

**40TH PARLIAMENT**



Economics and Industry Standing Committee

## **Report 4**

# **WESTERN AUSTRALIA'S SMASH REPAIR INDUSTRY: STRUCTURAL CHALLENGES**

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Presented by  
Ms J.J. Shaw, MLA  
November 2018

## *Committee Members*

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Chair	Ms J.J. Shaw, MLA Member for Swan Hills
Deputy Chair	Mr S.K. L'Estrange, MLA Member for Churchlands
Members	Mr Y. Mubarakai, MLA Member for Jandakot
	Mr S.J. Price, MLA Member for Forrestfield
	Hon D.T. Redman, MLA Member for Warren-Blackwood

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Report No. 4  
November 2018

Legislative Assembly  
Parliament of Western Australia

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Presented by

**Ms J.J. Shaw, MLA**

Laid on the Table of the Legislative Assembly on 29 November 2018



## Chair's Foreword

**P**arliamentary committees can only make findings and recommendations based on the evidence available to them. Moreover, jurisdictional limitations constrain the actions that the different tiers of government can take in response to issues within markets or industries. This is particularly true with respect to the smash repair industry.

There are a number of pressures affecting the State's smash repair industry. Smarter, more technologically advanced vehicles require more expensive and complex repairs, and also reduce the incidence of accidents, simultaneously driving down demand for smash repair services and increasing repair costs.

The industry is also experiencing vertical consolidation. Small business repairers face competition from insurance-company owned repairers and are often being forced to integrate into insurer's business models and practices, either through 'preferred repairer' status or the forced utilisation of the insurer's systems, processes and prices.

Despite these pressures, however, the Committee has found that there has not been a drop in the standard or safety of repairs being completed in Western Australia.

Allegations about structural inequalities between insurers and smash repairers, predatory behaviours and abuse of market power are rife – both here in WA and across the nation.

There is undoubtedly a high degree of concentration in the Australian motor vehicle insurance market, with two insurance groups (IAG and Suncorp) overwhelmingly dominating. The dynamic is different in WA, however, with RAC WA capturing approximately one-third of the State's market.

A range of allegations have been made, in multiple inquiries and forums, regarding the anti-competitive conduct of insurance companies. In this inquiry, the types of alleged misconduct included:

- Inappropriate 'steering' behaviours, whereby insurance companies direct customers away from businesses outside of their 'preferred' networks;
- The introduction of fixed prices for various forms of repair, unfairly driving average costs unsustainably low;
- Unequal bargaining power when agreeing the scope of repairs to vehicles; and
- The utilisation of 'funny time, funny money' to artificially price repairs.

The Committee sought direct evidence of inappropriate behaviours, but heard that repairers were reluctant to publicly provide details, for fear of losing work.

In closed sessions, anecdotes suggest there are instances of market abuse. Similarly, the Department of Mines, Industry Regulation and Safety noted that “a lot of anecdotal evidence comes to us from our interaction with people at the MTAWA... but no formal hard evidence has been brought to us... I have no doubt that that they occur from time to time, but they are just not coming to us”. The Committee put allegations of market abuse to the insurers, which were strenuously denied.

The Committee has limited ability to investigate the veracity of these claims and counter claims. Only an appropriately convened and empowered Commonwealth-level inquiry can properly investigate.

The Committee also pursued issues relating to the use of ‘funny time, funny money’ pricing methodologies. Again, this was denied by the insurers. However, direct evidence was provided to the Committee, suggesting that this unhelpful practice is utilised by at least one major company.

The Commonwealth Government can intervene in the business relationships between insurers and repairers and is responsible for the proper functioning of markets. Financial services are also federally regulated. A number of inquiries (at both the State and Federal level) have repeatedly urged the Commonwealth Government to take action, investigate and meaningfully address anti-competitive conduct in the smash repair industry. However, it is yet to take action.

The apparent nation-wide scope of the problem, and increased market concentration in other States, lends weight to the need for Federal action. Similar to the calls of industry and previous state and federal inquiries, this Committee considers that the Commonwealth should act. We have accordingly recommended that the Treasurer write to the Commonwealth Treasurer, seeking their agreement to direct the Australian Competition and Consumer Commission to undertake an in-depth inquiry into possible anti-competitive conduct and misuse of power.

The State Government’s capacity to intervene in the smash repair industry is limited.

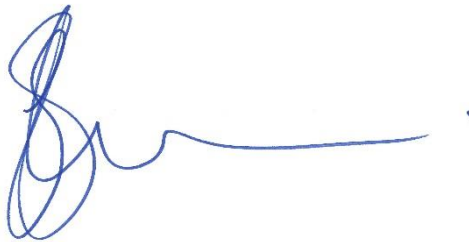
Evidence provided to the Committee indicated that both insurers and repairers consider the national Motor Vehicle Insurance and Repair Industry Code of Conduct to be effective. The New South Wales Government has made compliance with the Code mandatory. The Committee has recommended that this be similarly instituted in Western Australia by the end of 2019.

Two other matters, pertaining to vehicle write-offs and conduct in the tow truck industry, arose in this Inquiry, but fell outside of the terms of reference. The



Committee found that reviews on both matters have been previously initiated by the State Government, but have not concluded. Notably, WA is one of just two states that does not regulate the tow truck industry. The evidence suggests that there is a case for regulation.

The Committee would like to express its sincere thanks to the organisations and individuals that provided submissions and appeared before this inquiry. I would also like to thank my fellow committee members, Mr Sean L'Estrange MLA, Deputy Chair; Mr Yaz Mubarakai MLA; Mr Stephen Price MLA; and Hon Terry Redman MLA, for their contributions and engagement. We are also grateful to the Committee secretariat, Dr David Worth and Mr Lachlan Gregory, for their hard work and assistance.

A handwritten signature in blue ink, consisting of a stylized 'S' followed by a horizontal line.

**MS J.J. SHAW, MLA**  
**CHAIR**



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## **Ministerial Response**

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Committee directs that the Treasurer and the Minister for Commerce and Industrial Relations report to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the Committee.



## Findings and Recommendations

### Finding 1

Page 8

The Australian car insurance industry is dominated by two large companies – Insurance Australia Group and Suncorp Insurance Holdings Limited. The top four home and motor insurance companies control about 74% of the market.

### Finding 2

Page 8

While in other Australian jurisdictions IAG, Suncorp and Allianz dominate the car insurance markets, in Western Australia the major insurer is RAC Insurance.

### Finding 3

Page 10

The continued decline in reportable accidents in Western Australia has driven down demand for smash repairs, placing financial pressure on individual smash repair firms.

### Finding 4

Page 11

Technological changes in the automotive industry are fundamentally changing repair cost profiles, with parts constituting up to 50% of repair costs.

### Finding 5

Page 13

Vertical integration and efficiency-driven process streamlining is affecting the Western Australian smash repair industry.

### Finding 6

Page 22

The financial services industry is regulated by the Commonwealth Government. The Australian Securities and Investments Commission and the Australian Prudential Regulation Authority govern insurance market operations and customer relationships. The Australian Competition and Consumer Commission regulates relationships between businesses.

### Finding 7

Page 22

The State Government has a limited ability to intervene in the contractual and business arrangements between insurers and smash repair businesses.

### Finding 8

Page 22

A number of previous State and Commonwealth level inquiries have called for an independent investigation into structural issues affecting the smash repair industry.

### Recommendation 1

Page 23

The Treasurer write by 28 February 2019 to the Commonwealth Treasurer seeking their agreement to direct the Australian Competition and Consumer Commission under the

*Competition and Consumer Act 2010* to undertake in-depth inquiry into possible anti-competitive conduct and misuse of power in Australia's smash repair industry.

**Finding 9**

**Page 27**

The updated national Motor Vehicle Insurance and Repair Industry Code of Conduct is managed by representatives from both insurers and smash repair industries and is now accepted as a fairer and more transparent process for resolving and reducing conflict between the two key stakeholder industries than previous versions.

**Finding 10**

**Page 27**

Participation in the Motor Vehicle Insurance and Repair Industry Code of Conduct is voluntary in Western Australia.

**Finding 11**

**Page 35**

The evidence gathered by the Committee indicates that the pressures the smash repair companies work under has not led to a drop in the standard of repairs being completed in Western Australia, particularly the safety of repairs.

**Finding 12**

**Page 37**

The recently amended Motor Vehicle Insurance and Repair Industry Code of Conduct is acknowledged by both insurers and smash repair businesses as a positive initiative. It has been made mandatory for the smash repair industry in NSW.

**Recommendation 2**

**Page 37**

The Minister for Commerce and Industrial Relations bring legislation to the Parliament by the end of 2019 to mandate the Motor Vehicle Insurance and Repair Industry Code of Conduct in Western Australia.

**Finding 13**

**Page 40**

Australian Consumer Law and the national Motor Vehicle Insurance and Repair Industry Code of Conduct provide considerable protections to customers whose cars have been involved in an accident, including to choose their own repairer if their policy allows.

**Finding 14**

**Page 40**

Where customers have a choice of repairers, the Committee heard evidence of insurance staff 'steering' customers to their preferred network of repairers in an effort to lower the cost of repairs. Direct evidence of inappropriate steering behaviours would indicate an abuse of market power and provide further justification for a Commonwealth Government-initiated inquiry into structural issues in the smash repair industry.



**Finding 15****Page 41**

The Small Business Commissioner is currently able to assist small business operators, including smash repairers, resolve a wide range of disputes, including those related to contracts and the non-payment or non-performance of goods and services.

**Finding 16****Page 42**

The State's legislative responsibilities are restricted to regulating the local smash repair businesses and providing a limited consumer protection role for individuals who have had their vehicles repaired.

**Recommendation 3****Page 42**

The Minister for Commerce and Industrial Relations consider the role of the Small Business Commissioner as part of the process for the introduction of legislation mandating the Motor Vehicle Insurance and Repair Industry Code of Conduct in Western Australia.

**Finding 17****Page 45**

The long-standing tensions over the pricing of repairs for a vehicle involved in an accident are now being mediated by software systems and experienced assessors. However, a key disagreement remains over the appropriate hourly rate to be paid to tradespeople undertaking different repair tasks.

**Finding 18****Page 47**

The practice of 'funny time, funny money' is one that has been used for several decades by insurers and smash repairers to ease the pressures between the two stakeholders, and to assist in finding an agreed price for a particular repair. The Committee received conflicting evidence as to how wide-spread its use remains in Western Australia.

**Finding 19****Page 48**

The utilisation of the 'funny time, funny money' system is unhelpful. Methodologies that reflect a more accurate assessment of cost should be utilised. This matter should be addressed by a Commonwealth-initiated inquiry into structural issues affecting the smash repair industry.

**Finding 20****Page 51**

A review by the then-Department of Commerce of the *Motor Vehicle Dealers Act 1973* and the *Motor Vehicle Repairers Act 2003*, including the operation of the *Written-off Vehicle Register*, commenced in 2015 and has not yet concluded.

**Finding 21****Page 52**

Currently in Western Australia it is difficult for consumers to identify if a second-hand vehicle that they are purchasing has previously been classified by insurance companies as a 'repairable write-off', and included in the State's Written-off Vehicle Register.

**Finding 22****Page 54**

A review by the Department of Transport into the technical standards and offence provisions for the tow truck industry contained in the *Road Traffic (Vehicles) Regulations 2014*, that commenced in 2013, has yet to conclude.

**Finding 23****Page 54**

Western Australia is one of just two States that does not regulate the behaviour of the tow truck industry, particularly in regard to the fees and charges made to tow vehicles from car crashes. Evidence suggests that there is a case for the regulation of the State's tow truck industry.

# Chapter 1

## Setting the Scene

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*The people from the smash industry who have been on our advisory committee literally pull their hair out at some situations that they are trying to deal with and they see going on within their industry.*<sup>1</sup>

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### 1.1 Origin of the Inquiry

The connection between many drivers and their cars is intensely emotional, especially when the car has been damaged in an accident. In 2017 the Committee received a number of emails and letters about the relationship between smash repairers and the larger insurance companies in the State's motor vehicle repair industry, including from the Hon Bill Johnston MLA, Minister for Mines and Petroleum; Commerce and Industrial Relations; Electoral Affairs; Asian Engagement.<sup>2</sup>

At the time of receiving the Minister's correspondence, the Committee was undertaking an Inquiry into regional airfares in Western Australia. It agreed to invite Mr David Smith, Director General, Department of Mines, Industry Regulation and Safety and Mr David Hillyard, Commissioner for Consumer Protection and Acting Executive Director, Consumer Protection to a hearing about this matter on 29 November 2017.<sup>3</sup>

In discussing the issue of market power between small smash repairers and the larger insurance companies, the Commissioner for Consumer Protection said:

*They are the issues that the industry talks to us about anecdotally —the pressures these guys are under. The people from the smash industry who have been on our advisory committee literally pull their hair out at some situations that they are trying to deal with and they see going on within their industry.*<sup>4</sup>

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1 Mr David Hillyard, Commissioner for Consumer Protection and Acting Executive Director, Consumer Protection, Department of Mines, Industry Regulation and Safety, *Transcript of Evidence*, 29 November 2017, p5.

2 Hon Bill Johnston MLA, Minister for Mines and Petroleum; Commerce and Industrial Relations; Electoral Affairs; Asian Engagement, Letter, 23 August 2017.

3 Mr David Smith, Director General, Department of Mines, Industry Regulation and Safety, *Transcript of Evidence*, 29 November 2017.

4 Mr David Hillyard, Commissioner for Consumer Protection and Acting Executive Director, Consumer Protection, Department of Mines, Industry Regulation and Safety, *Transcript of Evidence*, 29 November 2017, p5.

## Chapter 1

After receiving further correspondence about this matter, and after concluding its Inquiry into regional airfares, the Committee agreed to undertake an Inquiry into Western Australia's Automotive Smash Repair Industry on 16 May 2018 and communicated the Inquiry's Terms of Reference (see Appendix 1) to the Legislative Assembly.

### 1.2 Gathering Data

The Committee placed an advertisement calling for public submissions to the Inquiry in *The West Australian* on Saturday 26 May 2018. Additionally an advertisement was placed in the Motor Trade Association of Western Australia's electronic newsletter *The Engine Room* on 19 April 2018. The Inquiry generated interest from a diverse section of the State's automotive industry stakeholders and the Committee received 16 submissions (see Appendix 2).

The Committee held 6 public hearings with key industry stakeholders including the Department of Mines, Industry Regulation and Safety, the Motor Trade Association of Western Australia, the Insurance Commission of Western Australia and the major insurance companies (see Appendix 3).

The Committee agreed to hold closed hearings on 13 August 2018 with five owners of smash repair businesses who were unwilling to provide evidence in public, due to their fear of repercussions from the insurance companies who, in some cases, provide much of their repair work.

### 1.3 A Brief Overview of the State's Smash Repair Industry

#### Early days

The State's smash repair industry has operated as long as automobiles have driven on its roads. The early industry was confined to "people who either had the mechanical understanding to effect repairs themselves or pay their staff, to undertake work."<sup>5</sup> Historically, many vehicle owners also undertook their own repairs, or would utilise the services of motor body manufacturers.

The large increase in automobile ownership after World War 2 produced an increase in accident rates. From a start in the 1920's, the art of panel beating and repair

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5 Mr Graham McDonagh, *Historical Overview of the Collision Repair Industry in Australia and Transfers of Power Through Rationalization*, Thesis, Division of Education, Arts and Social Sciences, University of South Australia, 2011, p44. Available at: <http://search.ror.unisa.edu.au/media/researcharchive/open/9915952108901831/53111913800001831>.

progressed into a specialised craft, and ‘panel beating’ “came of age and became established as a labour intensive, highly-skilled, cottage industry.”<sup>6</sup>

The new industry required limited capital to begin, thus family-owned smash repairers quickly grew in both urban and regional locations and, “smash repair shops grew to some 10,000 repairer businesses throughout Australia to satisfy a new market.”<sup>7</sup>

### Evolution and transformation

While most smash repairers are small companies, repair work is generally of a high standard. A Productivity Commission inquiry in 2005 found that there was no evidence of systematic issues with the safety or quality of repairs undertaken.<sup>8</sup>

The last thirty years has seen a contraction of the industry, a major factor being an overall decline in the frequency of car accidents (see Figures 1.1 and 1.2 below for WA data).<sup>9</sup> The number of smash repair companies in Australia has halved since 1975, with a history of the industry noting that, “insurers have not caused the reduction in smash repair work, but they have exploited an oversupply of service from a service industry that they are reliant upon.”<sup>10</sup> A 2005 Report by the Productivity Commission confirmed the rationalisation of the smash repair industry, finding that the number of repairers had decreased by about 25% in 15 years, from about 6,500 in 1991-92 to about 5,000 in 2005.<sup>11</sup>

The insurance industry has also continued its own rationalisation with a period of amalgamations and takeovers, commencing with the demutualisation of the NRMA (later IAG) in August 2000.<sup>12</sup> In Australia, IAG operates some of Australia’s larger car insurance brands, including NRMA Insurance, CGU, SGIO, and Lumley Insurance (which was Wesfarmers General Insurance Ltd).<sup>13</sup> Suncorp also offers car insurance in Australia via a wide number of different brands: AAMI, Apia, Just Car Insurance, Shannons, InsureMyRide, Vero, Bingle and CIL. It currently owns 50% of Royal Automobile Club of

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6 Ibid, p51.

7 Ibid, pii.

8 Submission No. 8 from Insurance Council of Australia, 26 June 2018, p2.

9 Mr Graham McDonagh, *Historical Overview of the Collision Repair Industry in Australia and Transfers of Power Through Rationalization*, Thesis, Division of Education, Arts and Social Sciences, University of South Australia, 2011, p201.

10 Ibid.

11 Productivity Commission, *Smash Repair and Insurance*, 17 March 2005, pxiv. Available at: [www.pc.gov.au/inquiries/completed/smash-repair/report/smashrepair.pdf](http://www.pc.gov.au/inquiries/completed/smash-repair/report/smashrepair.pdf). Accessed on 5 September 2018.

12 Wikipedia, *National Roads and Motorists' Association*, 31 July 2018. Available at: [https://en.wikipedia.org/wiki/National\\_Roads\\_and\\_Motorists%27\\_Association#Demutualisation](https://en.wikipedia.org/wiki/National_Roads_and_Motorists%27_Association#Demutualisation). Accessed on 4 September 2018.

13 IAG Ltd, *Australia*, 2018. Available at: [www.iag.com.au/about-us/what-we-do/our-business/australia](http://www.iag.com.au/about-us/what-we-do/our-business/australia). Accessed on 4 September 2018.

## Chapter 1

Tasmania Insurance and up until 2010 had car insurance joint ventures with the Royal Automobile Club of Queensland and Royal Automobile Association of South Australia.<sup>14</sup>

Cost-cutting innovations driven by insurance companies include the development of accident quotation centres. A shift in power from the repairer to the insurer followed as more recently smash repairers sold their businesses to insurance companies. For example, Suncorp owns 90% of CapitalSMART which operates 43 smash repair businesses across Australia and New Zealand. Capital SMART was established in 2007 to cater for minor to medium damage to cars, which could be quickly repaired and returned to their owners. It used “efficient systems in assessing and quoting, speedy supply chains and then quick-dry paint curing. They were generally the vehicles that could be driven to a repair shop and didn’t require towing.”<sup>15</sup>

Insurers also entered into arrangements with smash repairers to become their ‘preferred smash repairers’ (PSR). The Productivity Commission found that these preferred repairers benefit through a greater and more stable volume of work, faster payment for their work and more efficient arrangements for preparing repair quotes. Many repairers enter into such relationships with more than one insurer.<sup>16</sup> The Productivity Commission also found that the downside for these smash repairers was that they:

*...face considerable added pressure as insurers drive costs down; contracts appear detailed and somewhat intrusive; tenure of PSR status is not secure; and PSR status is generally non-assignable and thus lost if the business is sold.*<sup>17</sup>

The Insurance Council of Australia submitted that consumer expectations about repairs had changed as well, and that this was adding pressure to insurance companies to lower their fees:

*Consumers have more choice available to them and demand fast, convenient and quality repairs at the most cost effective and competitive price (the price of their insurance premium). In this way*

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14 Wikipedia, *Suncorp Group*, 3 August 2018. Available at:

[https://en.wikipedia.org/wiki/Suncorp\\_Group](https://en.wikipedia.org/wiki/Suncorp_Group). Accessed on 4 September 2018.

15 Mr Simon Evans, *Australian Financial Review*, ‘Suncorp’s crash repair arm accelerates’, 27 August 2017. Available at: [www.afr.com/business/banking-and-finance/financial-services/suncorps-crash-repair-arm-accelerates-20170825-gy4aoz](http://www.afr.com/business/banking-and-finance/financial-services/suncorps-crash-repair-arm-accelerates-20170825-gy4aoz). Accessed on 5 September 2018.

16 Productivity Commission, *Smash Repair and Insurance*, 17 March 2005, p xvii. Available at: [www.pc.gov.au/inquiries/completed/smash-repair/report/smashrepair.pdf](http://www.pc.gov.au/inquiries/completed/smash-repair/report/smashrepair.pdf). Accessed on 5 September 2018.

17 Ibid.

*insurers must also explore new business models, including how they manage repair work, in order to continue to meet these expectations.<sup>18</sup>*

A recent Senate Inquiry found that over a 15-year period between 2001-16, Australia's wage price index increased at an annual rate of 3.4%, while comprehensive car insurance premiums increased at half this rate, or 1.7% per annum. Home insurance premiums, on the other hand, increased at a far higher rate of 8.3%.<sup>19</sup>

### **Dominant companies**

The Australian car insurance industry is dominated by two large companies- Insurance Australia Group Limited (IAG) and Suncorp Insurance Holdings Limited. Suncorp has 9 separate brands offering car insurance across Australia:

- Suncorp
- AAMI
- GIO
- Bingle
- APIA
- Shannons
- CIL
- VERO
- Resilium<sup>20</sup>

Similarly, IAG offer car insurance nationally under 9 different brands:

- CGU
- SGIO
- NMRA
- SGIC
- Swann Insurance
- WFI Insurance
- Coles Insurance
- Lumley
- RACV (through a 70% shareholding in Insurance Manufacturers of Australia Pty Ltd)<sup>21</sup>

18 Submission No. 8 from Insurance Council of Australia, 26 June 2018, p2.

19 Parliament of Australia, Senate Economics References Committee, *Australia's general insurance industry: sapping consumers of the will to compare*, 10 August 2017, p16. Available at: [www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Generalinsurance/Report/c02](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Generalinsurance/Report/c02). Accessed on 4 September 2018.

20 Submission No. 2 from Motor Trade Association of WA, 22 June 2018, p13.

21 Ibid.

## Chapter 1

Table 1.1 provides information, collected by accounting firm PwC, of companies that offer 'General Insurance'. This data includes the two larger companies, smaller companies such as RAC WA, as well as some new entrants such as Youi. The largest general insurer in Australia is QBE Insurance, with premiums of \$14.9 billion and total assets of \$57.9 billion.<sup>22</sup>

**Table 1.1- Australia's largest car insurers<sup>23</sup>**

Company	Annual Premiums (mill)	Premium Ranking	Net Profit (after tax) (mill)	Outstanding Claims (mill)	Total Assests (mill)
QBE Insurance	\$14,886	1	\$1,136	\$17,791	\$57,936
IAG	\$8,464	2	\$1,031	\$6,394	\$29,596
Suncorp	\$8,172	3	\$659	\$7,380	\$26,113
Allianz Aust	\$3,687	4	\$324	\$4,786	\$12,794
Youi	\$623	10	\$59	\$114	\$877
Auto & General Insurance	\$494	12	\$15	\$79	\$601
RAC Insurance	\$391	15	\$25	\$53	\$625

The top four home and motor insurance companies controlled about 74% of the Australian market in 2016.<sup>24</sup> For the general insurance sector, in the 12 months to September 2016, gross written premiums for motor insurance was \$8,625 million, with an average premium of \$566, compared to the total home insurance premiums of \$7,882 million, with an average premium of \$668. The total industry after tax net profit for this period was \$3.1 billion, up from \$2.4 billion the previous year (a return of 11.2% on net assets), but down around 25% per cent from the 13 year average figure of \$4.1 billion.<sup>25</sup>

IAG and Suncorp's profit margins are reportedly higher than other car insurance companies overseas, with rates of about 15%. One reason for this is that they have not allowed their premiums and features to be included in on-line comparison sites. A recent article found that, "UK insurers operate on margins less than half that because

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22 PwC, *Insurance facts and figures*, 2017, p7. Available at: [www.pwc.com.au/insurance/insurance-facts-figures17.pdf](http://www.pwc.com.au/insurance/insurance-facts-figures17.pdf). Accessed on 4 September 2018.

23 Ibid.

24 Parliament of Australia, Senate Economics References Committee, *Australia's general insurance industry: sapping consumers of the will to compare*, 10 August 2017, p9. Available at: [www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Generalinsurance/Report/c02](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Generalinsurance/Report/c02). Accessed on 4 September 2018.

25 Ibid, p10.



they were forced to lower premiums after comparison sites highlighted better deals and features available from smaller providers.”<sup>26</sup>

The Insurance Commission told the Committee that it had issued motor injury insurance policies for 2.9 million insured vehicles in WA, driven by approximately 1.8 million insured drivers. Each year it receives approximately 10,000 motor injury insurance claims from crashes. Its RiskCover Division received between 1 July 2017 to 31 May 2018 2,260 new motor vehicle damage claims from 110 State Government public authorities and paid \$6.3 million to have cars repaired.<sup>27</sup>

Historically, between 10-15% of motorists are uninsured at any time and on average, an insurance policy holder has an accident every seven years.<sup>28</sup>

In WA, the car insurance landscape is different to other Australian jurisdictions. IAG controls only about 20% of the WA car insurance market, with its SGIO brand having a 11% market share. Other IAG brands offering car insurance in WA include HBF (4%), Coles (3%), and CGU, Lumley and Wesfarmers Insurance (all about 1%).<sup>29</sup> Suncorp offers car insurance in WA through AAMI, Apia, Bingle, Essentials by AAI, GIO, Shannons, and Vero and also has about 20% market share.<sup>30</sup>

RAC Insurance is a wholly-owned subsidiary of RAC WA and has a market share of ‘about 35 or 37%’, making it the major motor insurer in Western Australia.<sup>31</sup> The RAC described to the Committee that the difference between it and its competitors is its relationship with RAC WA, a not-for-profit organisation:

*So the fact that we are part of a membership organisation, the DNA of our organisation is all about the member. Indeed, from a claims insurance perspective, we look for ways to provide an optimal outcome for our members. The fact that we are part of a membership organisation permeates through our culture, and we are also different from the other insurers in that we are totally focused on WA. We have*

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26 Mr George Lekakis, *The New Daily*, ‘Two big insurers are driving your car insurance higher’, 23 June 2015. Available at: <https://thenewdaily.com.au/money/finance-news/2015/06/23/suncorp-iag-driving-car-insurance-premium/>. Accessed on 5 September 2018.

27 Submission No. 11 from Insurance Commission of WA, 9 July 2018, p1.

28 Mr Graham McDonagh, *Historical Overview of the Collision Repair Industry in Australia and Transfers of Power Through Rationalization*, Thesis, Division of Education, Arts and Social Sciences, University of South Australia, 2011, p210.

29 Mr Steven Fitzpatrick, Executive General Manager, Short Tail Claims, Insurance Australia Group, *Transcript of Evidence*, 12 September 2018, p2.

30 Submission No. 14 from Suncorp Group Ltd, 10 September 2018, p2.

31 Mr Andrew O’Hara, Chief Executive Officer, RAC Insurance Pty Ltd, *Transcript of Evidence*, 27 June 2018, pp1-2.

## Chapter 1

*local people providing local services to deliver better outcomes for our members.*<sup>32</sup>

### Finding 1

The Australian car insurance industry is dominated by two large companies – Insurance Australia Group and Suncorp Insurance Holdings Limited. The top four home and motor insurance companies control about 74% of the market.

### Finding 2

While in other Australian jurisdictions IAG, Suncorp and Allianz dominate the car insurance markets, in Western Australia the major insurer is RAC Insurance.

### A reduction in accidents

Australia's automotive accident rates were highest during the 1970's and there has been a steady decline since, with the rate of decline increasing from the mid-1980's.<sup>33</sup> Some predictions suggest that current accident frequencies could drop by 80% by 2040 due to a large uptake of autonomous or semi-autonomous vehicles. Similarly, the development of electric vehicles will lead to very low servicing and repair costs as they have less than ten moving parts compared to an internal combustion engine vehicle, which has hundreds of moving parts.<sup>34</sup>

The Western Australian Road Safety Commission records a motor vehicle accident or 'crash' if it results in bodily injury or property damage over \$3,000, the crash occurred on a road that was open to the public and the crash was not a result of a medical condition or a deliberate act (such as a suicide attempt).<sup>35</sup> Western Australian data for overall crashes show the dramatic decline in rates per 10,000 registered vehicles and for total distance travelled (Figure 1.1 below). There has been a similar reduction in the rate of crashes that have resulted in a fatality (Figure 1.2 below).

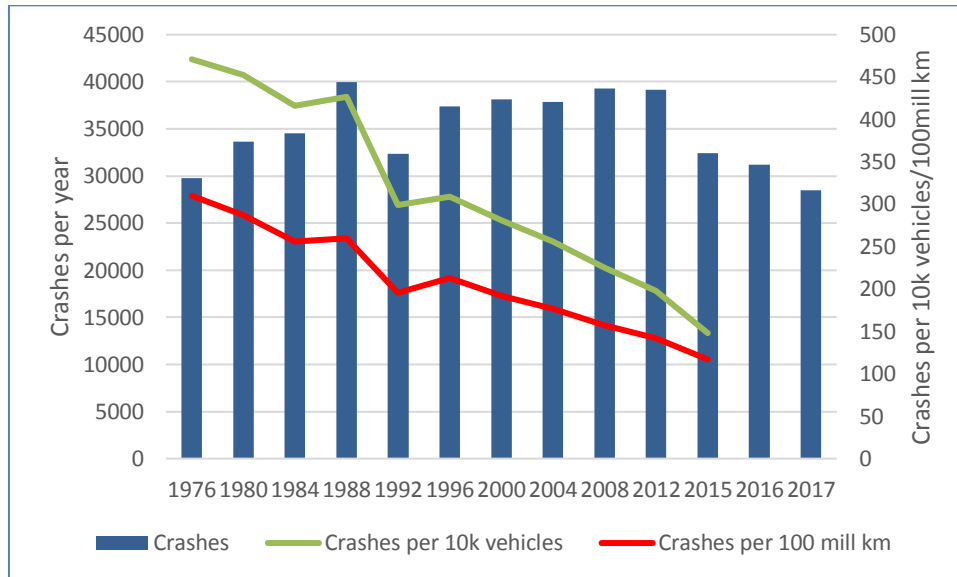
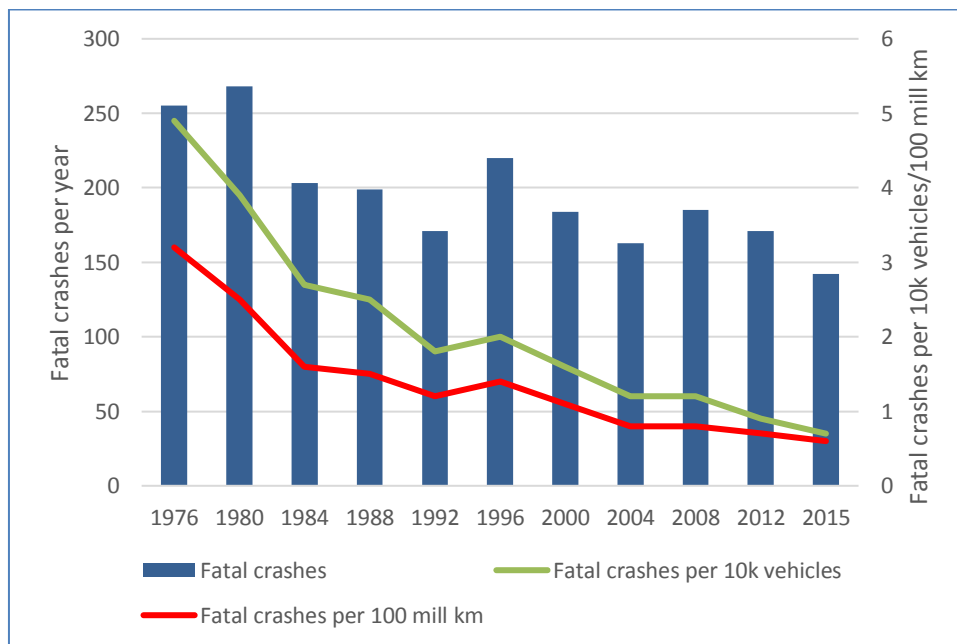
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32 Ibid.

33 Mr Graham McDonagh, *Historical Overview of the Collision Repair Industry in Australia and Transfers of Power Through Rationalization*, Thesis, Division of Education, Arts and Social Sciences, University of South Australia, 2011, p239.

34 Submission No. 5 from Department of Mines, Industry Regulation and Safety, 22 June 2018, p11.

35 Road Safety Commission, *Reported Road Crashes in 2015*, December 2016, pp8-9. Available at: [www.rsc.wa.gov.au/RSC/media/Documents/Road%20Data/Statistics/Annual%20crash%20statistics/annual-crash-statistics-2015.pdf](http://www.rsc.wa.gov.au/RSC/media/Documents/Road%20Data/Statistics/Annual%20crash%20statistics/annual-crash-statistics-2015.pdf). Accessed on 24 July 2018.

**Figure 1.1- WA Annual Crash data (1976-2017)<sup>36</sup>****Figure 1.2- WA Annual Fatal Crash Data (1976-2015)<sup>37</sup>**

36 Road Safety Commission, *Annual Statistics*, 20 August 2018. Available at: [www.rsc.wa.gov.au/Statistics/Annual-Statistics](http://www.rsc.wa.gov.au/Statistics/Annual-Statistics). Accessed on 24 July 2018.

37 Ibid.

## Chapter 1

### Finding 3

The continued decline in reportable accidents in Western Australia has driven down demand for smash repairs, placing financial pressure on individual smash repair firms.

### Technological change

Technological change has contributed to the contraction of the Australian smash repair industry. The introduction of systems for providing quotations for repairs, such as Vispara Technosoft's Repair Management Systems (RMS) and Audatex<sup>38</sup>, now allows quotations to be prepared from the application of digital images, as opposed to an actual physical inspection of vehicles.<sup>39</sup> The ownership and running costs of these new software systems has added to cost pressures for owners of smash repair businesses as "work became harder to get, vehicles became more sophisticated in design and, with the introduction of computer power, the cost of running a smash repair business started to escalate."<sup>40</sup>

New functionality in cars, such as advanced braking and steering capabilities, means that some parts have become far more expensive to repair. For example, a new front grill on a recent model Lexus costs over \$20,000 to replace.<sup>41</sup> In response, the IAG CEO recently said that it would negotiate with manufacturers over the 'exorbitant' cost of spare parts, and encourage customers to use its in-house repairer network.<sup>42</sup>

Suncorp told the Committee that research around the world had shown, that despite the drop on frequency and severity of accidents:

*...the cost of repairs has either stayed the same or gone up, and that is because, again, that equipment in the vehicle is very expensive to replace and repair, and if it gets damaged, it maintains a fairly high cost. That is why about 50% of the cost of repairs for an insurer are the cost of parts...*<sup>43</sup>

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38 Solera Holdings, *Audatex Australia*, nd. Available at: [www.audatex.com.au/](http://www.audatex.com.au/). Accessed on 4 September 2018.

39 Mr Graham McDonagh, *Historical Overview of the Collision Repair Industry in Australia and Transfers of Power Through Rationalization*, Thesis, Division of Education, Arts and Social Sciences, University of South Australia, 2011, p148.

40 Ibid, pii.

41 Mr Simon Evans, *Australian Financial Review*, 'Suncorp's crash repair arm accelerates', 27 August 2017. Available at: [www.afr.com/business/banking-and-finance/financial-services/suncorps-crash-repair-arm-accelerates-20170825-gy4aoz](http://www.afr.com/business/banking-and-finance/financial-services/suncorps-crash-repair-arm-accelerates-20170825-gy4aoz). Accessed on 5 September 2018.

42 Ms Alice Uribe, *Australian Financial Review*, 'IAG CEO Peter Harmer says new car repair costs are 'exorbitant'', 23 August 2017. Available at: [www.afr.com/business/iag-ceo-peter-harmer-says-new-car-repair-costs-are-exorbitant-20170823-gy2me0](http://www.afr.com/business/iag-ceo-peter-harmer-says-new-car-repair-costs-are-exorbitant-20170823-gy2me0). Accessed on 5 September 2018.

43 Mr Rob Bartlett, Executive Manager Joint Venture Claims Operations, Suncorp Group Ltd, *Transcript of Evidence*, 12 September 2018, p12.

In response, insurance companies have purchased companies that provide spare parts. Suncorp owns ACM Parts, but this company is currently not operating in WA.<sup>44</sup> The MTA told the Committee that this is a strategy used by the large companies on the east coast of Australia. It had recently campaigned against IAG setting up such an operation here in WA.<sup>45</sup>

The Australian Competition & Consumer Commission has also acknowledged that technological changes in cars is one factor in insurers 'steering' their customers to their own preferred smash repairers (a topic explored further in section 3.4 below):

*To fix today's cars, repairers need access to volumes of complex technical information held digitally by car manufacturers. This, however, allows car manufacturers to control who has access to the technical information needed to fix cars, often favouring their own dealer and preferred repairer networks over independent repairers.*<sup>46</sup>

#### **Finding 4**

Technological changes in the automotive industry are fundamentally changing repair cost profiles, with parts constituting up to 50% of repair costs.

#### **Large insurers and their direct relationship to smash repairers**

Another recent development undertaken by the large insurers is to develop a close business relationship with individual repair businesses, and in some cases to actually purchase an interest in them (vertical integration). The Australian Association of Progressive Repairers submitted that the Australian smash repair industry can now be divided into three business models:

1. Independent repairers.
2. Consolidators.
3. Consolidationers.<sup>47</sup>

The majority of smash businesses remain independent, but some may be preferred or recommended repairers for different insurance companies. Suncorp has a network of 45 repair centres across Australia and NZ which it operates under the brand Capital SMART. These are 'consolidators' under the AAPR model and Suncorp has three SMART

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<sup>44</sup> Ibid, p4.

<sup>45</sup> Mr Stephen Moir, Chief Executive Officer, Motor Trade Association of WA, *Transcript of Evidence*, 27 June 2018, p2.

<sup>46</sup> Australian Competition & Consumer Commission, *Driving reform in the automotive market*, 4 May 2018. Available at: [www.accc.gov.au/speech/driving-reform-in-the-automotive-market](http://www.accc.gov.au/speech/driving-reform-in-the-automotive-market). Accessed on 24 October 2018.

<sup>47</sup> Submission No. 1 from Australian Association of Progressive Repairers, 31 May 2018, p6.

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centres in WA, all in the Perth metropolitan area. Capital SMART was founded in 2010 and started in Melbourne with a joint venture between Suncorp and a smash repairer, Mr Jim Vais. SMART centres repair over 150,000 vehicles per year, about 45% of Suncorp's total repairs nationally and about 55% in WA.<sup>48</sup> None of the SMART centres is franchised and each is owned by Capital SMART, with a separate board and operating as a separate business.<sup>49</sup>

SMART stands for 'Small Medium Accident Repair Technology' and these centres specialise in repairs to driveable vehicles that have sustained low to medium collision damage such as replacement bumpers. Suncorp claims these centres use "innovative technologies, digital capabilities and processes to complete a high volume of repairs at fast turnaround times. SMART centres are able to carry out repairs to driveable vehicles at a rate of 50-70% faster than the industry average."<sup>50</sup>

In addition to its SMART centres, Suncorp also has a network of 13 'recommended repairers' in WA, the majority in Perth.<sup>51</sup> While its SMART centres repair the very small repairs, the recommended repairers undertake the "medium to heavy style of work" and require the equipment and trained staff to do these repairs. About 20% of Suncorp's repairs in WA are undertaken by non-recommended repairers.<sup>52</sup>

While IAG doesn't directly operate repair shops in WA, it has a preferred network of 36 repairers.<sup>53</sup> IAG claims to work with over 360 non-preferred repairers in WA, who complete about 29% of IAG's repairs in this State.<sup>54</sup> While IAG doesn't directly have an ownership stake in any smash repair centres, unlike Suncorp, it does maintain a significant role, and direct say, in how its preferred network of repairers is managed.

For example, on 25 October 2018 IAG sent a Motor Model Performance Update M18/012 to its partnered repairers titled 'New Guidelines for the Implementation of the IAG Work Health & Safety Program'. This new program requires an external company, Greencap (owned by WFI, which in turn is owned by IAG), to assess the repairer on 60 different factors, at the cost of the repairer. The Guidelines require the repairers to comply with this new program or have their agreement with IAG

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48 Mr Rob Bartlett, Executive Manager Joint Venture Claims Operations, Suncorp Group Ltd, *Transcript of Evidence*, 12 September 2018, p3 & p5.

49 Ibid, p5.

50 Submission No. 14 from Suncorp Group Ltd, 10 September 2018, p3.

51 Ibid.

52 Mr Rob Bartlett, Executive Manager Joint Venture Claims Operations, Suncorp Group Ltd, *Transcript of Evidence*, 12 September 2018, pp2-3.

53 Mr Steven Fitzpatrick, Executive General Manager, Short Tail Claims, Insurance Australia Group, *Transcript of Evidence*, 12 September 2018, p2.

54 Ibid, p6 & p8.

terminated. Repairers are unable to use other companies to provide this work safety program.<sup>55</sup>

AAPR's third category, 'consolidationers', include companies such as Car Craft Panel and Paint Ltd, which was formed in WA in 1987. It now has approximately 100 repair centres in WA, regional NSW, Queensland and SA. Its size allows it to negotiate national purchasing arrangements and supply agreements with suppliers.<sup>56</sup>

### **Lowering costs by increasing scale**

By having a more direct relationship with smash repair business through their own companies (Suncorp's Capital SMART) or preferred networks (RAC and IAG) the insurers can lower their direct costs because of the larger throughput of damaged cars. The 45 Capital SMART businesses have a capacity of 200,000 repairs a year, or about 85 cars a week. Gemini Accident Repair was founded in Perth in 2009. It now has 48 smash repair businesses across Australia and NZ.<sup>57</sup> It recently built a new repair facility in Wacol Queensland to repair cars specifically for the insurer RACQ. This facility has the capacity to repair 120 cars per week.<sup>58</sup> In 2015, Gemini was purchased by the AMA Group, creating a large network of nearly 100 centres.<sup>59</sup> The Committee was told in closed hearings that some smash repairers may only do 20-30 repairs a week.

### **Finding 5**

Vertical integration and efficiency-driven process streamlining is affecting the Western Australian smash repair industry.

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55 IAG, *Motor Model Performance Update M18/012*, 'New Guidelines for the Implementation of the IAG Work Health & Safety Program', 25 October 2018, p1.

56 Car Craft Group, *About the Car Craft Group*, 2018. Available at: <https://car-craft.com.au/about/>. Accessed on 22 October 2018.

57 Gemini Accident Repair, *Welcome to Gemini Accident Repair*, 2018. Available at: [www.geminiarc.com.au/index-gemini.php](http://www.geminiarc.com.au/index-gemini.php). Accessed on 25 October 2018.

58 Gemini Accident Repair, *Best New Shop Regional & National Winner - Gemini Wacol*, 2018. Available at: [www.geminiarc.com.au/news.php](http://www.geminiarc.com.au/news.php). Accessed on 25 October 2018.

59 Mr Tim Boreham, 'AMA's \$100m Gemini Accident Repair Centres deal fuels M&A action', *The Australian*, 15 September 2015.





## Chapter 2

# Regulation of the Conduct of the State's Smash Repair Industry

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*The key focus of the [State's] legislation is to ensure that repair work is carried out by qualified repairers through the licensing of repair business operators and the certification of tradespersons.*<sup>60</sup>

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### 2.1 Introduction

The State's smash repair industry is regulated by a complex series of State and Federal legislation. This chapter outlines the key points of this legislation and reviews the development of the national Motor Vehicle Insurance and Repair Industry Code of Conduct. The latest version of the Code was introduced on 1 May 2017, after a 15-month period of review by insurers and the smash repair industry.<sup>61</sup> An analysis of how well this Code works in WA, and whether it should be mandated as it is in NSW, is provided in the following chapter.

### 2.2 Western Australian Legislation

The *Motor Vehicle Repairers Act 2003* (MVR Act)<sup>62</sup> is the key piece of legislation regulating the State's smash repair industry and imposes serious obligations on licensed smash repair operators and the way they operate their business. The Act came into place following the introduction and passage of two pieces of legislation, the *Motor Vehicle Repairers Bill 2002* and the *Motor Vehicle Dealers Amendment Bill 2002*. The Act sought to improve consumer protection over a number of areas of the motor vehicle repair industry in addition to the formalisation of quality standards and the provision of a regulatory regime to improve consumer confidence.

The introduction of the MVR Act was the culmination of two committee inquiries. In 1990 the Motor Vehicle Repair Industry Review Committee was established by the Minister for Consumer Affairs to review the functioning of the industry and to facilitate legislative reform. A second Committee Inquiry was established in 1993 and focused on

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60 Submission No. 5 from Department of Mines, Industry Regulation and Safety, 22 June 2018, p3.

61 Australian Motor Body Repairers Association, *Introduction of the Motor Vehicle Insurance and Repair Industry (MVIRI) Code of Conduct*, 1 May 2017. Available at: [www.ambra.org.au/news-and-events/80-introduction-of-the-motor-vehicle-insurance-and-repair-industry-mviri-code-of-conduct](http://www.ambra.org.au/news-and-events/80-introduction-of-the-motor-vehicle-insurance-and-repair-industry-mviri-code-of-conduct). Accessed on 5 September 2018.

62 AustLII, *Motor Vehicle Repairers Act 2003*, 2003. Available at: [http://classic.austlii.edu.au/au/legis/wa/consol\\_act/mvra2003254/](http://classic.austlii.edu.au/au/legis/wa/consol_act/mvra2003254/). Accessed on 5 September 2018.

## Chapter 2

other Australian legislation regulating the motor vehicle repair industry and the extent to which the repair industry in Western Australia supported regulation. This Inquiry reviewed the regulatory scheme in NSW and recommended the introduction of a similar scheme in WA.<sup>63</sup>

In 2000 the then-Minister for Fair Trading undertook a public consultation program. The consultation consisted of focus groups which targeted both urban and regional consumers. The outcomes demonstrated considerable dissatisfaction with repairers and widespread support for legislation and regulation of the smash repair industry. A draft 'green' bill was tabled in the Parliament in June, 2002 providing for the licensing of motor vehicle repair businesses and the certification of individual repairers.<sup>64</sup>

The MVR Act came into operation in 2007 and provides for the licensing of repair businesses and the certification of individual repairers working in repair businesses. The Commissioner for Consumer Protection is the licensing authority.<sup>65</sup> The Department of Mines, Industry Regulation and Safety (DMIRS) explained the Act's roll-out:

*The implementation was undertaken in two stages over a two to three year period. The first stage being the registration of all tradespersons to establish the pool of certified repairers. The second stage involved the licensing of all repair businesses. The initial roll-out was focussed on gaining compliance with the Repairers Act by ensuring that businesses and tradespersons operating in the industry were educated about their responsibilities to be licensed or certified.*<sup>66</sup>

DMIRS explained to the Committee that "[o]ur licensing regime and our inspection regime is around that, so it is about having the right people at the right place doing the right work."<sup>67</sup> The Department can issue infringement notices and can prosecute licence holders before the State Administrative Tribunal or a court if they fail to meet their obligations.<sup>68</sup>

Section 5 of the MVR Act describes the types of car repairs that are regulated:

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63 Hon J.C. Kobelke, Minister for Consumer and Employment Protection, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 5 December 2002, p4078b.

64 Ibid.

65 Submission No. 5 from Department of Mines, Industry Regulation and Safety, 22 June 2018, p3.

66 Ibid.

67 Mr David Hillyard, Commissioner for Consumer Protection, Department of Mines, Industry Regulation and Safety, DMIRS, *Transcript of Evidence*, 27 June 2018, p3.

68 The Department of Mines, Industry Regulation and Safety, *Motor Vehicle Repairers - Infringements*, May 4, 2014. Available at: [www.commerce.wa.gov.au/consumer-protection/motor-vehicle-repairers-infringements](http://www.commerce.wa.gov.au/consumer-protection/motor-vehicle-repairers-infringements). Accessed on 5 September 2018.

- Examining motor vehicles;
- Diagnosing and detecting faults;
- Adjusting, servicing, and maintaining motor vehicles;
- Overhauling motor vehicles;
- Replacing components of motor vehicles;
- Modifying and altering motor vehicles; and
- Painting and treating the surfaces of motor vehicles.<sup>69</sup>

Section 39 of the MVR Act also requires that workers undertaking smash repairs have a certificate for the class of repairs they are doing, or be supervised by a certified repairer. The penalty for smash repairs being undertaken by someone without a certificate is a \$5,000 fine.<sup>70</sup> As at 1 July 2017, approximately 13,400 repairers were certified in Western Australia in a total of 4,351 licenced repair businesses. Of these business, less than 1,200 were smash repair business.<sup>71</sup>

The Department told the Committee that since it commenced physical inspections of licensed businesses in 2011, “overall, compliance with the Repairers Act is high” and:

*...prosecutions under the Repairers Act have related to unlicensed repair businesses, and individual repairers failing to comply with the conditions endorsed on their repairer’s certificate. There have been no enforcement actions against smash repairers.<sup>72</sup>*

DMIRS submitted that it was aware of anecdotal concerns in relation to the smash repair industry including: pressure from insurers to keep repair costs low resulting in poor quality and unsafe repairs. It said that these concerns:

*...predominantly relate to commercial arrangements between insurers and repairers and, as such, fall outside the scope of the legislation administered by Consumer Protection. Consumer Protection does not play a role in the regulation of insurance contracts between insurers and consumers. The Australian Prudential Regulatory Authority and the*

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<sup>69</sup> Ibid, Section 5.

<sup>70</sup> Ibid, Section 39.

<sup>71</sup> Submission No. 5 from Department of Mines, Industry Regulation and Safety, 22 June 2018, p4.

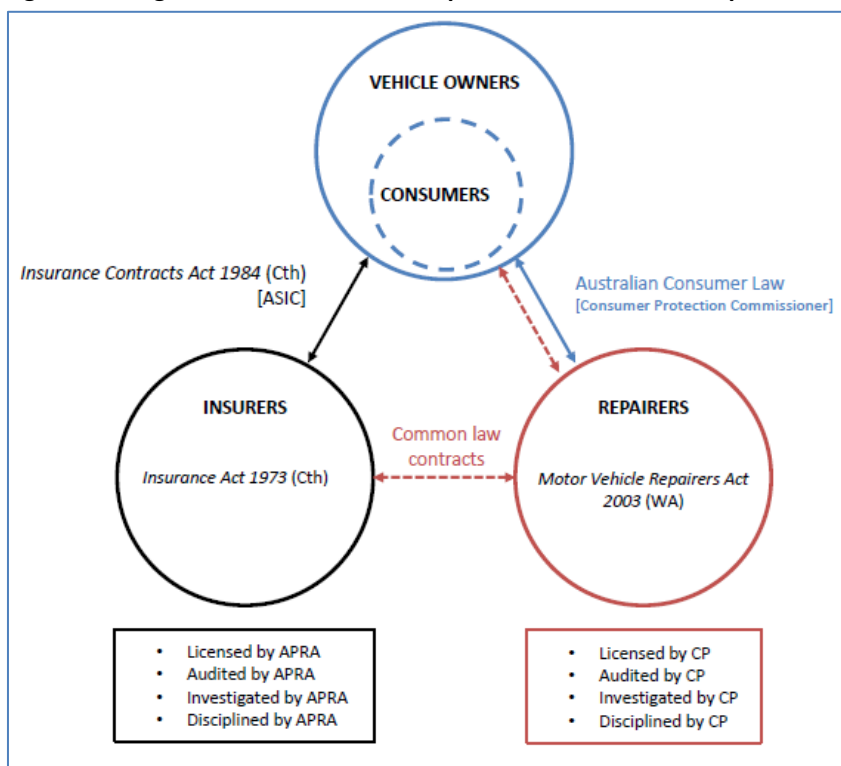
<sup>72</sup> Ibid, p6.

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*Australian Securities and Investment Commission are the key regulators in this area.*<sup>73</sup>

The MVR Act places WA in a unique position. NSW is the only other State which regulates motor vehicle repairers and the businesses they work for, while the ACT only regulates repair businesses.<sup>74</sup> DMIRS provided the Committee with an illustration of the interaction between the Federal and State legislation that impacts on consumers, smash repairers and insurers (Figure 2.1). Discussion of the relevant Federal legislation is included below in sections 2.4 and 2.5.

**Figure 2.1- Legal overview of relationship between consumers, repairers and insurers<sup>75</sup>**



## 2.3 Federal Legislation

### Australian Securities and Investments Commission

DMIRS told the Committee that the Australian Securities and Investments Commission (ASIC) is the Federal regulator for the *Insurance Contracts Act* and that:

<sup>73</sup> Ibid, p1.

<sup>74</sup> Ibid, p7.

<sup>75</sup> Mr Peter Gow, Acting Deputy Director General, Industry Regulation and Consumer Protection, Department of Mines, Industry Regulation and Safety, *Transcript of Evidence*, 27 June 2018, p2.

*...to some extent, the insurance bit is a Commonwealth patch and the consumer part is dealt with through the State consumer protection Commissioner. But the insurers have to get to the repairers and that is a straight commercial contract... There is no formal regulation of that; it is a straight business-to-business contract.*<sup>76</sup>

Australia's insurance industry is heavily regulated by the Federal Government and arrangements between customers and insurers are governed by ASIC, the Australian Prudential Regulation Authority, the *Insurance Contracts Act 1984*, the *Corporations Act 2001* and the *Australian Securities and Investments Commission Act 2001*. The DMIRS highlighted that Part II of the *Insurance Contracts Act* specifically requires that insurers act in the utmost good faith, and that:

*The Insurance Contracts Act's consumer protections are the sole source of remedies in relation to insurance contracts. As a result, it would be unconstitutional for WA to legislate to create jurisdiction over insurance-related disputes.*<sup>77</sup>

### **The ability of the Australian Competition and Consumer Commission to regulate misuse of power**

While ASIC regulates insurers to ensure that they comply with their legal obligations to operate fair, orderly and transparent markets when dealing with consumers<sup>78</sup>, it is the Australian Competition and Consumer Commission (ACCC) which regulates practices between companies. Anti-competitive conduct and the misuse of power is one of the ACCC's 'enduring priorities' for its compliance tasks conducted under the provisions of *Competition and Consumer Act 2010*.<sup>79</sup>

The imbalance between the large insurers and the smaller smash repairers, and the possible of the abuse of market power by the insurance companies to force prices below the costs faced by the repairers, was an issue pursued by the Committee in its hearings. The repairers the Committee spoke to in closed hearings were fearful of raising this issue publically in case the insurers responded by not placing any further jobs with them.

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76 Mr Peter Gow, Acting Deputy Director General, Industry Regulation and Consumer Protection, Department of Mines, Industry Regulation and Safety, *Transcript of Evidence*, 27 June 2018, p2.

77 Submission No. 5 from Department of Mines, Industry Regulation and Safety, 22 June 2018, p1.

78 Australian Securities and Investments Commission, *Who we regulate*, 4 September 2018. Available at: <https://asic.gov.au/about-asic/what-we-do/our-role/#who>. Accessed on 30 October 2018.

79 Australian Competition and Consumer Commission, *Compliance & enforcement policy & priorities*, nd. Available at: [www.accc.gov.au/about-us/australian-competition-consumer-commission/compliance-enforcement-policy-priorities#enduring-priorities](http://www.accc.gov.au/about-us/australian-competition-consumer-commission/compliance-enforcement-policy-priorities#enduring-priorities). Accessed on 30 October 2018.

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Suncorp argued that they weren't using their power against repairers, but were placing their customers' needs first:

*I think we do have a responsibility to our customers to make sure that pricing in the market is fair and reasonable—that we are not just taking any price that is proposed to us, that we do review it carefully, we do consider it in terms of the whole market price, and we do not just take whatever price is put to us. We also do need to consider the repair methods being proposed—whether they are actually over the top, whether or not there are simpler, more efficient methods.*

*So I think sometimes the question is whether or not those repairers actually fully understand what the market price can be in a really efficient repair model. As a result, I think our understanding of the smash repair industry and smash repairs in general is pretty high.<sup>80</sup>*

IAG also described their behaviour toward repairers as actually trying to assist smash repairers improve their practices:

*I guess it is not in our best interests to not have smash repairers in a sustainable position; it is about finding that right balance. I think there are a lot of new technologies out there, so it is about repair businesses being able to keep up with advances in technologies, which actually means that some of the things that might have taken a day to do take only half a day to do, so therefore the repairers that are investing in those technologies are the ones that are winning more work because they are willing to actually put the investment into their repair shops.<sup>81</sup>*

With the arrangements between insurers and repairers being one also covered by the Common Law, and the average cost of repairs being around \$3,000<sup>82</sup> and taking on average only 2.6 days to complete<sup>83</sup>, it is unlikely that individual smash repairers would escalate their disputes with insurance companies into expensive legal action or to put effort into having the ACCC agree to an inquiry.

The *Competition and Consumer Act 2010* allows the ACCC to initiate an inquiry or market study, but the Federal Treasurer is also able to refer a matter to it for inquiry.

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80 Mr Rob Bartlett, Executive Manager Joint Venture Claims Operations, Suncorp Group Ltd, *Transcript of Evidence*, 12 September 2018, p8.

81 Mr Steven Fitzpatrick, Executive General Manager, Short Tail Claims, Insurance Australia Group, *Transcript of Evidence*, 12 September 2018, p5.

82 Mr Richard Howe, Deputy Chief Executive, Insurance Commission of WA, *Transcript of Evidence*, 19 September 2018, p2.

83 Mr Rob Bartlett, Executive Manager Joint Venture Claims Operations, Suncorp Group Ltd, *Transcript of Evidence*, 12 September 2018, p2.

The ACCC published an issues paper on the relationship between the Australian motor body/smash repair industry and the general insurance sector in September 2003. It determined that there was “conduct occurring in the industry which is perceived to be unfair and unreasonable” and that this conduct may impact on the development of continuing commercial relationships given that a high proportion of smash repairs are performed under insurance contracts.<sup>84</sup> As noted below in section 2.5, the ACCC’s issues paper was one of the factors that led to the development of the initial national voluntary *Motor Vehicle Insurance and Repair Industry Code of Conduct* in 2006.

In 2015, the Australian Senate’s Standing Committee on Economics tabled its report *Future of Australia’s Automotive Industry: Driving Jobs and Investment* in which it considered the market power of insurers. The Senate Committee noted that these issues are regulated at the Commonwealth level and stated:

*The issues affecting the sustainability of the smash repair industry and the relationships between repairers, insurers and car parts suppliers are complex and very difficult to unbundle. The Committee considers that a more comprehensive and systemic review of the structure, conduct and performance of the smash repairs market is warranted and should be undertaken as a matter of priority.*<sup>85</sup>

The Senate Committee recommended that the Commonwealth Government initiate an independent inquiry into the smash repair industry, to examine the relationships between insurers, parts suppliers and smash repair businesses, and inform an appropriate policy response. In September 2017, the Commonwealth Government responded to the Report and stated it would continue to monitor the industry to better understand the issues.<sup>86</sup> It has not initiated an inquiry.

The Senate Committee’s recommendation echoed previous observations made in 2014 by the Legislative Assembly of New South Wales Select Committee on the Motor

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84 Australian Competition and Consumer Commission, *Smash repairers/ insurance issues paper published*, 19 September 2003. Available at: [www.accc.gov.au/media-release/smash-repairers/insurance-issues-paper-published](http://www.accc.gov.au/media-release/smash-repairers/insurance-issues-paper-published). Accessed on 31 October 2018.

85 Australian Senate, Standing Committee on Economics, *Future of Australia’s Automotive Industry: Driving Jobs and Investment*, 1 December 2015, s3.62. Available at: [www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Automotive\\_industry\\_2014/Report/c03](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Automotive_industry_2014/Report/c03). Accessed on 2 November 2018.

86 Australian Senate, Standing Committee on Economics, *Government Response*, 4 September 2017, p20. Available at: [www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Automotive\\_industry\\_2014/Government\\_Response](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Automotive_industry_2014/Government_Response). Accessed on 2 November 2018.

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Vehicle Repair Industry, which also noted “insurers are able to use their market dominance to exert price pressure on repairers.”<sup>87</sup>

Given the Commonwealth’s central regulatory role in the financial services sector, structural issues with respect to the relationships between smash repairers and insurers have also been raised in the context of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, although that entity is yet to complete the “Round Six: Insurance” phase of its process.<sup>88</sup>

The Economics and Industry Committee notes that the Western Australian Government has very limited jurisdiction over anti-competitive conduct. We also observe the repeated calls from industry and other agencies and jurisdictions for a Commonwealth-level inquiry into structural issues affecting the smash repair industry.

### Finding 6

The financial services industry is regulated by the Commonwealth Government. The Australian Securities and Investments Commission and the Australian Prudential Regulation Authority govern insurance market operations and customer relationships. The Australian Competition and Consumer Commission regulates relationships between businesses.

### Finding 7

The State Government has a limited ability to intervene in the contractual and business arrangements between insurers and smash repair businesses.

### Finding 8

A number of previous State and Commonwealth level inquiries have called for an independent investigation into structural issues affecting the smash repair industry.

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87 Legislative Assembly of New South Wales, Select Committee on the Motor Vehicle Repair Industry, *Motor Vehicle Repair Industry*, July 2014, pvii. Available at: [www.parliament.nsw.gov.au/ladocs/inquiries/1617/Report%20on%20the%20Motor%20Vehicle%20Repair%20Industry.pdf](http://www.parliament.nsw.gov.au/ladocs/inquiries/1617/Report%20on%20the%20Motor%20Vehicle%20Repair%20Industry.pdf). Accessed on 2 November 2018.

88 Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Interim Report*, 28 September 2018. Available at: <https://financialservices.royalcommission.gov.au/>. Accessed on 7 November 2018.



**Recommendation 1**

The Treasurer write by 28 February 2019 to the Commonwealth Treasurer seeking their agreement to direct the Australian Competition and Consumer Commission under the *Competition and Consumer Act 2010* to undertake in-depth inquiry into possible anti-competitive conduct and misuse of power in Australia's smash repair industry.

**2.4 Financial Ombudsman Service**

The national Financial Ombudsman Service (FOS) is responsible for dealing with consumer complaints regarding insurance-related products and matters relating to insurance claims. It is approved by ATSIC as an independent external dispute resolution scheme to deal with disputes between consumers and insurers but it is not a Federal Government funded program.<sup>89</sup> In 2016-17, 33% of FOS' general insurance disputes involved motor vehicle comprehensive insurance.<sup>90</sup>

Consumers generally raise an issue with their insurer directly, prior to seeking the assistance of FOS. Consumers can seek assistance from FOS in regard to the quality of works or parts used for an insurance claim, and "if FOS finds in favour the insurer, there remains scope for the consumer to take the matter to court. If FOS finds in favour of the consumer, the decision is binding on the insurer."<sup>91</sup>

The Committee wrote to FOS requesting the provision of specific statistics relevant to Western Australia. FOS indicated that in the last five years to date, it had received a total of 4,117 disputes from Western Australians in regard to general insurance disputes, of which 762 (18.5%) were in regard to motor vehicle comprehensive insurance claims.<sup>92</sup>

**Table 2.1- WA disputes raised with the Financial Ombudsman Service (2013-18)**

	2013-14	2014-15	2015-16	2016-17	2017-18
Total disputes	625	652	778	1,033	1,029
Car insurance disputes	165	148	119	165	165

<sup>89</sup> Submission No. 5 from Department of Mines and Regulation, Safety and Regulation, 22 June 2018, p2.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> Mr John Price, Lead Ombudsman, General Insurance, Financial Ombudsman Service Australia, Letter, 7 August 2018.

## Chapter 2

FOS said that it had “not identified any dispute trends regarding motor vehicle comprehensive insurance, such as an increase in disputes relating to the quality of motor vehicle repairs, especially in claims made by West Australian consumers.”<sup>93</sup>

### 2.5 Establishment of a National Industry Code of Conduct

According to a history of Australia’s smash repair industry:

*During the 2000’s cost cutting strategies by some insurers to save on automotive claims continued to inflame industry unrest to such a point that it proved a catalyst for government intervention in the form of two independent inquiries.*<sup>94</sup>

In 2002 the Australian Competition and Consumer Commission (ACCC) facilitated discussion with insurers, repairers and consumers and subsequently released an Issues Paper in 2003 supporting the establishment of a voluntary industry-wide code of conduct.<sup>95</sup>

Subsequently, in July 2004 the Small Business Ministerial Council supported the development of a national solution to problems in the smash repair and general insurance industries, which, at a minimum, would be based on a voluntary, industry-wide code. The Commonwealth Government said that it would “consider a strong regulatory response should a voluntary code not be satisfactorily progressed.”<sup>96</sup>

In 2004, the Productivity Commission undertook a further review, releasing its final report, *Smash Repair and Insurance*, in March 2005.<sup>97</sup> This Report supported recommendations from the ACCC’s inquiry calling for the establishment of a Code of Conduct to “govern aspects of the relationship between repairers and insurers and their dealings with each another.”<sup>98</sup> The Productivity Commission considered that, if voluntary agreement between insurers and repairers was not quickly reached, a code should be mandated under the provisions of the *Federal Trade Practices Act*.<sup>99</sup>

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93 Ibid.

94 Mr Graham McDonagh, *Historical Overview of the Collision Repair Industry in Australia and Transfers of Power Through Rationalization*, Thesis, Division of Education, Arts and Social Sciences, University of South Australia, 2011, p241.

95 Motor Vehicle Insurance and Repair Industry Code of Conduct, 2016-18. Available at: [www.abrcode.com.au/about.aspx](http://www.abrcode.com.au/about.aspx). Accessed on 17 July 2018.

96 Productivity Commission, *Smash Repair and Insurance*, 17 March 2005, pxiv. Available at: [www.pc.gov.au/inquiries/completed/smash-repair/report/smashrepair.pdf](http://www.pc.gov.au/inquiries/completed/smash-repair/report/smashrepair.pdf). Accessed on 5 September 2018.

97 Ibid.

98 Motor Vehicle Insurance and Repair Industry Code of Conduct, 2016-18. Available at: [www.abrcode.com.au/about.aspx](http://www.abrcode.com.au/about.aspx). Accessed on 17 July 2018.

99 Productivity Commission, *Smash Repair and Insurance*, 17 March 2005, p119. Available at: [www.pc.gov.au/inquiries/completed/smash-repair/report/smashrepair.pdf](http://www.pc.gov.au/inquiries/completed/smash-repair/report/smashrepair.pdf). Accessed on 5 September 2018.

The Commonwealth Government was supportive of the Commission's recommendations and established a Taskforce which included representatives from motor insurers and repairers. The Taskforce subsequently established the national voluntary *Motor Vehicle Insurance and Repair Industry Code of Conduct* on 29 June 2006. The Code underwent a wide-ranging review in 2016 and the revised Code commenced on 1 May 2017.<sup>100</sup>

The Code of Conduct is "intended to promote transparent, informed, effective and co-operative relationships between smash repairers and insurance companies on mutual respect and open communication."<sup>101</sup>

Currently over 2,000 smash repairers and 32 insurance companies, representing most major participants in motor vehicle insurance, are signatories to the Code. The Department of Mines, Industry Regulation and Safety told the Committee that 252 smash repair business in WA were signatories to the Code.<sup>102</sup> The Code is managed by an Administration Committee (CAC) made up of three appointees from the Motor Trades Association of Australia and three appointees from the Insurance Council of Australia. The ICA representatives for 2016-17 were from IAG, Suncorp and Allianz Insurance.<sup>103</sup>

The Code provides for three stages of dispute resolution. Where issues cannot be resolved between repairers and insurers at a local level, the matter can be raised through the insurer's internal dispute resolution (IDR) mechanism. Disputes that cannot be resolved following an IDR can then be raised through the Code's mediation mechanism (which includes the WA Small Business Commissioner). Where the parties are still unable to agree to a resolution, the Code provides for a third level of dispute resolution, 'expert determination', whereby an independent party is appointed to issue a final and binding order, resolving the dispute in the form of a written decision.<sup>104</sup>

During 2016-17, 397 IDRs were lodged with the CAC, 25 mediations and one application for expert determination were lodged. There have also been some disputes raised directly with state Small Business Commissioners.<sup>105</sup> The 397 IDRs flowed from

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100 Motor Vehicle Insurance and Repair Industry Code of Conduct, 2016-18. Available at: [www.abrcode.com.au/forms/2017-03-29%20May%202017%20Code%20of%20Conduct.pdf](http://www.abrcode.com.au/forms/2017-03-29%20May%202017%20Code%20of%20Conduct.pdf). Accessed on 17 July 2018.

101 Motor Vehicle Insurance and Repair Industry Code of Conduct, 2016-18. Available at: [www.abrcode.com.au/about.aspx](http://www.abrcode.com.au/about.aspx). Accessed on 17 July 2018.

102 Submission No. 5 from Department of Mines, Industry Regulation and Safety, 22 June 2018, p17.

103 Code Administration Committee, *Annual Report 2017*, nd, p1. Available at: [www.abrcode.com.au/site/DefaultSite/filesystem/documents/CAC-Annual-Report-2017.pdf](http://www.abrcode.com.au/site/DefaultSite/filesystem/documents/CAC-Annual-Report-2017.pdf). Accessed on 23 October 2018.

104 Ibid, p3.

105 Ibid.

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1.9 million insurance claims made in those 12 months for 13.6 million vehicles with comprehensive and third-party insurance policies.<sup>106</sup>

During the 12 years of operation of the Code, there have been 7 IDRs raised in WA.<sup>107</sup> The IAG explained to the Committee why more of these disputes don't end in an IDR:

*They are generally around method disagreements, for example, and have not extended past the IDR process... The assessing would be reviewed by the manager and then put through a team review and then passed back to a repairer for discussion and they are being resolved at that level.*<sup>108</sup>

This low level of officially recorded disputes does not reflect the real level of conflict between insurers and smash repairers. The MTA told the Committee of their actions to resolve conflicts so that they don't result in an IDR:

*An IDR is effective because it is recorded. The insurance companies do not like it, so they make sure they act on it. Repairers say to me in WA, "I'm a bit concerned about going down that track; I don't want any repercussions", so what I do to try to facilitate is speak to the insurance company and tell them, "There's a problem here". I give [the insurers] a certain amount of time to address it and then I tell them that I am left with no option but to put in an IDR. I have a very good success rate in employing that model.*<sup>109</sup>

The New South Wales Government legislated to mandate compliance by insurers and the smash repair industry with the pre-2017 Code, and remains the only State to have done so.<sup>110</sup> The MTA WA summarised the value of the Code:

*This is not to say that the Code is perfect, because it is not, but what it does do is lay out the groundwork for a transparent, fair and open relationship between the insurers and the smash repairers. It is fair to say that the relationship between these two very much dependent bodies is fractured, at best, and with some of the major insurers, it is almost toxic.*<sup>111</sup>

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106 Submission No. 1 from Australian Association of Progressive Repairers, 31 May 2018, p7.

107 Mr Troy Johns, Specialist, Industry Relations, Governance and Risk, Insurance Australia Group, *Transcript of Evidence*, 12 September 2018, p8.

108 Ibid.

109 Ms Marie Donato, Division Manager, Motor Trade Association of Western Australia, *Transcript of Evidence*, 27 June 2018, p4.

110 Mr Stephen Moir, Chief Executive Officer, Motor Trade Association of Western Australia, *Transcript of Evidence*, 27 June 2018, p1.

111 Ibid.

**Finding 9**

The updated national Motor Vehicle Insurance and Repair Industry Code of Conduct is managed by representatives from both insurers and smash repair industries and is now accepted as a fairer and more transparent process for resolving and reducing conflict between the two key stakeholder industries than previous versions.

**Finding 10**

Participation in the Motor Vehicle Insurance and Repair Industry Code of Conduct is voluntary in Western Australia.



## Chapter 3

# The Operation of the State's Smash Repair Industry

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*Insurer's market power and control continues and has changed the traditional workflow patterns that once filtered through the smash repair industry to now being directly under the control of insurers who dictate who, how, where and when, repairs to their claimants' vehicles take place.*<sup>112</sup>

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### 3.1 Introduction

The Committee has heard directly from five owners of smash repair businesses in WA about the financial pain they are under trying to complete insurance repair jobs at the hourly rate and total hours requested by the insurance companies' assessors. The witnesses requested that their evidence be provided confidentially. The Committee has resolved to uphold the witnesses' request for confidence.

Whilst not directly quoting from individuals (to maintain confidentiality), the claims made to the Committee included:

- knowing many of their customers are unaware of their right to take their damaged car to their preferred repairer, insurance companies 'steer' customers to use one of their own preferred repairers;
- introducing 'fixed price' repairs at their preferred repair businesses for many different repair types, which means a repairer will lose money on some repairs and make a profit on others, but drives the average cost of repairs (and revenues to the smash repairer) down; and
- mandating new work practices (such as workplace safety audits) which their preferred repairers must introduce and fund, at risk of losing their preferred status.

Some of these claims were refuted by the insurance companies, as further outlined below.

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<sup>112</sup> Mr Graham McDonagh, *Historical Overview of the Collision Repair Industry in Australia and Transfers of Power Through Rationalization*, Thesis, Division of Education, Arts and Social Sciences, University of South Australia, 2011, p241.

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Some of the evidence the Committee heard in closed sessions was supported by the Department of Mines, Industry Regulation and Safety, who said:

*...a lot of anecdotal evidence comes to us from our interaction with people at the MTAWA in terms of their complaints about insurers pushing down prices and insisting on certain standards. ... But no formal hard evidence has been brought to us about those sorts of behaviours... I have no doubt that they occur from time to time, but they are just not coming to us.*<sup>113</sup>

An academic review of the history of the Australian smash repair industry confirms that these pressures are being applied across Australia by insurance companies on repair businesses:

*Insurer's market power and control continues and has changed the traditional workflow patterns that once filtered through the smash repair industry to now being directly under the control of insurers who dictate who, how, where and when, repairs to their claimants' vehicles take place. Smash repair dependents, the majority, have shifted from being a service industry in their own right to becoming a subservient supplier under contract.*<sup>114</sup>

This review found that the issue of smash repair businesses being subjected to insurance dominance is not confined to Australia, and that "similar experiences of market power dominance by insurers are recorded as occurring in North America, Europe, Great Britain and South Africa."<sup>115</sup>

About 90% of the State's smash repairers are small, family-owned, businesses while the industry itself represents about "10% of the total of automotive businesses in Western Australia."<sup>116</sup> As Table 1.1 above highlights, the major insurers operating in WA all have annual car insurance premium incomes of over \$350 million.

The MTA agreed that repair work from insurers was of great importance to the success of most smash repairers in WA, as "the overwhelming majority of repairers are reliant

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113 Mr David Hillyard, Commissioner for Consumer Protection and Acting Executive Director, Consumer Protection, Department of Mines, Industry Regulation and Safety, *Transcript of Evidence*, 29 November 2017, p2.

114 Mr Graham McDonagh, *Historical Overview of the Collision Repair Industry in Australia and Transfers of Power Through Rationalization*, Thesis, Division of Education, Arts and Social Sciences, University of South Australia, 2011, p241.

115 Ibid, pp236-237.

116 Submission No. 2 from Motor Trade Association of Western Australia, 22 June 2018, p3.



on insurance companies feeding them work.”<sup>117</sup> Over 13 years ago, the Productivity Commission outlined the effects of this large power imbalance:

*...the major insurers particularly wield strong negotiating power in their dealings with the generally much smaller repairers. Indeed, some aspects of business, for example the terms and conditions of [preferred smash repairer] contracts, are virtually offered on a ‘take-it or leave-it’ basis.*<sup>118</sup>

In closed evidence, one smash repairer said that insurance companies could ‘punish’ smash repairers by the following actions which reduced the number of vehicles they could repair, or made it less efficient to do so:

- declaring a damaged vehicle a ‘total loss’, which meant that it can not be repaired, even if it was economically feasible to do so;
- convincing their customers to accept a cash settlement so that they can then take their car to another, cheaper, repairer; and
- purposely delaying assessments and authorisations to undertake the approved work, making it difficult for repairers to compete against other repairers and operate efficiently.

### 3.2 The Quality of Smash Repair Work in Western Australia

The evidence the Committee has gathered indicates that the pressures the repair companies work under has not led to a drop in the standard of repairs being completed in WA, particularly the safety of repairs. For example, the Committee was told that across Australia just 0.51% of IAG’s repairs had to be rectified.<sup>119</sup> The Institute Of Automotive Mechanical Engineers said that IAG was the only Australian insurance company that proactively carried out quality inspections for post-repaired vehicles.<sup>120</sup>

IAG confirmed that for all of its repairs, it ensures:

*...they are up to the right level of standard. We take the quality component very seriously. We actually do quality checks on 10% of all repair work that is done as part of our commitment to make sure that*

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117 Mr Stephen Moir, Chief Executive Officer, Motor Trade Association of Western Australia, *Transcript of Evidence*, 27 June 2018, p10.

118 Productivity Commission, *Smash Repair and Insurance*, 17 March 2005, p7. Available at: [www.pc.gov.au/inquiries/completed/smash-repair/report/smashrepair.pdf](http://www.pc.gov.au/inquiries/completed/smash-repair/report/smashrepair.pdf) . Accessed on 25 October 2018.

119 Submission No. 1 from Australian Association of Progressive Repairers, 31 May 2018, p2.

120 Submission No. 10 from Institute of Automotive Mechanical Engineers, 27 June 2018, p2.

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*our repairers, whether they be partner repairers or non-partner repairers, are actually repairing work to the right level of quality.*<sup>121</sup>

Another large insurer operating in WA, Suncorp, said that from their accident claim experience, it “has not identified any widespread issues regarding the quality of repairs or timeliness in Western Australia.”<sup>122</sup> It also said that its network of ‘recommended repairers’ had passed a stringent quality and process assessment, as set out in its Vehicle Repair Standard.

The Insurance Commission of WA (ICWA) submitted that their vehicle assessors report that “the quality of repairs on Government vehicles are good” and that it had “generally observed good business practices for those smash repairers working on Government vehicles insured by RiskCover.”<sup>123</sup> In their hearing, ICWA confirmed that they handle about 2,000 repairs a year using about 250 different repair companies across the State and they were “not aware of any concerns either directly or indirectly through our assessor panel of any systemic issues relating to the quality or the cost of work done by repairers for our insured vehicles.”<sup>124</sup>

The Insurance Council of Australia submitted that “[s]mash repair work in Australia is generally of a high standard.” They said that this has been confirmed by the findings of successive government inquiries. The Productivity Commission’s 2005 Inquiry had found that there was no evidence of systemic issues with the safety or quality of repairs undertaken. The Insurance Council of Australia said that it was their evidence and that of its members “that this is still the case and we are not aware of substantive evidence that would indicate otherwise.”<sup>125</sup>

DMIRs provided data to the Committee for the 2016-17 period, in which Consumer Protection received 239 consumer complaints relating to motor vehicle repairers for the 2016-17 financial year, of which 49 related to smash repairs. The most complained about issue was timeliness in completing repairs, representing 16 (33%) of smash repairs complaints. The second most complained about issue was quality of work, representing 11 (22%) of the complaints.<sup>126</sup> The Consumer Protection Commissioner told the Committee the chief reason for this was:

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121 Mr Steven Fitzpatrick, Executive General Manager, Short Tail Claims, Insurance Australia Group, *Transcript of Evidence*, 12 September 2018, p4.

122 Mr Rob Bartlett, Executive Manager Joint Venture Claims Operations, Suncorp Group Ltd, *Transcript of Evidence*, 12 September 2018, p1.

123 Submission No. 11 from Insurance Commission of Western Australia, 9 July 2018, p2.

124 Mr Richard Howe, Deputy Chief Executive, Insurance Commission of WA, *Transcript of Evidence*, 19 September 2018, p1.

125 Submission No. 8 from Insurance Council of Australia, 26 June 2018, p2.

126 Submission No. 5 from Department of Mines, Industry Regulation and Safety, 22 June 2018, p7.

*I would have to say it is self-regulation and professionalism, and that is both in the repair industry and in the smash industry. They live and die by their reputation. They are small operations ... with small margins, you just cannot afford to run a bad workshop.*<sup>127</sup>

DMIRS did note in its submission that a NSW Inquiry in 2014 found that “a significant number of vehicles are subject to poor quality repair work and are being returned to NSW roads, potentially increasing safety risks to road users.”<sup>128</sup> DMIRS concluded that:

*Consumer Protection’s complaints data nor findings of the various inquiries (apart from the NSW 2014 Inquiry) into the insurance and smash repair industries have produced significant evidence of sub-standard or unsafe repairs.*<sup>129</sup>

While the IAG quotes its rectification rate as 0.51% (see above), the Motor Trades Association of WA submitted that the accepted industry standard for rectification work to smash repairs was 4% and that “feedback from industry participants indicates that the rectification rate is now closer to 15%”, and that:

*Much of this rectification work does not appear in any reports produced by insurers as the insurers will send rectification work to alternate repairers with a cheque to simply make the problem ‘go away’.*<sup>130</sup>

As one sign of the level of competence of staff in the State’s smash repair businesses, at the 2018 national *Paint & Panel Bodyshop Awards*, the following WA companies won awards:

- Operational Excellence - Damage Control Accident Repair Centre;
- Digital Excellence – Gino’s Panel and Paint;
- Innovation Award – 1Q1 Bodyshop Flow Management; and
- Best Boutique Shop Australia - West Perth Panel & Paint.<sup>131</sup>

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127 Mr David Hillyard, Commissioner for Consumer Protection and Acting Executive Director, Consumer Protection, Department of Mines, Industry Regulation and Safety, *Transcript of Evidence*, 29 November 2017, p11.

128 Submission No. 5 from Department of Mines, Industry Regulation and Safety, 22 June 2018, p14.

129 Ibid.

130 Submission No. 2 from Motor Trade Association of Western Australia, 22 June 2018, p7.

131 Australasian Paint & Panel, *2018 Paint & Panel Bodyshop Awards Night*, 15 October 2018. Available at: [www.paintandpanel.com.au/news/news/2018-paint-and-panel-bodyshop-awards-night](http://www.paintandpanel.com.au/news/news/2018-paint-and-panel-bodyshop-awards-night). Accessed on 25 October 2018.

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### Lifetime guarantee

Another pressure point for the relationship between insurers and smash repairers is that all of the insurers offer 'lifetime' guarantees on the repair work. Australian Consumer Law covers the first three years after the repair has been completed, so insurers have a right to discuss a problem with the repairer in that period and have the repair rectified. Suncorp said that the additional lifetime guarantee "actually is real. I know it seems almost too good to be true; however, I have personally approved lifetime guarantee repairs from 1999."<sup>132</sup>

The MTA, on the other hand, said that the "lifetime guarantee is a nonsense. No manufacturer in the world will give you a lifetime guarantee on their car".<sup>133</sup> The pressure of this guarantee falls on a smash repair company that may have to rectify a repair that they had undertaken many years before, at their cost. The MTA provided an example that they thought was unreasonable:

*...we had a case just two weeks ago of a car that was repaired in 2010 after the hail damage and the owner had noticed that a corner of paint on the bonnet had started to peel. That car had been left out in the open, the paint had oxidised, a whole heap of stuff had happened, but because there was a nominated lifetime guarantee on it, the car was presented back to the repairer who did the original repair and the insurance company's instruction to them was, "Fix it or don't get any more work."*<sup>134</sup>

DMIRS provided evidence from a NSW Inquiry into smash repairs that some insurers were trying to discourage consumers from using non-preferred repairers by implying that the lifetime warranty on repairs would not apply at that repairer, despite this not being the case.<sup>135</sup>

IAG confirmed to the Committee that the lifetime guarantee on repairs did not require an increase in consumer premiums, and removing it would not result in lower premiums.<sup>136</sup>

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132 Mr Rob Bartlett, Executive Manager Joint Venture Claims Operations, Suncorp Group, *Transcript of Evidence*, 12 September 2018, p9.

133 Mr Stephen Moir, Chief Executive Officer, Motor Trade Association of Western Australia, *Transcript of Evidence*, 27 June 2018, p9.

134 Ibid.

135 Submission No. 5 from Department of Mines, Industry Regulation and Safety, 22 June 2018, p19.

136 Mr Steven Fitzpatrick, Executive General Manager, Short Tail Claims, Insurance Australia Group, *Transcript of Evidence*, 12 September 2018, pp3-4.

**Finding 11**

The evidence gathered by the Committee indicates that the pressures the smash repair companies work under has not led to a drop in the standard of repairs being completed in Western Australia, particularly the safety of repairs.

**3.3 The Operation of the National Code of Conduct in WA**

Section 2.5 above provided an overview of the development and operation of the Motor Vehicle Insurance and Repair Industry Code of Conduct, and that in its 12 years of operation there has only been 7 IDRs raised in WA by smash repairers in conflict with insurance companies. DMIRS submitted that there were presently 32 insurance companies and 252 WA smash repair businesses which are signatories to the Code.<sup>137</sup> Neither the Insurance Commission of WA nor RiskCover are signatories to the Code.<sup>138</sup>

In regard to the Code's effectiveness, DMIRS stated it was unable to comment as it:

*...has not received specific complaints in regard to the operation of the Code of Conduct, but is aware of stakeholder concerns about the lack of enforceability and the reluctance on the part of the smash repairers to initiative disputes.*<sup>139</sup>

RAC Insurance told the Committee that the Code "plays an important role of transparency between industry and setting the ground rules for how we interact with each another."<sup>140</sup> It treats all smash repairers as if they were a member of the Code, whether they had become a member of it or not.<sup>141</sup> However, RAC Insurance's CEO did not support making the Code mandatory:

*I guess our view would be we do not see any real evidence why you would make it mandatory. I think if you did something like that, it introduces another layer of regulation and potentially another layer of cost, and, ultimately, that might result in a lesser experience for the member through delays and time et cetera.*<sup>142</sup>

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137 Submission No. 5 from Department of Mines, Industry Regulation and Safety, 22 June 2018, p17.

138 Submission No. 11 from Insurance Commission of Western Australia, 9 July 2018, p2.

139 Submission No. 5 from Department of Mines, Industry Regulation and Safety, 22 June 2018, p17.

140 Mr Brad Chalder, Supplier Relationship Manager, RAC Insurance, *Transcript of Evidence*, 27 June 2018, p4.

141 Ibid.

142 Mr Andrew O'Hara, Chief Executive Officer, RAC Insurance, *Transcript of Evidence*, 27 June 2018, p5.

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Suncorp stated that it is a founding signatory member of the Code and had sat on its Board since its foundation.<sup>143</sup> When asked if there was room for improvement in the Code since the last review completed in 2017, Suncorp stated:

*I do not think it has actually been in place really long enough to say it needs substantial overhaul yet. Under the Code, every three years it is up for review. There is an independent review, they make recommendations and the Code Committee considers those, makes some proposed changes and takes it back to their shareholders and then comes back and proposes amendments...To me that is a good process.*<sup>144</sup>

The MTA, both the WA Branch and nationally, propose that the Code should be mandated in WA, as it is in NSW, as the voluntary nature of the Code makes its effectiveness doubtful.<sup>145</sup> Mandating the Code would also require the powers of WA's Small Business Commissioner (SBC) to be strengthened to allow the SBC to require evidence be produced and to allow them to impose financial penalties.<sup>146</sup> The MTA WA believes that the Code should be further reviewed here in WA by the SBC before it is mandated by the Government.<sup>147</sup>

The Committee directly asked a number of local smash repairers in their closed hearing whether they supported the MTA's proposal. They all supported it.

While the RAC did not agree with this proposal to mandate the Code, the IAG did, saying "I think mandating it means that everybody is on a level playing field in Western Australia, so I think would be probably the thing that we would definitely support the most."<sup>148</sup>

Suncorp did not have a formal view on whether the Code should be mandated in WA, but said "[t]he Code of Conduct, because it is mandated in one state, is effectively, because we are a national organisation, rolled out across all states [by Suncorp]".<sup>149</sup>

Under the Code, the SBC in WA is an approved mediation provider in resolving disputes between insurers and repairers. The WA Small Business Development Corporation

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143 Mr Rob Bartlett, Executive General Manager, Joint Venture Claims Operations, Suncorp Group Ltd, *Transcript of Evidence*, 12 September 2018, p1.

144 Ibid, p13.

145 Submission No. 2 from Motor Trade Association of Western Australia, 22 June 2018, p11.

146 Ibid, p12 & p18.

147 Mr Stephen Moir, Chief Executive Officer, Motor Trade Association of Western Australia, *Transcript of Evidence*, 27 June 2018, p11.

148 Mr Steven Fitzpatrick, Executive General Manager, Short Tail Claims, Insurance Australia Group, *Transcript of Evidence*, 12 September 2018, p8.

149 Mr Rob Bartlett, Executive General Manager, Joint Venture Claims Operations, Suncorp Group Ltd, *Transcript of Evidence*, 12 September 2018, p10.

advised that, for the period 1 July 2016 to 11 June 2018, the Small Business Commissioner has not dealt with any disputes between a smash repair business and insurance company originating from the Code.<sup>150</sup>

### **Finding 12**

The recently amended Motor Vehicle Insurance and Repair Industry Code of Conduct is acknowledged by both insurers and smash repair businesses as a positive initiative. It has been made mandatory for the smash repair industry in NSW.

### **Recommendation 2**

The Minister for Commerce and Industrial Relations bring legislation to the Parliament by the end of 2019 to mandate the Motor Vehicle Insurance and Repair Industry Code of Conduct in Western Australia.

## **3.4 Consumer Choice, Consumer Protection and Consumer Knowledge**

The Australian insurance industry is heavily regulated with insurance contracts and arrangements between customers and insurers governed by the Australian Prudential Regulation Authority. Consumers also have access to a range of warranties under Australian Consumer Law, including provisions relating to services being provided with due care and skill, being fit for the specified purpose and being completed within a reasonable time.<sup>151</sup>

DMIRS confirmed that in terms of insurance-related repairs, insurers are ultimately responsible for the quality and safety of repairs regardless of who completes the repairs. However, it acknowledged that many consumers “would not be in a position to readily assess the quality or safety of repairs” completed to their cars.<sup>152</sup>

Suncorp told the Committee, “[i]n our experience, most customers don’t have a preferred repairer, but are happy with a repair process that will be the quickest and least stressful for them.”<sup>153</sup> The Committee was told by a number of witnesses that some customers do want to choose their own repairer, and Suncorp agreed that their customers “do from time to time go to non-recommended repairers but generally in areas where we do not have repairers or recommended repairers.”<sup>154</sup>

150 Submission No. 5 from Department of Mines, Industry Regulation and Safety, 22 June 2018, p17.

151 Submission No. 8 from Insurance Council of Australia, 26 June 2018, p7.

152 Submission No. 5 from Department of Mines, Industry Regulation and Safety, 22 June 2018, p12.

153 Submission No. 14 from Suncorp Group Ltd, 10 September 2018, p2.

154 Mr Rob Bartlett, Executive Manager Joint Venture Claims Operations, Suncorp Group Ltd, *Transcript of Evidence*, 12 September 2018, p10.

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### The 'steering' of customers to repairers by insurance companies

This issue of insurers 'steering' their customers to their own repairers is a major one for smash repair businesses in WA. Some insurers, such as the on-line discount insurance company Bingle, require their policy holders to take their cars to a Suncorp recommended repairer, and this requirement is included in the Product Disclosure Statement of their policies.<sup>155</sup>

Section 9.1 of the national Code requires all insurers who have signed up to the Code to clarify their policy in terms of customer choice of repairers, and to:

*...ensure their Product Disclosure Statement (PDS) refers to their Choice of Repairer Policy with an unambiguous identifier and page reference in the PDS's table of contents, and which sets out its Choice of Repairer Policy clearly and in plain language at the page referenced.*<sup>156</sup>

This issue is also of concern to smash repairers in other western countries. In January 2010, approximately 500 smash repairers in the UK signed a petition for presentation to the then-British Prime Minister, Gordon Brown, calling for the prevention of insurance companies and fleet management companies steering work to the companies' own network of repairers.<sup>157</sup>

LAG promotes its process of 'steering' as one that provides a seamless experience for its customers at a more affordable price, "[from] the moment a claim is lodged, we will manage the entire process on their behalf, including booking in the car for an inspection on the spot."<sup>158</sup>

The insurance policies offered by most insurers in WA will allow customers to choose a repairer if they wish, but evidence was provided that when a customer rings their insurer wanting to use a non-preferred repairer, they will often be told that the insurer cannot guarantee the repairs completed by the business the customer has chosen.

A local repair business owner in regional WA submitted that, "[d]espite holding all the necessary licenses and having a brilliant track record":

*I've witnessed first-hand on numerous occasions customers be sold lines like "we can't guarantee the quality of workmanship if you choose to*

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155 Ibid, p11.

156 *Motor Vehicle Insurance and Repair Industry Code of Conduct*, 1 May 2017, p14. Available at: [www.abrcode.com.au/site/DefaultSite/filesystem/documents/2017-03-29CodeofConduct.pdf](http://www.abrcode.com.au/site/DefaultSite/filesystem/documents/2017-03-29CodeofConduct.pdf). Accessed on 24 October 2018.

157 Mr Graham McDonagh, *Historical Overview of the Collision Repair Industry in Australia and Transfers of Power Through Rationalization*, Thesis, Division of Education, Arts and Social Sciences, University of South Australia, 2011, p227.

158 Mr Steven Fitzpatrick, Executive General Manager, Short Tail Claims, Insurance Australia Group, *Transcript of Evidence*, 12 September 2018, p1.



*use that non preferred repairer" or "you can choose that repairer but you'll have to manage the claim yourself as they're non preferred".<sup>159</sup>*

While hurting his own business, these practises of steering a customer to a preferred repairer seem aimed at benefiting the insurers, who may guarantee the preferred repairer a certain amount of work "in exchange for discounted rates or even set price repairing."<sup>160</sup>

The five local repairers who gave evidence in closed hearings agreed that 'steering' was a major issue for them to ensure that they operated their own businesses as efficiently as possible. One repairer who was a preferred repairer for a large company said that jobs were steered to repair businesses owned by the insurer, so as to ensure that businesses operated at an efficient through-put of vehicles.

The major insurers who appeared before the Committee, RAC, IAG and Suncorp, denied their staff made such comments if a customer chose to take their damaged car to a non-preferred repairer. IAG said that this would actually be in breach of sections 9.3 (a) and (b) of the national Code:

*9.3 Signatories will not:*

*(a) make misleading or deceptive statements about the quality, capability or timeliness of a Repairer or group of Repairers;*

*(b) make misleading or deceptive statements about the quality, safety or timeliness of Repairs based on who the Insurer is or the approach the Insurer uses to allocate repairs or manage claims;...<sup>161</sup>*

The MTA offered that the RAC took a different approach to the other big insurers and was far more willing to allow its customers to have their car repaired at non-preferred business:

*What [RAC] do differently is that they try and encourage people...the language they use is, "Well, you've got a choice. These are some of the repairers you can go to", and if I say to them, "Yes, but I want to go over here", they go, "That's fine" and they allow it. Even the repairers say to*

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<sup>159</sup> Submission No. 9, 27 June 2018, p1.

<sup>160</sup> Ibid.

<sup>161</sup> *Motor Vehicle Insurance and Repair Industry Code of Conduct*, 1 May 2017, p14. Available at: [www.abrcode.com.au/site/DefaultSite/filesystem/documents/2017-03-29CodeofConduct.pdf](http://www.abrcode.com.au/site/DefaultSite/filesystem/documents/2017-03-29CodeofConduct.pdf). Accessed on 24 October 2018.

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*me that if their customer...are insured with RAC and they want to go there, they do not get the phone calls, and they do not get the grief.<sup>162</sup>*

DMIRS submitted that the current general legislative protections, coupled with protections offered under the Code of Conduct, are adequate for consumers to deal with issues of concern in relation to insurer conduct. Given these protections, the Department:

*...does not support the introduction of anti-steering legislation, but does support positive disclosure efforts to ensure consumers are made aware, at point of sale, as to whether the insurance policy on offer provides for a choice of repairer.<sup>163</sup>*

### Finding 13

Australian Consumer Law and the national Motor Vehicle Insurance and Repair Industry Code of Conduct provide considerable protections to customers whose cars have been involved in an accident, including to choose their own repairer if their policy allows.

### Finding 14

Where customers have a choice of repairers, the Committee heard evidence of insurance staff ‘steering’ customers to their preferred network of repairers in an effort to lower the cost of repairs. Direct evidence of inappropriate steering behaviours would indicate an abuse of market power and provide further justification for a Commonwealth Government-initiated inquiry into structural issues in the smash repair industry.

## 3.5 A Role for the WA Small Business Commissioner?

The Committee heard evidence from the Motor Trades Association of WA suggesting that the WA Small Business Commissioner’s role could be strengthened to match that of his NSW counterpart, and could provide a valued role in the future dispute resolution between smash repairers and insurers:

*The New South Wales Small Business Commissioner actually has the ability to mediate and issue instructions... We believe that the Small Business Commissioner in Western Australia would be in the perfect position to do that.*

*The difficulty in Western Australia is that the powers that are provided to the Commissioner are a little bit deficient, so he currently cannot*

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162 Ms Marie Donato, Division Manager, Motor Trade Association of Western Australia, *Transcript of Evidence*, 27 June 2018, p14.

163 Submission No. 5 from Department of Mines, Industry Regulation and Safety, 22 June 2018, p20.

*compel parties to come to mediation; we believe he should have the ability to be able to compel and also fine.*<sup>164</sup>

Western Australia's Small Business Commissioner (SBC) was first appointed in January 2012. A central duty of the SBC is to oversee an alternative dispute resolution (ADR) service for small business. Small Business WA says that its free ADR service provides "a low-cost method to resolve business-to-business and business-to-government disputes, avoiding court action and preserving business relationships."<sup>165</sup>

The SBC is able to assist small business operators resolve a wide range of disputes, including those related to:

- contracts;
- leasing business premises;
- non-payment or non-performance of goods and services;
- government departments and agencies; and
- franchises.<sup>166</sup>

The SBC is an approved mediation provider under schedule 1 of the *Motor Vehicle Insurance and Repair Industry Code of Conduct*. The Resolution Institute<sup>167</sup> is an approved mediation provider and determination provider under the Code.<sup>168</sup>

### Finding 15

The Small Business Commissioner is currently able to assist small business operators, including smash repairers, resolve a wide range of disputes, including those related to contracts and the non-payment or non-performance of goods and services.

The Committee received no evidence that smash repair businesses in WA have utilised these services to deal with conflicts they may have had with insurers.

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164 Mr Stephen Moir, Chief Executive Officer, Motor Trade Association of Western Australia, *Transcript of Evidence*, 27 June 2018, p4.

165 Small Business Development Corporation, *Small Business Commissioner*, 2018. Available at: [www.smallbusiness.wa.gov.au/about/about-sbdc/small-business-commissioner](http://www.smallbusiness.wa.gov.au/about/about-sbdc/small-business-commissioner). Accessed on 22 October 2018.

166 Small Business Development Corporation, *Types of disputes we can help with*, 2018. Available at: [www.smallbusiness.wa.gov.au/i-am-in-dispute/types-disputes-we-can-help](http://www.smallbusiness.wa.gov.au/i-am-in-dispute/types-disputes-we-can-help). Accessed on 22 October 2018.

167 Resolution Institute, *About us*, 2018. Available at: [www.resolution.institute/about-us/about](http://www.resolution.institute/about-us/about). Accessed on 23 October 2018.

168 Motor Vehicle Insurance and Repair Industry Code of Conduct, 2016-18. Available at: [www.abrcode.com.au/site/DefaultSite/filesystem/documents/2017-03-29SchedulesToTheCodeofConduct.pdf](http://www.abrcode.com.au/site/DefaultSite/filesystem/documents/2017-03-29SchedulesToTheCodeofConduct.pdf). Accessed on 17 July 2018.

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### Finding 16

The State's legislative responsibilities are restricted to regulating the local smash repair businesses and providing a limited consumer protection role for individuals who have had their vehicles repaired.

### Recommendation 3

The Minister for Commerce and Industrial Relations consider the role of the Small Business Commissioner as part of the process for the introduction of legislation mandating the Motor Vehicle Insurance and Repair Industry Code of Conduct in Western Australia.

## 3.6 The Key Tensions Between Insurers and Repairers

### The tasks required to complete in a repair

The first potential point of conflict between insurers and smash repairers arises when the insurer and repairer are agreeing whether a vehicle can be repaired, and if so, what needs to be done and what parts need to be replaced.<sup>169</sup> Each company has developed an assessment tool to help in this process, although some smash repairers use multiple tools depending on which insurance company has provided their job. RAC Insurance has worked with a local WA company to develop the IQI System, which the RAC claims is an “advanced user-friendly Body Shop Flow Management system which supports a true team-based production process and provides an interface between the administration, production and customer.”<sup>170</sup>

Suncorp's recommended repairers use a system called AudaNet<sup>171</sup> and has also worked with Thatcham<sup>172</sup>, a repair methods organisation funded and owned by UK insurers, to provide data on repairing different makes of vehicles.<sup>173</sup>

IAG has recently introduced a new online quoting methodology called New Times and Rates (NTAR)<sup>174</sup>, and told the Committee “Once you agree on a method ... that aligns to a manufacturing specification and return the car to how it should be, the times will then flow whether it be through Thatcham, whether it is through Audatex, whether it is

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169 Mr Steven Fitzpatrick, Executive General Manager, Short Tail Claims, Insurance Australia Group, *Transcript of Evidence*, 12 September 2018, p5.

170 Submission No. 7 from RAC Insurance Pty Ltd, 25 June 2018, p6.

171 Mr Rob Bartlett, Executive Manager Joint Venture Claims Operations, Suncorp Group Ltd, *Transcript of Evidence*, 12 September 2018, p9.

172 Thatcham Research, *Repair Technologies*, 2018. Available at: [www.thatcham.org/what-we-do/repair-technologies/](http://www.thatcham.org/what-we-do/repair-technologies/). Accessed on 25 October 2018.

173 Ibid, p7.

174 Insurance Australia Group, *New Times and Rates*, nd. Available at: <https://ntar.com.au/>. Accessed on 25 October 2018.

through New Times and Rates.”<sup>175</sup> IAG said that its online NTAR system allows repairers to challenge an assessment of times to do a task in an open forum. The repairer can say, “I’ve looked at this exercise and I don’t believe that’s the appropriate time.”<sup>176</sup>

### **The important role of assessors**

A key factor in the negotiation process seems to be the knowledge and experience of the assessors employed by the insurers, who determine the appropriate costs and the types of repairs required, and also monitor the quality of repairs undertaken. One smash repairer described assessors as central to the efficient and transparent operation of all parties in the smash repair industry, but that their actions are not independent from the repair process, and can result in a conflict of interest.<sup>177</sup>

The IAG told the Committee that “there is always a negotiation in terms of what the assessor and therefore us as an insurance company believes, versus what the repairer believes.”<sup>178</sup> However, Department of Mines, Industry Regulation and Safety (DMIRS) proposed that there had been a fundamental change over the past 20 years. Originally a customer typically would get two quotes and an insurance company would select one to proceed with. This is no longer happening and now:

*...assessors are going directly to have a look at the vehicle. They are determining what needs to be done and they are setting the parameters for the repairs and telling the repairer what they need to do and cutting back costs. That is the tension that is out there and has been growing over the years.*<sup>179</sup>

DMIRS submitted that WA’s *Repairers Act* did not require assessors to be either licensed or certified as they do not undertake actual work on vehicles.<sup>180</sup> The Insurance Council of Australia said that the revised national Code now includes minimum training and experience requirements for all estimators and assessors involved in insurer authorised repairs.<sup>181</sup>

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175 Mr Troy Johns, Specialist, Industry Relations, Governance and Risk, Insurance Australia Group, *Transcript of Evidence*, 12 September 2018, p6.

176 Ibid, p7.

177 Submission No. 6 from Nova Smash Repairs, 22 June 2018, p7.

178 Mr Steven Fitzpatrick, Executive General Manager, Short Tail Claims, Insurance Australia Group, *Transcript of Evidence*, 12 September 2018, p5.

179 Mr David Hillyard, Commissioner for Consumer Protection and Acting Executive Director, Consumer Protection, Department of Mines, Industry Regulation and Safety, *Transcript of Evidence*, 29 November 2017, pp4-5.

180 Submission No. 5 from Department of Mines, Industry Regulation and Safety, 22 June 2018, p5.

181 Submission No. 8 from Insurance Council of Australia, 26 June 2018, p5.

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Most assessors are employed directly by insurance companies while the Insurance Commission of WA uses a panel of external assessors across the State.<sup>182</sup> RAC Insurance said that its assessors were trained to the highest standard in Australia<sup>183</sup> and Suncorp told the Committee that it only employed tradespeople with skills in the industry as its assessors.<sup>184</sup>

### **The rates that will be paid for each task**

The other key point of difference between the two stakeholders is over rates of pay for staff undertaking various tasks, such as spray painting. To assist their 200 smash repair members, the MTA WA produced a cost calculator in March 2018 that incorporated all facets of running a smash repair business. The MTA told the Committee that the calculator had been independently evaluated by accountancy group BDO and the Australian Taxation Office. The assessment showed that the calculator was an accurate means to determine the actual cost of running a smash repair business.<sup>185</sup>

The MTA submitted that:

*What is alarming is that when applied to businesses in Western Australia, the hourly cost of doing business ranged between \$120 and \$160 per hour, far in excess of the \$30 average paid by insurers.*<sup>186</sup>

The MTA described the previous system of determining an hourly labour rate as applying “6.6% of the weekly award rate of pay to determine an hourly charge out rate, based on a 40 hour week.”<sup>187</sup> The MTA said that the insurance industry has moved away from this formula to a point where, had the previous formula applied, the base charge out rate would now be \$42.07 per hour. This compares to the current rate provided by insurers which, on average, “is \$30.00 per hour with \$28.60 at the lowest and \$33.00 per hour at the highest.”<sup>188</sup>

IAG said that it did not have their assessors arguing labour rates at the ‘coalface’, and ‘[t]hat is counterproductive. That is done at a management level through the assessing team.”<sup>189</sup> IAG said that under its preferred network of repairers:

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182 Mr Richard Howe, Deputy Chief Executive, Insurance Commission of WA, *Transcript of Evidence*, 19 September 2018, p1 & p3.

183 Mr Brad Chalder, Supplier Relationship Manager, RAC Insurance Pty Ltd, *Transcript of Evidence*, 27 June 2018, p8.

184 Mr Rob Bartlett, Executive Manager Joint Venture Claims Operations, Suncorp Group Ltd, *Transcript of Evidence*, 12 September 2018, p8.

185 Submission No. 2 from Motor Trade Association of WA, 22 June 2018, p7.

186 Ibid.

187 Ibid, p6.

188 Ibid.

189 Mr Troy Johns, Specialist, Industry Relations, Governance and Risk, Insurance Australia Group, *Transcript of Evidence*, 12 September 2018, p7.

*...a repairer can negotiate, and does negotiate, their rates on a yearly basis. They can come back to us and say, "Based on all our operating expenses and everything we're seeing in the industry, we think we actually need more." We have actually authorised a higher labour rate on those particular contracts. That is part of their contracts.*<sup>190</sup>

The smash repairers that provided evidence in confidence to the Committee alleged that the insurance companies would not negotiate on rates and presented them on a 'take it, or leave it' basis. Again, direct evidence of this conduct would be consistent with market abuse behaviours and should be considered as part of a Commonwealth-initiated review into the structural issues affecting the smash repair industry.

### Finding 17

The long-standing tensions over the pricing of repairs for a vehicle involved in an accident are now being mediated by software systems and experienced assessors. However, a key disagreement remains over the appropriate hourly rate to be paid to tradespeople undertaking different repair tasks.

## 3.7 Funny Time, Funny Money

Where 'the rubber hits the road' in negotiations between insurers and smash repairers is finding a way to describe the repairs that will be completed at the price both stakeholders can agreed to. If the times and prices that have been produced by the insurers' management systems, such as the RAC's IQI System or IAG's NTAR, don't match what a smash repairer can accept for the job, then for many decades the two stakeholders turned to the 'funny time, funny money' (FTFM) system.

The Productivity Commission described this practice as repairers quoting fictitious times for repair which:

*...generally involves repairers (with the full knowledge of insurers) inflating the estimated hours taken within the 'repair' segment of a given job to try to compensate for both the relatively fixed times within other segments ([remove and replace], paint, parts supply), and for what they may perceive as uneconomically low hourly rates of payment in the 'repair' or other stages including [remove and replace].*<sup>191</sup>

Earlier in 1995 the Industry Commission found that FTFM required negotiations on quotations between insurers and repairers on quotations to take place in circumstances which both parties know was fictitious, and "[t]here is a danger that

<sup>190</sup> Ibid, pp7-8.

<sup>191</sup> Productivity Commission, *Smash Repair and Insurance*, 17 March 2005, p82. Available at: [www.pc.gov.au/inquiries/completed/smash-repair/report/smashrepair.pdf](http://www.pc.gov.au/inquiries/completed/smash-repair/report/smashrepair.pdf). Accessed on 25 October 2018.

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practises such as these can escalate, contributing to fraud and malpractice on a large scale.”<sup>192</sup> The Productivity Commission’s Finding 4.2 recommended that insurers and repairers should abandon the FTFM system of quotation.<sup>193</sup> It found that:

*Some of the major insurers signalled their support for the FTFM system, whereas many repairers were opposed to it. In the Commission’s view, it has major drawbacks compared with a transparent and accurate system of pricing and costing... artificially inflating or deflating particular cost elements at the expense of others...*<sup>194</sup>

The Commission found that in 2005 up to 70% of repair jobs used the FTFM practice, and concluded that the abandonment of FTFM would improve commercial relations between smash repairers and insurers.<sup>195</sup>

The MTA agreed that the FTFM practice continued for many of its members in WA and said “‘funny time, funny money’ has been around for far too long...For us, this is orchestrated fraud and it should not be allowed.”<sup>196</sup>

IAG stated that FTFM wasn’t used and that “[i]t is an antiquated way of finding a price for a vehicle. IAG uses New Times and Rates, so we do not use funny time, funny money.”<sup>197</sup>

Suncorp disagreed that the practice was still followed, as “not that many repairers really quote in funny time now. They usually use their body shop systems.” It said:

*In reality we do not assess in funny time, funny money; we really assess in dollars. ... We tend to look at the bigger picture of the line items and the amount of money at the bottom of the page and look at the repair and look at whether or not that overall method and cost actually align, rather than the construction of things like funny time, funny money.*<sup>198</sup>

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192 Industry Commission, *Vehicle and Recreational Marine Craft Repair and Insurance Industries*, 15 March 1995, p69. Available at: [www.pc.gov.au/inquiries/completed/vehicle-marine-repair/43vehicl.pdf](http://www.pc.gov.au/inquiries/completed/vehicle-marine-repair/43vehicl.pdf). Accessed on 25 October 2018.

193 Productivity Commission, *Smash Repair and Insurance*, 17 March 2005, p88. Available at: [www.pc.gov.au/inquiries/completed/smash-repair/report/smashrepair.pdf](http://www.pc.gov.au/inquiries/completed/smash-repair/report/smashrepair.pdf). Accessed on 25 October 2018.

194 Ibid, pxx.

195 Ibid, p87.

196 Mr Stephen Moir, Chief Executive Officer, Motor Trade Association of Western Australia, *Transcript of Evidence*, 27 June 2018, p3.

197 Mr Steven Fitzpatrick, Executive General Manager, Short Tail Claims, Insurance Australia Group, *Transcript of Evidence*, 12 September 2018, p6.

198 Mr Rob Bartlett, Executive Manager, Joint Venture Claims Operations, Suncorp Group Ltd, *Transcript of Evidence*, 12 September 2018, pp8-9.



However, the Committee was provided by a smash repairer (who wished to remain confidential) a screen shot (Figure 3.1) taken from a body shop quotation system approved by Suncorp that clearly shows that FTFM is still an accepted quotation practice. This repairer said that iBody Shop and Quote Plus were two quotation systems which Suncorp use and accept quotes from, which have the drop down selection that includes options for 'Generic Funny' (for FTFM) and 'Generic Realistic'.

**Figure 3.1- Screen shot of quotation system providing for a FTFM option**

The screenshot displays a software interface for generating quotations. It is divided into several panels:

- Estimating Debtor:** Contains fields for Debtor Name, External Code, ABN, Assessing Provider (set to Manual), Time Schedule (dropdown menu), Business Phone, Email Address, and Address. The 'Time Schedule' dropdown is open, showing options: None, Generic Funny (highlighted), Generic Realistic, and LTAFMINTAR.
- Estimate Print Options:** Includes checkboxes for 'Print Customer Signature Area', 'Print Service Advisor Signature Area', 'Print Parts Markup as a Sub-Total', 'Print Sublet Markup as a Sub-Total', 'Print Estimate Comments', and 'Print Report On Items'. It also has dropdowns for 'Invoice Layout' (Detailed) and 'Invoice Excess Layout' (Alter Tax).
- Markup Rates:** A section for setting various rates with percentage inputs. It includes 'Price Settings' (List Price dropdown), 'New' (0.00%), 'Used' (20.00%), 'Aftermarket' (20.00%), 'Exchanged' (20.00%), 'Net New' (0.00%), 'Non-Genuine' (20.00%), and 'Sublet' (15.00%).
- Hours:** Contains a 'Overrides Labour Rate' checkbox and a table for 'Remove and Refit Rate' with values for Solid (\$55), Metallic (\$62), and Pearl (\$65). There is an 'Add paint rate' button.
- Print Estimate Lines Mode:** Includes dropdowns for 'Remove and Refit' (Hours), 'Repair' (Hours), 'Paint' (Hours), 'Mechanical' (Hours), 'Miscellaneous' (Amount), 'Parts' (Amount), and 'Sublet'.

The Committee was concerned to receive the screenshot in Figure 3.1, as it casts doubt over the veracity of evidence presented to it regarding the application of this methodology – particularly by Suncorp. We agree with the Productivity Commission that the utilisation of FTFM is unhelpful and that methodologies that reflect a more accurate assessment of cost should be utilised. Again, these matters should be addressed by a Commonwealth-initiated inquiry into structural issues affecting the smash repair industry.

### Finding 18

The practice of 'funny time, funny money' is one that has been used for several decades by insurers and smash repairers to ease the pressures between the two stakeholders, and to assist in finding an agreed price for a particular repair. The

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Committee received conflicting evidence as to how wide-spread its use remains in Western Australia.

### **Finding 19**

The utilisation of the 'funny time, funny money' system is unhelpful. Methodologies that reflect a more accurate assessment of cost should be utilised. This matter should be addressed by a Commonwealth-initiated inquiry into structural issues affecting the smash repair industry.

## Chapter 4

### Two Matters Outside the Inquiry's ToRs

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*No Government Agency currently enforces regulations pertaining to the towing industry.*<sup>199</sup>

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#### 4.1 Introduction

During the course of the Inquiry the Committee received evidence on two matters outside of its terms of reference- the repair and later sale of vehicles written off by insurers, and the operation of the State's tow truck industry. It chose not to expand its terms of reference to explore these matters in depth, but nonetheless considers them worthy to address below.

#### 4.2 Repairable Write-offs

The Insurance Council of Australia (ICA) provided data to a parliamentary inquiry in 2014 that about 15% of accidents result in major structural damage and that the majority of these cars were then written-off by insurance companies. The ICA also said that between 2-5% of insurance claims involve structural repairs.<sup>200</sup>

Department of Mines, Industry Regulation and Safety (DMIR) raised with the Committee in its original hearing that in Western Australia vehicles can be written off in two different ways by the Department of Transport under the current licensing regime.

##### **Current process for writing-off vehicles**

A 'statutory write-off' (SWO) is where a vehicle is involved in a serious accident and it is structurally unsound. It is delicensed and it can only be used for breaking up for scrap or the sale of its parts.<sup>201</sup> In WA, SWO vehicles are required to be labelled as such and this serves as an additional warning to consumers that the vehicle may not be re-licensed or re-registered. It is an offence to remove or damage this warning label.<sup>202</sup>

Vehicles classified by insurance companies as a 'repairable write-off' (RWO) are those with damage assessed as economically unviable to repair. The insurance company

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199 Submission No. 3 from AAAC Towing Pty Ltd, 22 June 2018, p1.

200 Submission No. 5 from Department of Mines, Industry Regulation and Safety, 22 June 2018, p14.

201 Mr David Hillyard, Commissioner for Consumer Protection and Acting Executive Director, Consumer Protection, Department of Mines, Industry Regulation and Safety, *Transcript of Evidence*, 29 November 2017, pp7-8.

202 Department of Transport, *Write-off a vehicle*, 26 February 2018. Available at: [www.transport.wa.gov.au/licensing/write-off-a-vehicle.asp](http://www.transport.wa.gov.au/licensing/write-off-a-vehicle.asp). Accessed on 8 November 2018.

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registers the vehicle's records on the Department of Transport's *Written-off Vehicle Register*, delicenss it and sells it into the marketplace.<sup>203</sup> The Committee was told in closed hearings with smash repairers that this was one way that insurance companies could remove a vehicle from a repairer that was not part of their preferred network.

However, the DMIR identified to the Committee that the RWO process created greater difficulties for consumers in WA, as "it is those vehicles which are being purchased which cause great angst to the motor vehicle industry. They are being purchased by people who then take them away and repair them."<sup>204</sup> DMIR said that other jurisdictions, such as NSW, have only a SWO system and do not allow written-off vehicles to be repaired and then re-registered.<sup>205</sup>

### Review of the operation of the Written-off Vehicle Register

DMIR submitted to the Committee that concerns about the State's SWO regime were being considered as part of a review of *Motor Vehicle Dealers Act 1973* and the *Motor Vehicle Repairers Act 2003*. The then-Department of Commerce had undertaken considerable consultation with key stakeholders as an initial step in the review process. The review's *Consultation Regulatory Impact Statement* was launched by the then-Minister for Commerce, Hon Michael Mischin MLC, in November 2015.<sup>206</sup>

The Department of Transport states that the *Written-off Vehicle Register* framework "has remained fundamentally unchanged since 2004 - other than a minor alteration to the damage assessment criteria in 2012 - it has become out-dated."<sup>207</sup>

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203 Department of Transport, *License a repairable written-off vehicle*, 3 September 2018. Available at: [www.transport.wa.gov.au/licensing/license-a-repairable-written-off-vehicle.asp](http://www.transport.wa.gov.au/licensing/license-a-repairable-written-off-vehicle.asp). Accessed on 8 November 2018.

204 Mr David Hillyard, Commissioner for Consumer Protection and Acting Executive Director, Consumer Protection, Department of Mines, Industry Regulation and Safety, *Transcript of Evidence*, 29 November 2017, p7.

205 Submission No. 5 from Department of Mines, Industry Regulation and Safety, 22 June 2018, p14.

206 Department of Commerce, *Consultation Regulatory Impact Statement: Review of Motor Vehicle Dealers Act 1973 and the Motor Vehicle Repairers Act 2003*, November 2015. Available at: [www.commerce.wa.gov.au/sites/default/files/atoms/files/mvreviewst2consultpaper.pdf](http://www.commerce.wa.gov.au/sites/default/files/atoms/files/mvreviewst2consultpaper.pdf). Accessed on 8 November 2018.

207 Department of Transport, *Stakeholder surveys*, 8 October 2018. Available at: [www.transport.wa.gov.au/licensing/stakeholder-surveys.asp](http://www.transport.wa.gov.au/licensing/stakeholder-surveys.asp). Accessed on 8 November 2018.

DMIR said that there had been a number of submissions to the review that:

*...were suggesting that information that is held already, like on the Written-off Vehicle Register, should be disclosed by selling dealers to customers so that it is brought to their attention. At the moment if a dealer was to not look at the register, he therefore does not know about it and therefore does not need to disclose.*<sup>208</sup>

## Finding 20

A review by the then-Department of Commerce of the *Motor Vehicle Dealers Act 1973* and the *Motor Vehicle Repairers Act 2003*, including the operation of the *Written-off Vehicle Register*, commenced in 2015 and has not yet concluded.

### Remaining difficulties with the write-off process

DMIR identified two gaps in actually having vehicles added to the *Written-off Vehicle Register*. Firstly, the Department of Transport and WA Police do not collect thorough data from road accidents. Police reports do not necessarily record all serious accidents that will require major repairs, “[t]hat never appears in any records, never in the history of the vehicle. It is only where it becomes an economic write-off that it even gets into those records.”<sup>209</sup>

Secondly, uninsured vehicles involved in a serious accident, or where drivers choose not to make an insurance claim (for example because they may have been affected by alcohol), are not entered in the *Written-off Vehicle Register* “because the connection between the Police reports of that accident damage and the licensing records of the vehicle do not exist.”<sup>210</sup>

Additionally, the DMIR told the Committee that the likelihood of a consumer doing a Personal Property Security Register check on a vehicle they are buying from a dealer “is non-existent; it is just not going to happen. There is no real need for them to, other than this accident damage stuff.”<sup>211</sup>

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208 Mr David Hillyard, Commissioner for Consumer Protection and Acting Executive Director, Consumer Protection, Department of Mines, Industry Regulation and Safety, *Transcript of Evidence*, 27 June 2018, p10.

209 Mr David Hillyard, Commissioner for Consumer Protection and Acting Executive Director, Consumer Protection, Department of Mines, Industry Regulation and Safety, *Transcript of Evidence*, 29 November 2017, p10.

210 Ibid.

211 Ibid.

## Chapter 4

The MTA proposed that the ‘repairable write-off’ process should be removed and the State just have a ‘statutory write-off system’, like NSW, as:

*...there is a very large element out there who gain a commercial advantage by illegally repairing these vehicles and putting them back out to unsuspecting consumers. That is a real problem.*

*We had a case two weeks ago where we had one group of people who had sold over 258 cars in an 18-month period, illegally. I think it is fair to assume that a lot of those cars—we know that they were acquiring those cars from the repairable auctions, but those cars were having cheap fixes made to them and then sold to unsuspecting consumers.<sup>212</sup>*

### Finding 21

Currently in Western Australia it is difficult for consumers to identify if a second-hand vehicle that they are purchasing has previously been classified by insurance companies as a ‘repairable write-off’, and included in the State’s Written-off Vehicle Register.

## 4.3 Complaints About the State’s Tow Truck Industry

A number of submissions received by the Committee (eg the Insurance Commission of WA) requested that the Inquiry’s Terms of Reference be expanded to include the State’s tow truck industry, particularly the behaviour of its business and tow truck operators.<sup>213</sup> The Committee considered these requests and declined to broaden the Inquiry’s ToRs. However, it did raise this topic with a number of witnesses during hearings and received a common piece of evidence- that WA is just one of two Australian States that do not currently regulate its tow truck industry (the other being Tasmania).<sup>214</sup>

AAAC Towing submitted that towing contractors are not required to have police checks, that crash victims are tricked into signing incomplete towing authorities and there are large disparities in fees for similar towing tasks:

*The Road Traffic (Vehicles) Regulations 2014 is ineffective in controlling the above-mentioned practices. Towing operators can charge whatever they want and the maximum penalty if enforced is currently \$200.00 for breaches. No Government Agency currently enforces regulations pertaining to the towing industry.<sup>215</sup>*

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212 Mr Stephen Moir, Chief Executive Officer, Motor Trade Association of Western Australia, *Transcript of Evidence*, 27 June 2018, p13.

213 Submission No. 11 from Insurance Commission of WA, 9 July 2018, pp2-3.

214 Submission No. 3 from AAAC Towing Pty Ltd, 22 June 2018, p1.

215 Ibid, p2.

The Insurance Commission of WA provided evidence that “some operators have demanded payment of over \$1,200 (inclusive of an additional yard fee) when the reasonable towing price range is \$400 to \$500. Insurers or consumers are required to then pay the higher fee to release their vehicle.”<sup>216</sup> The Commission also said that:

*Regulation 419(1) of the Road Traffic (Vehicles) Regulations 2014 (WA) requires that the driver of a tow truck must not tow or salvage any vehicle from the scene of an accident until the driver has completed in duplicate a statement containing the particulars set out in that provision.*

*RiskCover has received copies of Authority to Tow forms that do not have all the required particulars such as the tow truck's number plate, name and address of the tow truck driver and the cost of towing.*<sup>217</sup>

Towing regulations in other jurisdictions limit the cost of tow truck fees (a maximum fee of \$238 in NSW with an additional fee for longer tows) and in some cases operate a roster or crash allocation system for companies to provide towing services (eg Victoria).<sup>218</sup>

In May 2017, the Queensland Government ordered an independent investigation by former-Judge Forde into the towing of vehicles due to concerns about shady business deals, intimidating tactics and excessive fees.<sup>219</sup> All 22 recommendations made by the independent investigation were accepted and from “16 April 2018 all private property towing in regulated areas of Queensland must be performed by accredited drivers and assistants using licensed tow trucks. Drivers and assistants must be employed by licensed tow truck operators.”<sup>220</sup>

AAAC Towing and Thornlie Towing Pt Ltd submitted that the Queensland legislation was a suitable template if this State was to introduce new regulations for the towing industry, but that NSW and Victoria’s regulations are too onerous.<sup>221</sup> Among other things, the NSW regulations require ‘live’ daily log books for individual tow trucks.<sup>222</sup>

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216 Submission No. 11 from Insurance Commission of WA, 9 July 2018, p2.

217 Ibid, p3.

218 Ms Alice Richard, *Choice*, ‘Towing the line’, 5 October 2018. Available at: [www.choice.com.au/transport/cars/general/articles/what-to-do-if-you-need-car-accident-towing](http://www.choice.com.au/transport/cars/general/articles/what-to-do-if-you-need-car-accident-towing). Accessed on 10 October 2018.

219 Ibid.

220 Department of Transport and Main Roads, *Tow truck*, 15 October 2018. Available at: [www.tmr.qld.gov.au/business-industry/Accreditations/Tow-truck-licensing-scheme](http://www.tmr.qld.gov.au/business-industry/Accreditations/Tow-truck-licensing-scheme). Accessed on 22 October 2018.

221 Mr Terry Hughes, Thornlie Towing Pty Ltd, Email, 18 October 2018.

222 Mr Adrian Di Lallo, Operations Manager, AAAC Towing, Email, 22 October 2018.

## Chapter 4

DMIRS has been tasked with developing a business case and associated legislative changes that would be needed for its Consumer Protection Division assuming regulation of the conduct of tow truck operators from the Department of Transport. At this time DMIRS was unable to provide any documents to the Committee about this proposed change in departmental responsibilities.<sup>223</sup>

The Department of Transport (DoT) admitted that, since the original technical standards and offence provisions for the tow truck industry were promulgated in the *Road Traffic (Tow Truck) Regulations 1975*, “legislation has not kept pace with the changes that have occurred to the equipment used by the tow truck Industry.”<sup>224</sup>

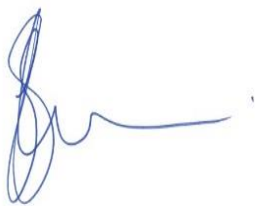
DoT began a process in 2013 to resolve these issues and an intergovernmental working group comprising DoT, Department of Commerce, the WA Police Force and the Insurance Commission have reviewed the technical regulations. It released a consultation paper in late-2017 requesting feedback on proposed updates to the *Road Traffic (Vehicles) Regulations 2014*.<sup>225</sup> No suggested amendments to the regulations have yet been presented to Parliament since the review commenced.

### Finding 22

A review by the Department of Transport into the technical standards and offence provisions for the tow truck industry contained in the *Road Traffic (Vehicles) Regulations 2014*, that commenced in 2013, has yet to conclude.

### Finding 23

Western Australia is one of just two States that does not regulate the behaviour of the tow truck industry, particularly in regard to the fees and charges made to tow vehicles from car crashes. Evidence suggests that there is a case for the regulation of the State’s tow truck industry.



**MS J.J. SHAW, MLA**  
**CHAIR**

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223 Mr David Hillyard, Commissioner and Acting Executive Director Consumer Protection, Department of Mines, Industry Regulation and Safety, Email, 22 October 2018.

224 Department of Transport, *Tow Truck Regulations- Proposed Updates*, nd, p3. Available at: [www.transport.wa.gov.au/mediaFiles/licensing/LBU\\_P\\_Tow\\_Truck\\_Regulations\\_Proposed\\_updates.pdf](http://www.transport.wa.gov.au/mediaFiles/licensing/LBU_P_Tow_Truck_Regulations_Proposed_updates.pdf). Accessed on 18 October 2018 but page subsequently removed by DoT.

225 Ibid.



# Appendix One

## Inquiry Terms of Reference

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On the 16 May 2018, the Economics and Industry Standing Committee resolved to undertake an Inquiry into the State's smash repair industry and resolved to inquire and report on:

- 1) Automotive smash repair work and whether it is being carried out to adequate safety and quality standards in Western Australia;
- 2) The current Motor Vehicle Insurance and Repair Industry Code of Conduct, its governance structure and dispute resolution mechanisms and whether it is effective at regulating the relationship between repairers and insurers, and in servicing consumer interests;
- 3) Consumer choice, consumer protection and consumer knowledge in respect of contracts and repairs under insurance policies; and
- 4) The business practises of insurers, and repairers, including vertical integration in the market, the transparency of those business practises and implications for consumers.



## Appendix Two

### Submissions Received

No.	Name	Position	Organisation
1	Mr Greg Preston	Chief Executive Officer	Australian Association of Progressive Repairers
2	Mr Stephen Moir	Chief Executive Officer	Motor Trade Association of Western Australia (Inc.)
3	Ms Kathy Morris	Director	AAAC Towing
4	Mr Terry Hughes	Director	Thornlie Towing Pty Ltd
5	Mr David Smith	Director General	Department of Mines, Industry Regulation and Safety
6	Mr Sal Martino	Director	Nova Smash Repairs
7	Mr William Golsby	General Manager Corporate Affairs	Royal Automobile Club of WA (Inc.)
8	Mr Robert Whelan	Executive Director and Chief Executive Officer	Insurance Council of Australia
9	Mr Marcus Coleman		Great Southern Smash Repairs
10	Mr Peter Blanshard	Chief Executive Officer	Institute of Automotive Mechanical Engineers
11	Mr Kane Blackman	Commission Secretary	Insurance Commission of Western Australia
12	Mr Claudio Federico	Director	City Towing
13	Mr Travis Arnold	Director	Fix Auto Morley
14	Mr Paul Sofronoff	Head of Motor Claims Assessing and Repair	Suncorp Group Ltd
15	Confidential		
16	Mr Richard Dudley	Chief Executive Officer	Motor Trades Association of Australia Limited



## Appendix Three

### Public Hearings

Date	Name	Position	Organisation
27 June 2018	Mr Stephen Moir	Chief Executive Officer	Motor Trade Association of WA
	Ms Marie Donato	Division Manager	
27 June 2018	Mr Andrew O'Hara	Chief Executive Officer, RAC Insurance	Royal Automobile Club of WA
	Mr Will Golsby	General Manager, Corporate Affairs, RAC Insurance	
	Mr Brad Chalder	Supplier Relationship Manager, RAC Insurance	
27 June 2018	Mr David Smith	Director General	Department of Mines, Industry Regulation and Safety
	Mr Peter Gow	Acting Deputy Director General, Industry Regulation and Consumer Protection	
	Mr David Hillyard	Commissioner for Consumer Protection	
12 September 2018	Mr Rob Bartlett	Executive Manager, Joint Venture Operations.	Suncorp Australia
	Mr Steven Fitzpatrick	Executive Manager, Short Tail Claims	Insurance Australia Group
	Mr Troy Johns	Specialist, Industry Relations, Risk and Governance	
19 September 2018	Mr Richard Howe	Deputy Chief Executive	Insurance Commission of Western Australia



## Appendix Four

### Closed Hearings

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Date	Name	Position	Organisation
13 August 2018	Confidential		
	Confidential		
	Confidential		
	Confidential		
	Confidential		





## Appendix Five

### Committee's Functions and Powers

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The functions of the Committee are to review and report to the Assembly on: -

- a) the outcomes and administration of the departments within the Committee's portfolio responsibilities;
- b) annual reports of government departments laid on the Table of the House;
- c) the adequacy of legislation and regulations within its jurisdiction; and
- d) any matters referred to it by the Assembly including a bill, motion, petition, vote or expenditure, other financial matter, report or paper.

At the commencement of each Parliament and as often thereafter as the Speaker considers necessary, the Speaker will determine and table a schedule showing the portfolio responsibilities for each committee. Annual reports of government departments and authorities tabled in the Assembly will stand referred to the relevant committee for any inquiry the committee may make.

Whenever a committee receives or determines for itself fresh or amended terms of reference, the committee will forward them to each standing and select committee of the Assembly and Joint Committee of the Assembly and Council. The Speaker will announce them to the Assembly at the next opportunity and arrange for them to be placed on the notice boards of the Assembly.



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