



***Initial Report of the Productivity Commission Inquiry into the
Smash Repair and Insurance Industry.***

RESPONSE

Productivity Commission Inquiry: Draft Report

Response by MTAWA

SUMMARY

- **OVERVIEW**

MTA WA welcomes in principle the broad thrust, findings and recommendations of the Commission's draft report.

- **PSR AGREEMENTS**

MTA WA supports the Commission's call for greater transparency in the criteria and terms of PSR Agreement, but believes that repairers negotiating strength, and their rights under a PSR Agreement, need prior changes to the Trade Practices Act (Section 46 and Section 51).

- **CHOICE OF REPAIRER**

MTA WA conditionally welcomes the Commission's proposal that there be greater transparency of consumer right of choice in selecting a repairer in terms of an insurance policy; but the MTA WA believes that insurers should be totally precluded from directing business to any individual repairer.

- **HOURLY RATES**

MTA WA agrees in principle with the Commission's recommendation that FT FM should be abandoned, and be replaced by individually negotiated repair charges.

However, MTA WA has called for effective industry negotiating rights through amendments to the Trade Practices Act, as a necessary precursor to individual negotiation.

- **CODE OF CONDUCT**

Whilst agreeing with the Commission that a Code of Conduct is probably the only way of exercising greater equity in the business relationship between repairer and insurers, the MTA WA believes that any such Code should be given immediate statutory effect, rather than being introduced initially on a voluntary basis, as recommended by the Commission.

- **WARRANTIES**

The MTA WA supports the Commission's proposals that warranties on repair work be more closely linked to warranties on parts, and more closely reflect the respective obligation of insurers and repairers.

- **PARTS**

MTA WA endorses the principle of the Commission's recommendations for greater transparency and commercial reality in the supply and use of parts; but only if hourly rates and charges for smash repair work are more realistic.

Overview

The MTA WA, on behalf of its Body Repair Division, welcomes in principle the main findings and draft recommendations of the Productivity Commissions' initial report.

In particular, proposed recommendations for greater transparency in the criteria and processes of PSR agreements; greater transparency of consumer-choice decisions in the wording of insurance policies; the introduction of a Code of Conduct; and the abolition of current charge-out practices (FT FM), would seem to have acknowledged and addressed salient aspects of the MTA WA's submission to the Productivity Commission.

In that respect, the MTA WA would agree with the Commission's finding that efficiencies and service in the repair industry are being hindered by tensions, animosity, and lack of trust between the insurance industry and the body repair industry; and to the extent that those acknowledged problem areas have been identified by the Commission, with its initial findings being directed at their amelioration, the MTA WA's Body Repair Division is encouraged by the Report.

In common with the Commission itself, the MTA WA's Body Repair Division is anxious to restore greater equity, fairness, and transparency to commercial relationships between insurers and body repairers. This will ensure that the body repair industry can develop and adapt to rapidly changing conditions, requirements, and technological criteria in the automotive industry, as well as maintaining and expanding the industry's employment potential for skilled manpower, and to thereby ensure continuing provision of effective, safe repair services by a vigorous, adaptable, and commercially viable industry.

In participating in the Productivity Commission's inquiry, MTA WA does not in any way wish to try and create artificial barriers to fair healthy competition, nor to market-led commercial evolution and rationalisation in the industry. However, the MTA WA firmly believes that any such developments should be in the context of a fair open marketplace, subject to natural market forces for economic and structural change. In the MTA WA's view those conditions are essential for fair competition; which in turn is acknowledged by the ACCC, and by the Commission itself, as being ultimately in the interests of Australian consumers.

In evaluating the realities of competition, or lack of it, in the smash repair/insurance company marketplace, it is regretted that the perceived immediate and short term beneficial interests of consumers appear to have distracted the Commission to some extent from the long term beneficial consumer interests which would flow from open and fair competition in the marketplace.

In that context, MTA WA's Body Repair Division would make the following comments on the Productivity Commission's initial report.

PSR Agreements

MTA WA would reiterate its contention that the real objective of any scheme of PSR agreements is minimisation of insurance company repair costs; and there is no evidence that reduction in those costs results in lower policy premium levels, or any other form of consumer benefit.

Not only have insurance premiums shown no reduction since the introduction of PSR agreements, but the lack of transparency in their practical application, as noted by the Commission, would in itself tend to give the lie to any claim of beneficial consumer interests as being their motivating objective.

Indeed, MTA WA would go so far as to cite recent instances of escalating insurance company profit levels, and presumably therefore the dividend payouts to shareholders, as further pointers to the true nature and objectives of PSR agreements.

MTA WA would therefore question the Commission's assertion that PSR agreements "accurately reflect" the insurers' evaluation of the efficiency and quality of preferred repairers.

The MTA WA agrees though that insurance companies do have the right to establish networks of PSR's; and it is hoped that the Commission's initial recommendations for greater transparency will go a long way towards addressing the abuses and anomalies identified by the MTA WA in its submission to the Commission.

However, MTA WA would reiterate its contention that equitable application of PSR agreements, and in particular those components which prescribe hourly rates of remuneration, and provisions for withdrawal and termination, are dependent on amendments to Sections 46 and 51 of the Trade Practices Act - as proposed in the MTA WA's submission to the Commission - in order to strengthen the negotiating position of small business operators in the smash repair industry, and to prevent unilateral, unconscionable conduct in the context of a written agreement or contract.

Consumer choice

Although the Commission is apparently satisfied that consumers do have "reasonable" choice of repairer in their contractual arrangements with insurance companies, MTA WA would question the Commission's reservations about the broader application of the principle of unfettered consumer choice. In particular the Commission's contention that "compulsory choice" would result in significant consumer disadvantage would be refuted by MTA WA.

In asserting that consumers should always have the right of choice in their selection of repairer, MTA WA does not suggest - and never has suggested - that insurers be prevented from ever recommending any particular repairer. However, it is MTA WA's contention that insurers should never have the right to actually direct business to any third-party independent business operator; and it is that principle which is inherent in the "anti-steering" legislation which currently prevails in the majority of the states of America.

MTA WA finds it hard to believe that legislation of that sort would ever have been introduced in the American states if the interests of consumers were to have been adversely affected in the way now suggested by the Commission.

MTA WA would also point out that the Commission's contention that "compulsory choice" would lead to increased costs is at odds with the fact that insurance company policy premium levels showed no evidence of reduction when consumer rights of choice were restricted by the introduction of PSR agreements. If the re-introduction of consumer choice were in fact to lead to increased costs, then it would seem reasonable to assume that the restrictions imposed by insurance companies on the exercise of consumer choice would have led to a decrease in costs - with that decrease being passed on to consumers through reduced premium bills. There is, however, no evidence of any such reduction having been passed on to consumers!!

MTA WA would also contend that the costs of repair in a fair and competitive market place would always be subject to prevailing market forces, were there in fact to be an even "playing field" in the body repair industry. The suggestion that freedom of choice in the selection of repairer would inevitably lead to a shift away from preferred smash repairers, and would result in escalating costs of repair, cannot be accepted by MTA WA.... unless it is also contended by the Commission that the present costs of repair (and in particular the hourly labour rates paid by the insurers) reflect reasonable market conditions!

Whilst MTA WA would conditionally welcome the Commission's draft proposals for greater transparency in insurance policies when citing consumer rights to selection of repairer, that right should be absolute - as contended by MTA WA in its submission to the Commission.

In reiterating that contention, MTA WA would agree that most consumers would not willingly accept greater cost or personal effort in securing the right of choice in the selection of repairer. However, consumers should always have the right to do so if they wish; and it is the persistent denial of that right, for blatant commercial advantage by insurance companies, which exacerbates the tensions, animosity, and lack of trust between the insurance and repair industries, and which the Commission has found to be detrimental to operational effectiveness, and to the longer term interests of consumers.

Hourly Rates and Parts

The MTA WA's Body Repair Division welcomes the Commission's findings and recommendations about current charge-out structures (FT FM).

In particular it is agreed that as a matter of normal commercial principle, and in accordance with ACCC and Trade Practices Act requirements, charges for smash repairs should be the subject of negotiation and agreement between the insurer and individual repairers.

However, in the context of the smash repair industry the immediate application of that contention would be unrealistic, and would probably be detrimental to repairers.

The present charge-out structure and process (known as FT FM) is historically entrenched; with insurers effectively setting the prevailing hourly rate by using as a benchmark the willingness of some to work for ludicrously low, commercially unrealistic rates. As the Commission itself has noted, the insurance side of the business equation comprises only four large commercial groupings, whilst the repairer side of that equation comprises 5000 separate individual operatives. Not only is there therefore a numerical imbalance, but it would be agreed by repairers themselves that there would also be an imbalance in salient aspects of business acumen, knowledge, and expertise. (The root cause of the present commercial stranglehold which the insurance industry has over the smash repair industry is the agreement of some individual smash repairers to work for very low rates which do not accurately reflect the true costs of operation).

In the view of MTA WA, the commercially inadequate and unrealistic rates currently paid by insurers should be subject to general negotiation by the repair industry as a whole prior to initiating a process of individual negotiation; and it is to enable repairers to attain a semblance of commercial balance and strength in that negotiating process that the MTA WA now reiterates its call for amendments to Section 46 of the Trade Practices Act.

Whilst accepting, and agreeing with, the principles of the Commission's findings in respect of negotiation of crash repair costs, the MTA WA believes that the Commission's initial recommendations are simplistic, with the realities of the body repair industry being more accurately reflected through recommendations that the negotiating powers and ability of the smash repair industry be significantly improved.

In respect of the cost of parts, the MTA WA would have no comment to make on the Commission's initial findings, except to reiterate the contention made in its submission to the Commission that repairers would not have to rely to any such extent on parts' mark-ups if the basic rates paid by insurers were commercially realistic.

The Commission's findings and recommendations in respect of the use of parts would be accepted by the MTA WA.

It would, however, be MTA WA's contention that practical, effective measures to redress the commercial imbalance between insurers and repairers in agreeing on a basic hourly labour rate would probably resolve most other areas of contention in the inter-dependant relationship between the two sectors of the industry.

Code of Conduct

Whilst it is noted that the Commission advocates initial introduction of a voluntary Code of Conduct, and whilst the MTA itself would agree in principle with that proposal, it remains the firm view of the MTA WA, that it is necessary for a mandatory Code of Conduct to be implemented immediately.

A voluntary Code of Conduct was proposed by the industry Commission some 10 years ago. It has also been advocated by many other authoritative bodies, including the ACCC, which conducted a series of round-table discussions on the matter.

However, it is a regrettable fact that all attempts by the body repair industry and its representative associations to engage the insurance industry in constructive discussions towards the development and implementation of a voluntary Code have proved fruitless. As is evident from submissions to the Commission, it is not the insurers' wish to have a Code of Conduct governing their relationships with repairers; and in that respect the MTA WA would again point to the escalating profits and dividend payments now being recorded by individual insurance companies.

As the Commission itself has acknowledged, it is only through a Code of Conduct that many of the inequities and imbalances in the commercial relationship between insurers and repairers can be effectively addressed, to the beneficial interests of consumers; and it is for that reason that the MTA WA would reiterate its contention that a governing Code should be introduced without further delay.

Given the lack of cooperation so far evidenced by the insurance industry, and given also the need for the longer term interests of consumers to be adequately protected through the development of an adaptive vigorous body repair industry, the MTA WA would propose that a Code of Conduct be mandated immediately in terms of the Trade Practices Act.

It is significant that the MTAA representing all body repair and Motor Trade Associations in Australia, has proposed inviting insurers to immediately meet with repairer representatives to draft appropriate provisions for a Code of Practice - but from anecdotal evidence of dismissive attitudes shown by insurers, the MTA WA would not be particularly optimistic of a positive response to the MTAA's invitation!

In regard to the proposed content of a Code, as advocated by the Commission, MTA WA would suggest that the Commission's proposals would be reasonable and realistic.... but only if the negotiating position of small business operators in the body repair sector of business were improved by relevant changes to the Trade Practices Act; and also if insurers were prevented from directing business to independent third-party operators in some other area of business - as would usually be the case in a competitive, economic, free-market structure.

Warranties

The Commission's findings and recommendations on warranties would be supported by MTA WA.