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Motor Trades Association of Queensland

Submission to the Productivity Commission Inquiry

Into

The relationship between the Australian Motor Vehicle Smash  
Repair Industry and the Motor Vehicle Insurance Industry

Submitted by: The Motor Trades Association of Queensland

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## 1.0 Overview

The smash repair industry is faced with the issue that insurance companies are placing increased pressure on motor body repairer's commercial operations whilst at the same time subjugating the consumer's right of choice with respect to the repairer of their motor vehicle in the event of a damage claim.

From the motor body repair industry's perspective, this creates the dangerous precedent where the majority of their business comes from one or two major insurance companies, creating a forced dependence on the insurance companies, eroding profits and forcing the industry into a position of labour and services provision companies and not actual motor body repairers for the owner of the vehicle.

From the owners perspective it creates a situation where they do not believe, or are not made aware, that they have a choice of repairer for their vehicle. Major insurance companies practice mass assessment where the damaged vehicle is taken to an assessing centre and the insurance company chooses the repairer and takes control of transporting the vehicle and organising the repairs.

For the consumer, whilst on the surface this represents a strong convenience of not having to worry about having their vehicle repaired, however, there exist many underlying issues that consumers have not been made aware of with this process.

This submission is aimed at highlighting the issues and recommending various courses of action in order to change industry focus and countering the pressure on the industry enforced by insurance companies.

### 1.1 Background and scope of submission

#### 1.1.1 Previous Inquiry

The 1995 Industry Commission into the Vehicle and Recreational Marine Craft Repair and Insurance Industries comprehensively examined many issues surrounding the repair and insurance industries. It also examined the towing industry, vehicle theft and compulsory third party property damage insurance.

#### 1.1.2 Matters to be examined

The scope of this submission is limited to the relationships between repairers, insurers and consumers and the issues associated with the current arrangements.

#### 1.1.3 Key recommendations from previous inquiry

The 1995 Industry Commission Inquiry determined that considerable tension between vehicle insurance and repair industries detracted from the performance of both sectors.

Thirty-one recommendations were made, only four of which fell within the Commonwealth's jurisdiction, and that the remainder were most appropriately addressed by the respective States or the industries themselves.

It would appear that very few (if any) of the recommendations made by the previous Commission have been acted upon by Government or industry. VACC, MTA-Q, MTA-NSW and other industry associations have been proactive in attempts to have the previous recommendation in relation to an industry code of conduct implemented, however insurance companies have been resistant to implementation of such a code.

#### 1.1.4 Hopes for this inquiry

Repairers trust that the Commission will re-identify previously recognised issues in relation to the industry and make similar recommendations for improvement to the relationships between repairers and insurers.

The MTA-Q anticipates that further pressure will be brought on insurers to adhere to an industry code of conduct that will address issues and concerns raised by members (repairers) and participants to this Commission Inquiry.

### 1.2 MTA-Q Structure and its Members

#### 1.2.1 What is MTA-Q

The Motor Trades Association of Queensland (MTA-Q) is an industry association, or registered union of employers that has been operating since 1929. The MTA-Q is based in Brisbane (with regional offices in Rockhampton and Townsville) whose State-wide operations are affiliated with counterparts in other States and Territories. The MTA-Q is a member of the Motor Trades Association of Australia (MTAA).

#### 1.2.2 Industry sectors represented and member numbers

The MTA-Q represents a variety of automotive industry sectors and comprises over 2500 members and locations throughout Queensland. The sectors represented include:

- Automotive air-conditioning repairers
- Automotive dismantlers
- Auto electricians
- Brake and exhaust repairers
- Engine reconditioners
- Farm machinery dealers
- Mechanical repairers
- Motor body repairers
- Motorcycle dealers
- Motor vehicle sales (new and used)
- Radiator repairers
- Rental vehicle operators
- Service station operators
- Tyre dealers and re-treaders
- Tow truck operators

## 2.0 The industry in Queensland

### 2.1 Crash repair market in Queensland

The number of motor vehicle accidents in Queensland annually is difficult to ascertain due to the following:

- Accidents where total damage is less than \$2500 are not required to be reported by law
- For commercial confidence reasons, insurers are reluctant to share or aggregate information on the total number of claims
- There exist a significant number of motor vehicle repairs that are either performed on uninsured vehicles, or the owner does not wish to make a claim, making them difficult to account for
- The majority of research data available concentrates on personal injury and fatality and disregards incidents not involving injury or criminal conduct

The following is a summary of collated data:

- 2.28 million vehicles in Queensland
- Approximately 220,000 motor vehicle repairs per annum
- 82% of vehicles involved in reported crashes required motor body repairs
- 60% of crashes occurred in South East Queensland, 42% in Brisbane metro area
- 300 motor body repairers in Brisbane, 650 in Queensland
- Accidents represent the major cause of motor body repair but other sources exist, such as storm (hail) and incidental damage. There is little research on this phenomena and difficult to account for.

#### 2.2.1 Competition, market forces and rationalisation of industry

With respect to the issue the competitive forces currently operating the environment are coming from several directions:

- Insurance companies competing for customers
- Other motor body repair businesses

Insurance companies have gone to great lengths to replace the position of the motor body repairer in the mind of the consumer and have achieved a high level of success to date. Consumers now rely mostly on the direction of their insurance company when choosing a repairer and with larger insurer's; the insurer controls the whole repair process, directing the work wherever they please.

Motor body repairers represent competition, but do not possess the resources or common voice to challenge the control of the insurance companies and compete ruthlessly with each other, eroding much of the profit from the industry and forcing smaller competitors to the wall.

Rationalisation of the industry has taken place in recent years with business owners joining forces to create bigger repair facilities in an effort to remain economically viable. Processes have been implemented to increase productivity and efficiency in an effort to

maintain profit margins. Business owners have sought assistance from material suppliers, professional consultants and industry associations in this process; however, feel that there is nothing further they can do to improve profitability without receiving higher remuneration for work performed.

#### 2.2.2 Estimated number of repairers

As previously mentioned, the estimated number of repairers in Queensland is 650, with 300 of those in the Brisbane metro area. This is down from some 850 repairers in 1999.

#### 2.2.3 Insurer / Repairer / Consumer relations

Historically, insurance policies provided that the insurer would authorise the repair of the motor vehicle rather than pay an agreed amount to the consumer for the cost of the repairs. These policies also allowed the consumer to seek authorisation / approval from the insurer to commence repairs after obtaining several quotations including one from a preferred repairer.

Insurers vary in the level of choice offered to their customers. Customers under a number of regimes retain the choice of where they want the vehicle to be repaired. Many insurance companies recommend the services of their own preferred repairers. The introduction of valet repair services, where the insurer takes delivery of the damaged vehicle and arranges its repair without the consumer being required to go through the quoting process is generally seen as a benefit to consumers especially when this process involves the assessment of the vehicle once the work has been completed. Repairers believe that the quoting process is complicated and lacks transparency; in fact repairers believe that decisions are often made arbitrarily and in some cases in a remedial or unpredictable manner.

Repairers have stated that the insurers discriminate against those consumers who wish to have repairs carried out by the repairer of their choice, particularly when that repairer is not a member of a 'preferred repair' system. Repairers have stated that in these circumstances the insurers will reportedly pay only the amount provided for in the lowest quote for the work. Other disincentives include the risk of policy cancellation and the disadvantages associated with cash settlements.

Insurers claim that as the consumer enters into a contract for insurance (policy) with the insurer then that consumer is the customer of the insurer. The insurer then subcontracts the work of vehicle repair to a smash repairer, of whom the insurer is in turn a client.

Repairers claim that over a period of years they may develop a relationship with one or a connected group of customers (families, businesses or word of mouth recommendations) who remain loyal to or bring work to the repairer for a number of reasons. The removal of the ability for the policyholder to choose their own repairer means that the repairer loses this return business. Repairers have stated that the telephone scripts used by insurers seek to steer consumers to repairers who are part of a preferred repairer network. The steering away of consumers by insurers is a central concern of repairers.



Having put forward these points it must also be noted that Queensland is fortunate to not have the market dominance of IAG as is the case in the southern States. Suncorp is by far the dominant insurer, followed by RACQ, AAMI, Allianz and NRMA. The major insurers in Queensland generally allow consumer freedom of choice when selecting a repairer; however the Association has received reports of all major insurers attempting to influence consumers when it comes to selecting a repairer post accident. The examples of these incidents are provided subsequently in this submission.

### 3.0 The appropriateness and transparency of criteria used by insurance companies to confer 'preferred smash repairer' status on smash repairers

#### 3.1 The transparency with which such status is conferred on (and removed from) individual repairers

##### 3.1.1 Preferred repairer schemes

There is a current trend within the insurance industry towards implementing preferred, approved or associate smash repairer schemes, sometimes referred to as 'badged' repairers. Where insurers have established such schemes, the general criteria for determining which repairer will be granted a 'preferred', 'selected' or 'associate' status is reported by insurers as being:

- repair quality
- customer service (including facilities for customers)
- average repair costs
- current relationship with insurer
- capability and competence
- identified need in a particular area
- presentation of business premises
- equipment levels
- processes / production management
- workplace health & safety and environmental compliance

Insurers have stated that the criteria for selection as part of a 'preferred repairer' scheme also includes whether or not the insurer requires a repairer in that particular geographical location. Selection is also contingent upon whether or not a commercial relationship can be developed or maintained between the insurer and the repairer (i.e. the willingness of a repairer to sign a contract).

The feedback received by members indicates that some repairers are understanding of the criteria employed by insurers to confer 'selected repairer' status, however repairers also believe that average repair costs are irrelevant as this figure can vary greatly depending on the volume of work and the nature (size) of the jobs being performed by a particular business.

There are advantages and disadvantages to 'preferred repairer' schemes to repairers and consumers alike. The main advantage to repairers is a steady workflow but with

this comes increased administration costs, the provision of 'lifetime warranties' and pressure to turn the vehicle around within seven days (or as quickly as possible). Also, the expense of capital investment in the form of constantly upgrading equipment in line with new manufacturing techniques for no extra return negatively affects repairers. Other on-costs that are required at an insurer's behest in relation to administration and customer service are not included in the hourly rate of remuneration.

Repairers outside a 'preferred repairer' network struggle to maintain their existing customer base due to insurer influence of policyholders. Evidence received indicates that insurers inform policyholders that if they take the vehicle to a repairer outside their own 'preferred repairer' network then the repairs will not be guaranteed. This inference leads the consumer to believe that a 'non-approved' repairer will perform repairs to an inferior quality standard. The issues of warranties are covered elsewhere in this submission.

Exit from 'preferred repairer' schemes can be executed by either party (repairer or insurer) on varying terms. The attached IAG contract contains the terms under which IAG may terminate a contract. Also attached is an example of a Brisbane based repairer that had his 'approved repairer' status revoked by AAMI despite meeting targets in relation to quality and turn around times. This repairer enlisted the assistance of the Association in his negotiations with AAMI and attached are copies of the correspondence exchanged in relation to this incident. The outcome of this incident has resulted in this repairer losing a large proportion of his work and has necessitated the dismissal of staff in order to remain economically viable. This was despite the repairer's offers to do whatever was necessary in order to retain his 'approved repairer' sign. Whilst AAMI did reduce this repairer's volume of work progressively in order to allow the repairer time to supplement the loss in other ways, the fact remains that the agreement was terminated without virtuous grounds.

### 3.1.2 Transparency of selection of preferred repairers

Repairers claim that the processes for determining preferred repairer status lack transparency and accountability. Repairers express concerns that some insurers have not clearly specified what requirements must be met to attain the preferred repairer status, nor are there any clear processes to assess applicants against any such criteria.

In Queensland, RACQ Insurance is in the process of restructuring its 'Selected Repairer' scheme and has consulted MTA-Q and asked for input in relation to the selection criteria to be employed. This is in direct contrast to IAG and the selection of its 'Preferred Smash Repairers' in Queensland. Despite having numerous members request assistance in their dealings with IAG, IAG refused to acknowledge the Association as an industry representative and would not respond to correspondence sent to it by the Association.

### 3.1.3 Preferred repairer contracts

Such was the onerous nature of the aforementioned IAG contracts that were offered to Queensland repairers, the Association warned members not to enter into any agreement without receiving independent legal advice. The Motor Trades Association

of Australia (MTAA) wrote to the Australian Competition and Consumer Commission in relation to the inequitable nature of the IAG contracts whilst the MTA-Q sent correspondence to the Queensland Fair Trading Minister in relation to the contracts and the introduction of an industry code of conduct.

#### 3.1.4 Supply of parts and sublet arrangements

Information received indicates that parts margins have been progressively eroded. This has been confirmed by RACQ Insurance who informed the Association that a previously allowed 4% margin on new parts will be removed (with effect 01 October 2004) and 'given back' to the repairers in the form of an increased 'weld on panel' rate (from \$25 to \$32.25 per hour) and a percentage of labour (2.7%) allowed for consumables. Comparative exercises performed by repairers in relation to this would seem to indicate that this will further erode profit margins and mean further losses.

Insurers also request copies of parts invoices from repairers in order to substantiate the price invoiced to the insurer. This results in increased costs (photocopying, faxing etc.) with no return for this outlay.

Sublet repairs are generally authorised without adjustment as other automotive businesses (mechanics / suspension specialists, tyre fitters etc.) will not negotiate price. Insurers pay up to \$120 per hour for these businesses to perform mechanical repairs without question. Despite this, the Association has been provided examples of insurers refusing to pay more than a set price for a particular service. For example, a vehicle that has been involved in a collision often requires repairs that cannot be undertaken by the smash repairer, i.e. air-conditioning system re-gas, wheel alignments, suspension repair etc. Insurance companies will often only pay the minimum charge that they can receive that particular service for. Insurers know that suppliers will charge (for arguments sake) \$70.00 for an air-con re-gas. Insurers will then expect to pay repairers no more than \$70.00 for this service, regardless of vehicle make, model or the physical location of the panel shop. The same situation is relevant to the other previously mentioned sub-let repairs. Insurers stop short of Third Line Forcing breaches by not forcing repairers to use certain suppliers however, the MTA-Q is of the opinion that insurers appear to exert undue influence. Surely a margin on top of the sub-let repair should be allowed for associated handling and transportation of the vehicle to and from the supplier's place of business. Some insurers allow no margin. It would appear that Insurers will not take into consideration the complexity or extenuating circumstances of a certain vehicle when assessing a quote prepared by a smash repairer.

### 3.2 Measures to ensure that market arrangements, including 'preferred smash repairer' status, do not compromise quality and safety

#### 3.2.1 Protection of consumer's investment

As technology improves and vehicle prices continue to rise consumers are outlaying more money to purchase motor vehicles. The repair of these vehicles should not be attempted by a repairer without qualifications and experience with that particular make

of vehicle, especially some European models. Manufacturers accredit body repairers that are proficient in repairing their particular marque; however this is often irrelevant to an insurer in the advent of a claim.

### 3.2.2 Method and appropriateness of repairs

Along with the increasing technology of motor vehicles come new materials that are used in the manufacturing process such as boron steel, magnesium and aluminium. Boron steel is used for certain panels on a range of late model European vehicles (including Holden Vectra), due to its much higher strength than standard steel for the same weight and thickness. However this material does require a range of specialist equipment and skills in order for repairs to be completed effectively. The use of conventional repair techniques on boron steel can result in the weakening of the structural strength of the vehicle, sometimes significantly. There have been concerns expressed that repairers without the equipment required to repair these products are attempting to repair such vehicles anyway, often due to an insurer authorising the work despite knowing the repairer does not have either the equipment or the expertise to do so.

### 3.2.3 Insurer directives on repair methods

The Association has received information to indicate that insurance assessors will direct repairers to perform repairs that contradict manufacturers' specifications and suggested repair techniques. In one example provided by a member, the disagreement with the insurance assessor resulted in a lot of wasted time, however the repairer would not compromise on quality and refused to relent to the assessors badgering for an inferior quality repair to be carried out. In this instance the vehicle owner had been referred to our member via the manufacturer dealership for the repair of their less than twelve month old Honda CRV. Assessors direct repairers to take 'short cuts' in order to save money on repair costs all the while fully aware that it is the repairer that carries the guarantee on the quality of repairs.

### 3.2.4 Use of genuine and parallel parts

The issue of parts replacement can be a complex issue. Insurers instruct repairers to use parallel parts to save on costs; however repairers argue that non-genuine parts suffer from inferior quality in relation to finish and 'fit'. Many hours can be spent refurbishing the part to ensure quality standards are met, meaning that the mark-up allowance dictated by insurers disappears. Repairers also contest that imported, non-genuine parts do not comply with Australian Design Rules and in the worst cases may affect the safety and /or structural integrity of a vehicle.

As a rule, insurers will only instruct repairers to use non genuine or second hand parts once the vehicle is outside any manufacturers warranty period; however there still remains the onus of responsibility of the repairer to warrant the repairs for the 'lifetime' of the vehicle.

### 3.2.5 Use of second hand parts

The use of second hand parts is a cost minimising method used by many insurers. Repairers claim that often a large amount of time is spent repairing the panel or part prior to fitment as wreckers or parts dismantlers verbally exaggerate the condition of the part before sending it. This means any allowable margin (again dictated by insurers) that may have been profit to the repairer has evaporated due to the extra time taken ensuring the part is of suitable quality for fitment.

The other major issue in relation to second hand panels / parts is the failure of insurers to disclose to consumers when second hand parts have been used in the repair of a vehicle. Some repairers will inform consumers when insurers direct the use of second hand parts, which will often result in the repairer receiving a less than favourable response from the consumer. Insurers indemnify themselves from this by including such terms in the fine print of an insurance contract. Insurers have long accused repairers of using second hand parts whilst charging the insurer for a new part. This practice may have occurred infrequently in the past however, as repairers now have to substantiate the fitment of all parts with copies of invoices to insurers, it is unlikely that it still occurs.

#### 3.2.6 Access to intellectual property

Whilst it is well and good to put forward the opinion that all vehicles should be repaired according to manufacturer's specifications, this is impossible to achieve if the manufacturer will not divulge what those specifications are. Manufacturers should be obligated to make available body and chassis dimensions of new vehicles and any peculiarities in repair techniques that could affect the structural integrity of a vehicle. Increasingly, manufacturer dealerships are operating smash repair facilities which give them an advantage over repairers that operate stand alone facilities.

#### 3.2.7 Role and qualifications of assessors

Insurance assessors, sometimes referred to as loss adjusters, are in the opinion of repairers 'cost minimisers'. Whilst the majority of insurance assessors are qualified tradespeople with a background in vehicle smash repairs, there are a number of insurers that use independent assessors or loss adjusters. These independent assessors may be from a domestic insurance background and whilst familiar with real estate, may have no knowledge of automotive applications.

There is definite need for a National scheme within which automotive insurance assessors are accredited as being 'qualified' to evaluate the level of damage to an accident damaged vehicle. Current inconsistencies in relation to direction of repair techniques and what constitutes a 'written off' vehicle lend further credibility to such a scheme.

### 3.3 The scope for Nationally agreed criteria to qualify for 'preferred smash repairer' status

#### 3.3.1 The growing complexity of motor vehicles

See Protection of consumer's investment (3.2.1) and Method and appropriateness of repairs (3.2.2)

### 3.3.2 Current Queensland situation

In Queensland the service component of the automotive industry is neither licensed nor regulated by Government. The MTA-Q has been lobbying the Queensland State Government for over a decade to introduce some form of licensing for the industry. Despite assurances by successive fair trading Ministers to examine the issues raised, to date nothing has been forthcoming.

### 3.3.3 Need for licensing of premises

In the absence of regulation of the industry any person with minimal experience or no official qualification can open a smash repair business and perform any manner of repairs to all types of vehicles. This ludicrous situation also leaves consumers that have been unfairly treated with little or no avenue for recourse. The Queensland Government Department of Fair Trading will often refer consumers to MTA-Q despite the fact that the Association is not a regulatory body. Consumers are frequently frustrated when informed that the industry is not licensed and that their only avenue for recourse lies with the Small Claims Tribunal process. At this point the complexity of the process becomes all too much for most consumers and they simply give up.

A system similar to that in New South Wales would be of benefit to the industry, ensuring qualified tradespeople carry out repairs and guaranteeing a government body — the Motor Vehicle Repair Industry Council (MVRIC) — oversees a Disputes Committee comprising both trade and consumer representatives.

### 3.3.4 Need for licensing of individuals

The same need applies for the licensing of individuals to ensure that appropriate qualifications are commensurate with the type of work being performed. Persons with no experience in repairing accident damaged vehicles should be unable to perform such repairs until qualifications are obtained.

### 3.3.5 National standards to reflect repairer capability

Along with a scheme to ensure that insurance assessors are competent to assess accident damage to motor vehicles (3.2.7), there is also a need to ensure that repairers are capable of repairing such damage. The previous inquiry into the industry determined that there were so few accidents as a result of inferior quality repairs in comparison to the number of repairs carried out that such a scheme was not necessary. It should not take the death of motorists as result of an improperly repaired vehicle for such a scheme to be implemented. Repairs should not be authorised to a repairer that doesn't have the equipment or knowledge to repair a particular make of vehicle or a certain level of damage (e.g. a repairer that does not have chassis measuring / straightening equipment should not be repairing badly damaged vehicles).

Such a scheme would not necessarily need to be administered by Government. The onus of responsibility should be placed upon insurers to ensure that the repairers they are authorising work to have the equipment, knowledge and ability to repair the type of repairs they are requesting.

#### 3.3.6 National repair standards

Repair standards should be in accordance with manufacturer's specifications.

- 3.4 Any measure 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

#### 3.4.1 Transparency of quotation system

The methods in which damaged vehicle quotations are prepared are complex to say the least. The existence of a fabricated time versus rate (commonly known as 'funny times – funny money') situation makes the interpretation of a quotation near impossible to those outside the industry. Repairers are concerned that should a legal challenge of invoiced repairs take place then their actions in terms of billing for hours of labour that weren't performed could be deemed as fraudulent. Suggestions to rectify this situation range from the adoption of the term 'units' rather than hours to implementing a real time, real money approach to quoting. The difficulty of the latter suggestion would be that different repair shops have a different hourly operating cost that could not be applied equitably to the entire industry.

An approach that entitles repairers to charge an hourly rate commensurate with hourly operating costs plus a profit margin and then have this rate linked to CPI would be the ideal scenario. However, Insurers will resist this citing the aforementioned variance in businesses operating costs as the reason. At present repairers that have calculated hourly operating costs know what ratio to allow when preparing quotes. For example, if the operating cost for the business has been calculated as \$75 per hour, then a quote will be prepared on a ratio of three to one (three hours @ \$25 per hour to perform one hour labour in real time).

#### 3.4.2 On-line assessing

The practice of on-line assessing as used by some insurers can pose a significant disadvantage to repairers. The ability to prepare an accurate quotation when the vehicle cannot be physically inspected is greatly reduced. Conversely, the ability of insurers to perform remote assessments from digital images sent to them by a repairer can expedite the repair process, meaning the repairer does not have to wait for an assessor to visit their premises prior to commencing repairs. With the advent of such technology, it is likely that the occurrence of on-line assessing will increase, saving repairers and insurers time and money by carrying out such functions remotely.

#### 3.4.3 Steering of consumers

Whilst the issue of consumer choice was covered in section 2.2.3 Insurer / Repairer / Consumer Relations, it is worth noting again the extent insurers will go to ensure repairs are performed by a 'preferred repairer'. A number of examples are contained within the Appendix in relation to the undue influence exerted by insurers to ensure the vehicle is repaired within their 'preferred repairer' network. An example of an insurer dictating where a third party claim was to be repaired is a prime example. Should the consumer have legally challenged the insurer in relation to their refusal to authorise the repairs to the repairer of his choice, then it is almost certain that the insurer would have been legally bound to authorise the repairs to the consumer's chosen repairer. Insurers rely on consumer's ignorance and indifference to achieve their objectives in relation to directing work to their 'preferred repairer' networks. Those consumers that insist the vehicle be repaired at their chosen repairer are either browbeaten into changing their minds or are continually informed of the consequences should they continue with their choice. The most common line used by insurers is "That repairer is not one of our 'preferred repairers'. We cannot guaranty the quality of the repairs if you take your vehicle to that repairer". This inference on the inability of the repairer to carry out quality repairs will often cause a consumer to change their mind and relent to the undue pressure being brought to bear upon them by an insurer.

#### 3.4.4 Cash settling

Should a consumer continue to elect to choose their repairer, some insurers will go to the extent of cash settling the policyholder at the cheapest quote they have obtained or at the adjusted price of the chosen repairer's quote. An attached example details a case involving NRMA and a consumer who was cash settled on a third party claim leaving a shortfall of \$1,364.91 on the cost of repairs. Again, had the consumer opted to legally challenge the insurer, it is almost certain that the insurer would be legally bound to pay the full cost of repairs at the consumer's repairer of choice.

#### 3.4.5 Other insurance company tactics

In the worst cases, if a policyholder continues to exercise their freedom of choice of repairer, not only will the insurer cash settle at the cheapest price possible, they will cancel the insured's policy. This makes it difficult for the consumer to obtain insurance from another company (having previously been denied insurance) and is another tactic used to coerce consumers into complying with the insurer's wishes. It should be noted that the Association has received no factual examples of this occurring, only verbal accounts from various sources.

### 4.0 Financial relationships between smash repairers and insurance companies

#### 4.1 The rates paid by insurance companies for smash repair work

##### 4.1.1 Hourly rates

The average rates for R&R (remove and refit / replace) and repair labour is \$25 per hour. This covers the purchase of plant, equipment, materials, tools, wages, annual



leave, leave loading, public holidays, sick pay, work cover, superannuation as well as business overheads such as rent, loan repayments, gas, electricity, phones, faxes, photocopiers, postage and the list goes on. The paint rate, whilst slightly higher necessitates inclusion of consumables such as masking tape, paper, door tape, blending thinners, fine-line tape, prepsol, sand paper, anti static cleaners, scotchbrite pads, matting paste, primers, primer hardeners, primer thinners, gunwash, colours, clearcoats, clearcoat hardeners, clearcoat thinners, plastic primers, etch primers, flexible additives, paint strainers, mixing cups, stirrers, spray-gun cleaning and servicing, spraybooth operating and maintenance costs (electricity, gas, filters etc.), buffing pads, cutting compounds, polishes, car wash, sponges, buckets, chamois, tack rags, rags, etc. On top of this already comprehensive list of necessary equipment are the painters wage, annual leave, leave loading, public holidays, sick pay, work cover and superannuation. Neither of these rates (repair and paint) allow for purchase of equipment in order to upgrade or replace worn out items. Also imposing upon businesses is the need to comply with OH&S / WH&S Legislation and the obligation to supply employees with air-fed masks, respirator masks, filters, pre-filters, disposable overalls, gloves, eye protection, hearing protection etc.

Any increase in rates paid by an insurer invariably results in a decrease in the times allowed for repairs or painting thus effectively fixing prices for the insurer. Numerous examples of the issues with rates have been received by the Association. Some examples have been included in the Appendix.

#### 4.1.2 Lifetime warranty

The trend of insurers to offer 'lifetime warranties' on repairs performed is simply a gimmick to provide consumers the confidence that repairs have been performed adequately. Insurers purport to carry the warranty where in reality the warranty is born entirely by the repairer. Therefore, claims made by insurers that repairs cannot be guaranteed if work is performed by a repairer outside 'preferred repairer' networks is a fallacy. Insurers claim that if the business closes or changes hands then they are responsible for any rectification work required, which may be the case, but the occurrence of such is so infrequent as to make this point invalid.

Examples have been received of insurers compelling repairers to purchase vehicles to which repairs have allegedly been performed to an inferior quality standard. One such example ended in the repairer taking legal action against the insurer after he was 'forced' to buy a vehicle that the insurer alleged he had repaired poorly. The repairer won the case and the insurer settled the matter with an undisclosed sum that is subject to privacy provisions.

#### 4.2 The timeframes provided to smash repairers by insurance companies to consider and make an informed decision on contract offers

##### 4.2.1 Conditions of repairer contracts

Whilst some aspects of the onerous nature of a number of insurer / repairer contracts was covered in 3.1.2 Transparency of Selection of Preferred Repairers and 3.1.3

Preferred Repairer Contracts, it should also be noted that the timeframes within which repairers had to obtain independent legal advice were so restrictive as to prevent adequate time in which to make an informed decision. Reports received indicated that repairers had in some cases only 72 hours within which to seek advice and decide whether to enter into a contract or not. Repairers contacted the MTA-Q desperately seeking assistance however; the refusal of IAG to acknowledge the Association only exacerbated the problem.

#### 4.3 The time taken by insurance companies to pay smash repairers for completed work

##### 4.3.1 Late payment trends

The association has received numerous examples of late payment s to repairers that are outside 'preferred repairer' networks. One member has provided evidence of a payment that took eight months from IAG on an invoice that wasn't in dispute. Others have numerous examples of payments later than 60 days from a range of insurers. The standard response from insurers when repairers enquire as to the whereabouts of their payment is "we don't have an invoice for that, can you resend it please" or "we can't locate the file on that particular job".

#### 4.4 Arrangements for consumers to have reasonable choice in the selection of repairers

##### 4.4.1 Choice of repairer offerings

In the opinion of some repairers, all insurance company 'preferred repairer' schemes should be disbanded and consumers allowed to choose their own repairer, placing all repair shops on an even footing. As it is likely that 'preferred repairer' schemes will remain in place, then consumers should be able to select a repairer of their choice without being put under pressure by insurers to use a 'preferred repairer'.

##### 4.4.2 Transparency of insurer policies and disclosure

As consumers generally enter into a contractual agreement (over the phone) with an insurer prior to reading or receiving a product disclosure statement, they are often not aware of many aspects of their policy before becoming a policyholder. If policies are subject to restrictions such as no choice of repairer and cash settlement or policy cancellation should a policyholder proceed with their chosen repairer, then these aspects need to be disclosed prior to the consumer entering into a contract of insurance.

### 5.0 The extent, adequacy and independence of dispute resolution systems between the smash repair industry, insurance companies and consumers

#### 5.1 Requirement for independent disputes resolution process

##### 5.1.1 Adjudication of quotation disputes

The Association has provided examples of mediation between repairers and insurers over quotation disputes. At present repairers can either negotiate with an insurer themselves or seek assistance from an independent body such as MTA-Q in an attempt to reach a resolution. Some insurers claim that any reasonable amount for a repair will be authorised providing the repairer can justify the expenses involved. There is a definite need for an independent adjudicator to determine fair time and cost provisions for vehicle repairs.

#### 5.1.2 Adjudication of appropriateness of repairs

The same need applies for appropriateness of repairs. Repairs should be carried out in accordance with manufacturer's specifications (see 3.2.6 Access to Intellectual Property), not on the say so of an assessor that may not necessarily be a qualified tradesperson. Assessors do not act in the best interest of the policyholder or the repairer, instead acting as a 'cost minimiser' or 'loss adjuster' for the insurer.

### 5.2 Current situation

#### 5.2.1 IEC

The General Insurance Enquiries and Complaints Scheme is a national Scheme for consumers aimed at resolving disputes between insureds and their insurance companies or claimants who have a dispute with another person's insurance company in relation to motor vehicle property damage (i.e. third party claim). The Scheme also provides general information about any general insurance matter. The Insurance Council of Australia Limited has developed the General Insurance Code of Practice for use by all insurers. Although no specific consumer redress is provided by this Code, it requires participating insurers to establish both internal and external dispute handling procedures, and sanctions may be imposed upon insurers if they fail to meet the Code's requirements.

Unsubstantiated claims from policyholders indicate little success in having disputes involving quality of repairs or rectification resolved by the IEC. A process whereby consumers have redress should they be unsatisfied with the findings of the IEC needs to be put in place.

### 5.3 Disputes resolution Procedure requirements

#### 5.3.1 Genuine independence

An independent body with no alliance to either insurers or repairers needs to be established to provide arbitration for consumers that have complaints in relation to the insurance claims process. Provisions for redress should the consumer be unsatisfied with the findings of the arbitrator should be included in this process.

At present there is no existence of an arbitrator for addressing grievances between insurers and repairers.

## 6.0 Summary

It is in the interests of government, insurers, policy holders and repairers to promote the efficient operation of a competitive motor vehicle repair industry in Australia.

The economic activity created by a competitive industry will create and maintain skilled employment, efficient customer service and viable and cost effective insurance and repair sectors.

However, anti-competitive practices can distort the operation of an efficient motor vehicle repair market. Such a distortion may provide short term benefits, especially for insurers and policyholders, but at the long term expense of a loss of investment and skills in the motor vehicle repair industry.

## 7.0 Recommendations

1. Insurers and repairers should adhere to an industry Code of Conduct as developed by the Victorian Automobile Chamber of Commerce subject to adaptation (should the need arise) by individual States.
2. The current fabricated time versus rate schedule should be eliminated and repairs assessed on the total cost of repairs. Insurers should not unreasonably adjust repairer's quotations.
3. Should the need for a time versus rate schedule be required by insurers in order to calculate total repair costs, then an approach that entitles repairers to charge an hourly rate commensurate with hourly operating costs plus a profit margin and then have this rate linked to CPI should be implemented.
4. Examine scope of a National scheme within which automotive insurance assessors are accredited as being 'qualified'.
5. Examine scope for the licensing of individuals to ensure that appropriate qualifications are commensurate with the type of repair work being performed.
6. Examine possibility of a workshop licensing scheme similar to that in New South Wales, ensuring qualified tradespeople carry out repairs and guaranteeing a governing body such as the Motor Vehicle Repair Industry Council (MVRIC) oversees a Disputes Committee comprising both trade and consumer representatives.
7. Ensure manufacturers are obligated to make available body and chassis dimensions of new vehicles and any peculiarities in repair techniques that could affect the structural integrity of a vehicle.
8. Examine provision of an independent arbitrator to determine fair time and cost provisions for vehicle repairs. This function could be undertaken by the 'Code

Administration Committee' by the appointment of an 'independent assessor' to determine such disputes in relation to time and cost of repairs.

9. Examine provision of an independent arbitrator to determine appropriateness of repairs. This function could be undertaken by the 'Code Administration Committee' by the appointment of an 'independent assessor' to determine such disputes in relation to method and appropriateness of repairs.

10. An independent body with no alliance to either insurers or repairers needs to be established to provide conciliation for consumers that have complaints in relation to the insurance claims process. Provisions for redress should the consumer be unsatisfied with the findings of the arbitrator should be included in this process.

11. Consumers should be able to select a repairer of their choice without being put under pressure by insurers to use a 'preferred repairer'. Should an insurer not offer freedom of choice of repairer under the terms of the insurance contract then the insurer must ensure that the policyholder is advised orally and confirmed in writing, at the time of sign up, of any restrictions that will apply to the Policyholder's ability to have their car assessed and repairs authorised at the Policyholder's chosen repairer.

## 8.0 Appendices

- 1 Evidence relating to steering of consumers / freedom of choice
- 2 Evidence relating to steering of consumers / freedom of choice
- 3 Evidence relating to lifetime warranties (in confidence)
- 4 Evidence relating to cash settlement
- 5 Evidence relating to freedom of choice / steering of consumers
- 6 Evidence relating to insurer directives on repairs (in confidence)
- 7 Evidence relating to labour rate / preferred repairers (in confidence)
- 8 Evidence relating to labour rate / preferred repairers (in confidence)
- 9 Evidence relating to late payment
- 10 Evidence relating to 'preferred repairer' contracts
- 11 Evidence relating to dispute resolution
- 12 Surveyed labour / paint rates
- 13 IAG Contract
- 14 Evidence relating to loss of 4% parts margin (in confidence)
- 15 Evidence relating to **undue influence by insurer / lifetime warranty / dispute resolution** (in confidence)
- 16 Evidence relating to steering of consumers / freedom of choice
- 17 Evidence relating to steering of consumers / freedom of choice
- 18 Evidence relating to steering of consumers / freedom of choice
- 19 Evidence relating to **rates versus times schedule**
- 20 Evidence relating to removal of 'preferred repairer' status