels for the benefit of all stakeholders. However, for ‘real time, real money’ to be introduced and adopted effectively insurers must ensure that their quoting systems are fair and equitable and be on a ‘like for like’ basis. Furthermore, this principle should be included in the code of conduct. Insurer quotation forms for example, which refer to quotes for ‘repair/replace’ are not conducive to obtaining ‘like for like’ quotes. In addition it should be noted that in some instances full and accurate quotes cannot be provided without dismantling the vehicle.

MTAA is pleased to see that the Commission has recommended that “...*a repairer should only be required to guarantee the work it actually performs and then only for an agreed reasonable time. Further, it [a smash repairer] should not be required to guarantee parts for a period longer than the part manufacture’s own warranty*”<sup>7</sup>. MTAA has consistently argued that it is unreasonable for insurers to expect smash repairers to carry the financial burden of lifetime warranties, far beyond anything provided for in statute and is pleased that the Commission has supported this view.

#### **CHOICE FOR CONSUMERS**

MTAA is disappointed that the Commission did not recognise the arguments put forward in its original submission regarding the need for consumer choice of repairer. MTAA and its Members remain firmly of the view that consumers should be offered “choice” and that that should be mandated. While MTAA believes that insurance companies should be entitled to establish a network of recommended repairers, they should not be able to steer customers to those repairers to the exclusion of other competent and qualified repairers; as is currently the case. As identified in our original submission, the majority of the states in America have now adopted anti-

---

<sup>6</sup> *Ibid.* Pp. XXXIII.

<sup>7</sup> *Ibid.* Pp. XXXIII.

steering legislation to prevent this exact situation from occurring. In addition, it is critical in terms of providing information to the marketplace, that insurers be forthright in informing consumers about the level of choice contained in their policies; including for example the option of “no choice” and this should be explicitly stated at the time of a policy being signed.

With regard to the argument put forward by insurers that choice of repairer will result in increased costs for insurers and consumers MTAA remains of the view that this is an unsustainable argument. For many years Australian policyholders were responsible for selecting their preferred repairers and obtaining quotes. However, over the last decade the insurance industry has sought to remove consumers’ rights in this area, with no apparent reduction in premiums. This is despite insurers arguing that choice increases costs. Thus, *ipso facto*, ‘no choice’ should reduce premiums. MTAA believes that it is appropriate for consumer choice of repairer to be mandated. However if this is unacceptable to the Commission, insurers should be required to reduce premiums where policies do not offer choice in line with the costs savings that they claim to have made through the removal of choice.

#### **DISPUTE RESOLUTION AND CODES OF CONDUCT**

MTAA welcomes the recommendation in the Commission’s draft report that the serious issues of dispute between insurers and repairers be resolved through an industry-wide code of conduct. As both the Association and the Commission have noted, one of the findings of the 1995 Industry Commission Inquiry was that there be a code of conduct for the smash repair sector. That recommendation was strongly supported by MTAA and its Members and it has been a source of some frustration to both smash repairers and their Associations that the insurers have been unwilling to enter into negotiations about a code. In recognition of the Commission’s draft report findings and to facilitate timely progression of this matter, on 30 November 2004, MTAA invited the Insurance Council of Australia (ICA) to meet to hold preliminary discussions on a voluntary industry-wide code of conduct. A response was received from the ICA on 28 January 2005 indicating that it is willing to meet to commence preliminary discussions on a voluntary, industry-wide code of conduct. This is a positive first step, however more discussion is required.

This further recommendation by the Commission that the parties enter into a code of conduct is therefore again strongly supported by MTAA and its Member Associations. The Association’s preference is for a mandated code, but MTAA is willing, as is recommended by the Commission, to enter into negotiations with the insurers for an industry-wide voluntary code of conduct. MTAA would though make the point that while it may be possible to negotiate the terms of a voluntary code with insurance companies, such a code will only ‘work’ if the individual insurance companies commit to complying with the terms of the code.

MTAA notes that the Commission’s draft report proposes that if the parties “*cannot agree on an industry-wide code within a specified reasonable time, the Commission’s preliminary view is that a code should be mandated under the provisions of the Trade Practices Act*”<sup>8</sup>. MTAA would like to offer a couple of

---

<sup>8</sup> Productivity Commission. Smash Repair and Insurance Draft Report (November 2004). Pp XXXV.

comments on that view. The first is that that Association does not oppose that approach. The second is that in saying that however, the Association believes that the Commission should recommend a specific timeframe for the negotiation of a voluntary code and after which time the Government would be asked to mandate a code. MTAA believes that it would be appropriate for the Commission to recommend that negotiations start immediately following the tabling of the Commission's final report with the Government and that a suitable maximum period for negotiation of a voluntary code would be that negotiations be finalised by 30 September 2005 with a commencement date of 1 January 2006.

MTAA believes that such a tight timeframe is appropriate, given that no progress has been made towards the introduction of a voluntary code in the past decade and that its smash repairer members do not wish to see another substantial period of time pass before a code (voluntary or mandatory) comes into effect.

MTAA has of course previously provided to the Commission a copy of its proposed code for the insurance and smash repair sectors.

In relation to the matters which the Commission is proposing should (or should not) be covered by a code, as set out at page xxix of the Draft Report Overview, MTAA would like to suggest that the Commission consider the following comments on the issues that the Commission is proposing an industry-wide code would not include. They are provisions relating to the following issues:

- *times to consider PSR contract offers:* MTAA believes that it is appropriate that any industry-wide (or for that matter, individual insurance company) code contains provisions relating to a period repairers have to consider PSR contract offers. The preferred smash repairer agreements that MTAA has sighted are, in terms of the language and the format used, very much like franchise agreements. The decision of a smash repairer to accept or not accept an offer of a PSR agreement from an insurance company is likely to be one which will have a major impact on the repairers business and is therefore a decision which would require careful consideration. The Franchising Code of Conduct stipulates certain timeframes in relation to the period for consideration of a franchise agreement and also provides for a cooling-off period once an agreement has been signed. MTAA believes that clauses similar to clauses 10 (Franchisor obligations) and 13 (Cooling off period) of the Franchising Code of Conduct be included in an industry-wide code between insurers and smash repairers. It may well be argued that a fundamental difference between a franchise agreement and a PSR agreement is that generally franchisees pay a significant franchise fee and smash repairers on entering into a PSR agreement do not. While at present that is the case, the fact remains that the decision about accepting (or not) a PSR agreement is one which repairers should not be pressured into making in an unreasonable timeframe. To avoid such a circumstance MTAA believes that it would be appropriate for an industry-wide code to include provisions relating to the timeframe repairers are given to consider PSR contracts and to include a provision providing a cooling-off period.

- *minimum hourly rates and prices:* MTAA agrees with the Commission that it is not appropriate that an industry-wide code contain provisions relating to minimum hourly rates and prices.
- *standard hours:* MTAA agrees with the Commission that it is not appropriate that an industry-wide code contain provisions relating to standard hours. However, MTAA notes that there are international companies who produce guides on repair times for insurance companies and repairers and if the Commission finds that it is necessary to have such information available for particular smash repair processes, MTAA believes that it should be available on a national basis.
- *types of parts to be used:* MTAA is of the view that while an industry-wide code should not necessarily stipulate the type of parts to be used in the repair of a damaged vehicle, insurers should be required by the code to disclose their respective policies on the types of parts that are to be used in repair work. MTAA believes that it is incumbent on insurers that such information should be disclosed to the repairer (and particularly in PSR agreements) and to insureds in their policies in plain English.
- *weightings for PSR selection criteria:* Generally speaking MTAA agrees with the Commission's position on this matter. However, the Association believes that it is extremely important that each insurance company has clearly defined selection criteria in respect of its PSR arrangements. It is also imperative that those criteria are disclosed and known to all repairers.
- *prescribed consumer choice:* MTAA notes that the Commission believes that an industry-wide code should not make the offering of choice of repairer mandatory *per se*. MTAA believes however, that choice of repairer should be mandated. The subtle removal of choice of repairer has and will continue to change the structure of the market as it alters the value of repair businesses depending on whether they are PSRs or not. Furthermore, the Commission should also note that legislating choice is not unheard of and has recently been introduced into the superannuation market.

In addition to mandating choice, MTAA believes that the code should require insurers to disclose the details of their product with regard to the application of choice at the start of their policy disclosure statements including the process that will be followed in the event of a claim, in plain English.

In relation to the issue of choice of repairer a copy of the MTAA earlier submission on the 'choice of repairer' offering by IAG is attached for the convenience of Commissioners.

- *terms of payment:* MTAA notes that the Commission believes that payment terms should not be a matter for inclusion in an industry-wide code. While MTAA does not advocate that the Code should mandate payment terms for all insurers it should require that insurers disclose to repairers what their payment arrangements will be. The Franchising Code of Conduct requires franchisors to disclose to franchisees the details of payments that the franchisee will be required to make to the franchisor and in the case of smash repairers and

insurance companies we do not think it unreasonable that repairers are made aware of the payment terms of insurance companies. Many repairers are of course reliant on the payments received from insurance companies to enable them to pay wages and other business operating costs.

- *particular conditions of guarantees:* As noted earlier in this submission, where insurance companies choose to offer insureds 'lifetime warranties' on repair work the costs of that arrangement should be carried by the insurer. In MTAA's view repairers cannot be required to provide anything more in terms of warranty than is required by statute. If an insurance company chooses to provide to insureds a 'lifetime' or other warranty on repair work then it should disclose, for reasons of transparency, to the repairer the terms of that warranty and note that it is provided (to the extent that it is more than what the repairer is required to provide under statute) at the insurer's cost. In addition, where an insurer overrules the repairer by altering the method of repair to a vehicle, MTAA believes that the insurer should carry the full liability for this decision and a written indemnity should be provided to the repairer.

MTAA believes that one of the basic tenets of an industry code is that of pre-contractual disclosure. It is essential that prior to entering into any PSR agreement, repairers are fully aware, and have had time to fully consider, all of the aspects of the business relationship

MTAA has no objection to the matters identified by the Commission as being suitable for inclusion in an industry-wide code (page xxix of the Draft Report). In relation to dispute resolution mechanisms some issues however do need to be carefully considered. Generally MTAA agrees that an industry-wide code should not address dispute matters which are currently being addressed through the IEC process. Thus consumer disputes with insurers should continue to be dealt with by the IEC arrangements. MTAA also agrees that disputes between repairers and insureds are able to be addressed through existing arrangements; be they with the assistance of repairers' representative associations, consumer affairs/fair trading offices or other avenues.

It is imperative however that an industry-wide code provide a mechanism for repairers to resolve any disputes that they may have with insurers and to be able to do so quickly. The Franchising Code of Conduct (FCC) requires that all franchisors have an appropriate internal dispute resolution process and the Code itself sets out a process for resolving disputes. A similar model could be adopted for the smash repair sector. However some changes would be required for it to provide a truly workable model for the smash repair sector.

The FCC model contains a number of timeframes for the various stages in the alternative dispute resolution process and while MTAA believes that it is very important that alternative dispute resolution processes have set timeframes, those timeframes are clearly inappropriate for dealing with a dispute between an insurance company and a repairer about a quotation for repair work. Such disputes need to be resolved within days (not weeks or months) and preferably within hours. Insureds cannot be expected to endure lengthy delays in the repair of their vehicles because of a dispute that may arise between repairer and insurer about an aspect of the



quote for repair or the repair process. Such disputes must be resolved as quickly and as cost-effectively as possible and the dispute resolution mechanism in the code needs to recognise and provide for that; MTAA believes that the dispute resolution timeframes presented in the 'Automotive Body Repair Industry (Fair Dealing) Code of Conduct' attached to MTAA's original submission are reasonable; this includes the appointment of an Independent Assessor for a quotation dispute within 48 hours, and a written determination made within a further 48 hours.

On the question of administration and compliance costs of a voluntary or mandatory industry-wide code of conduct, MTAA's only experience is with the mandatory FCC. MTAA is aware that in its review of the FCC in 2000, the Franchising Policy Council found that "*...on balance, the costs of compliance under the Franchising Code of Conduct do not outweigh the benefits that the mandatory Code provides to the industry*"<sup>9</sup>.

MTAA accepts that there would be some initial and on-going compliance costs for insurers associated with introduction of a code of conduct. However, in MTAA's view greater disclosure and transparency in the relationship between insurers and repairers, including the various PSR arrangements, is likely to benefit both parties and contribute over time to a better and more productive relationship between the parties.

MTAA is aware that improvements in digital and computing technology have opened up new avenues for both insurers and repairers in communication and quotation arrangements. Improvements in technology can often lead to more efficient and productive business arrangements. However, MTAA is concerned that in recent times some technology is being used by one insurer to effectively exclude other than its preferred repairers from quoting for vehicle repairs. The use of such internet based technology can become a 'barrier to entry' for repairers who do not have access to the necessary 'log-on' codes – and will undoubtedly lead to a further rationalisation of the market. MTAA would again make the point that market size and structure is not a matter which should be determined by insurance companies.

#### **SUMMARY AND CONCLUDING REMARKS**

In general terms, MTAA is pleased with the direction of the Commission's preliminary findings but believes that in some areas the Commission's recommendations could be strengthened. To address these areas, MTAA has presented informed discussion of the issues and rational and appropriate recommendations on improvements that can be made. These recommendations have been summarised below and MTAA recommends that the Commission amend its preliminary findings to include them.

1. Every insurer operating a PSR scheme should make public their specific criteria for selection of PSRs

---

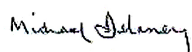
<sup>9</sup> Franchising Policy Council. Review of the Franchising Code of Conduct. May 2000  
[<http://www.industry.gov.au/assets/documents/itrinternet/ReviewofFCoC.pdf>] January, 2005

2. Consumer choice of repairer should be mandated to ensure stability in the structure of the market and value of individual smash repair businesses; if this is not acceptable to the Commission, a reduction in policy premiums to reflect the removal of choice by some insurers over the past decade should be required
3. Voluntary industry-wide code of conduct
  - a. a deadline for the finalisation of negotiations be 30 September 2005 with a commencement date of 1 January 2006 – otherwise a code be mandated; and
  - b. included in the code of conduct should be the following:
    - i. include provisions relating to the timeframe repairers are given to consider PSR contracts and provision for a 'cooling-off' period;
    - ii. insurers should be required by the code to disclose in plain English, to both repairers and consumers, their respective policies on the types of parts that are to be used in repair work;
    - iii. choice of repairer should be mandated and product disclosure statements relating to the repair and claims process be presented in plain English;
    - iv. the Code should mandate that all insurers disclose to repairers their payment arrangements; and
    - v. a dispute resolution model for smash repairers and insurers, that provides a mechanism for the timely and cost effective resolution of disputes between insurers and repairers. A dispute resolution model has already been presented to the Commission in MTAA's original submission.

Finally, it is recommended that the Commission acknowledge in its discussion and findings the imbalance of market power between the large insurers and the smaller smash repairers. This distinct imbalance places repairers at a disadvantage in their dealings with insurers regarding all facets of their business relationship making it difficult for an individual repairer to seek to address these concerns with insurance companies, as insurance companies often control the future of the repairer's business.

This is the rationale behind the establishment of a code of conduct to provide equity to the relationship and to provide protection to both insurers and repairers for the benefit of consumers.

Yours sincerely



**Michael Delaney**  
Executive Director

January 2005