



AN INQUIRY INTO
MOTOR VEHICLE INSURANCE
AND REPAIR INDUSTRY IN
SOUTH AUSTRALIA

Eighth Report

of the

ECONOMIC AND FINANCE COMMITTEE

Tabled in the House of Assembly and ordered to be published on Thursday 24 September

Second Session, Fifty-Fourth Parliament

PRESIDING MEMBER'S FOREWORD

The motor vehicle repair industry is a significant economic contributor, both in South Australia and nationally, generating over \$7.2 billion in revenue nationally each year from over 11,000 businesses that employ more than 37,000 people. In South Australia, almost 5,000 businesses in the automotive retail, service and repair sectors contribute \$2.85 billion annually to the economy, employing over 29,000 people, including 500 apprentices, with another 900 apprentices in training.

In recent decades the crash repair industry has undergone a rationalisation process at both the national and local level, but there are still hundreds of crash repairers located across the State, providing the important service of getting motor vehicles back on the road in a manner that ensures the continued safety of all South Australian road users.

There was a substantial amount of interest in this Inquiry across the crash repair and motor vehicle insurance sectors. The Committee received 53 written submissions and heard from 35 witnesses across seven public hearings and two in camera hearings, held between October 2019 and July 2020. The public galleries at the hearings held in late 2019 were consistently full of interested observers, highlighting the significant importance this Inquiry held for the South Australian crash repair industry.

During the Inquiry, the Committee heard from many crash repairers and consumers about the issues they had encountered while trying to get vehicles repaired as part of an insurance claim. These issues included:

- difficulties in consumers accessing their repairer of choice and claims of insurers steering consumers toward their preferred network of repairers;
- the use of second-hand and/or non-original equipment manufacturer parts in repairs and related safety, warranty and liability concerns when using those parts;
- a lack of transparency of information, with consumers often not being made fully aware by insurers of all the details related to their repairs and/or insurance policies;
- disagreements over the methodology used by crash repairers and insurers to assess the repairs needed, and the cost of said repairs, to restore the motor vehicle back to pre-accident condition, and the quote negotiation process; and
- insurers choosing to provide cash settlements to consumers instead of repairing their vehicles.

The Committee also heard from crash repairers about the issues they had with the Motor Vehicle Insurance and Repair Industry Code of Conduct (Code of Conduct), which is currently voluntary in South Australia. This included problematic dispute resolution processes, a lack of enforceability, and the need for financial penalties for breaches of the Code of Conduct. Despite those concerns, the Committee heard strong support from both crash repairers and insurers for the Code of Conduct to be made mandatory in South Australia.

The Committee makes 11 recommendations aimed at increasing transparency, consumer choice and awareness across the motor vehicle insurance and repair industry, while maintaining consumer safety by ensuring that at all motor vehicles repaired as part of insurance claims are restored to their pre-accident condition. The Committee also makes a number of recommendations aimed at working towards a nationally consistent, mandatory, Code of Conduct that includes robust and binding dispute resolution processes, with suitable financial penalties for breaches to ensure compliance by all parties.

I would like to express my gratitude to the Motor Trade Association of South Australia, the Motor Trades Association of Australia, the Insurance Council of Australia as well as the numerous crash repairers and insurers that provided a submission or appeared before the Committee at our public and in camera

hearings. I would also like to thank Pro Paint 'n Panel at Hindmarsh and Capital S.M.A.R.T. at Mile End South for taking time to show the Committee through their facilities, enabling us to understand the processes undertaken when motor vehicles are brought into their facilities for repairs.

I commend the members of the Committee, both past and present, for their contributions to this report. All members have worked cooperatively on this report. Finally, I thank the Committee staff for their assistance.



Matt Cowdrey OAM MP
PRESIDING MEMBER
MEMBER FOR COLTON

24 September 2020

EXECUTIVE SUMMARY

On 3 July 2019, the Economic and Finance Committee (Committee) resolved to inquire into, and report on the motor vehicle insurance and repair industry in South Australia. The Committee received 53 written submissions and held nine hearings (seven public hearings and two in camera hearings) between October 2019 and July 2020.

The Committee heard that, since 2005, there have been five major inquiries into the motor vehicle insurance and repair industries at Federal and State government levels, leading to the creation of, and subsequent amendments to, the Motor Vehicle Insurance and Repair Industry Code of Conduct (Code of Conduct), which is mandatory in New South Wales, but voluntary in all other Australian jurisdictions.

The Committee heard that the Code of Conduct is intended to “promote transparent, informed, effective and co-operative relationships between smash repairers and insurance companies based on mutual respect and open communication”. The Code of Conduct has two dispute resolution processes and is overseen by a Code Administration Committee, made up of three members appointed by the Motor Trades Association of Australia, and three members appointed by the Insurance Council of Australia. In addition to the Code of Conduct, in South Australia the industry has the South Australian Motor Vehicle Industry Dispute Resolution Code, overseen by the South Australian Small Business Commissioner, available as a dispute resolution mechanism.

The Committee heard that all major industry stakeholders were in favour of the Code of Conduct being made mandatory in South Australia. However, there were several concerns cited by crash repairers with the current Code of Conduct. These included a lack of enforceability, an absence of independent evaluation of code breaches, a lack of financial penalties for code breaches, and fears of reprisal from insurers discouraging crash repairers from making use of the Code of Conduct’s dispute resolution processes. The Committee also noted the concerns raised by the South Australian Small Business Commissioner regarding the Code Administration Committee’s lack of transparency and their power to amend the national Code of Conduct.

The Committee makes several recommendations related to the Code of Conduct, including:

- introducing legislation to mandate the Code of Conduct in South Australia;
- adding provisions for a binding dispute resolution process, overseen by a suitable independent authority, appropriate financial penalties for breaches to ensure compliance and reduce the number of disputes needing independent resolution, and an ongoing review process to ensure the Code of Conduct remains relevant to current industry requirements;
- introducing measures to increase the Code of Conduct’s transparency and improve consumer awareness; and
- working with other Australian jurisdictions to create a nationally consistent, mandatory, Code of Conduct that includes a binding mediation process and financial penalties for breaches.

The Committee also heard that, while assessors and their current assessment methods did not pose any serious risks or issues to quality repairs, there were several concerns raised regarding the way motor vehicle insurance claims and repairs were currently processed in South Australia. These concerns included: insurers steering customers to their preferred networks of repairers; the use of second-hand and non-original equipment manufacturer’s parts in repairs; a lack of transparency of information by insurers; and disagreements over the methodology used by crash repairers and insurers to assess the repairs needed, and the cost of said repairs.

The Committee makes several recommendations aimed at increasing customer choice, improving transparency around insurance policies and repairs and ensuring that all crash repairs from insurance claims continue to return cars to their pre-accident condition. The Committee also recommends that the Australian Competition and Consumer Commission conduct reviews into the vertical integration of insurers and crash repairers and use of second-hand and non-original equipment manufacturer's parts in crash repairs and the potential risks and issues associated with them.

FINDINGS

The Economic and Finance Committee prepared a list of findings, based on the evidence provided to the Committee.

1. The Australian motor vehicle insurance market is dominated by four companies (Insurance Australia Group, Suncorp Group, QBE and Allianz) that account for 80 per cent of the national market. However, RAA Insurance is a point of difference in South Australia, accounting for about 35 per cent of the South Australian motor vehicle insurance market.
2. All major stakeholders in the motor vehicle insurance and crash repair industry in South Australia providing evidence to the inquiry support the Motor Vehicle Insurance and Repair Industry Code of Conduct (Code of Conduct) changing from voluntary to mandatory in South Australia.
3. Industry is of the opinion that the current Code of Conduct lacks enforceability, financial penalties, timely resolution of disputes and independent evaluation of code breaches. Fears of reprisal also discourage crash repairers from engaging the Code of Conduct's dispute resolution processes.
4. The current Code of Conduct would need several significant changes before it could be considered as a prescribed industry code under the *Fair Trading Act 1987*.
5. The Code Administration Committee that manages the Code of Conduct lacks transparency.
6. The Australian Financial Complaints Authority plays an important role in assisting consumers to resolve disputes with their insurers.
7. Insurers are complying with the minimum requirements of the Code of Conduct by informing customers about their insurance policies in their Product Disclosure Statements (PDS). However, these documents can be improved to provide consumers with greater transparency to make better-informed decisions about their choice of repairer.
8. Preferred repairers and independent repairers appeal to different consumers for different reasons. Evidence provided to the committee suggests that insurers either informatively guide or more aggressively steer customers towards their preferred repairer networks and, in doing so, can encourage them to waive their choice of repairer provision.
9. On the evidence provided to the Committee, insurance assessors appear to be appropriately qualified to assess repairer quotes. Although assessors may not be as technically skilled as crash repairers, their ongoing training and the current requirements for qualifications and/or experience under the Code of Conduct are sufficient to perform their roles.
10. Current assessment methods do not pose serious risks or issues to quality repairs. Physical and desktop methods both play complementary roles in the assessment process. In some cases, particularly in regional areas, desktop assessments create efficiencies in the quotation process.
11. Increasing prices for original equipment manufacturer (OEM) parts and a lack of quality control surrounding cheaper alternatives, particularly those imported from overseas that avoid checks and balances of Australia's regulatory frameworks, are an area of concern. Some insurers indicated a preference for the use of non-OEM parts in repairs to reduce costs.
12. The compatibility of non-OEM and second-hand parts with integrated vehicle systems is a safety issue. This is particularly important for newer vehicles with increasingly advanced anti-collision systems. Only new OEM parts can safely integrate with these complex systems and features.

13. Pre- and post-diagnostic scans are integral to ensuring that all repaired or replaced parts function as they should before a vehicle can leave a repairer's premises in a safe, pre-accident condition. Despite this, scans are frequently not covered by insurers.
14. While the use of second-hand and non-OEM parts is legal, consumers have a right to greater clarity and transparency surrounding their inclusion in their vehicle under the conditions of their insurance policy.
15. Much of the relationship stress between crash repairers and insurers centres around the quotation process. Crash repairers consider that insurance assessors place profits above the actual costs of repairing vehicles, citing their frustrations with quotes that are consistently marked down and authorised with a 'take it or leave it' attitude. Conversely, the insurance assessor works within a different context, facing their own pressures to constantly deliver low premiums to customers in a competitive environment.
16. Evidence was provided to the Committee of some insurers reducing repairer quotes through the process of desktop assessment. This leads to the adoption of the practice of '*Funny Time, Funny Money*' (FTFM), which is an industry estimation methodology that does not reflect the real time or costs to safely and satisfactorily undertake the repair. It is confusing, misleading and does not provide customers with the transparency they need to make well-informed decisions about the value of repairs to their vehicle.
17. Real time costings are easier to understand and would more accurately reflect the time taken to repair and replace vehicle parts. OE manufacturers currently provide time guides for building new vehicles. An independent body could work on these guides and incorporate time factors associated with damaged or aged vehicles.
18. Although some allowances (such as time allowed and the cost of consumables) have not increased over a period of years, some repairers agree to accept these low allowances in exchange for a pre-determined volume of work or other contractual arrangements with insurers.
19. In the case of a stalemate with a repairer over a quote, insurers can compel a customer to accept a cash settlement instead of repairing the vehicle. This can leave customers out of pocket, out of warranty or out of insurance cover depending on the circumstances.
20. Insurers can use a two-quote model whereby they unfavourably compare an independent repairer's quote to a significantly cheaper quote from their own preferred repairer. The cheaper quote may be used as the cash settlement figure if the customer does not agree to have their vehicle repaired by the insurer's preferred network.

RECOMMENDATIONS

The Economic and Finance Committee recommends that:

1. The South Australian Government introduce legislation to mandate the Motor Vehicle Insurance and Repair Industry Code of Conduct (Code of Conduct) in South Australia as well as provisions for:
 - a binding mediation process to enable the expedited resolution of internal disputes between motor vehicle insurers and crash repairers, overseen by a suitable independent authority, such as the Small Business Commissioner or the Commissioner for Consumer and Business Services;
 - appropriate financial penalties for breaches of the Code of Conduct to ensure compliance by all parties; and
 - an ongoing review process to ensure that the Code of Conduct remains up-to-date and relevant to the current industry requirements.
2. The South Australian Government work with other Australian jurisdictions to amend the Code of Conduct to include provisions for:
 - a binding mediation process; and
 - appropriate financial penalties for breaches of the Code of Conduct.
3. The South Australian Government report yearly on insurance companies found either in breach of the Code of Conduct or with adverse findings against them.
4. The South Australian Government provide a portal to the Australian Financial Complaints Authority on a government website.
5. The South Australian Government require motor vehicle insurers to disclose any direct or indirect ownership or contractual arrangements in place when directing policy holders to specific crash repairers or providing crash repairer options.
6. The South Australian Government introduce legislation to ensure all South Australian motor vehicle insurance policies allow for, at the customer's discretion, the motor vehicle to be repaired by a crash repairer located within a reasonable distance of a regional customer's home address.
7. The South Australian Government write to the Australian Competition and Consumer Commission (ACCC), requesting they conduct a review into:
 - vertical integration of motor vehicle insurers and crash repairers; and
 - the use of second-hand and non-original equipment manufacturer (OEM) parts in crash repairs and the potential risks and issues associated with them.

8. It be a requirement for all South Australian motor vehicle insurance policies to explicitly state, in clear and concise language on the first page of their policy document, the location of the closest approved repairer to the policy holder, the insurer's ownership stake and/or contractual arrangements regarding that approved repairer, and whether the policy allows for:
 - choice of repairer;
 - choice of parts;
 - use of non-OEM or second-hand parts;
 - OEM windscreen replacement;
 - OEM headlight replacement; and
 - diagnostic scans.
9. Subsequent to ACCC work undertaken in line with Recommendation 7, the South Australian Government consider introducing legislation to mandate the use of only new genuine parts for motor vehicle insurance crash repairs where vehicles are still under the manufacturer's warranty period.
10. The South Australian Government encourage motor vehicle insurers and crash repairers to discontinue the use of *'funny time, funny money'* for crash repair costings and instead use costings based on the real time and cost of repairs, with guidelines for the time required to undertake repairs set by an independent party, such as the original equipment manufacturers.
11. The South Australian Government review the practices used by motor vehicle insurers to force their customers to accept a cash settlement instead of repairing the vehicle, and make it mandatory for insurers to publicly report on the numbers of cash settlements made to customers compared to repairs made to vehicles.

TABLE OF CONTENTS

PRESIDING MEMBER'S FOREWORD	I
EXECUTIVE SUMMARY	III
FINDINGS	V
RECOMMENDATIONS	I
TABLE OF CONTENTS.....	III
TABLE OF FIGURES	V
COMMITTEE MEMBERSHIP	VI
FUNCTIONS OF THE COMMITTEE	VII
REFERRAL PROCESS.....	VII
MINISTERIAL RESPONSES TO COMMITTEE REPORTS.....	VIII
TERMS OF REFERENCE	IX
1 INTRODUCTION	1
1.1 REFERRAL	1
1.2 CONDUCT OF THE INQUIRY	1
1.3 SCOPE OF THE INQUIRY.....	1
1.4 REFERENCING CONFIDENTIAL EVIDENCE.....	1
1.5 REPORT OUTLINE	2
2 OVERVIEW OF THE MOTOR VEHICLE INSURANCE AND REPAIR INDUSTRY	3
2.1 MOTOR VEHICLE INSURANCE INDUSTRY.....	3
2.2 CRASH REPAIR INDUSTRY	4
2.3 ROAD CRASH STATISTICS AND TRENDS	5
3 RECENT INQUIRIES INTO THE MOTOR VEHICLE INSURANCE AND REPAIR INDUSTRY IN AUSTRALIA	7
3.1 PRODUCTIVITY COMMISSION INQUIRY REPORT – SMASH REPAIR AND INSURANCE (2005)	7
3.2 NEW SOUTH WALES PARLIAMENT - STAYSAFE COMMITTEE REPORT – REPAIRING TO A PRICE, NOT A STANDARD (2005)	8
3.3 NEW SOUTH WALES PARLIAMENT – LEGISLATIVE ASSEMBLY SELECT COMMITTEE'S INQUIRY ON THE MOTOR VEHICLE REPAIR INDUSTRY (2014).....	9
3.4 AUSTRALIAN SENATE – ECONOMICS REFERENCES COMMITTEE'S INQUIRY INTO THE FUTURE OF AUSTRALIA'S AUTOMOTIVE INDUSTRY, DRIVING JOBS AND INVESTMENT (2015)	11
3.5 WESTERN AUSTRALIAN PARLIAMENT – LEGISLATIVE ASSEMBLY ECONOMICS AND INDUSTRY STANDING COMMITTEE'S INQUIRY INTO WESTERN AUSTRALIA'S AUTOMOTIVE SMASH REPAIR INDUSTRY (2018).....	12
4 SOUTH AUSTRALIAN MOTOR VEHICLE INSURANCE AND REPAIR INDUSTRIES LEGISLATIVE AND REGULATORY FRAMEWORK.....	14
4.1 LEGISLATIVE AND REGULATORY FRAMEWORK	14
4.2 MOTOR VEHICLE INSURANCE AND REPAIR INDUSTRY CODE OF CONDUCT.....	16
5 ISSUES RAISED REGARDING THE CODE OF CONDUCT	22
5.1 THE NEED FOR A MANDATED CODE OF CONDUCT	22
5.2 DISPUTE RESOLUTION PROCESSES	25
5.3 LACK OF FINANCIAL PENALTIES FOR BREACHES	31
5.4 FEAR OF REPRISAL FOR USING DISPUTE RESOLUTION PROCESSES.....	32
5.5 EXCLUDES THE CONSUMER FROM THE DISPUTE RESOLUTION PROCESS	35

6	KEY ISSUES IN THE SOUTH AUSTRALIAN CRASH REPAIR INDUSTRY	39
6.1	CHOICE OF REPAIRER	39
6.2.	ASSESSORS AND ASSESSMENT METHODS	50
6.3	NON-OEM / SECOND-HAND PARTS	54
6.4	PREPARING QUOTES	63
6.5	NEGOTIATING QUOTES.....	72
	ABBREVIATIONS	85
	APPENDIX A: LIST OF SUBMISSIONS.....	87
	APPENDIX B: LIST OF WITNESSES	90
	APPENDIX C: MOTOR VEHICLE INSURANCE AND REPAIR INDUSTRY CODE OF CONDUCT.....	92

TABLE OF FIGURES

<i>Figure 2.1: Road Crashes in South Australia, 1995-2018</i>	6
<i>Figure 4.1: Flowchart of insurance process under the Code of Conduct</i>	18
<i>Table 6.1: RAA Motor Vehicle Repair Jobs, Financial Year 2019-20</i>	83

COMMITTEE MEMBERSHIP

The Economic and Finance Committee (the Committee) is established pursuant to the *Parliamentary Committees Act 1991* (the Act). The Committee's main function is to consider matters in relation to state finances or economic development (excluding statutory authorities), along with other specific statutory functions referred to it from other Acts of Parliament. It is the 'Public Accounts Committee' of the South Australian Parliament and, as such, is a Member of the Australasian Council of Public Accounts Committees.

Its membership for the duration of this Inquiry was:

Mr Matthew Cowdrey OAM MP (Presiding Member from 4 March 2020)

Mr Sam Duluk MP (Presiding Member until 6 January 2020, Member until 18 February 2020)

Mr David Basham MP (from 31 July 2018 – 8 September 2020)

Hon Zoe Bettison MP (from 20 June 2018 – 4 February 2020)

Mr Blair Boyer MP

Dr Richard Harvey MP (from 18 February 2020)

Mr Stefan Knoll MP (from 8 September 2020)

Ms Andrea Michaels MP (from 6 February 2020)

Hon Stephen Mullighan MP

Mr Stephen Patterson MP (from 20 June 2018 – 8 September 2020)

Mr Tim Whetstone MP (from 8 September 2020)

Parliamentary Officer to the Committee:

Dr Joshua Forkert (until 26 January 2020)

Mr Adam Marafioti (from 27 January 2020)

Research Officer to the Committee:

Mr Adam Marafioti (until 26 January 2020)

Dr Joanne Hocking (from 20 July 2020)

FUNCTIONS OF THE COMMITTEE

Pursuant to section 6 of Act, the functions of the Economic and Finance Committee are:

- (a) to inquire into, consider and report on such of the following matters as referred to it under this Act:
 - (i) any matter concerned with finance or economic development;
 - (ii) any matter concerned with the structure, organisation and efficiency of any area of public sector operations or the ways in which efficiency and service delivery might be enhanced in any area of public sector operations;
 - (iii) any matter concerned with the functions or operations of a particular public officer or a particular State instrumentality or publicly funded body (other than a statutory authority) or whether a particular public office or particular State instrumentality (other than a statutory authority) should continue to exist or whether changes should be made to improve efficiency and effectiveness in the area;
 - (iv) any matter concerned with regulation of business or other economic or financial activity or whether such regulation should be retained or modified in any area;
- (b) to perform such other functions as are imposed on the Committee under this or any other Act or by resolution of both Houses.

The Committee has ongoing responsibilities under the following South Australian statutes:

- *Emergency Services Funding Act 1998*
- *Passenger Transport Act 1994*
- *Gaming Machines Act 1992*
- *Public Corporations Act 1993*
- *Motor Accident Commission Act 1992.*

REFERRAL PROCESS

Pursuant to section 16(1) of the Act, any matter that is relevant to the functions of the Committee may be referred to it in the following ways:

- (a) by resolution of the Committee's appointing House or Houses, or either of the Committee's appointing Houses;
- (b) by the Governor, or by notice published in the Gazette; or
- (c) of the Committee's own motion.

MINISTERIAL RESPONSES TO COMMITTEE REPORTS

Pursuant to section 19 of the Act, if a report contains recommendations, the Minister with responsibility in the area concerned is required to respond within four months and include in the response statements as to:

- (a) which (if any) recommendations of the Committee will be carried out and in the manner in which they will be carried out; and
- (b) which (if any) recommendations will not be carried out and the reasons for not carrying them out.

The Minister must cause a copy of the response to the Committee's report to be laid before the Committee's appointing House within six sitting days after it is made.

TERMS OF REFERENCE

On 3 July 2019, the Economic and Finance Committee resolved to inquire into, and report on the *Motor Vehicle Insurance and Repair Industry in South Australia*, with regard to:

- a. whether insurers and repairers respectively authorise and carry out repairs with the objective of restoring safety, structural integrity, presentation and utility of the vehicle, complying with relevant Australian law and fulfilling their obligations to the policy holder;
- b. the 2017 *Motor Vehicle Insurance and Repair Industry Code of Conduct* (the Code), its governance structure, the application of the Code's dispute resolution process, in particular the overall effectiveness of the dispute resolution mechanisms in regulating the relationship between collision repairers and insurers and in protecting consumer interests;
- c. consumer choice, consumer protection and consumer knowledge in respect of contracts and repairs under insurance policies in general, but with particular regard to choice of repairer, cash settlements, transparency and fairness in assessment of non-partnered repairer estimates and the efficacy and safety of web-based assessments;
- d. the business practices of insurers and repairers, including the effect of lessening competition through vertical integration into the market, the transparency of those business practices and implications for consumers; and
- e. any other related matters.

1 INTRODUCTION

This chapter of the report provides additional information about the Inquiry and its purpose.

1.1 Referral

On 3 July 2019, the Economic and Finance Committee (Committee) resolved to inquire into, and report on the motor vehicle insurance and repair industry in South Australia.

1.2 Conduct of the Inquiry

The Committee publicly advertised the Inquiry in July 2019 and wrote to key stakeholders, inviting submissions by 6 September 2019.

A total of 53 submissions were received and published on the Committee's website.¹ The list of submissions is at **Appendix A**.

A total of nine hearings (seven public hearings and two in camera hearings) were held between 16 October 2019 and 22 July 2020, with 35 witnesses appearing before the Committee.² The witnesses represented a range of motor vehicle insurers, crash repairers and industry groups. All hearings were held at Parliament House in Adelaide. The Committee also conducted site visits to the Pro Paint 'n Panel crash repairer in Hindmarsh and the Capital S.M.A.R.T. Repair Centre in Mile End on 20 November 2019. The list of witnesses who appeared before the Committee is at **Appendix B**.

The Committee thanks all submitters and witnesses for their important contributions to the Inquiry.

1.3 Scope of the Inquiry

The Inquiry examined the effectiveness of the voluntary Motor Vehicle Insurance and Repair Industry Code of Conduct in regulating the relationship between crash repairers and insurers and in protecting the interests of South Australian consumers. The Inquiry reviewed the recent government inquiries into the motor insurance and repair industries undertaken at the Federal and State levels. It also considered the Motor Vehicle Insurance and Repair Industry Code of Conduct (the Code of Conduct), the effectiveness of the dispute resolution mechanisms under the Code of Conduct, and other related issues regarding the Code of Conduct. The Code of Conduct is at **Appendix C**.

The Inquiry reviewed the key issues faced by motor insurance customers and crash repairers when dealing with motor insurance claims, such as consumer choice, protection and knowledge in respect to contracts, repairs and their insurance policies in general. It also discussed practical measures that could be implemented to address some of those issues, and other related matters.

1.4 Referencing Confidential Evidence

As part of this Inquiry, the Committee received a significant number of confidential submissions and heard a substantial amount of evidence in camera. In the interests of exercising the utmost caution, and to ensure that confidential submitters and witnesses are not inadvertently identified, the Committee has

¹ See: Parliament of South Australia, Economic and Finance Committee, <http://www.parliament.sa.gov.au/en/Committees/Committees-Detail>

² Section 26 of the *Parliamentary Committees Act 1991* provides that, except where the Committee otherwise determines, members of the public may be present while the Committee is examining witnesses.

decided not to directly reference any confidential evidence in this report. Instead, confidential evidence will only be referred to in general terms.

1.5 Report Outline

Chapter 2 of the report provides an overview of the motor vehicle insurance and repair industries in Australia and South Australia.

Chapter 3 of the report provides an overview of the recent government inquiries into the motor insurance and repair industries undertaken in other Australian jurisdictions.

Chapter 4 of the report outlines the legislative and regulatory frameworks related to the motor vehicle insurance and crash repair industries in South Australia and the Motor Vehicle Insurance and Repair Industry Code of Conduct.

Chapter 5 of the report discusses the issues raised with the Motor Vehicle Insurance and Repair Industry Code of Conduct.

Chapter 6 of the report discusses the issues raised about the current motor vehicle insurance and crash repair industries in South Australia.

2 OVERVIEW OF THE MOTOR VEHICLE INSURANCE AND REPAIR INDUSTRY

This chapter provides an overview of the motor vehicle insurance and repair industries in Australia and South Australia, including the major motor insurance companies, the major industry groups and bodies and the economic value of the industries.

2.1 Motor Vehicle Insurance Industry

The motor vehicle insurance market in Australia is dominated by four companies that account for up to 80 per cent of the home and vehicle insurance market:

- Insurance Australia Group (CGU, Coles Insurance, NRMA, RACV, SGIC, SGIO, Swann Insurance, WFI);
- Suncorp Group (AAMI, APIA, Bingle, GIO, Shannons, Suncorp, Vero);
- QBE; and
- Allianz.

According to Insurance Australia Group (IAG), their businesses in Australia and New Zealand consist of over 8.5 million customers, underwrite over \$11 billion of insurance premiums per annum and authorise repairs on around 400,000 motor vehicles each year.³

Mr Steven Fitzpatrick, Executive General Manager, Insurance Supply Chain, IAG, told the Committee that IAG had approximately 18 per cent of the consumer motor vehicle market in South Australia across its different brands:

SGIC would probably be our biggest market share with about 7 or 8 per cent, CGU would be the next with about 6 per cent, and then we have relationships with Bendigo Bank, People's Choice and so forth. So we have some partner arrangements through some of those particular brands, and that would be approximately about 1 per cent of the market.⁴

The Committee also heard that, in South Australia, IAG has a partner smash repairer (PSR) network comprising 24 smash repair businesses.⁵

Mr Rob Bartlett, Executive Manager, Major Contract Operations, Suncorp Group (Suncorp), told the Committee that Suncorp had over four million motor insurance customers nationally, with about 200,000 customers in South Australia. Primarily, Suncorp offered motor insurance in South Australia through their AAMI, Apia and Shannons brands.⁶

The Committee heard that Suncorp carried out between 14,000 and 15,000 repairs each year in South Australia. Of those, over 30 per cent were carried out by crash repairers not preferred by Suncorp, with the remainder of repairs undertaken by Suncorp recommended repairers.⁷

³ IAG, Submission 24, p. 1.

⁴ *Committee Hansard*, 27 November 2019, p. 54.

⁵ Submission 24, p. 6.

⁶ *Committee Hansard*, 4 December 2019, p. 67.

⁷ *Committee Hansard*, 4 December 2019, p. 67.

Suncorp has a 10 per cent ownership stake in the Capital S.M.A.R.T repair centres, along with a seat on the subsidiary board, having sold 90 per cent of their interest in the business in October 2019.⁸

According to Suncorp:

SMART stands for 'Small Medium Accident Repair Technology'. SMART centres specialise in repairs to driveable vehicles that have sustained low to medium collision damage – minor dints, replacement bumper bars, etc. SMART centres use innovative technologies, digital capabilities and processes to complete a high volume of repairs at fast turnaround times.⁹

There are 50 Capital S.M.A.R.T repair centres located across Australia and New Zealand. There are two in South Australia, located at Mile End and Holden Hill.¹⁰

In addition to the two Capital S.M.A.R.T repair centres, there are 10 "Suncorp Recommended Repairers" in South Australia. In order to become one of those recommended repairers, the repair must pass a Suncorp quality and process assessment process.¹¹

Compared to the Australian motor vehicle insurance market, the major difference in the South Australian motor vehicle insurance market is the inclusion of another major insurance provider, being RAA Insurance (RAAI), which is owned by the RAA Group.

According to the RAAI's Chief Executive Officer, Mr David Russell, RAAI is the only South Australian owned and operated insurer and is South Australia's largest personal lines insurer with "around 35% of the car insurance market in South Australia".¹²

In terms of the volume of work that RAAI was responsible for, Mr Russell told the Committee that, in South Australia in 2018, the RAA had around 49,000 motor vehicle claims and worked with around 200 different crash repairers.¹³

The RAA Group has an approved repairer network, comprised of over 450 crash repairers located across South Australia.¹⁴

2.2 Crash Repair Industry

In 2018-19, IBISWorld estimated that the motor vehicle body, paint and interior repair industry in Australia generated \$7.2 billion in revenue with over 11,000 businesses nationally, employing over 37, 000 people.¹⁵

Previous inquiries have highlighted that the crash repair industry has been undergoing a process of rationalisation since at least the 1990s, with the number of crash repairers nationally (most small business) declining from around 6,500 in 1991-92 to 5,000 in 2005, with further rationalisation expected since then.¹⁶

⁸ Suncorp website, <https://www.suncorpgroup.com.au/news/news/suncorp-divests-its-capital-smart-and-acm-parts-businesses> (accessed 14 August 2020).

⁹ Suncorp Group, *Submission 2*, p. 3.

¹⁰ *Submission 2*, p. 3.

¹¹ *Submission 2*, p. 3.

¹² *Committee Hansard*, 27 November 2019, p. 60.

¹³ *Committee Hansard*, 27 November 2019, p. 60.

¹⁴ RAA website, <https://our.raa.com.au/motor/locate-a-repairer> (accessed 14 August 2020).

¹⁵ IBISWorld, *Motor Vehicle Body, Paint and Interior Repair in Australia*, Industry Report S9412, January 2019.

¹⁶ Productivity Commission Inquiry Report (2005), *Smash Repair and Insurance*, p. 20.

According to the Productivity Commission, there were 392 smash repair businesses in South Australia in October 2000. In 2005, this number had decreased to approximately 250 businesses.¹⁷

While it is unclear how many crash repairers remain in South Australia, according to the Motor Trade Association of South Australia (MTA), there are currently almost 5,000 businesses in the automotive retail, service and repair sector in South Australia.¹⁸

The MTA told the Committee that these businesses contribute \$2.85 billion to the South Australian economy and employ over 29,000 people, including 500 apprentices, with another 900 apprentices currently in training.¹⁹

2.3 Road Crash Statistics and Trends

According to DPTI, as at 30 June 2020, there were around 1.27 million license holders and 1.84 million registered vehicles in South Australia.²⁰

In 2018, there were 13,599 reported road crashes in South Australia, including:

- 80 fatalities
- 576 serious injuries
- 5,468 minor injuries; and
- 8,646 property damage crashes.²¹

¹⁷ Productivity Commission Inquiry Report (2005), *Smash Repair and Insurance*, p. 21.

¹⁸ MTA, *Submission 36*, p. 3.

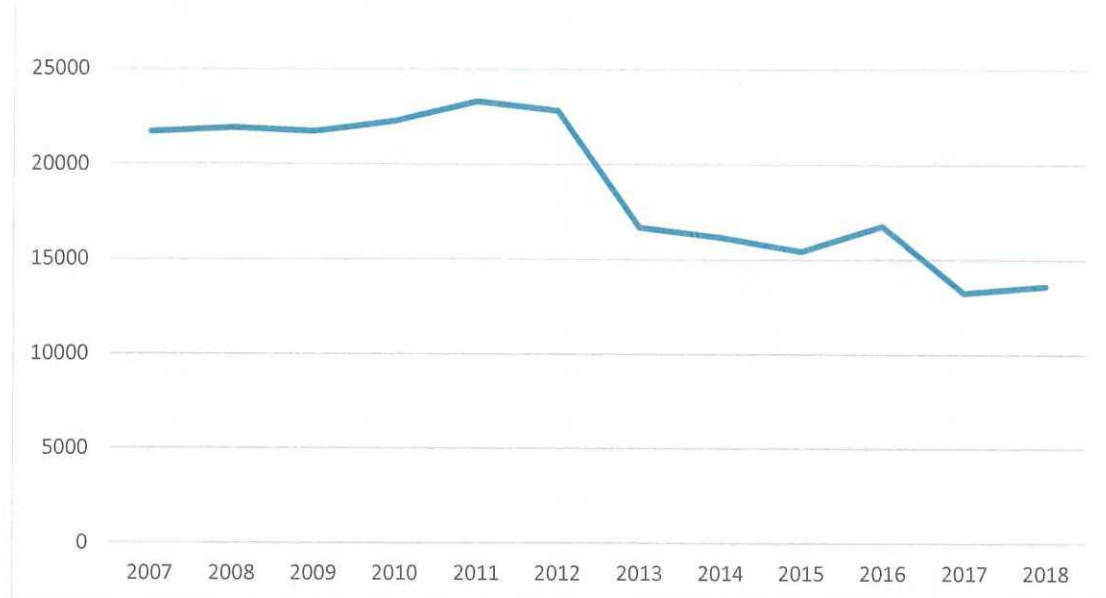
¹⁹ *Submission 36*, p. 3.

²⁰ https://dpti.sa.gov.au/registration_and_licensing (accessed 14 August 2020). The Department for Planning, Transport and Infrastructure became the Department for Infrastructure and Transport during this Inquiry.

²¹ DPTI, *Road Crashes in South Australia 2018*, https://dpti.sa.gov.au/data/assets/pdf_file/0006/613959/Road_Crash_2018.pdf (accessed 14 August 2020).

Consistent with other jurisdictions, the total number of crashes in South Australia has decreased over the past decade:

Figure 2.1: Road Crashes in South Australia, 1995-2018



Source: DPTI, *Road Crashes in South Australia 2018*, Table 1, p. 9.

3 RECENT INQUIRIES INTO THE MOTOR VEHICLE INSURANCE AND REPAIR INDUSTRY IN AUSTRALIA

This chapter provides an overview of the recent inquiries into the motor vehicle insurance and repair industry across Australia.

Since 2005, there have been five major inquiries into the motor vehicle insurance and repair industries at Federal and State government levels. The key recommendations and outcomes from those inquiries are discussed below.

3.1 Productivity Commission Inquiry Report – Smash Repair and Insurance (2005)

On 31 August 2004, the Productivity Commission received terms of reference from the Treasurer of Australia regarding the relationship between the smash repair industry and the insurance industry in Australia. The Productivity Commission was asked to investigate:

- the appropriateness and transparency of criteria used by insurance companies to confer 'preferred smash repairer' status on smash repairers;
- financial relationships between smash repairers and insurance companies;
- arrangements for consumers to have reasonable choice in the selection of repairers; and
- the extent, adequacy and independence of dispute resolution systems between the smash repair industry, insurance companies and consumers.²²

On 17 March 2005, the Productivity Commission submitted their final report. It highlighted significant tension between insurers and repairers. In particular:

- repairers felt exposed to major insurers' market power, with repairers obtaining an average of 75 per cent of their work (and up to 90 per cent for some repairers) through the insurance sector,²³ and
- over the last 10-15 years, insurers had become more focussed on control of costs, driven by a need to improve shareholder returns and contain premium levels to attract and retain customers.²⁴

The Productivity Commission found that serious issues of dispute between insurers and repairers affected fair trading and transparency, and impacted on efficiency, which had worsened with the concentration of insurer power.²⁵ The report stated that the commonly used quoting system, known as '*funny time, funny money*', should be abandoned. If times and hourly rates were to be used, they should reflect realistic times and rates, with parts, paints and significant consumables separately costed.²⁶

²² Productivity Commission, *Smash Repair and Insurance*, <https://www.pc.gov.au/inquiries/completed/smash-repair> (accessed 14 August 2020).

²³ Productivity Commission, *Smash Repair and Insurance*, p. 11.

²⁴ Productivity Commission, *Smash Repair and Insurance*, p. xiii.

²⁵ Productivity Commission, *Smash Repair and Insurance*, p. xii.

²⁶ Productivity Commission, *Smash Repair and Insurance*, p. xii.

The Productivity Commission recommended establishing a voluntary Code of Conduct for the insurance and repair industry to better resolve disputes.²⁷ However, it also recommended that such a code should not attempt to specify or regulate, on an industry-wide basis, matters such as:

- minimum hourly rates or prices;
- 'standard' hours for repair jobs;
- types of parts to be used;
- industry-wide preferred smash repairer selection criteria and/or weightings for preferred smash repairer criteria;
- compulsory choice of repairer;
- requirements to spread work among repairers; and
- particular conditions of guarantees.

In response to the recommendations, the Commonwealth Government formed a task force of insurers and repairers to develop the Code of Conduct, which was released in June 2006, and took effect on 1 September 2006.²⁸

This Code of Conduct, known formally as the Motor Vehicle Insurance and Repair Industry Code of Conduct, is discussed in detail in Chapter 4 of this report.

3.2 New South Wales Parliament - STAYSAFE Committee Report – Repairing to a Price, Not a Standard (2005)

On 13 October 2005, the Legislative Assembly of New South Wales requested the STAYSAFE Committee inquire into motor vehicle smash repairs under the Preferred Repairer Scheme operated by the National Roads and Motorists' Association Limited (NRMA) and Insurance Australia Group (IAG), and the risk to safety arising from:

- repairers quoting for jobs by inspecting photos of damaged vehicles rather than physically inspecting the damaged vehicle;
- financial penalties if damage is later uncovered that was not apparent through the internet photographs, possibly leading to cost cutting and unsafe repair practices;
- use of second-hand vehicle parts, further compromising safety; and
- the NRMA and IAG employing unqualified smash repair assessors to photograph and help administer vehicles for repair.²⁹

²⁷ Productivity Commission, *Smash Repair and Insurance*, p. 143.

²⁸ Minister for Small Business and Tourism, Hon Fran Bailey MP, 'New Voluntary Code – Win for both smash repairers and insurers', Media release, 1 June 2006, <https://www.pc.gov.au/inquiries/completed/smash-repair/files/mediarelease4.pdf> (accessed 14 August 2020).

²⁹ STAYSAFE Committee, Legislative Assembly, Parliament of New South Wales, *Repairing to a Price, Not a Standard*, December 2005, p. 7. <https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryReport/ReportAcrobat/5550/STAYS%20SAFE%2066%20-%20NRMA%20Insurance%20motor%20vehicle%20smash%20r.pdf> (accessed 14 August 2020).

In December 2005, the STAYSAFE Committee tabled its final report.³⁰ It made 44 recommendations, including:

- that IAG:
 - suspend their web-based repair management system due to it not being safe in its current form and operation;
 - suspend the use of financial penalties against crash repairers who find and report further damage to a motor vehicle during repair;
 - reintroduce policy holder choice of repairer at no cost;
 - cease using the term 'cosmetic damage' regarding damaged motor vehicles;
 - review the hourly rate paid to crash repairers;
 - abolish the use of the 'funny time, funny money' method;³¹
- that the Federal Government review and report on safety issues associated with:
 - imported new non-genuine parts, imported parallel parts, and 'grey imports' used in the repair of damaged motor vehicles; and
 - the use of recycled (second-hand) parts in the repair of damaged motor vehicles;
- the feasibility of using independent loss assessors in motor vehicle insurance claims be assessed; and
- the introduction of anti-steering legislation be considered.

Several recommendations were also made regarding qualifications, skills and training for loss assessors and adjusters, the assessment and certification of motor vehicle roadworthiness and crashworthiness and compliance, the reporting of consumer complaints and other safety issues, licensing and certification arrangements for crash repairers and an audit and inspection program for motor vehicles repaired after major or structural crash damage.

3.3 New South Wales Parliament – Legislative Assembly Select Committee's Inquiry on the Motor Vehicle Repair Industry (2014)

In 2013, the Legislative Assembly of New South Wales established a Select Committee to inquire into and report on the contractual relationships between insurers and motor vehicle repairers, the quality of smash repair work in New South Wales, consumer choice in the marketplace, and whether the industry works competitively.³²

In the context of the New South Wales Parliament's Inquiry, it should be noted that the Motor Vehicle Insurance and Repair Industry Code of Conduct (Code of Conduct) has been mandatory in New South Wales since 2007. In addition, failure to comply with the Code of Conduct could constitute a breach of the *Fair Trading Act 1987 (NSW)*.

³⁰ STAYSAFE Committee, Legislative Assembly, Parliament of New South Wales, *Repairing to a Price, Not a Standard*, December 2005, p. 1.

³¹ The 'funny time, funny money' method is discussed in detail in Chapter 6.

³² Select Committee on the Motor Vehicle Repair Industry, Legislative Assembly, Parliament of New South Wales, *Motor Vehicle Repair Industry*, July 2014, p. 1.

In July 2014, the Select Committee tabled its final report.³³ It found that:

- two companies controlled 60 per cent of the motor vehicle insurance market in NSW;
- a significant number of vehicles in New South Wales were subject to poor quality repair work;
- the quality of repair work was affected by insurers using their market dominance to exert price pressure on repairers;
- insurers may offer inducements to 'steer' customers to insurer-preferred or insurer-owned repair shops, impacting on genuine consumer choice; and
- the Code of Conduct provided a dispute resolution mechanism, but there was 'continued, significant tension between insurers and repairers', and a lack of enforceability leading to frequent breaches of the Code.³⁴

The Select Committee made 21 recommendations aimed at:

- increasing the accountability of motor vehicle loss assessors and repairers;
- better balancing the power relationship between insurers and repairers;
- increasing the transparency of the repair process and insurer practices for consumers;
- increasing the enforceability and effectiveness of the Code of Conduct.

In particular, the Select Committee recommended that the New South Wales Government work with the Commonwealth Government to make the Code mandatory across Australia, with penalties for non-compliance, and oversight by the Australian Competition and Consumer Commission (ACCC).

Should the Commonwealth not make the Code of Conduct mandatory across Australia, the Select Committee recommended the New South Wales Government make amendments to strengthen the Code, including introducing penalties for non-compliance. As of 2014, New South Wales Fair Trading had not taken action, or imposed penalties, for breaches of the Code of Conduct.³⁵

In its response to the report, the New South Wales Government stated that it supported 18 of the 21 recommendations in full or in part, including the development of legislation which would:

- establish a licensing scheme for insurance loss assessors;
- provide greater access for repairers to seek assistance from the Office of the Small Business Commissioner (OSBC); and
- ensuring appropriate penalties are available to address breaches of the Code of Conduct.³⁶

³³ Select Committee on the Motor Vehicle Repair Industry, Legislative Assembly, Parliament of New South Wales, *Motor Vehicle Repair Industry*, July 2014, <https://www.parliament.nsw.gov.au/ladocs/inquiries/1617/Report%20on%20the%20Motor%20Vehicle%20Repair%20Industry.pdf> (accessed 14 August 2020).

³⁴ Select Committee on the Motor Vehicle Repair Industry, Legislative Assembly, Parliament of New South Wales, *Motor Vehicle Repair Industry*, July 2014, pp. vi–x.

³⁵ Select Committee on the Motor Vehicle Repair Industry, Legislative Assembly, Parliament of New South Wales, *Motor Vehicle Repair Industry*, July 2014, p. 93.

³⁶ New South Wales Government, *Government Response to the Report on the Motor Vehicle Repair Industry*, December 2014,

Following the release of the report, the Code Administration Council, which is the committee responsible for the Code of Conduct, reviewed the Code of Conduct and introduced several changes, including new enforcement mechanisms providing for binding determinations.³⁷

3.4 Australian Senate – Economics References Committee’s Inquiry into the Future of Australia’s Automotive Industry, Driving jobs and investment (2015)

On 25 November 2014, the Senate referred an Inquiry into the future of Australia’s automotive industry to the Senate Economics References Committee. The Inquiry examined how government could act to assist the automotive industry following the announcement of the closure of vehicle manufacturing in Australia by 2017.³⁸

On 1 December 2015, the Senate Economics References Committee tabled its final report. While much of the Inquiry was not directly relevant to the interactions between motor vehicle insurers and the repair industry in Australia, the Senate Economics References Committee did hear concerns about the difficulties facing the crash repair industry related to the market power of insurers.

In particular, vertical integration, such as ‘writing off’ cars, harvesting their parts to supply the repairers and then also becoming involved in running some repair shops, supplying ‘safe’ parts and preventing access to repair and servicing information from motor vehicle manufacturers were all raised as issues.³⁹ The report also noted that, according to the MTAA, two insurers effectively controlled 80 per cent of the market.⁴⁰ This meant that “those dominant insurers could dictate the prices they were prepared to pay for work, while also effectively determining the availability of work and the quality of the repairs allowed.”⁴¹

The Senate Economics References Committee recommended establishing an independent inquiry into the crash repair industry to “examine the relationships between insurers, parts suppliers and smash repair businesses and inform an appropriate policy response”.⁴²

In 2017, the Commonwealth Government noted this recommendation, stating it would “continue to monitor the smash repair industry” and investigate where there is a “demonstrated competition issue”.⁴³

<https://www.parliament.nsw.gov.au/ladocs/inquiries/1617/Government%20Response.pdf> (accessed 14 August 2020).

³⁷ CAC, 2017 Annual Report, p. 2.

³⁸ Senate Economics References Committee, Senate, Parliament of Australia, *Future of Australia’s automotive industry: Driving jobs and investment*, 1 December 2015, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Automotive_industry_2014 (accessed 14 August 2020).

³⁹ Senate Economics References Committee, Senate, Parliament of Australia, *Future of Australia’s automotive industry, Driving jobs and investment*, pp. 30-31.

⁴⁰ Senate Economics References Committee, Senate, Parliament of Australia, *Future of Australia’s automotive industry, Driving jobs and investment*, p. 30.

⁴¹ Senate Economics References Committee, Senate, Parliament of Australia, *Future of Australia’s automotive industry, Driving jobs and investment*, p. 31.

⁴² Senate Economics References Committee, Senate, Parliament of Australia, *Future of Australia’s automotive industry, Driving jobs and investment*, Recommendation 12, p. 32.

⁴³ Australian Government, *Government Response to Report on Future of Australia’s automotive industry, Driving jobs and investment*, 5 September 2017, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Automotive_industry_2014/Government_Response (accessed 14 August 2020).

3.5 Western Australian Parliament – Legislative Assembly Economics and Industry Standing Committee’s Inquiry into Western Australia’s Automotive Smash Repair Industry (2018)

On 16 May 2018, the Western Australian Legislative Assembly’s Economics and Industry Standing Committee agreed to undertake an Inquiry into Western Australia’s automotive smash repair industry. The Inquiry considered:

- if automotive smash repair work was being carried out to adequate safety and quality standards in Western Australia;
- if the Code of Conduct was effective at regulating the relationship between repairers and insurers, and in servicing consumer interests;
- consumer choice, consumer protection and consumer knowledge regarding contracts and repairs under insurance policies; and
- the business practices of insurers and repairers, including vertical integration in the market, the transparency of those business practices and the implications for consumers.⁴⁴

On 29 November 2018, the Standing Committee tabled its final report. The Standing Committee found that:

- the decline in reportable accidents in Western Australia had driven down demand for smash repairs and placed financial pressure on individual smash repair firms;
- the voluntary Code of Conduct was recognised by insurers and repairers as a ‘positive initiative’;
- State Governments had limited ability to intervene in the contractual and business arrangements between insurers and repairers, and financial services were regulated at the Commonwealth level;
- where customers have a choice of repairers, the Committee heard evidence of insurance staff ‘steering’ customers to their preferred network of repairers to try to lower the cost of repairs;
- the practice of ‘funny time, funny money’ was ingrained in the process between insurers and smash repairers to assist in finding an agreed price for a repair, but that the utilisation of that system was unhelpful.⁴⁵

The Committee made three recommendations:

- the Western Australian Treasurer write to the Commonwealth Treasurer, seeking agreement for the ACCC to undertake an in-depth inquiry into possible anti-competitive conduct in the smash repair industry;
- that legislation be introduced into the Western Australian Parliament by the end of 2019 to mandate the Motor Vehicle Insurance and Repair Industry Code of Conduct (Code of Conduct) in Western Australia; and

⁴⁴ Economics and Industry Standing Committee, Legislative Assembly, Parliament of Western Australia, *Western Australia’s Smash Repair Industry: Structural Challenges*, 29 November 2018, p. 55.

⁴⁵ Economics and Industry Standing Committee, Legislative Assembly, Parliament of Western Australia, *Western Australia’s Smash Repair Industry: Structural Challenges*, pp. iii–vi.

- the role of the Small Business Commissioner be considered as part of the process for the introduction of legislation mandating the Code of Conduct in Western Australia.⁴⁶

In its response to the Committee's recommendations, the Western Australian Government:

- supported referring the matter to the Commonwealth Government and wrote to the Federal Treasurer, asking for consideration of an ACCC review of the industry;
- noted that it would not be possible to commit to making the Code of Conduct mandatory, due to the significant legislative amendments required, which would likely:

raise issues of inconsistency with the sovereignty of Parliament as it would incorporate into WA law an instrument whose contents are not subject to any Parliamentary control or oversight⁴⁷

- noted that it would be necessary to devise arrangements for enforcement; and
- supported, 'in-principle', the recommendation to include the Small Business Commissioner in the Code of Conduct process, but noted that the role would need to be considered in a broader context, as the Western Australian Government did not support mandating the Code of Conduct at present.⁴⁸

⁴⁶ Economics and Industry Standing Committee, Legislative Assembly, Parliament of Western Australia, *Western Australia's Smash Repair Industry: Structural Challenges*, pp. iii–vi.

⁴⁷ Western Australian Government, *Government Response to Report on Western Australia's Smash Repair Industry: Structural Challenges*, 2 April 2019, p. 3.

⁴⁸ Western Australian Government, *Government Response to Report on Western Australia's Smash Repair Industry: Structural Challenges*, 2 April 2019, [http://parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/E42B32CD30D7C2D7482583510017DC20/\\$file/20190403+SRI+Government+Response.pdf](http://parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/E42B32CD30D7C2D7482583510017DC20/$file/20190403+SRI+Government+Response.pdf) (accessed 14 August 2020).

4 SOUTH AUSTRALIAN MOTOR VEHICLE INSURANCE AND REPAIR INDUSTRIES LEGISLATIVE AND REGULATORY FRAMEWORK

This chapter discusses the legislative and regulatory frameworks related to the motor vehicle insurance and crash repair industries in South Australia and the Motor Vehicle Insurance and Repair Industry Code of Conduct (Code of Conduct).

4.1 Legislative and Regulatory Framework

In South Australia, the motor vehicle insurance and repair industries have relatively low levels of industry-specific legislation and regulation. The industries are broadly regulated by a range of State and Commonwealth legislation:

- *Motor Vehicles Act 1959 (SA)*⁴⁹;
- *Fair Trading Act 1987 (SA)*⁵⁰;
- *Insurance Act 1973 (Cwlth)*⁵¹, *Insurance Contracts Act 1984 (Cwlth)*⁵², *Corporations Act 2001 (Cwlth)*.⁵³

The Motor Vehicles Act 1959 (SA) is the legislation that regulates compulsory third-party insurance.

The Fair Trading Act 1987 (SA) is the legislation that applies the Australian Consumer Law (ACL) in South Australia. The ACL includes:

- trade practices;
- unfair contract terms;
- unfair practices and unfair trading;
- consumer guarantees;
- product safety; and
- information standards that apply to services and goods.⁵⁴

This legislation also provides a dispute resolution mechanism (the *Motor Vehicle Industry Dispute Code*, discussed in the section below) for the motor vehicle industry.

The *Insurance Act 1973 (Cwlth)*, *Insurance Contracts Act 1984 (Cwlth)*, *Corporations Act 2001 (Cwlth)* regulate the insurance industry and arrangements between insurers and consumers. It is monitored by the Australian Securities and Investment Commission (ASIC).

⁴⁹ <https://www.legislation.sa.gov.au/lz/c/a/motor%20vehicles%20act%201959.aspx> (accessed 20 August 2020).

⁵⁰ <https://www.legislation.sa.gov.au/LZ/C/A/FAIR%20TRADING%20ACT%201987.aspx> (accessed 20 August 2020).

⁵¹ <https://www.legislation.gov.au/Details/C2017C00065> (accessed 20 August 2020).

⁵² <https://www.legislation.gov.au/Details/C2016C00820> (accessed 20 August 2020).

⁵³ <https://www.legislation.gov.au/Details/C2017C00328> (accessed 20 August 2020).

⁵⁴ Australian Consumer Law, <https://www.sa.gov.au/topics/business-and-trade/regulation/fair-trading/consumer-law> (accessed 20 August 2020).

4.1.1 South Australian Motor Vehicle Industry Dispute Resolution Code

South Australia has a specific industry code for resolving disputes, called the *South Australian Motor Vehicle Industry Dispute Resolution Code*. Introduced in 2014, this was the first mandatory alternative dispute resolution process with financial penalties in Australia.

The aim of the Code is to promote the:

...successful resolution of motor vehicle related disputes in a streamlined and defined manner. The Code sets out a process that can be undertaken by the Office of the Small Business Commissioner (OSBC) to bring parties in a dispute together with the intention of assisting the parties to resolve the dispute in a timely and beneficial manner.⁵⁵

The Code is legislated under the *Fair Trading (Motor Vehicle Industry Dispute Resolution Code) Regulations 2014 (SA)*⁵⁶ and is overseen by the Small Business Commissioner (SBC). It provides:

...a mandatory alternative dispute resolution processes on a no (or low cost) basis for participants in the motor vehicle industry, which includes all motor vehicle businesses, as well as any business involved in the manufacturing, distributing, supplying, acquiring, repairing or restoring of motor vehicles or motor vehicles parts and accessories.⁵⁷

Under the Code, the SBC has a variety of powers to assist in resolving disputes. Parties to the dispute can be compelled to:

- exchange information relevant to the dispute;
- answer questions;
- attend meetings; and
- participate in mediation and other forms of alternative dispute resolution.⁵⁸

There are two levels of financial penalties for breaches of the *Motor Vehicle Industry Dispute Code*, issued by the Office of the Small Business Commissioner:

- civil expiation notice (including fees for failing to attend meetings); or
- court action to obtain a civil penalty of up to \$50,000 for a corporation or \$10,000 for a natural person.⁵⁹

The SBC told the Committee that the OSBC works toward bringing parties together as soon as practicable once a written application regarding the dispute has been received by the OSBC, with failure to attend a meeting attracting a civil expiation fee of \$4,000 for a corporation or \$500 for a natural person.⁶⁰

The Committee heard that the OSBC has a panel of nine qualified, independent mediators to assist in the resolution of motor vehicle related disputes, with an appropriate mediator assigned by the SBC to

⁵⁵ SBC, *Submission 35*, p. 1.

⁵⁶

[https://www.legislation.sa.gov.au/LZ/C/R/Fair%20Trading%20\(Motor%20Vehicle%20Industry%20Dispute%20Resolution%20Code\)%20Regulations%202014.aspx](https://www.legislation.sa.gov.au/LZ/C/R/Fair%20Trading%20(Motor%20Vehicle%20Industry%20Dispute%20Resolution%20Code)%20Regulations%202014.aspx) (accessed 20 August 2020).

⁵⁷ *Submission 35*, p. 1.

⁵⁸ *Submission 35*, p. 1.

⁵⁹ Small Business Commissioner South Australia, *Motor Vehicle Industry Dispute Resolution Code*, https://www.sasbc.sa.gov.au/industry_codes/motor_vehicle_industry_dispute_resolution_code (accessed 20 August 2020).

⁶⁰ *Submission 35*, p. 2.

facilitate the mediation on a case-by-case basis. Parties are encouraged to act in good faith during the mediation, which is conducted on a confidential basis. Any settlement reached during this process is legally enforceable.⁶¹

The Code has been activated on four separate occasions since it was introduced in January 2014.⁶²

In 2018-19, the Small Business Commissioner received 71 enquiries regarding motor vehicles, an increase of 25 per cent from 2017-18.⁶³

4.2 Motor Vehicle Insurance and Repair Industry Code of Conduct

In 2006, the Commonwealth Government established the Smash Repair and Insurance Industry Implementation Taskforce, comprising insurers and repairers, to develop a code of conduct for the motor vehicle insurance and repair industry, in response to the recommendation from the 2005 Productivity Commission Inquiry into Smash Repair and Insurance (as discussed in Chapter 3).⁶⁴

The Taskforce developed the national *Motor Vehicle Insurance and Repair Industry Code of Conduct*⁶⁵ (Code of Conduct), which came into effect on 1 September 2006.

A copy of the Code of Conduct is at **Appendix C**.

The Code of Conduct is mandatory in New South Wales (under the *Fair Trading Act 1987 (NSW)*). It is voluntary in all other Australian jurisdictions, including South Australia.

The Code of Conduct is intended to “*promote transparent, informed, effective and co-operative relationships between smash repairers and insurance companies based on mutual respect and open communication*”⁶⁶.

The Code of Conduct outlines:

- insurer and repairer relations, including how repairers will provide estimates, carry out repairs and deal with insurers in relation to repairs and what insurers will or will not require of repairers who are undertaking repair work for them;
- the qualifications and requirements needed to be a code approved assessor and mandates their use for insurance crash repair;
- the qualifications and requirements needed to be a code approved estimator and mandates their use for insurance crash repair, except when providing paintless dent repair estimates;
- network smash repair schemes (repairers promoted by an insurer under an accreditation scheme operated by the insurer) and the terms under which they shall operate;
- the estimate, repair and authorisation process;

⁶¹ SBC, *Submission 35*, pp. 1-2.

⁶² *Submission 35*, p. 2.

⁶³ Small Business Commissioner South Australia, *Annual Report 2018-19*, p. 29, <https://www.sasbc.sa.gov.au/about-us/annual-reports> (accessed 20 August 2020).

⁶⁴ Select Committee on the Motor Vehicle Repair Industry, Legislative Assembly, Parliament of New South Wales, *Motor Vehicle Repair Industry*, July 2014, p. 85.

⁶⁵ Motor Vehicle Insurance and Repair Industry Code of Conduct, <https://www.abrcode.com.au/site/DefaultSite/filesystem/documents/2017-03-29CodeofConduct.pdf> (accessed 20 August 2020).

⁶⁶ About the Code, <https://www.abrcode.com.au/about-the-code> (accessed 20 August 2020).

- repair warranties and how they will be carried out;
- payment for repairs;
- signatory obligations; and
- the repair dispute resolution process.⁶⁷

There is no interaction between the Code of Conduct and the *South Australian Motor Vehicle Industry Dispute Resolution Code*. Relevant disputes are dealt with under one of the Codes, but not both simultaneously, and the two Codes do not overlap.⁶⁸

The Small Business Commissioners in New South Wales and Victoria are Approved Determination Providers under the Code of Conduct, but the Small Business Commissioner in South Australia is not.⁶⁹

As at 2018, over 2,000 crash repairers and over 30 insurance companies, representing most major participants in motor vehicle insurance, were signatories to the Code of Conduct.⁷⁰

Figure 4.1, on the next page, outlines the insurance and repair process to be followed under the Code of Conduct and the responsibilities of each party.

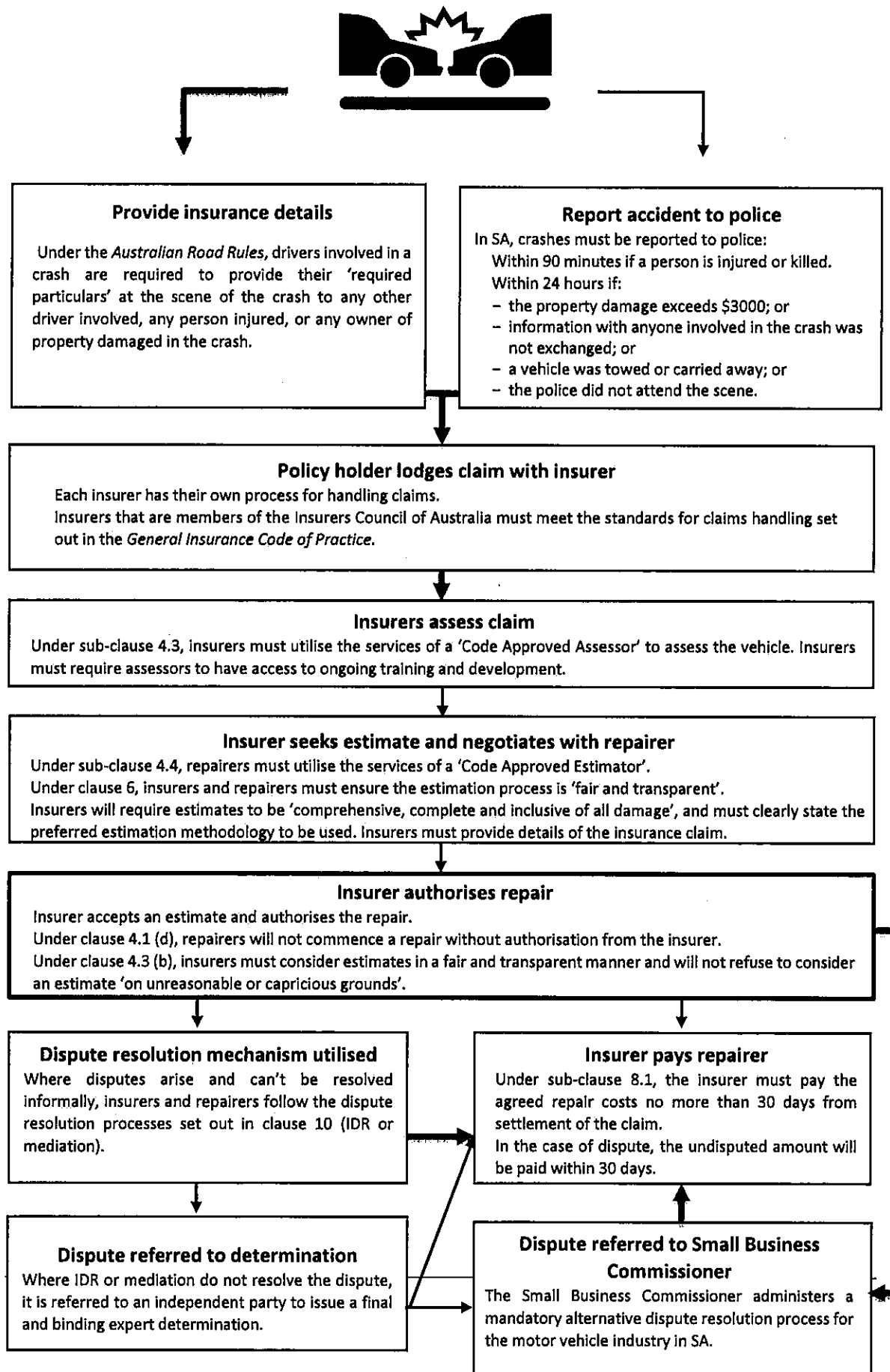
⁶⁷ Motor Vehicle Insurance and Repair Industry Code of Conduct, <https://www.abrcode.com.au/> (accessed 20 August 2020).

⁶⁸ SBC, *Submission 35*, p. 2.

⁶⁹ *Submission 35*, p. 2.

⁷⁰ Code Administration Committee, *Annual Report 2018*, p. 1, <https://www.abrcode.com.au/site/DefaultSite/filesystem/documents/CAC-Annual-Report-2018-Final-v1.pdf> (accessed 20 August 2020).

Figure 4.1: Flowchart of insurance process under the Code of Conduct



4.2.1 Administration of the Code of Conduct

The Code of Conduct is managed by a Code Administration Committee (CAC), made up of six members - three members appointed by the Motor Trades Association of Australia (MTAA) and three members appointed by the Insurance Council of Australia (ICA). The CAC must meet at least two times per year but may meet more frequently as required.⁷¹

Members of the CAC serve for a two-year period but may be re-nominated for a further two years. The ICA and MTAA can replace or substitute their respective appointees at any time and for any reason. The chairperson of the CAC is elected by its members and serves for a 12-month period, with the chairperson rotating between ICA and MTAA representatives.⁷²

The role of the CAC includes:

- developing a protocol for the appointment, establishment and operation of a national panel of Mediators;
- monitoring compliance with the Code of Conduct and referring any alleged breaches to the appropriate government regulator;
- conducting an external review of the operation of the Code of Conduct every three years; and
- producing a publicly available annual report, with a copy of the report provided to the relevant Federal Minister. The report must include:
 - an assessment of insurer and repairer compliance with the Code of Conduct;
 - the number and type of applications for Mediation under the Code of Conduct;
 - any other matters the CAC considers relevant to the Code of Conduct.⁷³

4.2.2 Dispute Resolution

The Code of Conduct provides for two dispute resolution processes:

- an Internal Dispute Resolution (IDR) mechanism, to deal with disputes that arise between an insurer and repairer, prior to commencement or completion of repair, where a dispute can't be resolved at the local level;⁷⁴ and
- an External Dispute Resolution (EDR) mechanism, to deal with disputes relating to alleged non-compliance with the Code or contractual disputes, or where a repairer disagrees with the outcome of an IDR process. This option is available only where both the insurer and the repairer are signatories to the Code.⁷⁵

⁷¹ Code Administration, <https://www.abrcode.com.au/code-administration> (accessed 20 August 2020).

⁷² Code Administration, <https://www.abrcode.com.au/code-administration> (accessed 20 August 2020).

⁷³ Code Administration, <https://www.abrcode.com.au/code-administration> (accessed 20 August 2020).

⁷⁴ Motor Vehicle Insurance and Repair Industry Code of Conduct, Clause 11.2 <https://www.abrcode.com.au/site/DefaultSite/filesystem/documents/2017-03-29CodeofConduct.pdf> (accessed 20 August 2020).

⁷⁵ Motor Vehicle Insurance and Repair Industry Code of Conduct, Clause 11.3 <https://www.abrcode.com.au/site/DefaultSite/filesystem/documents/2017-03-29CodeofConduct.pdf> (accessed 20 August 2020).

Under the IDR process, each insurer must establish an IDR mechanism that provides for the prompt, transparent and fair resolution of disputes. Disputes, in the first instance, must be registered through the Code of Conduct website. The CAC then advises the relevant insurer of the IDR dispute lodgement.

In terms of timeliness, insurers must provide a written acknowledgement of the complaint to the repairer within three business days and the IDR process must be concluded within nine business days following CAC notification, unless otherwise agreed to by both parties.⁷⁶

Should the repairer disagree with the outcome of an IDR process, they can elevate the dispute to an EDR process. Parties participating in an EDR process should try to resolve the dispute within 15 business days of the notification of the dispute, unless otherwise agreed to by both parties. Participation in the EDR process is mandatory for signatories to the Code of Conduct.⁷⁷

If the EDR process does not result in an outcome acceptable to both parties, or the dispute proves incapable of resolution by the EDR process, the mediator in the EDR process provides a written statement to the both parties setting out:

- the parties to the dispute;
- an outline of the dispute; and
- a list of unresolved issues.⁷⁸

According to the latest CAC Annual Report, in 2018 there were 282 IDRs and 17 EDRs.⁷⁹

If the IDR and mediation do not settle the dispute, the Code provides for an Approved Determination Scheme, where an independent party is appointed to issue a final and binding 'expert determination'. To date, there have been three determinations made under the Approved Determination Scheme.

4.2.3 Code of Conduct Reviews

Since the Code of Conduct was introduced several external reviews of the Code of Conduct have been undertaken:

2010 Review by ICDP Australia⁸⁰

The three main observations made by this review were that:

- the Code of Conduct provided a means to improve the overall relationship between repairers and insurers. However, repairers indicated that there was a progressive loss of confidence in the Code of Conduct to address continuing underlining industry operational issues between repairers and insurers;

⁷⁶ Motor Vehicle Insurance and Repair Industry Code of Conduct, Clause 11.2 <https://www.abrcode.com.au/site/DefaultSite/filesystem/documents/2017-03-29CodeofConduct.pdf> (accessed 20 August 2020).

⁷⁷ Motor Vehicle Insurance and Repair Industry Code of Conduct, Clause 11.3.

⁷⁸ Motor Vehicle Insurance and Repair Industry Code of Conduct, Clause 11.3.

⁷⁹ Code Administration Committee, *Annual Report 2018*, p. 2, <https://www.abrcode.com.au/site/DefaultSite/filesystem/documents/CAC-Annual-Report-2018-Final-v1.pdf> (accessed 20 August 2020).

⁸⁰ ICDPA (2010), *Review of the Motor Vehicle Insurance & Repair Industry Code of Conduct*, <https://www.abrcode.com.au/site/DefaultSite/filesystem/documents/MVIRICoCReport.pdf> (accessed 20 August 2020).

- insurers broadly supported the Code of Conduct, but a small number suggested the need to amend it to include provisions to provide insurers with a means to enforce repairer compliance, for example, the ability to initiate IDRs against repairers;
- improved communication and education were needed for both insurers and repairers about the principles and provisions contained in the Code, and about issues that the Code does not specifically and directly address.

In response to the review, the CAC acknowledged the differing views expressed by repairers and insurers and that the CAC itself had not been able to reach agreement on many recommendations.

2013 Review by Executive Counsel Australia⁸¹

In 2013, Executive Counsel Australia reviewed the Code of Conduct. The CAC agreed to 6 of the 21 recommendations made in the review.

Key outcomes agreed to included that:

- arbitration be included as part of the dispute resolution process;
- all disputes must be lodged through the Code of Conduct website, with the website updated to provide for reports to be available to the CAC to ensure both parties are meeting the requirements of the Code;
- a clause be added, highlighting the need for Signatories to behave in a professional and courteous manner; and
- a section be added to section four 'Code Approved Assessors' to ensure that only assessors who met the qualifications detailed could be engaged by insurance signatories.

2016 Review by the New South Wales Government and CAC⁸²

During 2016 the New South Wales Government and the CAC conducted an expedited review of the Code of Conduct, with the CAC considering several recommendations put forward by the New South Wales Government.

Key outcomes that were agreed to included:

- the implementation of expert determination rules as part of the dispute resolution process;
- new requirements on repairers to ensure their estimators had the skills and qualifications necessary for the role;
- deadlines for insurers to carry out assessments after receiving an estimate from a repairer; and
- reporting obligations on insurers to report to government regulators incidences where a signatory has disregarded their due diligence and care towards the safety of a vehicle.

The revised Code commenced on 1 May 2017.

⁸¹ Code Administration Committee, 2016 *Annual Report*, p. 2., <https://www.abrcode.com.au/site/DefaultSite/filesystem/documents/CAC-Annual-Report-2016.pdf> (accessed 20 August 2020).

⁸² Code Administration Committee, 2017 *Annual Report*, p. 2., <https://www.abrcode.com.au/site/DefaultSite/filesystem/documents/CAC-Annual-Report-2017.pdf> (accessed 20 August 2020).

5 ISSUES RAISED REGARDING THE CODE OF CONDUCT

This chapter discusses the issues raised regarding the Motor Vehicle Insurance and Repair Industry Code of Conduct in South Australia.

5.1 The Need For A Mandated Code Of Conduct

The Committee heard that insurers, crash repairers and industry groups were largely in favour of making the current, voluntary, Motor Vehicle Insurance and Repair Industry Code of Conduct (Code of Conduct) mandatory in South Australia.

Motor vehicle insurer, Suncorp Group, told the Committee that it was a signatory to the Code of Conduct and assessed all quotes received in accordance with the Code of Conduct. They supported the Code of Conduct's role in providing a dispute resolution framework and certainty to insurers and repairers⁸³ and welcomed *"the opportunity to discuss how the Code can continue to deliver benefits to our customers, including making the existing code mandatory for all repairers."*⁸⁴

Mr Rob Bartlett, Executive Manager, Major Contract Operations, Suncorp Group, told the Committee that Suncorp thought the Code of Conduct had been working well and that it was a great way for both repairers and insurers to work together cooperatively and help manage the natural tension that exists both parties due to the competitive and commercial nature of their relationship.⁸⁵

Mr Bartlett told the Committee that the Code of Conduct had been mandated in New South Wales for over 10 years and that the Western Australian parliamentary inquiry (discussed in Chapter 3) also recommended mandating the Code of Conduct.⁸⁶

...as a result, we think that it is actually reasonable for all of the states to have an understanding and a view as to what the Code does for its communities and how it works. The best way, in fact, that it can actually be developed and enhanced going forward is for all of the states, in our view, to continue to understand how mandating can work for it.⁸⁷

When asked whether Insurance Australia Group would be in favour of a mandatory Code of Conduct in South Australia, Mr Steven Fitzpatrick, Executive General Manager, Insurance Supply Chain, Insurance Australia Group Limited, told the Committee:

Yes. We subscribe to the code and we do that nationally. We work very closely with repairers. We think it actually adds value. The determinations we find valuable and then we adhere to those determinations. I think that it not only actually protects smash repairers, it also protects insurance companies.⁸⁸

Mr Troy Johns, Specialist, Industry Relations, Supply Chain, Insurance Australia Group Limited, told the Committee that the Code of Conduct was very effective and balanced in New South Wales. As a result of operating from within the mandatory Code of Conduct for over a decade, both insurers and crash repairers had learnt to be more reasonable with how they approach each other.⁸⁹

⁸³ Suncorp Group, *Submission 2*, p. 4.

⁸⁴ *Submission 2*, p. 1.

⁸⁵ *Committee Hansard*, 4 December 2019, p. 68.

⁸⁶ *Committee Hansard*, 4 December 2019, p. 68.

⁸⁷ *Committee Hansard*, 4 December 2019, p. 68.

⁸⁸ *Committee Hansard*, 27 November 2019, p. 55.

⁸⁹ *Committee Hansard*, 27 November 2019, p. 55.

Mr Johns also told the Committee that, if the Code of Conduct were to be mandated in South Australia, it was important to keep it nationally consistent to be viable within the industry.⁹⁰

At the public hearing held on 4 December 2019, Mr David Russell, Chief Executive Officer, RAA Insurance, told the Committee that:

We believe the code is working well, from RAA's perspective. If the committee's decision was to mandate the code, then we would have no problems with that. It would not change our operations. If that would help the industry relationships, then we would be happy if that was achieved.⁹¹

The South Australian crash repair industry also appears to be in favour of a mandated Code of Conduct.

Mr Raymond Khabbaz, Director of FinishLine Collision, recommended that the Code of Conduct be made *"mandatory and compulsory for all industry players."*⁹²

Mr Jason Mallia, Workshop Manager at Auto Transformers, told the Committee that he believed a mandatory code would stop some of the customer steering tactics he had encountered working in the crash repair industry.⁹³

As part of the confidential evidence received, several independent South Australian crash repairers told the Committee that they also supported the Code of Conduct being made mandatory in South Australia.

The Motor Trade Association of South Australia (MTA), the main industry organisation for the automotive retail, service and repair businesses in South Australia, told the Committee that it was critical that there be a transparent, informed, effective and cooperative relationship between crash repairers and insurance companies. The MTA stated that the current, voluntary, Code of Conduct had been a useful tool to improve the visibility of insurer conduct, but that a mandated Code of Conduct in South Australia, including an enforceable mediation process, would greatly assist the relationship between repairers and insurers.⁹⁴

The Committee heard that an effective solution was to identify and remove the areas impacting an effective and consumer/small business / insurer relationship and provide mechanisms to ensure small business competitiveness and consumer rights, including the jurisdictional mandating of the Code.⁹⁵

The MTA told the Committee that, whilst the Code of Conduct proposes best industry practice, it had several fundamental failings, namely:

- it was voluntary;
- there were no penalties for breaches (even where legislated);
- it contained loose and undefined terms; and
- the dispute resolution process was expensive and non-binding on future behaviour.⁹⁶

⁹⁰ *Committee Hansard*, 27 November 2019, p. 56.

⁹¹ *Committee Hansard*, 4 December 2019, pp. 60-61.

⁹² FinishLine Collision, *Submission 4*, p. 8.

⁹³ *Committee Hansard*, 30 October 2019, p. 19.

⁹⁴ MTA, *Submission 36*, p. 6.

⁹⁵ *Submission 36*, p. 6.

⁹⁶ *Submission 36*, p. 5.

To help address those failings, the MTA recommended that the Code of Conduct be legislated in South Australia to ensure that *"the intentions reflected in the voluntary Code of Conduct were made legally enforceable, with appropriate penalties for non-compliance."*⁹⁷

The MTA also recommended that the current Code of Conduct be reviewed to ensure *"it remains relevant to both the needs of industry and insurers and provides surety for consumers in relation to the correct repair of their vehicles."*⁹⁸

The MTA told the Committee that, at a minimum, the Code of Conduct should be strengthened to protect consumers and ensure that their vehicles were restored to pre-accident condition with no loss in resale value.⁹⁹ Mr Khabbaz agreed with the MTA's position, stating that a mandatory Code of Conduct should be driven by the principle that the damaged vehicle be returned to its pre-accident condition.¹⁰⁰

The Committee also heard that the South Australian legislation enshrining the Code of Conduct should be reviewed and updated periodically to include lessons learned from determinations and any relevant case law.¹⁰¹

Mr John Chapman, South Australian Small Business Commissioner (SBC), told the Committee that:

Voluntary codes generally, from my experience, don't work because there is no enforcement and sometimes people don't sign up to them. We have seen that in national situations with codes where you have a big business that doesn't sign up, and they are really often not worth the paper they are written on.¹⁰²

Mr Chapman also told the Committee that, from a regulatory perspective, he preferred a mandatory code of conduct over a voluntary one:

...I prefer the mandatory approach, where there is as little wriggle room as possible. Usually—not always—it is the bigger end of town that is not engaging. Sometimes, we need to deal with small businesses. When you look at a situation you could say, 'Well, that's not really fair practice.' So mandatory codes that are backed by penalties are important, in my view.¹⁰³

Mr Chapman told the Committee that he had considered whether the Code of Conduct could be prescribed as an industry code under Part 3A of the *Fair Trading Act 1987* (SA), in the same way as the *South Australian Motor Vehicle Industry Dispute Resolution Code*. However, there were significant practical and policy considerations that would present barriers to the Office of the Small Business Commissioner (OSBC) being effectively involved in the administration of the Code of Conduct.¹⁰⁴

For example, the terms of the Code of Conduct as drafted were not immediately amenable to being enshrined in regulation. Some of the terms of the Code of Conduct are aspirational in nature, and many are simply insufficiently prescriptive to enable consistent interpretation and application under the Code of Conduct. The Committee heard that this was an important consideration, given that breaches of industry codes carry the risk of a civil penalty.¹⁰⁵

⁹⁷ MTA, *Submission 36*, p. 5.

⁹⁸ *Submission 36*, p. 6.

⁹⁹ *Submission 36*, p. 27.

¹⁰⁰ FinishLine Collision, *Submission 4*, p. 8.

¹⁰¹ *Submission 36*, p. 35.

¹⁰² *Committee Hansard*, 13 November 2019, p. 34.

¹⁰³ *Committee Hansard*, 13 November 2019, p. 34.

¹⁰⁴ SBC, *Submission 35*, p. 2.

¹⁰⁵ *Submission 35*, p. 3.

Legislative amendments would also need to be made to give the SBC a determinative power when resolving disputes as, currently, the SBC does not have a general power to make a binding determination under the *Small Business Commissioner Act 2011*.¹⁰⁶

Another potential issue was that there was a view that a prescribed industry code under the *Fair Trading Act 1987* could not allow for voluntary participation.¹⁰⁷

Mr Chapman also highlighted the fact that, as the Code Administration Committee (CAC) have the power to amend the current, voluntary Code of Conduct, if that was enshrined in regulation with no changes, the South Australian Government would need to consider making new regulations every time an amendment was made. The Committee heard that this would be an inefficient process and, as the South Australian Government was not in control of the changes made to the Code of Conduct, could also lead to the Code of Conduct being abandoned if the Government of the day was not comfortable with the amendments.¹⁰⁸

Mr Chapman also told the Committee that, in his view, there is a total lack of transparency in the motor vehicle insurance and repair industry, including a lack of transparency on the part of the CAC, particularly in relation to scheduled meetings, agenda items and meeting outcomes.¹⁰⁹

The Committee also heard from the Motor Trades Association of Australia Limited (MTAA), which is a federation of various state and territory motor trades associations and automobile chambers of commerce, including the Motor Trade Association of South Australia (MTA). The MTAA stated that their national position is for the Code of Conduct to be strengthened by mandating it in legislation in each Australian jurisdiction.¹¹⁰

Mr Richard Dudley, Chief Executive Officer, MTAA, told the Committee that the MTAA was of the belief that mandating of the Code of Conduct should be done at a state jurisdictional level, as it has in New South Wales, so the pressure can be applied on the Federal Government to introduce an nationally mandated Code of Conduct.¹¹¹

Mr Dudley told the Committee that the implementation of the mandatory code in New South Wales had made a noticeable difference to the motor vehicle insurance and crash repair industries, with greater clarity provided to the expectations on both industries by having the voluntary code embedded in jurisdictional legislation. However, he also stated that the weakness of the mandatory code was that the New South Wales legislation was isolated in its approach to a national industry, which is why the MTAA was arguing for a mandated Code of Conduct in all Australian jurisdictions.¹¹²

5.2 Dispute Resolution Processes

The Committee heard that there were several issues that related to the dispute resolution processes under the Code of Conduct. These included:

- a lack of enforceability, with the dispute resolution process being expensive and non-binding on future behaviour;
- the Code of Conduct containing loose and undefined terms;

¹⁰⁶ SBC, *Submission 35*, p. 3.

¹⁰⁷ *Submission 35*, p. 3.

¹⁰⁸ *Submission 35*, p. 3.

¹⁰⁹ *Submission 35*, p. 4.

¹¹⁰ MTAA, *Submission 25*, p. 4.

¹¹¹ *Committee Hansard*, 13 May 2020, p. 101.

¹¹² *Committee Hansard*, 13 May 2020, p. 101.

- a lack of understanding on the part of dispute resolution providers; and
- a lack of timeliness in the dispute resolution process.

5.2.1 Lack of enforceability

The Committee heard that the Code of Conduct's lack of enforceability meant that the dispute resolution processes under the Code of Conduct were problematic for crash repairers.

The MTA told the Committee that they were aware that repairers had attempted to resolve disputes on many occasions using the internal dispute resolution procedure (IDR) provided for by the current Code of Conduct under Clause 11.2. However, a conflict of interest existed in that the insurer is the entity that decides whether they have breached the Code of Conduct.¹¹³

That is, insurers self-assess whether they have acted fairly, transparently and reasonably. As identified above, it is routinely the case that insurers are flatly refusing to accept that they have breached the Code in any circumstances. This represents a clear imbalance in power that has been mentioned throughout this submission flowing from a Code that was intended to place repairers and insurers on an equal footing.¹¹⁴

FinishLine Collision expressed a similar view, stating that a key issue of the Code of Conduct was its lack of enforceability in relation to breaches of the Code of Conduct and decisions arising from IDRs and external dispute resolutions (EDRs).¹¹⁵

Mr Raymond Khabbaz, from FinishLine Collision told the Committee that whenever his company sent in an IDR it was rejected totally. He told the Committee that they had been to arbitration on two or three occasions but that the insurer used its legal resources to diminish section 4.1, section 6.3 and section 11 of the Code of Conduct, stating that *"nobody has an understanding of the Code to the extent that they could either arbitrate or rebut discussions. It doesn't have strong enough teeth. It's not prescriptive enough."*¹¹⁶

Mr Chapman, the South Australian Small Business Commissioner, told the Committee that such situations had also been his experience during the time that he was the Chief Executive Officer of the MTA, from 2005 to 2015.¹¹⁷

Mr Paul Back, Industry Engagement Specialist, MTA, told the Committee that repairers had succumbed to the belief that they were not going to get anywhere with their dispute if they considered the path of external dispute resolution or mediation because, without the enforceability of the Code of Conduct and without an independent determination, they were relying on the insurer's determination of what the insurer consider fair and reasonable.¹¹⁸

The Committee heard that the dispute resolution process, set out in section 11 of the Code of Conduct, applied only to disputes arising from Sections 4 to 9 of the Code of Conduct. As such, Section 1 of the Code, which covered the "Principles of the Code" was not within the scope of the IDR process and any IDRs related to the Principles of the Code were rejected on this basis.

The MTA told the Committee that crash repairers routinely advised that repairers who did raise a dispute received arbitrary, template style responses, with insurers denying any breach of the Code of Conduct.

¹¹³ MTA, *Submission 36*, p. 25.

¹¹⁴ *Submission 36*, p. 35.

¹¹⁵ FinishLine Collision, *Submission 4*, p. 7.

¹¹⁶ *Committee Hansard*, 30 October 2019, p. 19.

¹¹⁷ SBC, *Submission 35*, p. 3.

¹¹⁸ *Committee Hansard*, 16 October 2019, pp. 3-4.

In addition, crash repairers advised the MTA that they considered lodging disputes a waste of time, and that it was their view that the Code of Conduct had “no teeth” because the insurer was the “judge, jury and executioner” and served no benefit in providing prompt response to protect the consumer’s interest.¹¹⁹

The MTAA also told the Committee that the ineffectiveness of the Code of Conduct was evident in motor vehicle insurers’ ongoing conduct and behaviour. In particular, the MTAA highlighted the fact that, of the more than 650 disputes insurers were legitimately notified of (in accordance with the Code of Conduct’s requirements) since 1 January 2016, less than 10 disputes had received adequate, transparent or meaningful responses.¹²⁰

According to the MTA, insurers were aware that crash repairers, as small businesses, did not have time to spend hours in mediation to invariably achieve the same result that they had already achieved, with dispute resolution resulting in both parties having achieved nothing but a small dent in the insurer’s time and resources and a large hole in the repairer’s time and resources for a non-binding decision.¹²¹

The Committee heard that MTAs across Australia had recorded around 800 IDR’s from different jurisdictions, with the MTA in South Australia recording up to 100 unique IDRs, with several additional IDRs lodged at different points in time to try to address IDRs that insurers had not responded to or ignored.¹²²

The Committee heard that the most common unresolvable disputes included IDRs related to incomplete assessment, arbitrarily setting repair allowance, applying ‘funny time, funny money’, cash settling claims, using non authorised genuine parts, and concerns about consumer choice (these issues are discussed in detail in Chapter 6). However, the MTA stated that, as the majority of disputes fell outside of a contractual arrangement with the repairer, the Code of Conduct was ineffective in providing adequate dispute resolution for repairers.¹²³

The Committee heard and received a number of other confidential examples of alleged Code of Conduct breaches. These included instances where insurers allegedly:

- dismissed IDRs against themselves by self-assessing those IDRs as not a breach of the Code of Conduct;
- systematically rejected certain items listed on all repair quotes, despite those items being required by the manufacturer for a safe repair;
- directed repairers to use aftermarket or second-hand parts against the manufacturer’s published guidelines;
- repeatedly rejected claims from crash repairers for a significant period of time, only to resolve the dispute in line with what was originally claimed by the crash repairer to avoid an IDR being lodged against them; and
- repeatedly rejected and ignored certain items of a crash repairer’s repair quote, forcing the crash repairer to lodge an IDR process in order to get the insurer to agree with the crash

¹¹⁹ MTA, *Submission 36*, p. 25.

¹²⁰ MTAA, *Submission 25*, p. 11. Further discontent in the industry was evidenced by Mr Paul Unerkov, Chief Executive Officer, MTA, stating that “70 per cent of Paul’s [Mr Back’s] time and quite a chunk of my time [was spent] dealing with member/insurer issues,” *Committee Hansard*, 16 October 2019, p. 10.

¹²¹ *Submission 36*, p. 25.

¹²² *Submission 36*, p. 25.

¹²³ *Submission 36*, pp. 26-27.

repairer's recommended repairs, ending with the insurer making an ex-gratia payment and not acknowledging any fault on their part.

The MTA told the Committee that they were also aware that insurers were treating determination findings with 'lip service', describing them as 'isolated outcomes'. The MTA stated that insurers were treating the determination outcomes in isolation because no penalties currently existed to enforce the Code of Conduct's provisions. This meant that the industry was not learning and adjusting their behaviours because of these outcomes.¹²⁴

The Committee heard that this was evidenced by the way insurers continued to treat repairers' estimates after the New South Wales determination, highlighting insurers' reliance on their preferred estimation methodologies, and the Victorian determination highlighting the insurers' arbitrary allowances for rates.¹²⁵

The MTAA highlighted another example of the lack of enforceability of the Code of Conduct, with IAG, to date, failing to completely amend all the clauses of its proforma authority to remove the unfair terms that conflict with the Code of Conduct. This is despite repeated requests by MTAA, MTAA members and the Australian Motor Body Repairers Association, as well as representations made to regulators.¹²⁶

To improve the enforceability of a mandated Code of Conduct, the MTA recommended that the legislation for a mandatory Code of Conduct provide for a binding mediation process. The MTA suggested that the SBC would be the most appropriate determining authority for disputes, with the SBC given powers under the Code of Conduct to compel parties in dispute to provide materials relevant to the complaint, to attend compulsory mediation, and provide binding determinations to resolve industry disputes.¹²⁷

5.2.2 Loose and undefined terms

The Committee heard that the Code of Conduct included several loose and undefined terms, making the interpretation of some sections subjective and open to different interpretations.

The MTA highlighted section 4.2(b) of the Code of Conduct as an example of loose and undefined terms. Section 4.2(b):

provides that insurers, in their dealings with repairers in relation to repair work, are required to "consider estimates in a fair and transparent manner, and will not refuse to consider an estimate on unreasonable or capricious grounds".

The MTA stated that the interpretation of the underlined terms was subjective and, therefore, unclear. They also stated that, in a New South Wales Determination, the definition and meaning of those terms was examined and the Acts Interpretation Act relied upon to determine the dispute.

Mr Chapman, SBC, also told the Committee that some of the terms in the Code of Conduct were "simply insufficiently prescriptive to enable consistent interpretation and application under the Code of Conduct."¹²⁸

5.2.3 Lack of understanding on the part of dispute resolution providers

The MTA told the Committee that the Resolution Institute and the SBC were approved mediation providers in South Australia under the current Code of Conduct. However, in circumstances where

¹²⁴ MTAA, *Submission 36*, p. 26.

¹²⁵ *Submission 36*, p. 26.

¹²⁶ MTAA, *Submission 25*, p. 11.

¹²⁷ *Submission 36*, pp. 6-7.

¹²⁸ SBC, *Submission 35*, p. 3.

crash repairers sought to escalate a dispute for an alleged breach of the Code of Conduct to an external dispute resolution (EDR) process, difficulties often arose with the determination provider assigned by the Resolution Institute not having an adequate level of understanding of the issues in order to adequately make determinations on cases.¹²⁹

The Committee heard that, in one example where the Resolution Institute was the appointed determination provider, the determination provider failed to address the repairer's complaint in his decision finding that the insurer had not breached the Code of Conduct. This was despite the determination provider having noted in the last paragraph of his decision that the insurer should have communicated with the repairer when the repairer submitted their estimate. In particular, the repairer's complaint was that the insurer failed to consider their estimate in accordance with section 4.2 of the Code of Conduct or refused to consider the estimate on unreasonable grounds. In which case the repairer lodged their dispute and relied on the Code of Conduct dispute resolution process to acknowledge that section of the Code of Conduct and their complaint.¹³⁰

FinishLine Collision told the Committee of similar issues, stating that, in their experience, external reviews, arbitration and mediation had fallen short in the past because the parties conducting the review or providing the mediation were not immersed in the Code of Conduct, nor did they have a full understanding of how the industry works.¹³¹

5.2.4 Lack of timeliness

Mr Jeff Williams, Former Chairman, South Australian Body Repair Specialists Division and Former Chairman, Australian Motor Body Repairers Association, told the Committee that the Code of Conduct's dispute resolution process took far too long.

By the time you have actually established that there's a dispute you need to use the Code for, the insurer goes back to the consumer [explains that there is a dispute between the insurer and the repairer] and they move the car on the repairer. So, there's no incentive to use that Code of Conduct and the dispute resolution because the time is just such a long period of time to actually get a result. In a lot of cases, the insurers at IDR will just give you a rejection that says, 'We've done nothing wrong,' and that's it. It's then into mediation.¹³²

Mr Williams told the Committee that the dispute resolution processes could take three to six months to be resolved, which was far too long as most consumers were not going to wait for the repairer to resolve their dispute with the insurer in order to get their car fixed.

This is why we are looking for something that will speed up the process, whether it be a Small Business Commissioner for the code of conduct. It's a rulebook, and everybody agrees the rulebook is good, but it's how the teeth get put into it and how it gets processed.¹³³

Mr Paul Unerkov, Chief Executive Officer for the MTA, agreed with Mr Williams, stating that the current dispute resolution process took too long and that *"whilst repairers and insurers are determining the alleged breaches meanwhile, all the consumer wants is the car to be fixed and returned and back on the road."*¹³⁴

Mr Unerkov told the Committee that the dispute resolution process under the Code of Conduct was expensive and time consuming, and the impact that this had is it makes it difficult for non-partnered

¹²⁹ MTA, *Submission 36*, p. 25.

¹³⁰ *Submission 36*, p. 25.

¹³¹ FinishLine Collision, *Submission 4*, p. 7.

¹³² *Committee Hansard*, 16 October 2019, pp. 13-14.

¹³³ *Committee Hansard*, 16 October 2019, pp. 13-14.

¹³⁴ *Committee Hansard*, 16 October 2019, p. 3.

repairers to complete the necessary repairs in a timely manner. To resolve this issue, Mr Unerkov asked the Committee to increase the provisions of the Small Business Commissioner to be in line with other jurisdictions, to facilitate timely resolution of disagreement to achieve the repair standard.¹³⁵

5.2.5 Alternative dispute resolution options

The MTAA told the Committee that all of the issues with the Code of Conduct and its dispute resolution provisions meant that the MTAA and its members were having to constantly engage Small Business Commissioners (where available), and the recently formed Australian Financial Complaints Authority on behalf of motor body repairers, as well as consumers, in order to find more suitable alternatives to the Code dispute resolution provisions.¹³⁶

The MTAA suggested to the Committee that, due to the failure by insurers to address all the issues with the Code of Conduct's dispute resolution provisions, there was an increased need for state-based regulation of industry behaviour. The MTAA recommended that the South Australian Government, alongside the Australian Financial Complaints Authority (AFCA), take on a more comprehensive role in the dispute mediation and resolution processes in the industry, armed with increased powers and a strengthened penalty and enforcement capability to appropriate South Australian Government departments and agencies.¹³⁷

The MTAA told the Committee that AFCA had proven their effectiveness in addressing consumer complaints in the car insurance and motor body repair industry and suggested that there could be an opportunity for increased linkages between the South Australian Government, the SBCO and AFCA. This could include:

- increasing South Australian government agent/regulator powers to refer cases from the Code of Conduct to AFCA for expert binding determinations; and
- engagement with AFCA as their proxy investigator to seize tapes from insurers based on a case/claim; and add that tape/script to the evidence file for the AFCA adjudicator's to draw their conduct conclusions, with AFCA acting as an adjudicator agent for the South Australian Government.¹³⁸

Mr Unerkov, from the MTA, told the Committee that dispute resolution was an especially important issue for the crash repairer industry and that there needed to be a better mechanism available to resolve disputes in the industry.¹³⁹

He suggested to the Committee that the SBC could play a role in an alternative dispute resolution mechanism for the motor vehicle insurance and crash repair industry.

I think it's providing a channel for dispute resolution. It is understanding the Code and understanding the requirements of the Code. We would need to get someone who actually gains a bit of knowledge in how the industry works as well and can provide some mediation to ensure that there is a resolution quickly with regard to these issues.¹⁴⁰

Mr Unerkov suggested that the role AFCA played in protecting consumers in this industry served as a good example of a body that represented the consumer, adjudicated in a timely manner and had been

¹³⁵ Mr Paul Unerkov, Chief Executive Officer, MTA, *Committee Hansard*, 16 October 2019, pp. 3-4.

¹³⁶ MTAA, *Submission 25*, p. 12.

¹³⁷ *Submission 25*, p. 12.

¹³⁸ *Submission 25*, p. 12.

¹³⁹ *Committee Hansard*, 16 October 2019, p. 10.

¹⁴⁰ *Committee Hansard*, 16 October 2019, p. 10.

quite effective in resolving disputes, while noting that there was no equivalent for disputes between insurers and repairers.¹⁴¹

Mr Chapman, the Small Business Commissioner, told the Committee that the legislation that created his role as the Small Business Commissioner was mainly focused on alternative dispute resolution, not adjudication and determination. In addition, based on advice he had received, to try and put a determinative function in the mandatory code that he had responsibility for under the South Australian Motor Vehicle Industry Dispute Resolution Code was probably not the best solution, and a stronger, more comprehensive, legislative solution would be required.¹⁴²

The Committee also heard that, based on Mr Chapman's feedback from Victoria, the determination process was not necessarily a quick process, suggesting that that process might not be a suitable process for resolving most of the disputes between motor vehicle insurers and crash repairers due to the quick resolution and timeliness required.¹⁴³

Mr Chapman also told the Committee that he would not recommend that South Australia adopt the New South Wales mandatory Code of Conduct as the code changed on a reasonably regular basis and would then be coming back through the regulatory process to Parliament for approval, such as via the Legislative Review Committee. While Mr Chapman stated that was appropriate, he argued whether it was a good use of Parliament's time.

Mr Chapman also told the Committee that, regarding mediation, it could be effective, but there were times when the determinative function might be required to resolve a particular dispute. He told the Committee that his Office handled between 60 and 90 cases at any one time and that they generally allowed a day for a mediation. However, Mr Chapman noted that mediation required agreement between the parties and, if a party has determined not to give ground, you were not going to get agreement.¹⁴⁴

5.3 Lack Of Financial Penalties For Breaches

The Committee heard that the lack of financial penalties for breaches of the current Code of Conduct was another significant issue for South Australian crash repairers.

The MTAA told the Committee that the current Code of Conduct was inadequate due to difficulties experienced in the resolution of disputes. In particular, the lack of any financial penalties meant that there was no strong deterrence for misconduct, behaviours and actions that may be in breach of the code and that the MTAA national position was that the Code of Conduct should be mandated and prescribed with a strong penalty regime to deter conduct and behaviours that continue to impact the industry and consumers.¹⁴⁵

The MTAA suggested that one solution to this issue was to increase the SBC's powers and including financial penalties as part of any legislation introduced to mandate the Code of Conduct. The MTAA's proposal included an enhanced role for the SBC to investigate the degree to which motor vehicle insurers and/or crash repairers' internal dispute resolution notifications were frivolous. If any were found to be frivolous or bad faith, the legislation could allow for a substantial financial penalty to be paid by the offending party.¹⁴⁶

¹⁴¹ *Committee Hansard*, 16 October 2019, p. 10.

¹⁴² *Committee Hansard*, 13 November 2019, p. 34.

¹⁴³ *Committee Hansard*, 13 November 2019, p. 34.

¹⁴⁴ *Committee Hansard*, 13 November 2019, p. 39.

¹⁴⁵ MTAA, *Submission 25*, p. 11.

¹⁴⁶ *Submission 25*, p. 13.

When asked whether the introduction of a mandatory Code of Conduct in New South Wales had led to a shift in attitudes with insurers, Mr Richard Dudley, Chief Executive Officer, MTAA, told the Committee that he had witnessed workarounds to compliance. Issues such as 'funny time, funny money', a lack of transparency and proper recognition of the cost of business crash repairers had not been impacted or alleviated as a result of the introduction of a mandatory Code of Conduct.¹⁴⁷

One could argue that that's because there need to be stronger penalty regimes attached to breaches of the legislation and a stronger enforcement capability as well. We would argue that those are two key components that would result in much better outcomes than what we have seen to date.¹⁴⁸

Mr Dudley highlighted the testimony provided by the New South Wales Fair Trading Commissioner, Mr Rod Stowe, to the 2014 Inquiry on the Motor Vehicle Repair Industry in New South Wales Parliament, that indicated that the New South Wales Office of Fair Trading had never taken action or imposed the monetary penalties available under the Act in response to breaches of the Code of Conduct, and that only two complaints about the Code of Conduct were received from 2008 to 2013.¹⁴⁹

When asked what he saw as being the mechanism for bringing about more realistic repair costings, Mr Dudley told the Committee that one of the provisions in a mandated Code of Conduct could be the introduction of a substantial penalty for the continued use of the 'funny time, funny money' methodology. However, Mr Dudley stated that the penalties for such a breach would need to be substantial enough to discourage the insurance companies from trying to "pay lip service to or try to obfuscate on".¹⁵⁰

The Committee heard confidential evidence from a number of South Australian crash repairers that they believed that financial penalties were needed in order to discourage motor vehicle insurers from continuing to undertake actions that were blatantly breaching the Code of Conduct.

When asked about potential penalties that could be considered for breaches of a mandatory Code of Conduct, Mr Rod Bartlett, from Suncorp Group, told the Committee that it was up to government to determine whether or not they believed further penalties or other obligations should be attached.¹⁵¹

Mr Bartlett also stated that:

...it's both an insurer and a repairer code and we would like to think that insurers are highly compliant with the Code. Certainly, they make mistakes and, certainly, they sometimes misapply aspects of the Code, but it's a complex document. Unfortunately, I would imagine that there are certain instances where repairers breach the Code in ways that would be onerous upon them if there were criminal sanctions.¹⁵²

5.4 Fear Of Reprisal For Using Dispute Resolution Processes

The Committee heard that fear of reprisal from insurance companies was discouraging several crash repairers from making use of the dispute resolution processes available under the Code of Conduct.

The ICA submitted that "the vast majority of disputes are resolved at this level [IDR level], requiring no further action".¹⁵³

¹⁴⁷ Committee Hansard, 13 May 2020, p. 94.

¹⁴⁸ Committee Hansard, 13 May 2020, p. 94.

¹⁴⁹ Mr Richard Dudley, Chief Executive Officer, MTAA, *Response to Questions on Notice*, 8 June 2020, p. 1.

¹⁵⁰ Committee Hansard, 13 May 2020, p. 100.

¹⁵¹ Committee Hansard, 22 July 2020, p. 128.

¹⁵² Committee Hansard, 22 July 2020, p. 128.

¹⁵³ ICA, *Submission 39*, p. 5.

All three insurance companies that appeared before the Committee highlighted the low number of disputes under the Code of Conduct as proof that the Code of Conduct was working well.

IAG told the Committee that, in the 13 years of the Code of Conduct's operation, they had received a total of 62 IDR and three EDR dispute notifications from crash repairers in South Australia. IAG stated that, as the number of EDR disputes was small relative to the number of authorised repairs undertaken each year, it reflected the:

...effectiveness of the Code of Conduct in regulating the relationship between repairers and insurers and facilitating resolution of disagreements without the need to go through an external dispute resolution process.¹⁵⁴

IAG also told the Committee that this was consistent with Finding 9 of the 2018 Western Australian Parliamentary Inquiry that:

...[t]he 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.¹⁵⁵

The Committee also heard that, in Western Australia, it was reported that, the Western Australian Small Business Commissioner did not deal with any disputes between a crash repair business and insurance company originating from the (amended) Code of Conduct for the period 1 July 2016 to 11 June 2018 and that the Western Australian Inquiry also found that:

- *"[t]he recently amended Motor Vehicle Insurance and Repair Industry Code of Conduct is acknowledged by both insurers and smash repair businesses as a positive initiative"*
- *"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."*¹⁵⁶

IAG also told the Committee that there had been suggestions that crash repairers were reluctant to lodge a dispute for fear of losing work. However, they stated that they did not agree with this view, telling the Committee that they promoted the availability of the dispute resolution options throughout the industry and had not *"under any circumstances"*:

- discouraged repairers from accessing these options; or
- discriminated against repairers that access these options.¹⁵⁷

IAG stated that they believed the Code of Conduct provided both repairers and insurers with *"access to cost-effective dispute resolution mechanisms with the aim of resolving disputes in an efficient and fair manner."*¹⁵⁸

Ms Hayley Cain, Senior Manager, Claims, RAA Insurance, told the Committee that the fact that RAA Insurance had only had two disputes since the Code of Conduct was established was an example of why she believed the Code of Conduct was working appropriately as a voluntary code:

¹⁵⁴ IAG, *Submission 24*, p. 5.

¹⁵⁵ *Submission 24*, p. 5.

¹⁵⁶ *Submission 24*, p. 5.

¹⁵⁷ *Submission 24*, p. 6.

¹⁵⁸ *Submission 24*, p. 6.

We treat our disputes through that process the same as a member complaint or a customer complaint. We attempt to resolve with the repairer and, if we are unsuccessful, it escalates to an independent committee within RAA that's outside the claims department to make the final decision. We have had two disputes in the history of the code, and both of them have been resolved satisfactorily.¹⁵⁹

Mr Rob Bartlett, from Suncorp Group told the Committee that Code of Conduct disputes were rare in South Australia, with Suncorp Group having just one such dispute in the previous 12 months.¹⁶⁰

However, Mr John Chapman, Small Business Commissioner suggested that there could be other factors impacting on the number of dispute resolutions registered:

Another area of concern is the Code of Conduct website, which is very difficult to navigate and by no means user-friendly. It is almost impossible to find crucial documents such as the Schedules to the Code of Conduct. I am advised by a member of CAC that repairers consistently report problems with the Code of Conduct website, and this is said to be contributing to low dispute numbers.¹⁶¹

Mr Chapman also told the Committee that there had been very few cases where crash repairers had sought assistance from the OSBC, despite the existence of the South Australian Motor Vehicle Industry Dispute Resolution Code and the Code of Conduct. Mr Chapman believed that this was due to their very real concerns that they will not get further work from the insurers and/or will experience a backlash from insurer employed assessors.¹⁶²

There is strong anecdotal evidence over the years that I'm aware of. I was the former CEO of the Motor Trade Association for eight years, so have been pretty close to this sector for some time. I should also declare I did work for Insurance Australia Group, which is one of the largest motor vehicle insurers through SGIC in South Australia. So that remains a concern, that I believe there are issues in the industry.¹⁶³

The Committee heard from the MTAA of similar instances where crash repairers had lost work after trying to seek recourse against motor vehicles insurers via the dispute resolution processes in the Code of Conduct:

Car Insurers can, and have, made the work provision pipeline suddenly dry up or end completely, putting businesses under significant duress at best, and, at worst, forcing business closure.¹⁶⁴

Similarly, FinishLine Collision told the Committee that there was a reluctance on the part of repairers to engage with the dispute resolution processes due to concerns about not receiving future business; and dispute resolution processes requiring improvements.¹⁶⁵

The Committee also received confidential evidence from several South Australian crash repairers outlining instances of abuse and bullying by insurance companies that made them reluctant to use the Code of Conduct's dispute resolution processes for fear of reprisal.

This included multiple instances where crash repairers' quotes were rejected by the insurance company for not being in line with the insurer's time and hourly rate guidelines, followed by assessors contacting

¹⁵⁹ *Committee Hansard*, 4 December 2019, p. 61.

¹⁶⁰ *Committee Hansard*, 13 May 2020, p. 101.

¹⁶¹ SBC, *Submission 35*, p. 4.

¹⁶² *Submission 35*, p. 5; *Committee Hansard*, 13 November 2019, p. 33.

¹⁶³ *Committee Hansard*, 13 November 2019, p. 34.

¹⁶⁴ MTAA, *Submission 25*, p. 11.

¹⁶⁵ Finishline Collision, *Submission 4*, p. 7.

the repairers by phone to advise them to adjust the times or hourly rates down, under threat of either losing future work or the insurer moving the vehicle to another repairer.

One crash repairer noted that the breaches of the Code of Conduct were intentionally kept verbal to avoid a paper trail back to the insurer. In addition, disputing the breaches was so time consuming that the crash repairer ended up even worse off as a result of registering a dispute.

5.5 Excludes The Consumer From The Dispute Resolution Process

Another issue raised during the Inquiry regarding the Code of Conduct was that it largely excludes the consumer from having a role in any disputes between motor vehicle insurers and crash repairers regarding the repair process, despite the consumer being ultimately impacted by these dispute delaying the repair of their motor vehicle and/or impacting their choice of repairer.

Dr Graham McDonagh told the Committee that the Australian Financial Complaints Authority (AFCA), which was established in November 2018, could serve an important role in assisting consumers with fair, independent and effective solutions for any disputes they may have regarding their motor vehicle insurance.¹⁶⁶

AFCA is the independent ombudsman scheme for the financial services sector. AFCA considers complaints related to several areas, including insurance and assists consumers and small businesses to reach agreements with financial firms about how to resolve those complaints.

Should a complaint be unable to be resolved between the parties, AFCA can decide an appropriate outcome. Their decisions can be binding on the financial firm involved in a complaint and they can award compensation for losses suffered because of a financial firm's error or inappropriate conduct. However, they do not award compensation to punish financial firms or impose fines.¹⁶⁷

The MTAA told the Committee that there was a need for the South Australian Government to play a bigger role in the regulation of the insurance industry, including the dispute resolution process, with enhanced engagement with AFCA as part of that.¹⁶⁸

However, the MTA noted that, while AFCA can consider consumer complaints regarding their treatment by an insurer, they are unable to make determinations on complaints by a repairer against an insurer. In their submission to the Committee the MTA cited a situation where an MTA member had lodged a complaint with AFCA regarding an insurer's actions during the quoting process for a motor vehicle insurance repair job.¹⁶⁹

Unfortunately, we have been advised that AFCA can't resolve these disputes for repairers on the basis that there is no legal relationship between the repairer and insurer. AFCA can only investigate this behaviour if a customer (who has a contractual relationship with the insurer) lodges a complaint via the internal dispute resolution process, and subsequently progresses the matter to AFCA for determination.¹⁷⁰

This suggests that, while crash repairers may not be able to use AFCA's dispute resolution mechanisms to resolve complaints they have against insurers, it does give the consumer access to a dispute resolution mechanism for any issues they may have with how their insurer is dealing with them.

¹⁶⁶ Dr Graham McDonagh, *Submission 37*, pp. 4-5.

¹⁶⁷ AFCA website, <https://www.afca.org.au/about-afca> (accessed 20 August 2020).

¹⁶⁸ MTAA, *Submission 25*, pp. 10-11.

¹⁶⁹ MTA, *Submission 36*, pp. 7, 28.

¹⁷⁰ *Submission 36*, p. 7, 28.

Mr Dudley, Chief Executive Officer of the MTAA, told the Committee that his organisation had been assisting a number of consumers to make applications with AFCA regarding issues they were facing as part of getting their motor vehicles repaired under an insurance policy:

So we often field many, many complaints from consumers themselves, which is why we have taken the action, if consumers want redress in that respect, for us to be able to encourage our motor body repairers to represent them, if that be their choice, and take that complaint to the Australian Financial Complaints Authority. We have posted many, many applications to AFCA on that basis to try to address that consumer concern.¹⁷¹

¹⁷¹ Mr Richard Dudley Chief Executive Officer, MTAA, *Committee Hansard*, 13 May 2020, p. 98.

Committee View

The Committee acknowledges that all major stakeholders in the motor vehicle insurance and repair industry in South Australia are in favour of the Motor Vehicle Insurance and Repair Industry Code of Conduct (Code of Conduct) being made mandatory in South Australia. However, the Committee is concerned by the evidence it received regarding the Code of Conduct's lack of enforceability, absence of independent evaluation of code breaches, lack of financial penalties for breaches and fears of reprisal discouraging crash repairers from making use of the Code of Conduct's dispute resolution processes.

The Committee considers that a successful mandatory Code of Conduct requires robust and binding processes, overseen by an appropriately resourced independent party, to enable expedited dispute resolution between motor vehicle insurers and crash repairers.

The Committee also recognises the importance of enforcing the Code of Conduct, with appropriate financial penalties in place to address any breaches, ensure all parties comply and help reduce the number of disputes needing independent resolution. The Committee also acknowledges the need for an ongoing review process to ensure that the Code of Conduct remains up to date in an industry where technology advances at a rapid rate.

The Committee notes the comments made by Mr John Chapman, Small Business Commissioner, regarding the lack of suitability for incorporating the Code of Conduct as an industry code under the *Fair Trading Act 1987*. The Committee also notes Mr Chapman's concerns with the Code Administration Committee's (CAC) lack of transparency and the potential issues that the CAC's power to amend the national Code of Conduct could cause the South Australian Government.

The Committee also recognises the importance of nationally consistent legislation and regulation in helping to reduce the administrative burden on businesses. The Committee suggests that the South Australian Government work with other Australian jurisdictions, and the CAC to create a nationally consistent Code of Conduct for the industry incorporating provisions for a binding mediation process and appropriate financial penalties for breaches.

The Committee recognises the importance of transparent and timely information in aiding consumer decision making. To increase consumer transparency regarding the Code of Conduct, the South Australian Government should publish an annual report on the operation of the Code of Conduct and any code breaches that occurred in the previous 12 months.

The Committee acknowledges that the current legislation does not allow the Australian Financial Complaints Authority (AFCA) to resolve disputes between insurers and crash repairers over motor vehicle insurance repairs disputes. However, the Committee does recognise the important role AFCA plays in assisting consumers to resolve any disputes they may have with their insurer. The Committee considers that it would be helpful to consumers to incorporate information about AFCA and provide a link to their website as part of the South Australian Government's consumer rights information.

Recommendation 1: The South Australian Government introduce legislation to mandate the Motor Vehicle Insurance and Repair Industry Code of Conduct (Code of Conduct) in South Australia as well as provisions for:

- a binding mediation process to enable the expedited resolution of internal disputes between motor vehicle insurers and crash repairers, overseen by a suitable independent authority, such as the Small Business Commissioner or the Commissioner for Consumer and Business Services;

- appropriate financial penalties for breaches of the Code of Conduct to ensure compliance by all parties; and
- an ongoing review process to ensure that the Code of Conduct remains up-to-date and relevant to the current industry requirements.

Recommendation 2: The South Australian Government work with other Australian jurisdictions to amend the Code of Conduct to include provisions for:

- a binding mediation process; and
- appropriate financial penalties for breaches of the Code of Conduct.

Recommendation 3: The South Australian Government report yearly on insurance companies found either in breach of the Code of Conduct or with adverse findings against them.

Recommendation 4: The South Australian Government provide a portal to the Australian Financial Complaints Authority on a government website.

6 KEY ISSUES IN THE SOUTH AUSTRALIAN CRASH REPAIR INDUSTRY

This chapter of the report outlines key issues for customers and repairers regarding motor vehicle insurance claims in the South Australian crash repair industry.

6.1 Choice of Repairer

According to the Insurance Council of Australia (ICA), the South Australian insurance market was highly competitive with many brands and policies.¹⁷² Customers could insure their motor vehicle through:

- policies that delegated choice of crash repairer to insurers or
- policies that granted customers the power to choose their own crash repairer.

Aside from the RAA, policies featuring a choice of repairer component typically attracted higher premiums.¹⁷³

Section 9.1 of the Code of Conduct provided specific instructions for insurers to help customers make an informed decision about choice of repairer policies:

Insurers will ensure their Product Disclosure Statement (PDS) refers to their Choice of Repairer Policy with an ambiguous identifier and page reference in the PDS' table of contents, and which sets out its Choice of Repairer Policy clearly and in plain language at the page reference.¹⁷⁴

The ICA and the Insurance Australia Group (IAG) both acknowledged these obligations.¹⁷⁵

The Committee heard evidence at an in camera hearing that these basic requirements might not provide adequate transparency for policyholders. An example was provided of a customer contacting an insurer to make a claim, under the impression that their policy incorporated freedom of choice provisions. However, the customer learnt that their PDS had changed without their knowledge and they could not choose their own repairer for their vehicle.¹⁷⁶

Mr Richard Dudley, Chief Executive Officer of the Motor Trades Association of Australia (MTAA) similarly stated that policyholders tended to renew their policies without full awareness of any significant changes to their PDS.¹⁷⁷

A crash repairer, FinishLine Collisions, also called for increased transparency around navigating the complexities of insurance. The submission urged that *"full disclosure takes place at the time of selling/signing the policy to ensure consumers are assisted in their understanding of the principles of the insurance cover on offer."*¹⁷⁸

¹⁷² ICA, *Submission 39*, p. 2.

¹⁷³ The ICA attributed higher premiums to higher repair costs and independent crash repairers' irregularity of work in comparison to preferred network repairers (Mr Tom Lunn, Senior Policy Manager, ICA and Mr Peter Hartman, Member, National Motor Insurance Committee, ICA, and Chair Motor Vehicle Insurance and Repair Industry Code of Conduct Administration Committee, *Committee Hansard*, 27 November 2019, p. 49).

¹⁷⁴ See Appendix C for the full Code of Conduct.

¹⁷⁵ *Submission 39*, p. 8; IAG, *Submission 24*, p. 8.

¹⁷⁶ See also MTA, *Submission 36*, p. 32.

¹⁷⁷ *Committee Hansard*, 13 May 2020, p. 98.

¹⁷⁸ FinishLine Collisions, *Submission 4*, p. 14. A confidential submission also outlined the difficulty consumers faced locating the relevant information in PDS documents.

The Committee heard evidence that many customers preferred to let their insurer select their crash repairer due to a range of factors including a lack of confidence or industry knowledge, infrequency of accidents, a focus on quick repairs, or trust in the insurer to manage a stressful process.¹⁷⁹ In their submission, IAG quoted an Australia-wide survey that found 69 per cent of drivers preferred their insurer to manage the repair process.¹⁸⁰

These customers were referred to an insurer's preferred network repairer.¹⁸¹ The Committee heard one viewpoint from the insurance industry and the Australian Competition and Consumer Commission (ACCC) that argued preferred networks delivered faster turnarounds at more competitive rates without compromising quality:

- The ICA asserted that customers who used preferred network repairers were not disadvantaged in terms of repair standards.¹⁸²
- The ACCC submitted that "preferred provider schemes can provide benefits to consumers in the form of timely and efficient repairs, lower premiums, quality assurance and insurer expertise about repair services".¹⁸³ Other benefits cited included "the consumer avoids the burden of independently engaging with repairers, obtaining quotes, managing the payments and recovery of costs from repairers."¹⁸⁴
- Suncorp considered its Capital S.M.A.R.T centres to be "*industry leaders*" with a turnaround 50-70 per cent faster than the industry average and 90 per cent of customers rating their service as excellent.¹⁸⁵ Suncorp also described its ten other recommended repairers as delivering "*exceptional customer service*" and "*high quality, cost-effective and safe repairs*".¹⁸⁶
- The Royal Automobile Association (RAA) highlighted the quality of training and expertise in their approved repairer network.¹⁸⁷

The Committee heard an alternative viewpoint of the quality of preferred network repairers. Independent crash repairers described their competitors as "*cheaper alternatives*" for lower quality repairs and their operations as a "*race to the bottom for delivering a service with a price*".¹⁸⁸ The Committee heard similar views from crash repairers during an in camera hearing and in confidential submissions.

¹⁷⁹ ICA, *Submission 39*, p. 8; IAG, *Submission 24*, p. 3, 7; Suncorp Group, *Submission 2*, p. 2; Mr Rob Bartlett, Executive Manager, Major Contract Operations, Suncorp Group, *Committee Hansard*, 4 December 2019, p. 67.

¹⁸⁰ *Submission 24*, p. 7.

¹⁸¹ For specific details on these networks in South Australia, see Chapter 2.

¹⁸² *Submission 39*, p. 9.

¹⁸³ ACCC, *Submission 44*, p. 4.

¹⁸⁴ *Submission 44*, p. 5.

¹⁸⁵ *Submission 2*, p. 3. Capital S.M.A.R.T Centres specialise in rapid repairs for vehicles requiring small to medium level repairs (Mr Bartlett, *Committee Hansard*, 4 December 2019, p. 67; *Submission 2*, p. 3).

¹⁸⁶ *Submission 2*, p. 3. For the minimum requirements standard for Suncorp Group Recommended Repairers, see *Submission 2*, Appendix A.

¹⁸⁷ RAA, *Submission 43*, p. 4; Mr David Russell, Chief Executive Officer, RAA Insurance, *Committee Hansard*, 4 December 2019, p. 60.

¹⁸⁸ Mr David Cavuoto, Managing Director, Commercial Crash Repairs, *Committee Hansard*, 30 October 2019, p. 20; Mr Jason Mallia, Workshop Manager, Auto Transformers, *Committee Hansard*, 30 October 2019, p. 19; Mr Raymond Khabbaz, Director, FinishLine Collision, *Committee Hansard*, 30 October 2019, p. 20.

A confidential submission described an occasion when an insurance company assessor ordered a crash repairer to polish, rather than replace, a scratched headlight. When the repairer questioned this sub-standard fix, the assessor informed them that preferred repairers must accept insurer orders. It was only when the repairer informed the insurer that he was independent that a replacement part was ordered.

This perspective stemmed from a belief that insurers exerted 'downward pressure' on their preferred network repairers to perform repairs for the lowest possible price to attract more customers and thereby increase market dominance.¹⁸⁹

The South Australian arm of the Motor Trades Association (MTA) submitted that "*preferred networks have been misused to have the effect, or likely effect, of limiting competition in the marketplace which is detrimental to consumers*".¹⁹⁰ Moreover, it questioned the impact this pressure placed on quality: "*there is absolutely no doubt that there are repairs being carried out, that as a result of the low average cost ... enforced by insurance companies, are below standard*".¹⁹¹ The submission even suggested that the customer might not notice sub-standard repairs as some might not be visible to an unskilled eye.¹⁹²

Customers requiring more autonomy in their decision making could purchase a policy with freedom of choice provisions. The MTA estimated that as many as 30 per cent of South Australian policyholders seek to nominate their own crash repairer in the event of an accident.¹⁹³

The Committee also learnt the following statistics about insurers authorising repairs under freedom of choice policies in South Australia:

- Shannons was the primary Suncorp brand offering choice of repairer for motorists.¹⁹⁴ According to Mr Todd Finney, Executive Manager of Specialist Claims at Suncorp, customers used non-preferred repairers under their other two major South Australian brands - Apia and Australian Associated Motor Insurers (AAMI) - "*from time to time*".¹⁹⁵
- Approximately 30 per cent of Shannons repairs were undertaken by independent repairers outside the Suncorp network.¹⁹⁶
- Approximately 32 per cent of Suncorp's repairs (5,000 annually) were negotiated with non-recommended repairers.¹⁹⁷
- Mr Rob Bartlett, Executive Manager, Major Contract Operations, Suncorp Group, stated that Suncorp's underlying spend on non-recommended crash repairers was approximately 14 per cent more than their preferred network providers.¹⁹⁸

¹⁸⁹ MTA, *Submission 36*, pp. 9, 16, 29. This perspective was also presented during an in camera hearing. Industry expert, Dr Graham McDonagh, described the pressure the Suncorp-owned S.M.A.R.T networks placed on their Suncorp-affiliated preferred repairers (*Submission 37*, pp. 24-27).

¹⁹⁰ *Submission 36*, p. 16.

¹⁹¹ *Submission 36*, p. 16.

¹⁹² *Submission 36*, p. 16.

¹⁹³ Mr Paul Unerkov, Chief Executive Officer, MTA, *Committee Hansard*, 16 October 2019, p. 2.

¹⁹⁴ Mr Todd Finney, Executive Manager of Specialist Claims, Suncorp Group, *Committee Hansard*, 22 July 2020, p. 123. Other Suncorp Group brands offering freedom of choice in the South Australian market included Suncorp Group's Essentials, Suncorp, and Vero (Suncorp Group, *Submission 2*, p. 2).

¹⁹⁵ *Committee Hansard*, 22 July 2020, p. 127.

¹⁹⁶ Mr Rob Bartlett, Executive Manager, Major Contract Operations, Suncorp Group, *Committee Hansard*, 22 July 2020, p. 124.

¹⁹⁷ Mr Bartlett, *Committee Hansard*, 4 December 2019, pp. 70-71.

¹⁹⁸ *Committee Hansard*, 4 December 2019, p. 71.

- Mr Troy Johns, Specialist, Supply Chain, IAG, stated that all IAG brands in South Australia incorporated freedom of choice as a standard policy feature, except for the Coles brand which included it as an optional feature.¹⁹⁹
- 45.6 per cent of IAG's repairs were conducted through 540 independent small repairers in South Australia.²⁰⁰
- All the RAA's policies contained choice of repairer provisions.²⁰¹ During the 2019/20 financial year, 2,310 or 8.44 per cent of all RAA repair jobs were carried out at independent repairers outside the RAA-Approved network.²⁰²

Independent crash repairers were a popular choice for South Australian motorists compared to motorists in other jurisdictions. The ICA stated that independent crash repairers performed the "vast majority" of insurer-authorised repairs in Australia, with South Australia experiencing a higher proportion than most states.²⁰³ Suncorp submitted that South Australia had a higher figure of customers nominating their own repairer than their interstate counterparts.²⁰⁴

Freedom of choice appealed to customers for reasons including familiarity with the repairer, location, time constraints, or personal recommendations.²⁰⁵ Regional communities demonstrated trust and ongoing relationships with their local, independent repairer who they chose to engage in the event of an accident.²⁰⁶ FinishLine Collision's submission demonstrated that customers exhibited strong loyalty to their business over thirty years of operations "*with many of our clients returning several times over the years. Importantly those clients have also referred their family and friends.*"²⁰⁷

Classic or prestige vehicle motor enthusiasts were singled out as a strong market for choice of repairer policies, particularly customers from Suncorp's Shannons brand.²⁰⁸

Mr Jason Mallia, Workshop Manager of Auto Transformers, argued that independent repairers could produce a higher standard of work than preferred network repairers, particularly on more advanced cars.²⁰⁹ Mr Jeff Williams, former chairman of the Australian Motor Body Repairers Association (AMBRA) suggested that independent repairers could have better facilities and training.²¹⁰ For example, one confidential submission highlighted its extensive, specialised training by three OEM manufacturers.

¹⁹⁹ The Coles brand encompassed 0.3 per cent of IAG's holdings – it included 40 policies with choice and 331 without choice (Mr Troy Johns, Specialist, Supply Chain, IAG, *Committee Hansard*, 22 July 2020, p. 130). See also IAG, *Submission 24*, p. 9.

²⁰⁰ Mr Johns, *Committee Hansard*, 22 July 2020, p. 130.

²⁰¹ Mr Daniel Muller, Motor Assessing Manager, RAA Group, *Committee Hansard*, 22 July 2020, p. 136. See also RAA Group, *Submission 43*, p. 3.

²⁰² RAA Group, *Response to Questions on Notice*, 30 July 2020, p. 1.

²⁰³ Mr Tom Lunn, Senior Policy Manager, ICA, *Committee Hansard*, 27 November 2019, p. 42.

²⁰⁴ Suncorp Group, *Submission 2*, p. 2.

²⁰⁵ *IBISWorld*, Motor Vehicle Body, Paint and Interior Repair in Australia, Industry Report S9412, January 2019, p. 11; MTAA, *Submission 25*, p. 7; Mr Richard Dudley, Chief Executive Officer, MTAA, *Committee Hansard*, 13 May 2020, p. 97.

²⁰⁶ CAPPA Motor Bodies, *Submission 26*, p. 2.

²⁰⁷ FinishLine Collision, *Submission 4*, p. 6. *Submission 26* also highlighted these relationships with customers.

²⁰⁸ Mr Rob Bartlett, Executive Manager, Major Contract Operations, Suncorp Group, *Committee Hansard*, 4 December 2019, p. 68; Mr Bartlett, *Committee Hansard*, 22 July 2020, p. 124.

²⁰⁹ *Committee Hansard*, 30 October 2019, p. 19.

²¹⁰ *Committee Hansard*, 16 October 2019, p. 12.

Conversely, Suncorp's submission stated that independent repairs "*have often taken longer*" and costs for customers "*often exceed what we consider would be reasonable*".²¹¹

As stated above, South Australian insurers typically treated freedom of choice as an optional feature available for an additional cost factored into a higher policy premium.²¹² The MTA submitted that this was consistent with practices in Victoria, New South Wales and the Australian Capital Territory.²¹³ However, this bucked an international trend for freedom of choice provisions which were increasingly becoming mandatory in motor vehicle insurance policies in countries such as the United Kingdom.²¹⁴

At an in camera hearing, crash repairers supported mandating freedom of choice in all motor vehicle insurance policies for reasons of financial fairness. Mr Dudley supported this view, when he stated that the MTAA expressed "*a significant problem with the entire concept that consumer choice should be a charged-for item*".²¹⁵

The ICA argued against mandating freedom of choice in policies because it "*may not be of particular value or importance to many customers*".²¹⁶

6.1.1 Steering

According to the MTA, steering occurred when:

insurance companies direct[ed] customers who have made an insurance claim following an accident to insurer-preferred or insurer-owned repair shops even though the customer may have a right or preference to have his or her car repaired at a repair shop of his or her choice and he or she has that right under his or her insurance policy.²¹⁷

The Code of Conduct did not specifically use 'steering' as a term, but Section 9.3 obligated signatories to 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;
- c) Engage in statements, actions or behaviour designed or intended to prevent or discourage a Customer from having any necessary rectification work following a Repair undertaken at the Repairer who completed the original Repairs.²¹⁸

In its submission, the MTA denounced steering as an unethical practice that breached the Code of Conduct and Australian consumer law.²¹⁹ However, the ACCC stated that it was aware of these industry

²¹¹ Suncorp Group, *Submission 2*, p. 4.

²¹² The MTA noted the RAA as an exception (*Submission 36*, p. 31).

²¹³ *Submission 36*, p. 31.

²¹⁴ MTAA, *Submission 25*, p. 7.

²¹⁵ Mr Richard Dudley, Chief Executive Officer, MTAA, *Committee Hansard*, 13 May 2020, p. 96. Another confidential submission also supported mandating freedom of choice in all policies.

²¹⁶ ICA, *Submission 39*, pp. 8, 9.

²¹⁷ *Submission 25*, p. 7. This definition was based on one from the Select Committee on the Motor Vehicle Repair Industry, Legislative Assembly, Parliament of New South Wales, *Motor Vehicle Repair Industry*, July 2014, <https://www.parliament.nsw.gov.au/ladocs/inquiries/1617/Report%20on%20the%20Motor%20Vehicle%20Repair%20Industry.pdf> (accessed 14 August 2020), p. 55.

²¹⁸ For the Code of Conduct in full, see Appendix C.

²¹⁹ MTA, *Submission 36*, pp. 29, 32.

concerns but did not consider steering to breach consumer law in terms of misuse of market power, exclusive dealing, unconscionable conduct or unfair contract terms.²²⁰ Moreover, it also considered that consumers benefited from more traffic to preferred repairer networks by low repair prices.²²¹

The MTA submitted that:

ultimately consumers have little control over where their vehicle is taken following a motor vehicle accident. Despite having insurance cover that provides for a choice of repairer, their vehicle will often end up with a repairer chosen by their insurer, thus removing any ability for the consumer to receive their entitlements under the provisions of their policy... It is the MTA's view that the major insurance providers are using their market dominance to direct consumers to their own repair networks and in doing so are limiting consumer choice as to how a vehicle is repaired and by whom.²²²

It further added that State Government action was required to combat steering in this inquiry, recommending "serious measures" be considered such as anti-steering legislation.²²³

Mr John Chapman, South Australian Small Business Commissioner, observed that limiting customer choice in this way was "to the detriment of small businesses in this State".²²⁴ In his submission, he supported the MTA's assertion consumers were losing control over where their vehicles were being taken and "in many instances the vehicle will be taken to a repairer chosen by the insurer, which removes the consumer's ability to choose their repairer, despite having insurance cover that provides for choice of repairer."²²⁵

Mr Dudley stated that "while steering in itself is not illegal, it's the manner in which steering occurs in this industry which has caused long-term and longstanding issues for an effective and proper competitive environment."²²⁶

LAG's submission implied that steering did not occur because the Code of Conduct prohibited it:

Smash repairers have in the past alleged that some insurers misrepresent available choice, or exert undue pressure not to exercise choice, especially when a claim is being made. However, the Code specifically prevents insurers from misrepresenting choice options and engaging in inappropriate steering behaviours.²²⁷

Mr Peter Hartman, representing the insurance industry, told the Committee that insurers wanted to keep independent repairers thriving for a competitive industry and that, if customers had a preference for their own crash repairer, "obviously insurance companies have got to respect that".²²⁸ The RAA outlined

²²⁰ Australian Competition and Consumer Commission (ACCC), *Submission 44*, pp. 1-5. The ACCC stated that misleading conduct regarding financial products, including insurance, was covered by the *Australian Securities and Investments Commission Act 2001* (ASIC Act) and that consumers could access dispute resolution through the Australian Financial Complaints Authority (AFCA) (*Submission 44*, pp. 4-5).

²²¹ *Submission 44*, p. 4.

²²² *Submission 36*, p. 27.

²²³ MTA, *Submission 36*, p. 30.

²²⁴ SBC, *Submission 35*, p. 4.

²²⁵ *Submission 35*, p. 4.

²²⁶ *Committee Hansard*, 13 May 2020, p. 95.

²²⁷ IAG, *Submission 24*, p. 8.

²²⁸ *Committee Hansard*, 27 November 2019, pp. 42, 51.

their policy to the Committee, describing a process whereby the staff member suggested three RAA-Approved providers if the policyholder did not have their own repairer in mind.²²⁹

Despite these assertions, the Committee received a significant body of evidence concerning insurers steering policyholders at the time of making a claim.²³⁰

Submissions, hearings and confidential complaints highlighted several broad tactics that insurance staff could employ to dissuade policyholders from enacting choice of repairer provisions in their policies:

- Adopting demanding verbal behaviour that “coerces, bullies, intimidates, or harasses” to encourage policyholders to give in;²³¹
- Exploiting disadvantaged or vulnerable customers suffering stress, trauma or grief from the vehicle accident;²³²
- Taking advantage of customers’ lack of understanding of their PDS, their policies or their cover;
- Making disparaging remarks against the policyholders’ choice of repairer to cast a preferred network provider in a comparatively positive light;²³³
- Ensuring customers remained ignorant about the ownership or contractual relationships between the insurer and the proposed repairer;
- Withholding information or misleading the customer;
- Promoting other features associated with the insurer’s repairer such as car washing, taxi transport or hire cars to the workshop, or lifetime guarantees on repairs which could be provided by the customer’s chosen repairer in the first place; and²³⁴
- Referring to independent repairers as ‘not approved’ or ‘not authorised’. Mr Andrew Mitchell, owner of Auto Transformers, argued that this conveyed a loaded impression to the consumer that the independent repairer did not meet industry standards or was inferior to a preferred network provider.²³⁵

The Committee heard and received evidence of the following examples of insurers engaging in steering and curtailing customers’ freedom of choice:

- Policyholders forced to repeatedly assert their rights to choose their own repairer during intimidating or aggressive interaction/s with the insurer.²³⁶ A confidential submission described a customer insisting on exercising their choice of repairer up to five times during one

²²⁹ Mr David Russell, Chief Executive Officer, RAA Insurance, Ms Hayley Cain, Senior Manager, Claims, RAA Insurance, *Committee Hansard*, 4 December 2019, pp. 64, 65.

²³⁰ The MTA considered some incidents serious enough to warrant ACCC consideration (MTA, *Submission 36*, p. 30).

²³¹ *Submission 36*, pp. 9, 29; Auto Transformers, *Submission 13*, p. 2; CRASH2000 Automotive Body Repairs, *Submission 16*, p. 1.

²³² *Submission 36*, p. 29; FinishLine Collision, *Submission 4*, pp. 6, 9; Mr Richard Dudley, Chief Executive Officer, MTAA, *Committee Hansard*, 13 May 2020, p. 98.

²³³ *Submission 36*, p. 29.

²³⁴ *Submission 36*, p. 29; Mr Jason Mallia, Workshop Manager, Auto Transformers, *Committee Hansard*, 30 October 2019, p. 19; *Submission 13*, p. 2. Confidential submissions also provided evidence.

²³⁵ Mr Andrew Mitchell, Owner, Auto Transformers, *Committee Hansard*, 30 October 2019, p. 20; *Submission 13*, p. 2.

²³⁶ *Submission 13*, p. 2. This was also reflected in confidential submissions.

conversation. Crash repairers reported customers in tears at their workshop after altercations with their insurer over asserting their freedom of choice.²³⁷ Evidence given during an in camera hearing outlined an incident where a customer had been so intimidated by the insurer that the repairer had to request written confirmation from the insurer that they could perform the job before the customer's mind could be put at ease.

- Strong selling tactics pressured customers into taking vehicles to preferred repairers because they were cheaper, faster or better than a policyholder's nominated crash repairer.²³⁸ Auto Transformers' submission highlighted that insurers promoted unrealistic turnaround times to attract customers.²³⁹
- Multiple submissions outlined occasions when insurance staff misled policyholders by telling them they could not use independent/non-approved repairers when this was not the case.²⁴⁰ Ron Gray Crash Repairs described a case where an insurer told a customer over the telephone that they did not have freedom of choice in their policy and steered them to a preferred repairer. The customer then approached Ron Gray for assistance and learnt that their policy did in fact clearly state a choice of repairer provision.²⁴¹
- Customers being falsely informed that insurers would not guarantee or warranty repairs at non-preferred repairers.²⁴² The MTA cited a tactic of insurers not guaranteeing repairs at chosen repairers even for policies that guarantee the repair "*in any event*".²⁴³ However, insurers could refuse to send customers to repairers that did not meet standards for "*safety, quality, fairness, effectiveness and pricing*".²⁴⁴
- Casting aspersions at independent repairers for their speed, price or professionalism.²⁴⁵ Confidential complaints outlined customers outlining insurers describing chosen crash repairers as too expensive and questioning why they would want to use them. In another confidential complaint, a policyholder was told that a preferred repairer would start repairs immediately compared to the slower turnaround time of an independent crash repairer but later discovered themselves waiting a month for repairs to start due to the preferred provider's work commitments. A similar situation occurred in another confidential submission when a repairer was fraudulently informed that a car was moved to a preferred network repairer because the independent repairer was too busy to work on it. Another confidential submission outlined an insurer describing a nominated repairer as ill-equipped to handle repairs as cause to move a car to a preferred repairer. One confidential IDR stated a repairer was considering legal action against the defamation they felt was cause to their business by the descriptions given to customers.

²³⁷ CRASH2000 Automotive Body Repairs, *Submission 16*, p. 1; Mr Aldo Verdnik, Director, CRASH2000 Automotive Body Repairs, *Committee Hansard*, 30 October 2019, p. 18.

²³⁸ Auto Transformers, *Submission 13*, p. 2; Mr Linton Price, *Submission 11*, p. 1; Mr Sam Pates, *Submission 20*, p. 1.

²³⁹ *Submission 13*, p. 2.

²⁴⁰ *Submission 13*, p. 5. An additional confidential submission also outlined more evidence of this.

²⁴¹ Ron Gray Crash Repairs, *Submission 28*, p. 5.

²⁴² *Submission 16*, p. 2; Waikerie Crash, *Submission 18*, p. 1. Evidence from an in camera hearing and confidential submissions also highlighted this point.

²⁴³ MTA, *Submission 36*, pp. 9, 29, 32. Confidential submissions also highlighted this point.

²⁴⁴ Mr David Russell, Chief Executive Officer, RAA Insurance, *Committee Hansard*, 4 December 2019, p. 64.

²⁴⁵ *Submission 36*, p. 29.

- Three cases where policyholders reported that insurers could not find a customer's repairer of choice in their system.²⁴⁶ In their submission, Auto Transformers conveyed one of these experiences with the Shannons call centre: *"The customer was told that we are not an approved repairer and they cannot come here because they can't find us on their system. Our customer was insistent that he wanted us to do the job. After 20 minutes on the phone, they finally said yes."*²⁴⁷
- A possible conflict of interest whereby staff at an insurance call centre received incentives to steer policyholders to preferred network repairers.²⁴⁸
- Customers threatened with full upfront costs of the repair unless they went to a preferred network repairer.²⁴⁹
- Ignoring customer requests to use a nearby local independent repairers, instead sending them to a repairer located an inconvenient distance away.²⁵⁰ On one occasion, an elderly client was told to drive 4.5 hours from regional South Australia to Mile End for a quote at a preferred repairer before a more local repairer at Naracoorte intervened on the customer's behalf.²⁵¹
- A confidential submission outlined multiple threats to customers to arrange their own third-party assessor if they went to a repairer outside the preferred network.
- Attempts to steer customers on the telephone while they physically stood with their cars at the premises of their chosen independent repairer.²⁵²
- A confidential submission described customers who owned a specific type of vehicle being steered away from an independent repairer despite the repairer being a specialist repairer for that vehicle and the preferred network repairer not having specialist knowledge of the vehicle.

The impact of steering could be greater on regional policyholders, depending on their proximity to crash repairers. The Committee heard evidence of insurers steering or attempting to steer regional policyholders towards preferred repairers located an inconvenient distance away in a different town (e.g. from Waikerie to Berri) or even in metropolitan Adelaide.²⁵³ Disparaging comments against local, independent repairs to redirect policyholders could cause deeper ramifications in smaller towns where "people talk" and the repairers could be personally known in the community.²⁵⁴

The major insurers submitted evidence that suggested they were more likely to work with independent repairers in regional communities if no preferred provider was located nearby. In this situation, Suncorp gave customers access to local independent repairers with whom they established connections over

²⁴⁶ Auto Transformers, *Submission 13*, pp. 3-4.

²⁴⁷ *Submission 13*, p. 3. Another confidential submission outlined a similar experience.

²⁴⁸ *Submission 13*, p. 1; MTA, *Submission 36*, pp. 9, 29.

²⁴⁹ Mr Linton Price, *Submission 11*, p. 1; Mr Sam Pates, *Submission 20*, p. 1.

²⁵⁰ Multiple cases were outlined in a confidential submission.

²⁵¹ CAPPA Motor Bodies, *Submission 26*, p. 2.

²⁵² Waikerie Crash, *Submission 18*, p. 1; *Submission 26*, p. 2. More evidence was found in confidential submissions and brought before the Committee at an in camera hearing.

²⁵³ Mr Paul Back, Industry Engagement Specialist, MTA, *Committee Hansard*, 16 October 2019; pp. 11-12; Mr Raymond Khabbaz, Director, FinishLine Collision, *Committee Hansard*, 30 October 2019, p. 30; *Submission 18*, p. 1.

²⁵⁴ *Submission 18*, p. 1. An in camera hearing also highlighted evidence about this point.

the years.²⁵⁵ IAG reported that their rate of repairs authorised at independent repairers increased to 63.3 per cent in regional South Australia.²⁵⁶

²⁵⁵ Mr Rob Bartlett, Executive Manager, Major Contract Operations, Suncorp Group, *Committee Hansard*, 22 July 2020, pp. 124, 127.

²⁵⁶ Mr Troy Johns, Specialist, Supply Chain, IAG, *Committee Hansard*, 22 July 2020, p. 130.

Committee View

The Committee prioritises the freedom of South Australian motorists to make their own well-informed decisions regarding motor vehicle insurance.

While the Committee notes that insurers follow the minimum requirements of the Code of Conduct by informing customers about their insurance policies in their PDS, it considers that most customers are not overly familiar with the intricacies, legalities and changing content of their insurance cover. Insurers can still make this process more transparent for policyholders by ensuring important content is prioritised near the front to help customers locate the information they need to make better choices.

Given they both offer significant advantages to consumers, the Committee considers that policyholders should be free to decide whether a preferred network provider or an independent repairer best suits their needs. The Committee understands that many customers may not have a preference and may benefit from the convenience of letting their insurer manage the process. Conversely, the Committee vigorously stresses that customers who want to choose their own crash repairer should be able to do so under the provisions of the appropriate policy.

The Committee does not consider that freedom of choice provisions should be mandated in all motor vehicle policies, as this would likely result in an increase to premiums and force some policyholders to pay for a feature they would not use.

The Committee acknowledges that insurers are free to direct business to their preferred provider networks, but should not be free to do so in ways that breach the Code of Conduct, or encourage customers to waive their rights for which they may have been paying additional premiums. The Committee considers that steering deliberately misleads or intimidates customers at a traumatic time and, in many cases, causes them to forego their customer choice.

The Committee believes that customers making claims expect their insurers to act in good faith on their behalf and may not be aware of vertical integration in the marketplace. Policyholders who pay to choose their own crash repairer should be informed about the connections between the insurer and the repairers recommended to them at the initial point of contact with the insurer. The Committee considers that this greater transparency would then arm the consumer with more information to make a better, well-informed decision about their choice of crash repairer.

The Committee considers that regional consumers should not be unfairly disadvantaged by where they live, and that legislation should protect regional policyholders from being forced to accept repairs located unsafe and inconvenient distances from home.

Recommendation 5: The South Australian Government require motor vehicle insurers to disclose any direct or indirect ownership or contractual arrangements in place when directing policy holders to specific crash repairers or providing crash repairer options.

Recommendation 6: The South Australian Government introduce legislation to ensure all South Australian motor vehicle insurance policies allow for, at the customer's discretion, the motor vehicle to be repaired by a crash repairer located within a reasonable distance of a regional customer's home address.

6.2. Assessors and Assessment Methods

Upon arrival at a crash repairer, vehicles underwent an assessment process to ascertain and document the damage. An insurance assessor played a key part in the repair process by evaluating costs, parts and repair/replacement methods outlined in the quote.²⁵⁷ Their judgment was pivotal to determining the course of the negotiating process, remuneration paid to the crash repairer and potentially the quality of repairs.

Mr Tom Skothos, Vice Chairman of AMBRA, estimated that over 80 assessors worked in South Australia with one or two dozen between the major insurance companies.²⁵⁸

6.2.1 Suitability of Assessor

Mr Raymond Khabbaz, Director of FinishLine Collision, did not consider that assessors could effectively evaluate quotes performed by skilled crash repairers. They *“are not in situ working on it. They are at arm’s length. They are not of the industry ... They have knowledge but they have it through theory, not practice.”*²⁵⁹

Although exteriors and chassis were the most likely parts of a motor vehicle to sustain damage in an accident, other components such as paint, mechanics and glass or windscreens could also potentially require assessment on the same quote.²⁶⁰ Thus, a broad suite of skills was a valuable asset for assessors. Insurance industry spokesman, Mr Hartman, explained that assessors were *“generally”* trained to handle all aspects of vehicle repairs with capacity to divide jobs according to specialist backgrounds.²⁶¹

Mr Mallia of Auto Transformers considered that the knowledge base of assessors did not stretch far enough to cover multiple sections of a vehicle with the level of detail required. He presented a hypothetical scenario where an assessor with a background in spray painting might struggle to effectively assess the time and labour required for vehicle body repair.²⁶²

In 2017, the Code of Conduct increased provisions under Section 4.3 for insurers to employ assessors with either:

- (i) a trade qualification and a minimum of five years of post-apprenticeship experience in their profession as a panel beater, spray painter or motor mechanic; or
- (ii) more than five years of experience as a motor insurance Assessor; or
- (iii) the Certificate IV Vehicle Loss Assessing Course.²⁶³

Mr Hartman, speaking on behalf of the insurance industry, argued that insurance agencies employed assessors with qualifications such as panel beating, spray painting or motor mechanics.²⁶⁴ The RAA submitted that their team of assessors were *“trade qualified panel beaters or spray painters that have*

²⁵⁷ For a summary of the process, see MTAA, *Submission 25*, p. 14.

²⁵⁸ *Committee Hansard*, 16 October 2019, p. 5.

²⁵⁹ *Committee Hansard*, 30 October 2019, p. 23.

²⁶⁰ *IBISWorld*, p. 11.

²⁶¹ *Committee Hansard*, 27 November 2019, p. 50.

²⁶² *Committee Hansard*, 30 October 2019, p. 24.

²⁶³ For the Code of Conduct in full, see Appendix C. See also Mr Hartman, Member, National Motor Insurance Committee, ICA, and Chair Motor Vehicle Insurance and Repair Industry Code of Conduct Administration Committee, *Committee Hansard*, 27 November 2019, p. 50; ICA, *Submission 39*, p. 5.

²⁶⁴ Mr Hartman, *Committee Hansard*, 27 November 2019, p. 50; Mr Paul Back, Industry Engagement Specialist, MTA, also stated that many assessors left small repair businesses for opportunities in the insurance industry (*Committee Hansard*, 16 October 2019, p. 9).

previously owned or managed a crash repair business".²⁶⁵ Even the MTA acknowledged the *"high degree of skill and qualification ... among the assessors"*.²⁶⁶

Although the Code of Conduct did not impose minimum requirements for assessor training, the Committee learned of the following insurer investments in updating and maintaining skills, knowledge and professional development:²⁶⁷

- IAG claimed their assessors were *"the most highly trained in the country"* with the most current industry certifications in Certificate IV in Vehicle Loss Assessing. According to its 2017/18 annual report, IAG achieved I-CAR Gold Class for Insurance for the sixth consecutive year.²⁶⁸ This requires a minimum rate of 60 per cent of assessors to achieve Platinum level certification – IAG achieved a rate of 90 per cent.²⁶⁹
- Suncorp invested in training programs with I-CAR and Thatcham Research to deliver training and development. The agreement with Thatcham was via an industry-first Global Associate program delivering the latest repair methodology to assessors.²⁷⁰
- RAA assessors also received I-CAR training, and *"all the information and tools they need"* to maintain industry awareness.²⁷¹
- Speaking on behalf of the insurance industry, Mr Hartman described assessors *"ongoing"* training on-the-job, in the marketplace and at an assessors' institute.²⁷²

6.2.2. Physical vs Desktop Assessments

Assessors evaluated repair quotes against the damage on the vehicle via either one or a combination of two assessment methods:

- a physical inspection of the vehicle at the repairer's premises, or
- a virtual inspection of the vehicle through digital images of the damage submitted to the insurer. This process is known as a desktop or web-based assessment.²⁷³

The Committee heard the following statistics and information regarding the prevalence of both assessment methods in South Australia:

²⁶⁵ RAA Group, *Submission 43*, p. 2. See also Ms Hayley Cain, Senior Manager, Claims, RAA Insurance, *Committee Hansard*, 4 December 2019, p. 62.

²⁶⁶ Mr Paul Back, Industry Engagement Specialist, MTA, *Committee Hansard*, 16 October 2019, p. 9.

²⁶⁷ I-CAR Australia states that there is *"no Australian regulation for "the collision repair industry to undertake ongoing professional development through training"* (*Submission 12*, p. 7).

²⁶⁸ I-CAR Australia *"develops and delivers" ... "post-qualification skills enhancement" ... including "OEM training, hands-on skills certification and training, industry recognised skills recognition and professional development programs, accessible education, training and information to the entire collision repair industry."* *Submission 12*, p. 1.

²⁶⁹ To achieve Platinum certification, each assessor had to complete 10 courses initially and then a minimum of two courses annually to maintain the certification (IAG, *Submission 24*, p. 4).

²⁷⁰ Suncorp Group, *Submission 2*, p. 3.

²⁷¹ RAA Group, *Submission 42*, p. 2; Ms Cain, *Committee Hansard*, 4 December 2019, p. 62.

²⁷² *Committee Hansard*, 27 November 2019, p. 50.

²⁷³ See *Submission 2*, Appendix 4, p. 23 for detailed repair photo guidelines.

- The MTA approximated that physical inspections sat around the 80-90 per cent rate approximately 15 years ago but believed that insurers now used desktop assessments where possible to save on transport costs associated with physical assessments.²⁷⁴
- Insurance representative, Mr Hartman, could not approximate the current physical versus desktop assessment percentages in the insurance industry due to different models, methodologies and locations.²⁷⁵
- In December 2019, Ms Hayley Cain, Senior Manager of Claims at RAA Insurance, submitted that they conducted a ratio of 60 per cent physical assessments versus 40 per cent desktop assessments, but that desktop assessments were capped at low value repairs only.²⁷⁶ In July 2020, Mr Daniel Muller, Motor Assessing Manager of RAA, provided slightly different figures of 55 per cent physical assessments and 45 per cent desktop assessments.²⁷⁷
- Mr David Russell, Chief Executive Officer of RAA Insurance, stated that physical assessments were not necessary if the repairer and assessor agreed on the quote and method of repair.²⁷⁸
- Suncorp Group and IAG preferred to use desktop assessments for simple repair jobs and send assessors out to conduct physical assessments for more complex jobs.²⁷⁹
- At a Committee hearing, Mr Bartlett could not provide Suncorp's statistics for physical assessments carried out at repairer premises over the past financial year.²⁸⁰ Suncorp later provided the Committee with a written response but requested that it remain confidential.²⁸¹

Information presented during an in camera hearing revealed that RAA and Allianz performed physical assessments at their premises once a week – all the other insurers required desktop assessments.

The Committee found that both physical and desktop assessments conducted by assessors presented a range of advantages and disadvantages.

The Committee heard that physical assessments:

- were preferred for more complex repairs;²⁸²
- might be required to assess internal/concealed damage (e.g. underneath a bumper bar);²⁸³

²⁷⁴ Mr Paul Unerkov, Chief Executive Officer, MTA, *Committee Hansard*, 16 October 2019, pp. 6-7.

²⁷⁵ *Committee Hansard*, 27 November 2019, p. 45.

²⁷⁶ *Committee Hansard*, 4 December 2019, p. 61.

²⁷⁷ *Committee Hansard*, 22 July 2020, p. 137.

²⁷⁸ *Committee Hansard*, 4 December 2019, p. 62.

²⁷⁹ Mr Rob Bartlett, Executive Manager, Major Contract Operations, Suncorp Group, *Committee Hansard*, 22 July 2020, p. 125; Mr Troy Johns, Specialist, Supply Chain, IAG, *Committee Hansard*, 22 July 2020, p. 131.

²⁸⁰ *Committee Hansard*, 22 July 2020, p. 133.

²⁸¹ Mr Bartlett, Executive Manager, Major Contract Operations, Suncorp Group, *Response to Questions on Notice*, 21 August 2020, p. 2.

²⁸² Mr Steven Fitzpatrick, Executive General Manager, Insurance Supply Chain, IAG, *Committee Hansard*, 27 November 2019, p. 55; Mr Bartlett, *Committee Hansard*, 22 July 2020, p. 124; Mr Johns, *Committee Hansard*, 22 July 2020, p. 131.

²⁸³ Mr Peter Hartman, Member, National Motor Insurance Committee, ICA, and Chair Motor Vehicle Insurance and Repair Industry Code of Conduct Administration Committee, *Committee Hansard*, 27 November 2019, p. 44.

- presented opportunities for crash repairers and assessors to collaborate and build a working relationship;²⁸⁴
- could be cursory due to assessors rushing to cover multiple repairer premises and vehicles;²⁸⁵ and
- added to the duration of the job if the assessor did not schedule a timely visit.²⁸⁶

The Committee heard that desktop assessments:

- were preferred for simpler jobs;²⁸⁷
- facilitated a quicker start to the repair process;²⁸⁸
- could improve assessment and repair times;²⁸⁹
- enhanced accessibility, particularly for regional repairers;²⁹⁰
- "increased productivity" and improved efficiencies in adding additional images and linking to other information about the job (quote, supplementary quote, vehicle details, damage classifications etc);²⁹¹
- could fail to convey the full range or complexity of vehicle damage via digital images. Damage could potentially also extend beyond the information captured in the photographs;²⁹² and
- increased the repairer workload in taking and uploading images for the assessor, according to evidence provided at an in camera hearing.

The ICA was unaware of any quality or safety issues arising from desktop assessments, while the RAA submitted that their desktop assessments were subject to auditing.²⁹³

²⁸⁴ Ms Hayley Cain, Senior Manager, Claims, RAA Insurance, *Committee Hansard*, 4 December 2019, p. 61.

²⁸⁵ Mr Jason Mallia, Workshop Manager, Auto Transformers, *Committee Hansard*, 30 October 2019, p. 24.

²⁸⁶ Mr Peter Hartman, Member, National Motor Insurance Committee, ICA, and Chair Motor Vehicle Insurance and Repair Industry Code of Conduct Administration Committee, *Committee Hansard*, 27 November 2019, p. 45, 56. In camera evidence was also presented.

²⁸⁷ Mr Hartman, *Committee Hansard*, 27 November 2019, p. 45.

²⁸⁸ Mr Steven Fitzpatrick, Executive General Manager, Insurance Supply Chain, IAG, *Committee Hansard*, 27 November 2019, p. 55; ICA, *Submission 39*, p. 3.

²⁸⁹ *Submission 39*, p. 3; *IBISWorld*, p. 24.

²⁹⁰ Mr Paul Unerkov, Chief Executive Officer, MTA, *Committee Hansard*, 16 October 2019, p. 6.

²⁹¹ Australian Association of Progressive Repairers, *Submission 50*; Mr Steven Fitzpatrick, *Committee Hansard*, 27 November 2019, p. 55; Mr Daniel Muller, Motor Assessing Manager, RAA Group, *Committee Hansard*, 22 July 2020, p. 137.

²⁹² Mr Paul Unerkov, MTA, *Committee Hansard*, 16 October 2019, p. 7.

²⁹³ *Submission 39*, p. 3; RAA Group, *Submission 43*, p. 4.

Committee View

The Committee considers that assessors and their assessment methods do not pose any serious risks or issues to quality repairs.

The Committee understands that, in many cases, assessors are not as technically skilled as crash repairers, but recognises that they perform a different role in the assessment process, subject to differing pressures from the insurance industry. The Committee does not consider that they necessarily need the same high level of technical ability and knowledge as crash repairers and regards their qualifications under the requirement of the Code of Conduct as sufficient to perform their roles. The Committee also commends the insurers for their commitment to professional development, learning and educating their assessment teams in a dynamic industry.

The Committee recognises that the physical and desktop assessments are generally accepted throughout the crash repair industry. The Committee acknowledges that both methods have some disadvantages, but that both play complementary roles in the assessment process, with physical assessments suited to complex jobs and desktop assessments suited to simpler jobs. The Committee also notes the importance of desktop assessments in regional areas where physical assessments might significantly delay the process for customers and repairers.

The Committee is satisfied that customers are not negatively impacted by the suitability of insurance assessors or their methods.

6.3 Non-OEM / Second-hand Parts

Insurance assessors evaluated crash repairer quotes to determine whether the repairer should fix the damage, or a replacement part should be sourced instead.

There was a general consensus that technology had a significant impact on the crash repair industry with advances in integrated systems, increased computerisation and intricate components.²⁹⁴ A consequence of technical advances was an increasing requirement for replacement parts that could fetch a high price. As Ms Cain stated to the Committee, as *"cars become more sophisticated, parts are less repairable and more replaceable. The cost of parts in the motor repair world is certainly not going backwards; it is going forwards really quickly."*²⁹⁵

Replacement parts were classified in the following categories:

- **Original Equipment Manufacturer (OEM) parts:** new and genuine (e.g. direct from the Toyota manufacturer in Australia).
- **Parallel parts:** genuine OE parts made by original OE manufacturers but imported via an alternative supply chain (e.g. *"it comes from Toyota in a different country"*) at a cheaper cost.²⁹⁶

²⁹⁴ ICA, *Submission 39*, pp. 1-2; Mr Jason Mallia, Workshop Manager, Auto Transformers, *Committee Hansard*, 30 October 2019, p. 19.

²⁹⁵ Ms Hayley Cain, Senior Manager, Claims, RAA Insurance, *Committee Hansard*, 4 December 2019, p. 65.

²⁹⁶ Mr Rob Bartlett, Executive Manager, Major Contract Operations, Suncorp Group, *Committee Hansard*, 22 July 2020, p. 126; Mr Troy Johns, Specialist, Industry Relations, Supply Chain, IAG, *Committee Hansard*, 22 July 2020, p. 131; *IBISWorld*, p. 17.

- **Non-OE / aftermarket parts:** non-genuine parts or copies of OE. These parts were “not made or supplied by a supplier to the original manufacturer of the vehicle.”²⁹⁷
- **Second-hand / recycled OEM:** used genuine OEM parts taken from total loss or de-registered vehicles acquired by commercial recyclers or dismantlers.²⁹⁸ These were generally for older vehicles out of warranty.

The MTAA was unable to provide any comparative data on the prevalence of genuine versus non-genuine parts in South Australia.²⁹⁹

Crash repairers tended to prefer genuine OEM parts for all cars where possible. The Committee heard from Ron Gray Crash Repairs that there was “an immense body of evidence from leading industry repair groups and vehicle manufacturers supporting why the use of new genuine parts in repairs is vital to the structural integrity of modern vehicles.”³⁰⁰ Mr Dudley from the MTAA stated that “genuine parts where appropriate should be the go-to mechanism”.³⁰¹ Crash repairers on a panel hearing reported always quoting for OEM parts.³⁰² At an in camera hearing, another repairer stated that he was willing to pay more for OEM parts even if cheaper options existed.

However, the Committee heard evidence that some independent repairers were forced to drop their standards and pursue cheaper parts if insurers did not pay them enough to acquire new, genuine OEM parts for a repair.³⁰³

Insurers’ policies towards the types of replacement parts were varied:

- New vehicles were repaired with new, genuine OEM parts under the conditions of the customer’s warranty. For IAG, this constituted “within the first three years of a vehicle’s compliance date”.³⁰⁴ Suncorp stated that “invariably OE parts supplied by OE dealers in Australia” were used to repair near-new or new cars under the terms of their policies.³⁰⁵
- For older vehicles, Mr Johns claimed that IAG only “authorise[d] the fitment of new genuine or used genuine parts”.³⁰⁶ He explained that IAG’s preference was “a new OEM or, if not available and it’s an older car, a used OEM, of course, which is all recycled”.³⁰⁷ IAG “only authorised parts that complied with manufacturer specifications, relevant national standards and guidelines, and did not compromise safety or repair integrity, and did not void or affect warranties.”³⁰⁸

²⁹⁷ IAG, *Response to Questions on Notice*, 29 July 2020, p. 3.

²⁹⁸ IAG, *Response to Questions on Notice*, 29 July 2020, p. 3.

²⁹⁹ Mr Richard Dudley, Chief Executive Officer, MTAA, *Response to Questions on Notice*, 8 June 2020, p. 5.

³⁰⁰ Ron Gray Crash Repairs, *Submission 28*, p. 3.

³⁰¹ *Committee Hansard*, 13 May 2020, p. 101.

³⁰² Mr Jason Mallia, Workshop Manager, Auto Transformers, and Mr Raymond Khabbaz, Director, FinishLine Collision, *Committee Hansard*, 30 October 2019, p. 27.

³⁰³ Mr Jeff Williams, Former Chairman, South Australian Body Repair Specialists Division and Former Chairman, AMBRA, *Committee Hansard*, 16 October 2019, p. 13.

³⁰⁴ When the date was available and subject to limited exceptions. IAG, *Submission 34*, p. 3; Mr Troy Johns, Specialist, Industry Relations, Supply Chain, IAG, *Committee Hansard*, 22 July 2020, p. 132.

³⁰⁵ Mr Rob Bartlett, Executive Manager, Major Contract Operations, Suncorp Group, *Committee Hansard*, 22 July 2020, p. 126.

³⁰⁶ Mr Johns, *Committee Hansard*, 22 July 2020, pp. 130, 131.

³⁰⁷ Mr Johns, *Committee Hansard*, 22 July 2020, p. 131.

³⁰⁸ IAG, *Submission 34*, pp. 2-3.

- The IAG Parts Guidelines stated that “non-genuine / aftermarket parts are not acceptable” and that “used OEM parts cannot be substituted with non-genuine/aftermarket parts”, but they also stated that “non-genuine/aftermarket parts (non-safety related)” could be used “when New or Used OEM parts are unavailable”.³⁰⁹
- The RAA submitted that they authorised “original recommended parts” and “predominantly it’s OEM spare parts” with no arbitrary timeframe.³¹⁰ Mr Muller stated that the RAA considered OEM parts to be the most cost-effective option, given the delays and damages associated with second-hand parts.³¹¹
- Mr Finney openly stated that Suncorp authorised recycled parts, if they could uphold a lifetime guarantee.³¹²
- Mr Bartlett indicated Suncorp’s pragmatic approach towards replacement parts:

We’ve got a policy that applies the right part for the repair. OEM parts are quite often the right parts, especially for new cars. But for some old cars, to ensure they actually get repaired, it’s very important to have the range of options, not least recycled parts, which are the most environmentally friendly option. In some cases, there are aftermarket or parallel parts, which are imported through an alternative supply chain, but OE, which are used.³¹³

The Committee heard evidence from hearings and via submissions that insurers had increasingly turned to parallel or second-hand parts, due to financial motivations. Savings could range up to 70 per cent price difference.³¹⁴ During an in camera hearing, one crash repairer provided an example of a new OEM headlight costing up to \$2,000 and a second-hand one costing \$500. Ron Gray Crash Repairs believed that insurers sought these cheaper options over OEM parts where possible.³¹⁵

Mr Bartlett articulated the high value of cheaper, aftermarket parts to Suncorp and its customers in potentially keeping vehicles on the road instead of writing them off:

Aftermarket parts serve a very, very strong value to our market, not least because the cost of those parts is lower—nobody pretends otherwise. It comes from a non-OE supply network. The cost of the overheads of the supply network of the OEs is not on it. As a result, older cars that don’t have the same market value are able to be repaired and put back on the road safely, as opposed to being a total loss because of the cost of OE parts, which do remain stubbornly high, especially with the end of manufacturing in Australia.³¹⁶

³⁰⁹ The guidelines provide definitions and specify whether OEM or second-hand parts are required for particular car parts (IAG, *Response to Questions on Notice*, 29 July 2020, p. 2-3.).

³¹⁰ Mr David Russell, Chief Executive Officer, RAA Insurance, *Committee Hansard*, 4 December 2019, p. 60; Mr Daniel Muller, Motor Assessing Manager, RAA Group, *Committee Hansard*, 22 July 2020, p. 137.

³¹¹ *Committee Hansard*, 22 July 2020, p. 137.

³¹² Mr Todd Finney, Executive Manager, Specialist Motor Claims, Suncorp Group, *Committee Hansard*, 22 July 2020, p. 125.

³¹³ Mr Rob Bartlett, Executive Manager, Major Contract Operations, Suncorp Group, *Committee Hansard*, 22 July 2020, p. 125.

³¹⁴ The range quoted at an in camera hearing was 30-70 per cent.

³¹⁵ Ron Gray Crash Repairs, *Submission 28*, p. 3.

³¹⁶ *Committee Hansard*, 22 July 2020, p. 127.

Other evidence concerning replacement parts presented to the Committee included:

- Confidential evidence presented at an in camera hearing and confidential submissions demonstrating that insurers authorised the use of second-hand or non-OEM parts for a fraction of the price;³¹⁷
- Confidential in camera evidence that insurance assessors ordered a crash repairer to use second-hand parts for all vehicles over three years old;
- A confidential submission and in camera evidence from multiple crash repairers that they had been ordered by insurers to obtain or use parallel or used parts on new vehicles under warranty;
- A confidential complaint outlined an insurer did not provide enough remuneration for the repairer to follow the insurer's own policy of replacing parts on new vehicles, rather than repairing them;
- A confidential submission from a crash repairer who specialised in repairs for a specific vehicle make submitted that an insurer diverted that specific make away from their business because it only used OEM parts, and
- A case discussed at an in camera hearing where a customer wanted OEM glass in their windscreen, but the insurer told the repairer to use aftermarket glass. The customer returned two weeks later unhappy with the product and resubmitted the original request.

A crash repairer observed at an in camera hearing that insurers put the onus on customers to insist on genuine replacement parts in their vehicles, even though they couldn't expect to know they had to ask for them in the first place.

6.3.1 Safety Concerns

Insurers maintained that their business decisions surrounding second-hand or non-OEM parts did not compromise safety or repair quality.

IAG stated that that it only authorised parts that complied with manufacturer specifications, relevant national standards and guidelines, did not compromise safety or repair integrity, and did not void or affect warranties.³¹⁸

Mr Russell maintained that the RAA was compelled to *"do the right thing by members without compromising on quality or safety ... mindful of ensuring repairs are done to manufacturer specifications and requirements"*.³¹⁹

Mr Dudley from the MTAA stated that using non-OE or second-hand parts *"exposes consumers to potential safety implications"*.³²⁰

Ron Gray Crash Repairs described the use of non-genuine and second-hand parts as *"out of line with industry best practices, OEM repair methods and the Code of Conduct"*.³²¹ More significantly, they described their use as *"out of line with the manufacturer's guidelines"*.³²²

³¹⁷ See also Ron Gray Crash Repairs, *Submission 28*, p. 3.

³¹⁸ IAG, *Submission 24*, p. 2.

³¹⁹ *Committee Hansard*, 4 December 2019, p. 60.

³²⁰ *Committee Hansard*, 13 May 2020, p. 101.

³²¹ *Submission 28*, p. 3.

³²² *Submission 28*, p. 3.

As stated above, both IAG and RAA expressed a preference for either new or used OE in older cars with Suncorp expressing a more pragmatic approach of the right part for the right job. However, the Committee heard evidence that the genuineness of a parallel part could be questionable and difficult to determine upon arrival in Australia.

This issue was highlighted during in camera hearings when the Committee heard the following evidence:

- Crash repairers strongly asserted that neither manufacturers nor importers could guarantee that parallel parts were genuinely produced by the relevant automotive factories.
- A crash repairer spoke of a major insurer requesting them to locate parallel parts for new vehicles. They were seriously concerned about the quality of these parts but did not question the insurer for fear of reprisal.
- A crash repairer described the random nature of parallel parts and not being sure whether he would receive a quality OE part or an inferior copy. They also stated that many of these parallel parts were produced in countries with less rigorous quality standards than Australia.
- Another incident was described where a crash repairer was instructed to pick up a batch of parallel parts and ship them to Melbourne. Staff there encountered difficulties determining the origin of the parts.
- A witness told the Committee that exteriors of parallel part radiators appeared identical to genuine OEM radiators, but the interior could have thinner plastic walls that might impact on the tube and blow a head gasket.
- A parallel part oil filter arrived in a Toyota box. The part looked genuine, but the oil was bypassed inside the unit, providing no filtration at all.

The Committee heard the following other safety concerns from crash repairers regarding non-OE, parallel and second-hand parts in the crash repair industry:

- A lack of safety regulation and frameworks for second-hand, parallel or non-OE parts. A panel of crash repairers provided in camera evidence that no national safety standard applied to parallel parts imported from overseas. At the same hearing, repairers argued that manufacturers could not guarantee that parallel parts complied with any law. When the Committee asked Mr Bartlett about the legislative frameworks that determined the quality of Suncorp's recycled or aftermarket parts, he could not provide an answer.³²³ Suncorp later provided a response but requested that it remain confidential.³²⁴
- On the same issue, the MTAA submitted in their response to a Question on Notice that they were unable to *"identify any formal process or methodology, legislative instrument or regulation which provides assurance regarding the fit for purpose nature of parallel parts. There are requirements in some jurisdictions for components such as wheels and tyres, and there are Australian Design Rules and Australian Standards for components such as windscreens, but from MTAA research there appears to be no mechanism for checking whether parallel parts meet these standards and requirements where they are specified."*³²⁵

³²³ Committee Hansard, 22 July 2020, p. 125.

³²⁴ Mr Bartlett, Executive Manager, Major Contract Operations, Suncorp Group, *Response to Questions on Notice*, 21 August 2020, p. 2.

³²⁵ Mr Richard Dudley, Chief Executive Officer, MTAA, *Response to Questions on Notice*, 8 June 2020, p. 5.

- Use of these parts disregarded the “*first and foremost*” principle of repair according to manufacturer specifications whereby specific types of products must be used in specific repairs to ensure safety.³²⁶
- Vertical integration potentially caused a conflict of interest, given that some insurers invested in parts supply as revealed at an in camera hearing.³²⁷ These crash repairers described a situation whereby insurers could lower their costs by directing repairers to purchase second-hand or non-OEM parts from their parts supplier rather than buying more expensive OEM replacements. A confidential submission questioned the quality of the parts supplied by insurers.

Modern collision avoidance and auto braking systems in motor vehicles incorporated intricate sensors, lasers, cameras and radars.³²⁸ Imperfect second-hand or non-OEM parts that failed to function in full synchronicity with such elements in the vehicle could risk the lives of customers and other motorists.

Crash repairers provided the following examples of safety potentially being compromised by installation of second-hand or non-OEM parts in technically complex repairs:

- Non-genuine windscreens contained less material which could compromise a vehicle’s collision avoidance system.³²⁹ Mr Dudley stated that some windscreens contained “*satellite navigation antennas, radio antennas built into the actual glass and sensors within the glass itself for various other functions of the vehicle*”.³³⁰ Replacement with the wrong glass could potentially nullify rain-sensing wipers.³³¹ An in camera crash repair panel considered windscreens a priority for consumer disclosure in policies.
- Dealers could not guarantee that Subaru cameras would calibrate through non-genuine glass on Subaru lights.³³²
- A repairer was instructed to replace a headlight with a parallel part headlight, which lacked the same integration functionality with the car’s systems (e.g. steering and rain sensors).³³³ An in camera crash repair panel considered headlights a priority for consumer disclosure in policies.
- One witness stated that sensors could be found behind the bar. If the thickness of the material was out by even one millimetre, the sensor could deliver a false reading of up to ten metres inaccuracy.³³⁴

Moreover, crash repairers expressed their concern and submitted evidence regarding insurers not covering the cost of pre and post diagnostic scans required to test newly installed replacement parts.³³⁵

³²⁶ Mr Richard Dudley, Chief Executive Officer, MTAA, *Committee Hansard*, 13 May 2020, p. 101.

³²⁷ A confidential submission also stated that insurers expected repairers to source parts from their own parts suppliers.

³²⁸ *IBISWorld*, p. 6.

³²⁹ Mr Jeff Williams, Former Chairman, South Australian Body Repair Specialists Division and Former Chairman, AMBRA, *Committee Hansard*, 16 October 2019, p. 14. Windscreen repairs were the most common form of automotive glass repair and replacement, involving injecting and then curing a clear resin with UV light (*IBISWorld*, p. 11).

³³⁰ *Committee Hansard*, 13 May 2020, p. 102.

³³¹ Mr Dudley, *Committee Hansard*, 13 May 2020, p. 102.

³³² Mr Williams, *Committee Hansard*, 16 October 2019, p. 13.

³³³ Mr Dudley, *Committee Hansard*, 13 May 2020, p. 102.

³³⁴ Mr Williams, *Committee Hansard*, 16 October 2019, p. 14.

³³⁵ These scans retrieved codes from the electronic control units and modules that indicated problems (MTA, *Submission 38*, p. 16). Mr Tom Skothos, Chairman, South Australian Body Repair Specialists Division and Vice Chairman, AMBRA and Mr Paul Back, Industry Engagement Specialist, MTA,

In its submission, Australia's leading collision repair training and development body argued that scans were necessary to ensure correct communication between components and sensors to prevent malfunctions and stated their disapproval that "*many in the insurance industry and repair industry ... [do] not acknowledge the necessity*" of the scans.³³⁶

At an in camera hearing, a crash repairer described a situation when they lodged a dispute against an insurer and, through the process, demonstrated the manufacturer's requirement for scans to assure safe repairs. Ultimately, the insurer paid for a one-off scan and did not acknowledge an ongoing need for scans to all vehicles. The repairer subsequently gave up including scans on their quotes because insurers refused to pay for them.

During one of the hearings, the Committee surmised that insurers might not want to pay for diagnostic scans so as not to discover – and potentially pay for – additional problems with the vehicle.³³⁷

6.3.2 Notifying the Customer

The Committee heard different interpretations of the appropriate way to notify customers about the use of second-hand or non-OEM replacement parts in their vehicles.³³⁸

The MTA submitted that South Australian consumers were "*being misled, or simply not informed, by insurers regarding the parts used to repair their vehicle*".³³⁹

Crash repairers handled customers differently in these situations. At an in camera hearing, one described a 'don't ask, don't tell' approach while another felt they could not inform customers about the non-OEM parts in their car for fear of retribution from an insurer. Another repairer told the customer about the parts as a way of protecting their business in case of future issues with the vehicle.

Insurers considered that they had lived up to their obligations to inform customers about the parts in their vehicles:

- The ICA submitted that customers could search through the Code of Conduct for disclosure requirements about the use of types of parts, to make an "*informed choice*" about policies.³⁴⁰
- Mr Johns from IAG stated that they expected repairers or assessors to declare the types of parts used in the repair to the customer.³⁴¹ He also informed the committee that IAG took a "*very public position in our parts policy*".³⁴²

Committee Hansard, 16 October 2019, p. 14. The MTA stated that IAG would only pay for scans upon written permission from a supplier (*Submission 36*, p. 16). See also Ron Gray Crash Repairs, *Submission 28*, pp. 1-2. Confidential submissions contained further evidence of insurers failing to pay for scans.

³³⁶ I-CAR Australia, *Submission 12*, pp. 5, 7. Crash repairers at an in camera hearing also provided further evidence of the necessity of scans.

³³⁷ *Committee Hansard*, 16 October 2019, p. 14.

³³⁸ The Parliament of New South Wales' STAYSAFE Committee recommended that insurers be required to inform policy holders when recycled (second-hand) or non-genuine parts are used in repairs (STAYSAFE Committee, Legislative Assembly, Parliament of New South Wales, *Repairing to a Price, Not a Standard*, December 2005, [https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryReport/ReportAcrobat/5550/STAYS AFE%2066%20-%20NRMA%20Insurance%20motor%20vehicle%20smash%20r.pdf](https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryReport/ReportAcrobat/5550/STAYS%20SAFE%2066%20-%20NRMA%20Insurance%20motor%20vehicle%20smash%20r.pdf) (accessed 14 August 2020), p. 21).

³³⁹ MTA, *Submission 36*, p. 23.

³⁴⁰ ICA, *Submission 39*, p. 8.

³⁴¹ *Committee Hansard*, 22 July 2020, p. 131.

³⁴² Troy Johns, Specialist, Supply Chain, IAG, *Committee Hansard*, 22 July 2020, p. 132.

- Mr Finney stated that Suncorp customers first notified through their PDS.³⁴³ He went on to further explain:

throughout the process there will be some instances where customers are just happy to hand off the repair to one of our partners and have it repaired in the most efficient way. They will not ask, but they will be provided with the information throughout the process; it's either through a copy of the quote ... [or a conversation with the assessor].³⁴⁴

Mr Bartlett then went on to clarify that customers could also learn about part in their vehicles via a conversation with the assessor.³⁴⁵

6.3.3 Warranty and Liability Issues

The Committee heard evidence that repairing some vehicles with second-hand or non-OEM parts may void a vehicle's warranty conditions. The MTA submitted that *"only genuine parts should be used for vehicles that are under manufacturer's warranty as it is recognised that the use of non-genuine parts invariably void manufacturer's warranty"*.³⁴⁶ This was because the part constituted a change in the contract agreed to by the respective parties.³⁴⁷

The Committee also heard the following at an in camera hearing:

- Non-OEM parts were not covered under a warranty as they were not been created under the manufacturer's specifications in compliance with the Australian Design Rules;
- Crash repairers were caught in the middle between insurers setting lifetime warranties on non-OEM parts and customers seeking to claim on those parts, and
- If a vehicle was involved in a subsequent accident and a second-hand or non-OEM part in any way compromised structural integrity, liability rested with the repairer. Thus, while the insurer benefited from the financial savings in authorising a cheaper part, the repairer took on the business risks arising from the insurer's decision.

Ron Gray Crash Repairs summarised this situation:

I find this to be one of the most grotesque features of the industry as a whole: Insurers are profiting via reducing repair safety standards whilst exposing repairers to the liability that they have created in doing so. Whilst the Code of Conduct includes the provision to prevent this in 7.4 & 7.5, it lacks enforcement provisions necessary to protect both repairers and consumers.³⁴⁸

³⁴³ Mr Todd Finney, Executive Manager of Specialist Claims, Suncorp Group, *Committee Hansard*, 22 July 2020, p. 125.

³⁴⁴ Mr Finney, *Committee Hansard*, 22 July 2020, p. 126.

³⁴⁵ Mr Rob Bartlett, Executive Manager, Major Contract Operations, Suncorp Group, *Committee Hansard*, 22 July 2020, p. 126.

³⁴⁶ MTA, *Submission 36*, p. 23. See also Mr Jeff Williams, Former Chairman, South Australian Body Repair Specialists Division and Former Chairman, AMBRA, *Committee Hansard*, 16 October 2019, p. 13.

³⁴⁷ MTA, *Submission 36*, p. 23.

³⁴⁸ Ron Gray Crash Repair, *Submission 28*, p. 3.

Committee View

The Committee is concerned about the implications of increasing prices for OEM parts, the availability of cheaper alternatives and a lack of quality control surrounding imported parts overseas that avoid the checks and balances of Australia's regulatory frameworks.

The Committee particularly notes the safety risks posed by substandard replacements for technically advanced features that integrate with vehicle collision systems. The Committee also understands the importance of pre- and post-diagnostic scans to the integrity of the repair, and to the safety of all South Australians on the road.

The Committee recognises that actions should be taken imminently to address the issues arising from OEM and non-OEM parts, given that vehicle systems and technologies are increasing in complexity at a rapid rate. The Committee considers that an ACCC review into vertical integration and the risks associated with second-hand and non-OEM parts would bring greater transparency to customers making decisions in the marketplace, and to crash repairers forced to work with these replacement parts.

The Committee also requires further assurance that the use of non-OEM parts is not violating consumer rights or voiding their warranties. The Committee considers that the process of notifying a customer regarding the nature of parts in their vehicle lacks transparency. While the use of second-hand and non-OEM parts is legal, the customer has a right to greater clarity and transparency surrounding their inclusion under the conditions of their policy. The Committee considers that insurer PDS must clearly articulate the critical policy details (e.g. such as use of non-OEM or second-hand parts) in the most prominent place on the first page of the document.

The Committee considers it unacceptable that insurers authorise repairs to new vehicles that are still under warranty with anything other than new, OEM parts that safely match a vehicle's complex systems and features.

Recommendation 7: The South Australian Government write to the Australian Competition and Consumer Commission (ACCC), requesting they conduct a review into:

- vertical integration of motor vehicle insurers and crash repairers; and
- the use of second-hand and non-original equipment manufacturer (OEM) parts in crash repairs and the potential risks and issues associated with them.

Recommendation 8: Require all South Australian motor vehicle insurance policies to explicitly state, in clear and concise language on the first page of their policy document, the location of the closest approved repairer to the policy holder, the insurer's ownership stake and/or contractual arrangements regarding that approved repairer, and whether the policy allows for:

- choice of repairer;
- choice of parts;
- use of non-OEM or second-hand parts;
- OEM windscreen replacement;
- OEM headlight replacement; and
- diagnostic scans.

Recommendation 9: Subsequent to ACCC work undertaken in line with Recommendation 7, the South Australian Government consider introducing legislation to mandate the use of only new genuine parts for motor vehicle insurance crash repairs where vehicles are still under the manufacturer's warranty period.

6.4 Preparing Quotes

Crash repairers and insurers could practice two different methods of calculation on the same quote. Repairers prepared and submitted quotes to insurance assessors based on one calculation methodology. Insurers assessed the quote in a different methodology, returning it to the repairer with adjustments and/or authorisation to begin repairs.

6.4.1 Repairer Methodology

Crash repairers based their quotes on the real time and real costs required to repair each vehicle to pre-accident condition in accordance with on manufacturer specifications. In its submission, the MTA also noted that every accident generated *"different damage and repair profiles"*.³⁴⁹ Thus, the repairer's estimate carefully considered the individual condition and circumstances of each vehicle.

In a hearing, the Committee stated that repairing a vehicle to the cost of the actual damage sustained would constitute safer repairs.³⁵⁰

Mr Back from the MTA summarised the repairer quotation and repair process:

a repairer provides a damage assessment of a vehicle. In their expert opinion, they consider that some parts need to be replaced and some parts can be repaired, and they provide their recommendations as an overview of the necessary repairs. The code requires them to provide that estimate, complete and comprehensive of all obvious damage. If the damage is not obvious, if it's behind the bumper or behind the guard, they call that the 'report', where they will require the repairer to start removing parts to inspect further damage on the vehicle.³⁵¹

The Committee heard that crash repairers spent anywhere from an hour to a full day constructing a unique assessment for each vehicle that *"represent[ed] a carefully constructed blueprint and maps how the repairs are to be correctly executed, what method is to be used, what parts are to be supplied, and at what cost."*³⁵²

Further complicating the repairer assessment process was a requirement under Section 4.1 (b) (ii) of the Code of Conduct for repairers to prepare initial quotes without dismantling the vehicle.³⁵³

The Committee heard minimal evidence of insurers considering repairer quotes excessive. Mr Lunn from the ICA was the only witness to suggest that crash repairers factored profit margins into their quotes, when he stated that *"quite often they will ask for more money than they actually even want to do the repair. They will sometimes build in their piece of negotiation."*³⁵⁴

As more details about a job came to hand, crash repairers could submit supplementary quotes for additional resources. For example, a supplementary quote could become necessary for more parts and labour after discovering further damage upon dismantling a vehicle.³⁵⁵ Mr Mitchell from Auto Transformers stated that one particular insurer operated an internal ratings system that rewarded

³⁴⁹ MTA, *Submission 36*, p. 21.

³⁵⁰ *Committee Hansard*, 4 December 2019, p. 64.

³⁵¹ *Committee Hansard*, 16 October 2019, p. 8.

³⁵² Dr Graham McDonagh, *Submission 37*, p. 9.

³⁵³ This provision states that repairers could not dismantle vehicles *"for the purpose of preparing an estimate or report unless requested or authorised to do so by the Insurer"*. For the Code of Conduct in full, see Appendix C.

³⁵⁴ *Committee Hansard*, 27 November 2019, p. 48.

³⁵⁵ Mr Andrew Mitchell, Owner, Auto Transformers, *Committee Hansard*, 30 October 2019, pp. 19-20.

repairers that did not submit supplementary quotes.³⁵⁶ The fewer supplementary quotes submitted for a job, the higher up the list for future jobs a company went.³⁵⁷

Confidential submissions from independent crash repairers outlined concerns that insurers used supplementary quotes to further delay the process for the customer.

6.4.2 Insurer Methodology

Insurers based their assessments of repairer quotes on broader external factors such as contractual arrangements, market costs and maintaining affordable premiums for policyholders. In desktop assessments, assessors used photographs of the damage sustained to inform their decisions, as discussed in Section 6.2.

The crash repairer industry considered that, regardless of their methodology, insurers adjusted quotes to meet profit margins. Mr Paul Back from the MTA stated that insurer methodologies provided for *"maximum allowances ... based on the insurer's cost objectives to meet cost models that are inappropriate for the repair of one's vehicle, depending on the scope of damage that has occurred to it"*.³⁵⁸ One confidential submission even described an insurance employee incentive scheme to keep repair costs low.

Crash repairers criticised insurer methodology, stating:

- *"they do not assess they actual job and only assess the quote"*.³⁵⁹
- a *"lack of transparency and fairness in the quoting and assessment process"*.³⁶⁰
- *"[our] ability as repairers to combat any one of these methods ... is made near-impossible"*³⁶¹ and
- *"[the job] should focus on delivering an appropriate finish, not one that is determined by the level of funding offered."*³⁶²

The MTAA submitted that *"the major insurers' assessing, and pricing practices are designed to avoid good faith negotiations"* and *"preclude[d]"* fair competition.³⁶³

The insurance industry submitted the following to the Committee:

- IAG submitted that *"the primary benefit of this competitive environment for customers is that by better management of repair costs, insurance companies are better able to maintain competitive premiums"*.³⁶⁴

³⁵⁶ *Committee Hansard*, 30 October 2019, pp. 19-20.

³⁵⁷ Mr Andrew Mitchell, Owner, Auto Transformers, *Committee Hansard*, 30 October 2019, pp. 19-20; Auto Transformers, *Submission 13*, p. 3.

³⁵⁸ *Committee Hansard*, 16 October 2019, p. 8.

³⁵⁹ Auto Transformers, *Submission 13*, p. 3, 5.

³⁶⁰ Ron Gray Crash Repairs, *Submission 28*, p. 3.

³⁶¹ *Submission 28*, p. 3.

³⁶² FinishLine Collision, *Submission 4*, p. 14.

³⁶³ MTAA, *Submission 25*, pp. 15, 16.

³⁶⁴ IAG, *Submission 24*, p. 9.

- Mr Hartman, representing the insurance industry, stated that *"you always expect tension and always expect opposing sides to have views on improvement."*³⁶⁵ He went on to emphasise *"a competitive outcome for the customer so we can have affordable insurance products."*³⁶⁶

Average Cost

The MTA submitted that insurers operated their preferred repairer networks on an average repair cost price point.³⁶⁷ It viewed this as an unfair tactic to reduce the average cost of repairs and lessen competition in the market.³⁶⁸

The MTA explained that average costs operated in the following way for preferred repairers:

- Insurers determined an average cost per vehicle that could be based on the repairer's past performance (e.g. a repairer's average repair cost per vehicle for the last six months might be \$1,300).
- The repairer received an allowance of \$1,300 from the insurer to repair each vehicle, regardless of whether the costs exceeded that figure or not.
- The preferred repairer had made a business decision to accept this figure as part of contractual arrangements. These contained a *"volume incentive"* of ongoing work that offset the impact of losses on jobs over \$1,300.³⁶⁹

Mr Khabbaz from FinishLine Collision described his average cost arrangements to the Committee. He picked up a set volume of 50 cars multiplied by an average of \$7,000 for a total of \$350,000 as a rate of pay from the insurer even if FinishLine worked jobs over \$350,000 during that period.³⁷⁰

Regarding volume of work as part of average cost arrangements, the ACCC submitted that *"by guaranteeing the preferred repairers a certain amount of work, the repairers may be able to provide cheaper repairs for the insurance company ... this assists in maintaining low premiums for the consumer."*³⁷¹

Repairers expressed discontent over the misleading nature of average cost quoting. Mr Verdnik called it *"a false average cost of repairs, because if we have X amount of quotes and we work out an average on X amount of quotes on the same vehicle, that average would be different than the average."*³⁷²

Mr Chapman, South Australian Small Business Commissioner, questioned the system of average cost, stating that insurers had access to claims history that could determine more accurate averages to combine with repairer expertise to better determine an *"average accident"*.³⁷³

³⁶⁵ *Committee Hansard*, 27 November 2019, p. 42.

³⁶⁶ Mr Peter Hartman, Member, National Motor Insurance Committee, ICA, and Chair Motor Vehicle Insurance and Repair Industry Code of Conduct Administration Committee, *Committee Hansard*, 27 November 2019, p. 42.

³⁶⁷ MTA, *Submission 36*, p. 15.

³⁶⁸ *Submission 36*, p. 35; Mr Paul Unerkov, Chief Executive Officer, MTA, *Committee Hansard*, 16 October 2019, p. 4.

³⁶⁹ Mr Paul Back, Industry Engagement Specialist, MTA, *Committee Hansard*, 16 October 2019, pp. 10-11.

³⁷⁰ *Committee Hansard*, 30 October 2019, p. 21. For another description of average cost arrangements, see Dr Graham McDonagh, *Submission 37*, p. 16.

³⁷¹ ACCC, *Submission 44*, p. 5.

³⁷² Mr Aldo Verdnik, Director, CRASH2000 Automotive Body Repairs, *Committee Hansard*, 30 October 2019, p. 22, 29.

³⁷³ *Committee Hansard*, 13 November 2019, p. 36.

Mr Hartman and Mr Russell stated that Allianz and RAA did not use average cost models.³⁷⁴ Mr Bartlett confirmed that Suncorp participated in average cost arrangements:

Contractually, we may seek to average that price over a number of cars. In some cases, we have repairers in Australia doing 5,000 or 6,000 repairs in a year, which means that we can do an average across that which comes in very close. We tend to do it in bundles of averaging, so we can actually help them meet their cashflow arrangements. Each and every job is individually authorised at the actual cost of the repair, but averaging does occur across a range of volume.³⁷⁵

Allowances

For individual quotes, assessors calculated rates of payment to crash repairers based on pre-determined allowances for parts and labour.³⁷⁶

Mr Bartlett stated that Suncorp offered a labour allowance of \$60 an hour determined by auditing their database of over 23,000 previous claims over the last 6-12 months.³⁷⁷ This allowance was the same for all repairers (e.g. panelbeaters, spray painters etc.).³⁷⁸ Mr Bartlett conceded that this rate was lower than market rate but that repairers could make up revenue on other parts of a quote and he went on to state that Suncorp "*suggest[ed] that there is almost no industry hourly rate, as in it changes so frequently between repairers and between jobs, between insurance brands and between makes and models of cars, that it's actually quite difficult to say what it actually is*".³⁷⁹

During the hearing, the Committee pointed out an inherent issue with calculating the increase based on a sample of potentially low allowances in the first place.³⁸⁰

Crash repairers submitted the following concerns about insurer allowances:

- Their arbitrary and unrealistic nature did not reflect the actual costs of repairing a vehicle.³⁸¹
- They had not adequately increased over time or in line with Consumer Price Index (CPI).³⁸² For example, CRASH2000 repairers received less to paint a car today than 30 years ago, even though the cost of paint had increased approximately 2.5 to 3 per cent annually.³⁸³ Auto Transformers submitted that rates for the categories of 'Remove and Replace' of parts and 'Painting' had remained the same since 2011/12 and "*need[ed] to be brought up to rates that ... more consistent with the costs of running a business in 2019*".³⁸⁴
- A confidential submission highlighted that they that did not incorporate increasing costs for new equipment or new safety technologies.

³⁷⁴ Committee Hansard, 27 November 2019, p. 55; Committee Hansard, 4 December 2019, p. 64.

³⁷⁵ Committee Hansard, 4 December 2019, p. 73.

³⁷⁶ Except for RAA Group, which did not use allowances (Mr David Russell, Chief Executive Officer, RAA Insurance, Committee Hansard, 4 December 2019, p. 64).

³⁷⁷ This allowance increased from \$54 an hour approximately a month before the hearing (Committee Hansard, 4 December 2019, p. 69).

³⁷⁸ Mr Rob Bartlett, Executive Manager, Major Contract Operations, Suncorp Group, Committee Hansard, 4 December 2019, p. 70.

³⁷⁹ Committee Hansard, 4 December 2019, p. 70.

³⁸⁰ Committee Hansard, 4 December 2019, p. 69.

³⁸¹ MTA, Submission 36, p. 14, 21; Ron Gray Crash Repairs, Submission 28, p. 4.

³⁸² Submission 28, p. 4. In camera evidence and in a confidential submission also supported this point.

³⁸³ CRASH2000 Automotive Body Repairs, Submission 16, p. 2; MTAA, Submission 25, p. 15.

³⁸⁴ Auto Transformers, Submission 13, p. 4.

- Confidential submissions stated that some item allowances had decreased over time or was decreased by assessors in individual quotes.
- The MTAA objected to insurers keeping “labour rates stable at about half of the hourly rates that would be sustainable for independent motor vehicle repairers” and argued that some crash repairers were paid the same hourly rates as 20 years ago.³⁸⁵ The \$54 hourly figure was described as “unsustainable” in comparison to “barely sustainable shop rates” of \$95 an hour.³⁸⁶ Mr Mitchell of Auto Transformers stated that the hourly rate at his business was \$120 plus GST and that insurers did not pay “even half of that sometimes”.³⁸⁷ Other repairers in an in camera hearing and in confidential submissions objected to insurers’ low hourly labour rates.
- Some crash repairers objected to Suncorp setting a labour rate. At an in camera hearing, repairers stated their perception that the new \$60 rate constituted ‘funny time, funny money’.
- The MTA submitted that rates could be determined on labour times for removal and replacement of undamaged parts, without considering factors that affected time such as vehicle damage, age or location of the part (e.g. caught behind a bull bar).³⁸⁸
- Refusal to negotiate on allowances. Ron Gray Crash Repairs described an incident where the insurer “refused to assess the job or any future job as it was quoted at the \$30/hr instead of \$28/hr”.³⁸⁹

Many preferred network repairers made conscious business decisions to accept the low allowances, factoring in contractual arrangements such as set volumes of vehicles.³⁹⁰ In contrast, the low allowances had greater impact on independent crash repairers who relied on profits from individual jobs, lacked the economic buffer of contractual arrangements and experienced pressure to deliver quality repairs from the same allowances.³⁹¹ Some crash repairers reported feeling bullied or financially desperate enough to drop the values of their quotes to secure jobs.³⁹²

Moreover, the MTA submitted the following regarding price points and fairness:

The MTA asks that the Inquiry establish whether it is reasonable to apply the same model that is used within the confines of the preferred repairer cohort over all repairs across the industry? The cost pressures derived by the lowest repair cost benchmarked by the insurer leads to pressure on the whole industry to meet the same price point as the insurers dictate for their preferred repairer network.³⁹³

Funny Time, Funny Money

‘Funny time, funny money’ (FTFM) was a well-known industry colloquialism for an estimation methodology that did not “reflect the real time to safely and satisfactorily undertake the repair or reflect

³⁸⁵ MTAA, *Submission 25*, p. 17; Mr Richard Dudley, Chief Executive Officer, MTAA, *Committee Hansard*, 13 May 2020, p. 99.

³⁸⁶ *Submission 25*, p. 17.

³⁸⁷ *Committee Hansard*, 30 October 2019, p. 26. Evidence at an in camera hearing indicated that the \$120 rate was consistent with other repairers.

³⁸⁸ MTA, *Submission 36*, p. 21.

³⁸⁹ Ron Gray Crash Repairs, *Submission 28*, p. 4.

³⁹⁰ Mr Paul Back, Industry Engagement Specialist, MTA, *Committee Hansard*, 16 October 2019, p. 10.

³⁹¹ Mr Back, *Committee Hansard*, 16 October 2019, p. 12.

³⁹² Mr Jason Mallia, Workshop Manager, Auto Transformers and Mr Andrew Mitchell, Owner, Auto Transformers, *Committee Hansard*, 30 October 2019, p. 25.

³⁹³ *Submission 36*, p. 15.

the real cost of repair".³⁹⁴ The MTAA described the times in FTFM as "fictitious".³⁹⁵ In its submission, FinishLine Collision described FTFM as "*an unfair system of arriving at a fair and reasonable price for repairs*".³⁹⁶

According to the MTAA, insurers fixed a maximum number of labour hours and allowances per repair task.³⁹⁷ For example, Mr Mitchell, owner of Auto Transformers, described this type of mismatch between the labour allowance paid and the time taken to perform a task:

I will give you one example: we get paid very little to match the colour on a car. We get paid a dollar figure, which is sometimes \$25, sometimes \$30, and that is to actually do a colour match on the car. Now, everyone in the industry knows that it takes a little longer than that. That's maybe 10 minutes of time in real dollar value.³⁹⁸

In order to survive, crash repairers might have responded by inflating the estimated hours on other parts or repairs.³⁹⁹ Conversely, the MTAA submitted that repairers also used FTFM in overstating time on repair jobs if the insurer paid insufficient hourly rates on labour.⁴⁰⁰ A confidential submission also admitted to inflating labour times in this compensatory way.

Mr Williams described a hypothetical FTFM scenario in a repair shop:

Most repair shops would have an average hourly rate that they need to achieve of around about \$90 to \$100. What the insurers do is they come along and they pay you \$30 an hour. For you to be able to achieve the \$90 or \$100 that you need, you have to actually increase the time, so you have to fudge the time.

For what would normally take an hour to do, you have to quote three or four hours. You are actually increasing the time, which is really a fraudulent way of doing business, because you are suggesting it should take four hours and being paid for four hours, but it is only taking an hour to do the actual repair. That's how you get from the \$30 to the \$90 or \$100.

Of course, the times that you are quoting aren't based on anything; they are just purely and simply based on an opinion from an insurer about how long it should take based on the rate that they believe you need to return ... In funny time, you also quote for stuff that you don't need to do so that you can actually achieve the rate that you do need to achieve.⁴⁰¹

A significant issue outlined was the confusion that FTFM caused consumers. As Mr Williams put it, "*is a very difficult thing to try to explain to someone that it is going to take an hour but you are quoting for four.*"⁴⁰² Mr Dudley from the MTAA also highlighted an impact on "*customer confidence by not having a realistic time ... to conduct the repair or a realistic price on that repair as well.*"⁴⁰³

In their submission, the MTAA highlighted that the 2005 Productivity Commission inquiry found the following effects of FTFM detrimental to the crash repair industry:

³⁹⁴ MTAA, *Submission 25*, p. 3.

³⁹⁵ *Submission 25*, p. 5.

³⁹⁶ FinishLine Collision, *Submission 4*, p. 13.

³⁹⁷ *Submission 25*, p. 5.

³⁹⁸ *Committee Hansard*, 30 October 2019, p. 24.

³⁹⁹ *Submission 25*, p. 5.

⁴⁰⁰ *Submission 25*, p. 17.

⁴⁰¹ Mr Jeff Williams, Former Chairman, South Australian Body Repair Specialists Division and Former Chairman, AMBRA, *Committee Hansard*, 16 October 2019, p. 4. For other descriptions, see Mr Aldo Verdnik, Director, CRASH2000 Automotive Body Repairs, *Committee Hansard*, 30 October 2019, p. 29.

⁴⁰² *Committee Hansard*, 16 October 2019, p. 4.

⁴⁰³ *Committee Hansard*, 13 May 2020, p. 100.

- Distorted comparison of cost between different repair methods;
- Encouragement of low-quality parts use;
- Increased ability of insurers to apply downward pressure on price, and
- Worsened transparency and was highly misleading, particularly to third parties.⁴⁰⁴

Mr Chapman, the Small Business Commissioner, also highlighted that FTFM failed to properly remunerate repairers for their work.⁴⁰⁵ He put to the Committee that using a 'real time, real money' methodology would "*remove some of the areas of dispute in the industry*".⁴⁰⁶

The MTAA, members of the MTA and AMBRA adopted a national position to abolish FTFM and replace it with realistic time and rates.⁴⁰⁷ Mr Dudley from the MTAA recommended an alternative costing methodology utilising the Australian Taxation Office's education and advisory materials for small businesses.⁴⁰⁸ He stated that the MTAA had also created a cost calculator for the crash repair industry for members to understand the actual costs of vehicle repair.⁴⁰⁹

The MTA recommended that this inquiry recommend abolishing "*all known variations of Funny Time, Funny Money*", describing it as potentially encouraging "*fraud and misconduct*".⁴¹⁰ Mr Dudley depicted FTFM as a methodology "*not transparent to the consumer or to the repairer, and drives behaviours within the industry*".⁴¹¹ At the first Committee hearing, Mr Unerkov from the MTA stated that the practice was currently being phased out across Australia but that South Australia was one of the states still using FTFM "*the most*".⁴¹²

The MTA supported using OEM guides to calculate times as an alternative benchmark but acknowledged that these guides were designed for building, not repairing, vehicles.⁴¹³ Other crash repairers at an in camera hearing supported the OEs setting realistic times and the MTA engaging an independent body to determine industry rates.

Mr Dudley claimed that both repairers and insurers engaged in FTFM, but that repairers used it as a "*flow-on effect*" of insurer FTFM practices to survive.⁴¹⁴

Mr Bartlett from Suncorp stated that "*insurers don't write funny time, funny money quotes but some repairers do*".⁴¹⁵

All insurers that participated in the Inquiry denied using FTFM methodology.⁴¹⁶

⁴⁰⁴ MTAA, *Submission 25*, pp. 5-6. See also Productivity Commission, *Smash Repair and Insurance*, <https://www.pc.gov.au/inquiries/completed/smash-repair> (accessed 14 August 2020), p. 86.

⁴⁰⁵ *Committee Hansard*, 13 November 2019, p. 36.

⁴⁰⁶ Mr John Chapman, Small Business Commissioner, *Committee Hansard*, 13 November 2019, p. 36.

⁴⁰⁷ Mr Richard Dudley, Chief Executive Officer, MTAA, *Committee Hansard*, 13 May 2020, p. 99; MTA, *Submission 36*, p. 19; *Submission 25*, pp. 5-6.

⁴⁰⁸ *Committee Hansard*, 13 May 2020, p. 100.

⁴⁰⁹ Mr Richard Dudley, Chief Executive Officer, MTAA, *Committee Hansard*, 13 May 2020, p. 100.

⁴¹⁰ *Submission 36*, pp. 18, 35.

⁴¹¹ *Committee Hansard*, 13 May 2020, p. 95.

⁴¹² *Committee Hansard*, 16 October 2019, p. 4.

⁴¹³ *Submission 36*, pp. 18-19.

⁴¹⁴ *Committee Hansard*, 13 May 2020, p. 99.

⁴¹⁵ *Committee Hansard*, 4 December 2019, p. 70.

⁴¹⁶ For IAG, see *Submission 24*, p. 8. For RAA Group, see Mr David Russell, Chief Executive Officer, RAA Insurance, *Committee Hansard*, 4 December 2019, p. 63. For Suncorp Group, see Mr Rob Bartlett,

Evidence submitted to the Committee contained discussion of or examples of FTFM in confidential submissions.⁴¹⁷

At a Committee hearing, Mr Bartlett stated that Suncorp was less concerned with individual components of a quote and primarily concerned with the total:

we think that the system as a whole produces whole quotes equivalent to what would be written in other systems ... both our system and their system [repairers'] assume that revenue will be made up across the whole quote, not just individual elements of it. In essence, when we are negotiating, we are looking at the total price of the job, not individual units.⁴¹⁸

Estimation or Other Insurer Methodologies

The major insurers did not consider that their ways of working constituted FTFM and outlined their alternative methodologies to assess or calculate quotes.

Mr Johns said that IAG “jumped first” to a “more realistic times methodology ... that’s been in the market longer than any methodology in Australia”.⁴¹⁹ IAG submitted that its New Times and Rates (NTAR) estimation methodology “allows for quoting in realistic times and rates as opposed to the outdated practice of quoting in ‘funny time, funny money’”.⁴²⁰ Mr Johns stated that IAG’s ‘Online Repair Management’ operating platform was freely available for repairers to submit quotes and images.⁴²¹

Mr Hartman, in his capacity as Allianz representative, reported that Allianz had transitioned approximately 25 per cent of repairs to “original equipment times”.⁴²²

Ms Cain described the RAA as using “a formula to arrive at a cost for service.”⁴²³ Mr Russell further explained their way of working and calculating repairer quotes:

We do not have average repair costs or allowances, we don’t have contracts: we have a service level agreement. We don’t have contracts in place where we will provide X number of cars per week, or volume-based. We don’t have that in place, and we don’t have an average cost that says, ‘Okay, the assessment now is X and it’s above-average and therefore, you know.’ We look at an individual car, its repairs, what’s required to fix the problem and that’s the figure we pay.⁴²⁴

In a subsequent hearing, Mr Muller further outlined RAA’s methodology to the Committee:

We assess every quote. We will go through and ensure that what has been quoted is fair and reasonable, and that the repairs that have been quoted for are a true and accurate reflection of what’s needed to do the repairs. ... We look at what dollar amount is going to be paid for the service and the parts. We rely on our assessment team and their knowledge, skills and experience to look at what is considered a fair and reasonable amount, given the knowledge, skills and experience they have of what the industry charges generally.⁴²⁵

Executive Manager, Major Contract Operations, Suncorp Group, *Committee Hansard*, 4 December 2019, p. 69.

⁴¹⁷ Auto Transformers, *Submission 13*, p. 3; MTA, *Submission 36*, p. 18; Dr Graham McDonagh, *Submission 37*, p. 15.

⁴¹⁸ *Committee Hansard*, 4 December 2019, p. 70.

⁴¹⁹ *Committee Hansard*, 27 November 2019, p. 55.

⁴²⁰ IAG, *Submission 24*, p. 8.

⁴²¹ *Committee Hansard*, 22 July 2020, p. 131.

⁴²² *Committee Hansard*, 27 November 2019, p. 46.

⁴²³ *Committee Hansard*, 4 December 2019, p. 63.

⁴²⁴ *Committee Hansard*, 4 December 2019, p. 64.

⁴²⁵ *Committee Hansard*, 22 July 2020, p. 136.

Some crash repairers still considered estimation methodologies to be variations of FTFM because they did not reflect the true costs of repairing vehicles.⁴²⁶

The Committee heard that the variety of insurer methodologies used to calculate rates and adjust quotes affected the industry in the following ways:

- Worsened transparency and confusion. The lack of consistency between different insurers was considered an argument to develop standardised real-time costings across the industry set by an independent body, as discussed at an in camera hearing.
- The MTAA submitted that insurers increasingly required crash repairers to submit quotes in their preferred methodology.⁴²⁷ The MTA cited an example of *"one of the dominant insurers"* requiring repairers to use their software to convert repair rates into the insurer's preferred estimation methodology or submit their quote through the system which converted it for them.⁴²⁸ Ron Gray Crash Repairs stated that insurers forcing repairers to *"provide quotes using their format"* was a breach of the Code of Conduct, while the MTA considered some conversions akin to FTFM.⁴²⁹
- Evidence given at an in camera hearing heard that the same job could be subject to different quotes and rates of payment depending on the company, their different interpretations of market force and positions in the market.
- Some repairers noted specific problems with quoting software programs that did not contain all makes and models of vehicles. According to Mr Mallia from Auto Transformers, this was *"not good enough"* because *"if you are going to give an industry a product to quote specifically for that model, it must have all the right criteria to quote that car."*⁴³⁰ He stated that insurers could then set rates on vehicles that were close but not the same.⁴³¹

⁴²⁶ CRASH2000 Automotive Body Repairs, *Submission 16*, p. 2; MTAA, *Submission 25*, p. 5; MTA, *Submission 36*, p. 19.

⁴²⁷ *Submission 25*, p. 15.

⁴²⁸ *Submission 36*, pp. 18, 21.

⁴²⁹ Ron Gray Crash Repairs, *Submission 28*, p. 4; *Submission 36*, p. 19. In the Code of Conduct, Section 6 6.2 (b) states that *"repairers may submit an estimate in realistic times and rates recognising the insurers right to obtain an alternative estimate"*. This is subject to Section 6 6.2 (a) which states that *"insurers will state clearly the preferred estimation methodology to be applied"*. For the Code of Conduct in full, see Appendix C.

⁴³⁰ *Committee Hansard*, 30 October 2020, p. 22.

⁴³¹ Mr Jason Mallia, Workshop Manager, Auto Transformers, *Committee Hansard*, 30 October 2020, p. 22. A confidential submission noted the same make and model inaccuracies in the software.

Committee View

The Committee considers that the current process of preparing quotes is opaque. While repairers and insurers may understand the nature of 'Funny Time, Funny Money' (FTFM) costings, the Committee considers that consumers cannot be expected to comprehend the complex interplay of contractual arrangements and allowances on their repair quote.

The Committee considers that FTFM is, at best, misleading, and at worst, deceptive.

The Committee believes the arbitrary rates set on time and labour on quotes hinder transparency and prevent customers understanding the full value of repairs and insurer remuneration. An 'ends justifies the means' approach should not apply towards calculating parts and labour on a quote.

The Committee considers that repairer methodology with its real-world approach to vehicle repairers is much easier to explain to consumers. The Committee supports calls to develop standardised real-time costings across the crash repair industry to be developed by an independent party such as the OE manufacturers who set guides for building vehicles. However, it acknowledges that any times for the crash repair industry would also need to factor in issues associated with damaged and aged vehicles.

The Committee does not seek to change labour rates or allowances on specific repair items, as it does not wish to interfere with market forces or contractual arrangements between businesses.

Recommendation 10: The South Australian Government encourage motor vehicle insurers and crash repairers to discontinue the use of 'funny money, funny time' for crash repair costings and instead use costings based on the real time and cost of repairs, with guidelines for the time required to undertake repairs set by an independent party, such as the original equipment manufacturers.

6.5 Negotiating Quotes

The exchange between the crash repairer and the insurer regarding the quote was called the negotiation.⁴³² Repairs could not begin until the negotiation concluded.

FinishLine Collisions highlighted their perspective that *"the process should focus on ensuring the owner of the vehicle is the winner, not the insurer"*.⁴³³ Yet consumers caught in the middle of a drawn-out negotiation process could lose access to their vehicle for extended periods of time. For example, evidence submitted to the Committee highlighted waiting periods of three weeks, 25 days and one period from March to August.⁴³⁴ Mr Unerkov from the MTA also stated that consumers sought timely repairs and *"don't want to sit there and wait while all of this stuff is being sorted out in the background."*⁴³⁵

In a confidential submission, one crash repairer reported getting the customer to contact the insurer to expedite the quote process since the insurer appeared to be ignoring the repairer's attempts to move the repair along.

Contractual relationships between the insurer and the crash repairer could determine the nature of the negotiation process. According to Mr Steven Fitzpatrick, Executive General Manager, Insurance Supply

⁴³² MTA, *Submission 36*, p. 10.

⁴³³ FinishLine Collision, *Submission 4*, p. 14.

⁴³⁴ Ron Gray Crash Repairs, *Submission 28*, pp. 5-6; CAPPA Motor Bodies, *Submission 26*, p. 2. The other waiting time was outlined in a confidential submission.

⁴³⁵ *Committee Hansard*, 16 October 2019, pp. 3, 6.

Chain, IAG reviewed all assessments regardless of the repairer.⁴³⁶ In contrast, Mr Bartlett explained that quotes from Suncorp's preferred network repairers underwent relatively little scrutiny compared to quotes from independent repairers:

We have different contractual arrangements. Some repairers we don't pre-assess the repair; they are authorised to commence work immediately. But, as you can imagine, our expectations on their quality, their equipment levels and their training are very high, so we have a very high confidence in their ability to just get on with the work. We also have commercial arrangements in place to give us a confidence around the pricing. With other repairers who we don't have those intimate relationships with we would almost invariably seek to either desktop assess where we can if it's simple work. If it's more complex work, we would invariably inspect the vehicle and work with the repairer to determine the best possible repair process.⁴³⁷

6.5.1 Adjusting Quotes

Insurance assessors adjusted crash repairer quotes to reflect their chosen methodology and returned them to the repairer.

Under Section 4.2 (b) (ii) of the Code of Conduct, insurers had to "*consider estimates in a fair and transparent manner, and ... not refuse to consider an estimate on unreasonable or capricious grounds*".⁴³⁸ Furthermore, under Section 6.3, "*without limiting Insurers' and Repairers' rights to fair and transparent negotiation, the Insurer may not unreasonably or arbitrarily alter the Repairer's estimate unless the Insurer insists on changing the repair process, parts or materials to be used*".⁴³⁹ Issues between repairers and insurers typically arose when repairers considered that insurers altered their quotes in breach of these provisions.

The MTA estimated that approximately 90 per cent of repairer quotes were adjusted in some way.⁴⁴⁰

Insurers provided the following details about repairer quotes and insurer adjustments to the Committee:

- In a Committee hearing, Suncorp cited a rate of "*something like 95 per cent ... or higher*" for quotes passing after the negotiation process.⁴⁴¹ When asked how many passed through without adjustment or being marked down by Suncorp assessors, Mr Bartlett could not provide an answer.⁴⁴² Suncorp later provided a response, but requested that it remain confidential.⁴⁴³
- Quotes from crash repairers totalling approximately 50 per cent more than Suncorp's rates could prompt the insurer to seek a second quote from an alternative repairer.⁴⁴⁴
- Mr Hartman from the ICA stated that "*most repairs are agreed on. Every day we authorise repairs, and repairs are fixed. But you always expect tension and always expect opposing sides to have views on improvement ... more than 99 per cent of the time repairs or pricing is being agreed to*" and "*There are a lot of scenarios where the repair cost is agreed to quite easily, and the negotiations are within range of where both sides are.*"⁴⁴⁵

⁴³⁶ Committee Hansard, 27 November 2019, p. 54.

⁴³⁷ Committee Hansard, 22 July 2020, p. 124.

⁴³⁸ For the Code of Conduct in full, see Appendix C.

⁴³⁹ For the Code of Conduct in full, see Appendix C.

⁴⁴⁰ Mr Paul Back, Industry Engagement Specialist, MTA, Committee Hansard, 16 October 2019, p. 9.

⁴⁴¹ Mr Rob Bartlett, Executive Manager, Major Contract Operations, Suncorp Group, Committee Hansard, 4 December 2019, p. 70.

⁴⁴² Committee Hansard, 4 December 2019, p. 72.

⁴⁴³ Mr Bartlett, Response to Questions on Notice, 21 August 2020, p. 2.

⁴⁴⁴ Mr Bartlett, Committee Hansard, 4 December 2019, p. 71.

⁴⁴⁵ Committee Hansard, 27 November 2019, pp. 42, 45, 46.

- In the hearing, IAG stated that they marked down “less” quotes from preferred network providers in comparison to independent repairers.⁴⁴⁶ In their response to a question on notice, they provided the following statistics about quotes for the 2018/19 financial year:
 - 52.5 per cent final assessments greater than the original estimate;
 - 39.5 per cent final assessments less than the original estimate, and
 - 8 per cent remained as per the original estimate.⁴⁴⁷
- Their submission covered a similar policy for if they considered the crash repairer's original quote:

reasonable when assessed under our NTAR model, we will authorise repairs and provide our policyholder with a lifetime guarantee on the workmanship of repairs. If we believe the quote is unreasonable based on our assessment under NTAR, we will obtain another quote and attempt to negotiate with the repairer based on the alternate quote.⁴⁴⁸

Crash repairers submitted a wide range of evidence of or confidential quotes marked down by insurers.⁴⁴⁹

Mr Back from the MTA described the format and experience of receiving a marked down quote: *“they're just simply crossed out, everything is crossed out. The repairer receives an email from the insurer saying, 'Please find attached copy of our revised assessment based on the insurer's maximum allowances’”*.⁴⁵⁰

Mr Mitchell from Auto Transformers described a similar experience: *“these assessors will look at the figures and go, 'Ah well, I know that my boss is telling me I need to slash some money off that'—slash that, slash that.”*⁴⁵¹

The Committee heard the following key evidence from repairers about marked down quotes:

- Responses to questions about price variations on marked down quotes included anywhere from 10-30 per cent, a minimum 25 per cent reduction, and a 50 per cent rate of “common adjustment”.⁴⁵²
- In contrast to insurers, repairers argued that marked down quotes were the norm. The MTA couldn't provide an exact figure but estimated “a very high percentage”.⁴⁵³
- Ron Gray Crash Repairs submitted that quotes were “merely cross-checked against outdated and unrealistic allowance tables”.⁴⁵⁴

⁴⁴⁶ Committee Hansard, 27 November 2019, p. 55.

⁴⁴⁷ IAG, *Response to Questions on Notice*, 10 December 2019, p. 1.

⁴⁴⁸ Submission 24, p. 8.

⁴⁴⁹ Ron Gray Crash Repairs, Submission 28, pp. 5-6; Auto Transformers, Submission 13, p. 5; MTA, Submission 36, p. 16; Dr Graham McDonagh, Submission 37, p. 15.

⁴⁵⁰ Mr Paul Back, Industry Engagement Specialist, MTA, Committee Hansard, 16 October 2019, p. 7.

⁴⁵¹ Committee Hansard, 30 October 2019, p. 24.

⁴⁵² Mr David Cavuoto, Managing Director, Commercial Crash Repairs, Committee Hansard, 30 October 2020, p. 25; Mr Paul Unerkov, Chief Executive Officer, MTA, Committee Hansard, 15 October 2019, p. 10. Evidence also came from an in camera hearing.

⁴⁵³ Mr Back, Committee Hansard, 16 October 2019, p. 8.

⁴⁵⁴ Ron Gray Crash Repairs, Submission 28, p. 4.

- At an in camera hearing, repairers described that almost any variance to insurers' tables of allowances would result in quote rejections, but insurers could also threaten future work or to coerce customers to change repairers.
- Some repairers would refuse a job if the insurers marked the quote down too low.⁴⁵⁵
- The MTA submitted that some quotes were not considered because the insurer labelled the customer's choice of repairer as "*uncompetitive*" or "*too expensive*."⁴⁵⁶
- The language used by the MTA in referring to insurance assessors as "*loss adjustors*" reflected their perception of insurers' financial priorities.⁴⁵⁷

One confidential submission stated their belief that customers should be made aware of marked down quotes if the changes affected the vehicle's safety.

Aside from being marked down, evidence demonstrated that insurance assessors could alter quotes in the following ways:

- Crossed out requests for OEM parts and replaced them with instructions to obtain non-OEM or second-hand parts;⁴⁵⁸
- Denied requests for diagnostic scans, as shown in confidential submissions
- Unnecessary repair items added, and necessary items removed, according to a confidential submission
- Figures adjusted without explanation, or⁴⁵⁹
- Essential steps of the repair process struck off, along with the costs, as shown in a confidential submission.

Insurers defended their decision to mark quotes down, particularly those for independent repairers since "*the repair costs claimed for these repairs often exceed what we consider would be reasonable*".⁴⁶⁰ Mr Bartlett from Suncorp emphasised the insurer's obligation to customers to:

make sure that we don't just accept any price, that we accept fair market prices, that we accept and work with the repairers to achieve a competitive and efficient marketplace so insurance is actually affordable for our community.⁴⁶¹

He stated that "*we don't shy away from the fact that we do try to get a competitive market price*".⁴⁶²

On behalf of the insurance industry, Mr Hartman stated that "*we do need to negotiate an outcome where we have a competitive repair cost so that we can have an affordable premium*".⁴⁶³

⁴⁵⁵ CAPPA Motor Bodies, *Submission 26*, p. 2.

⁴⁵⁶ MTA, *Submission 36*, p. 15.

⁴⁵⁷ Mr Paul Unerkov, Chief Executive Officer, MTA, *Committee Hansard*, 16 October 2019, p. 3.

⁴⁵⁸ *Submission 36*, p. 23.

⁴⁵⁹ Auto Transformers, *Submission 13*, p. 5.

⁴⁶⁰ Suncorp Group, *Submission 2*, p. 4.

⁴⁶¹ *Committee Hansard*, 4 December 2019, p. 71.

⁴⁶² Mr Rob Bartlett, Executive Manager, Major Contract Operations, Suncorp Group, *Committee Hansard*, 4 December 2019, p. 71.

⁴⁶³ *Committee Hansard*, 27 November 2019, p. 45.

The MTA submitted that *"the affected repairers don't consider the Insurer's 'allowances' realistic or appropriate to cover all obvious damage to achieve the necessary repairs in order to return the vehicle to pre-accident condition and not suffer a loss in resale value"*.⁴⁶⁴

Mr Back from the MTA also highlighted the arbitrary nature of quote adjustments to the Committee: *"It is not based on the necessary scope of repairs: it's based on the insurer's maximum allowances. That's where the disparity is between the OEM specifications on the best method of fixing the car versus what the allowances are."*⁴⁶⁵

Confidential submissions highlighted a difficult decision faced by repairers if insurers marked down quotes to the point where job costs exceeded insurer allowances. In which case, repairers could drop standards or output to keep the business profitable or perform quality repairs to manufacturer specifications by making up costs from their own pocket.⁴⁶⁶ One repairer told the committee at an in camera hearing that they repeatedly endured financial losses to ensure safe repairs.

Ron Gray Crash Repairs submitted evidence about another case in which decided to run at a loss to ensure standards were high:

the assessor ... had arbitrarily adjusted our quote to below what we could possibly safely repair it for and so our options were to commence the job as a loss and blindly hope the assessor would be fair and reasonable later or decline the job despite being the customer's choice of repairer. We had inspected the vehicle in person and knew we couldn't repair it for the authorised amount and we did not want to take on the job knowing it would be a loss, so we submitted a supplementary quote to try to justify our repair estimate. 18 days after the insurer received our supplementary quote, they sent it back, again with more arbitrary adjustments and an amount that was slightly more but still going to be a loss for us to take on. ... we decided ... we would go ahead with the job as a loss.⁴⁶⁷

As Ron Gray Crash Repairs articulated, *"it is this forcing of repairers between a rock and a hard place where consumer safety is put at risk"*.⁴⁶⁸

When asked how repairers could deliver required safety and service levels on low remuneration from insurers, Mr Lunn from the ICA still insisted that all the vehicles were expected to be repaired *"safely to Australian standards and to the OEM's specified standards. There is no tolerance for any issue of safety ... That is number one ..."*⁴⁶⁹ He went on to state that repairers could ask for more money.⁴⁷⁰

Mr Russell from the RAA stated that he would strive to ensure *"the industry is allowing enough money to repair cars safely and back to manufacturers' specifications. If that's not happening, then that would be a concern for RAA and obviously our members."*⁴⁷¹ When the RAA was asked by the Committee in its capacity as South Australia's biggest motor vehicle insurer industry as to whether it had a broad view about this matter, Mr Russell responded that it was *"difficult to comment on the details of competitors"*.⁴⁷²

⁴⁶⁴ MTA, *Submission 36*, p. 8.

⁴⁶⁵ *Committee Hansard*, 16 October 2019, p. 7.

⁴⁶⁶ Ron Gray Crash Repairs, *Submission 28*, pp. 5-6; FinishLine Collision, *Submission 4*, pp. 8, 15. An in camera hearing also provided evidence.

⁴⁶⁷ Ron Gray Crash Repairs, *Submission 28*, pp. 5-6.

⁴⁶⁸ *Submission 28*, p. 2.

⁴⁶⁹ *Committee Hansard*, 27 November 2019, p. 47.

⁴⁷⁰ Mr Lunn, Senior Policy Manager, ICA, *Committee Hansard*, 27 November 2019, p. 47.

⁴⁷¹ *Committee Hansard*, 4 December 2019, p. 63.

⁴⁷² *Committee Hansard*, 4 December 2019, p. 63.

The Committee heard concerns from repairers that the crash repair industry could move towards a system similar to private health insurance whereby the customer might become forced to pay a gap left by inadequate insurance cover.⁴⁷³

6.5.2 Determining Agreement

Repairers objected to the unfair nature of a process they did not consider a true negotiation. The MTA interpreted "disregard" for repairer quotes as contravening the Code of Conduct.⁴⁷⁴ Many described a one-sided process with insurance assessors sending back an adjusted quote with a 'take it or leave it' attitude.⁴⁷⁵ The MTAA went so far as to say that quotes were adjusted to the extent that insurers "substitute[d] their own".⁴⁷⁶ One confidential submission stated that insurers could mark down quotes before immediately authorising repairs, bypassing communicating or negotiating with the repairer altogether.

Mr Dudley from the MTAA spoke strongly against:

the failure to be able to properly negotiate the rate for the repair and the time taken for the repair. This issue has manifested itself in terms of what we believe in some circumstances are unfair contract terms and unfair provisions.... More often than not, these terms and conditions are a 'take it or leave it' approach, and that means that there is very little negotiation, in good faith or otherwise, able to be made by a small business smash repairer against a very large dominant market player in terms of negotiating a fair and reasonable price for the repair to be undertaken on a vehicle.⁴⁷⁷

Mr Mitchell from Auto Transformers described his perspective of an assessor's non-negotiability on allowances: "Well, that's what we pay.' But, who sets that? 'That's just what we pay.'"⁴⁷⁸

The MTA outlined a strategy that insurers utilised in the event of an impasse, whereby the insurer obtained a cheaper, second quote from a preferred network repairer to entice a customer to complete repairs there instead.⁴⁷⁹ This second quote could be 'low-balled', referring to a practice of underquoting to make another quote appear comparatively unreasonable.⁴⁸⁰

In its submission, the MTA outlined situations where preferred networks provided a low-balled quote for crash repairs to lure customers from their chosen repairers or threaten repairers if they did not drop the value of a quote.⁴⁸¹ Mr Chapman, Small Business Commissioner, also gave evidence to the Committee that this tactic of obtaining a second quote to move the car existed in the industry.⁴⁸² To the customer's

⁴⁷³ CAPPA Motor Bodies, *Submission 26*. At an camera hearing, repairers outlined a similar concern for the future.

⁴⁷⁴ MTA, *Submission 36*, p. 20.

⁴⁷⁵ Mr Jason Mallia, Workshop Manager, Auto Transformers, *Committee Hansard*, 30 October 2019, p. 24; Mr Richard Dudley, Chief Executive Officer, MTAA, *Committee Hansard*, 13 May 2020, pp. 97, 100-101; Dr Graham McDonagh, *Submission 37*, p. 15; *Submission 36*, p. 15. An in camera hearing and confidential submissions also outlined the same attitudes in the industry.

⁴⁷⁶ MTAA, *Submission 25*, p. 16.

⁴⁷⁷ *Committee Hansard*, 13 May 2020, p. 97.

⁴⁷⁸ *Committee Hansard*, 30 October 2019, p. 24.

⁴⁷⁹ MTA, *Submission 36*, p. 31.

⁴⁸⁰ *Submission 36*, p. 14.

⁴⁸¹ *Submission 36*, p. 28. See also Mr Jeff Williams, Former Chairman, South Australian Body Repair Specialists Division and Former Chairman, AMBRA, *Committee Hansard*, 16 October 2019, p. 7.

⁴⁸² *Committee Hansard*, 13 November 2019, p. 37.

detriment, the preferred repairer could later submit a supplementary quote to cover additional expenses deliberately excluded from the original low-balled quote.⁴⁸³

Suncorp confirmed that they engaged in obtaining second quotes to resolve disputes, *"in the rare instance where we cannot come to an agreement with a repairer regarding repair method, timeliness or repair cost"*.⁴⁸⁴ In his evidence before the Committee, Mr Bartlett stated that there would only be a few occasions when Suncorp pursued a second quote if the pricing on the first quote was quite at odds with Suncorp's allowances.⁴⁸⁵ In a later hearing, he described the second quote as *"a very useful tool for insurers"* to ensure repair quality in line with market prices and *"something that can be called upon if agreement can't be reached"*.⁴⁸⁶

Insurers felt they had processes in place for crash repairers to contact them if they questioned their adjustments. According to Mr Johns, repairers and customers could contact IAG assessors and assessment team leaders prior to commencing any formal dispute proceedings.⁴⁸⁷

Mr Russell stated that a process existed at RAA whereby, the event of an issue, an assessor was sent to physically examine the vehicle and work through the quote details with the repairer.⁴⁸⁸ He drew particular attention to the clarification role potentially played by physical inspections if the desktop assessment images failed to provide all the details.⁴⁸⁹ Ms Cain stated that a repairer or member could escalate issues to an independent committee within RAA outside the claims department.⁴⁹⁰

Mr Russell attributed RAA's higher rates of customer satisfaction and low dispute rates to their assessors working collaboratively with crash repairers:

That means conversation with a crash repairer to agree on a price to be able to get that work done properly to those specifications and those requirements. That's what we do. ... That means sitting down with the repairer going through the quote, listening to what the repair process is going to be and agreeing a final figure and repair methodology to repair that car. I think that's what we would encourage perhaps the committee to investigate and seek out whether that is being done or not done in other areas.⁴⁹¹

Mr Muller outlined more of the RAA's collaborative approach in a later hearing:

So we will go through it. I guess it is probably worth mentioning that our assessment team that we have are all qualified tradespeople, and they all own or manage repair shops, so they all have an understanding of the challenges and the costs that are associated with doing repairs in a crash repair environment. It enables us from our perspective to have what we believe is a mutual respect between the repair industry and our assessors.⁴⁹²

⁴⁸³ MTA, *Submission 36*, p. 14.

⁴⁸⁴ Suncorp Group, *Submission 2*, p. 2.

⁴⁸⁵ *Committee Hansard*, 4 December 2019, p. 70.

⁴⁸⁶ Mr Bartlett, Executive Manager, Major Contract Operations, Suncorp Group, *Committee Hansard*, 22 July 2020, p. 124.

⁴⁸⁷ *Committee Hansard*, 22 July 2020, p. 131; IAG, *Response to Questions on Notice*, 29 July 2020, p. 1.

⁴⁸⁸ *Committee Hansard*, 4 December 2019, p. 62.

⁴⁸⁹ Mr Russell, Chief Executive Officer, RAA Insurance, *Committee Hansard*, 4 December 2019, p. 62.

⁴⁹⁰ *Committee Hansard*, 4 December 2019, p. 61.

⁴⁹¹ *Committee Hansard*, 4 December 2019, pp. 63-64.

⁴⁹² *Committee Hansard*, 22 July 2020, p. 136.

Mr Russell emphasised the importance of agreement between the assessor and repairer over the assessment method: *"As long as the quote and the method of repairs is discussed and agreed between the assessor and the repairer"*.⁴⁹³

Ms Cain stated that the RAA's focus on members and *"culture of service and resolving issues"* may have contributed to their differing operational approach.⁴⁹⁴

Physical assessments presented an opportunity for repairers and assessors to work collaboratively on crash repair jobs. But the Committee heard this could depend on the personality of the assessor. At an in camera hearing, the Committee heard evidence from a crash repairer who dealt with two assessors from the same insurer – one was willing to work with him on realistic prices to fix the vehicle, allocating him \$300 more on the paint allowance than the other assessor.

According to Mr Skothos from the Motor Body Repairers Association, *"there are certain assessors that are just not negotiable. Whatever they think their opinion is, that is what they will go by and that's what they will stand by."*⁴⁹⁵

Mr Mallia from Auto Transformers described a former spirit of collaboration and negotiation in the industry that he felt was now lacking.⁴⁹⁶ Evidence at an in camera hearing outlined that the head of an assessing department had called a repairer, threatening their business if they did not accept an adjusted quote.

Finally, the Committee received a confidential submission from a customer expressing their frustrations at what they considered to be a deliberately slow assessment process because they selected their own repairer. On two separate occasions, the customer went through the process with a preferred repairer and with an independent repairer, noting a seemingly deliberately longer assessment process for the second claim. The MTAA's submission confirmed this view, stating that policyholder claims for repairs performed at independent repairers were processed more slowly.⁴⁹⁷

6.5.3 Cash Settlements

Insurers could provide cash settlements to policyholders for the costs of repairing the vehicle or the market value costs of 'writing it off'.

The Committee heard that customers could be disadvantaged by cash settlements for repair costs in the following ways:

- Warranties or lifetime guarantees on repairs purchased via the cash settlement money would be null and void. As Mr Skothos put it, *"If you have any issues with that down the track, the insurance company will say, 'Sorry, you accepted the cash settlement, so we are not taking ownership of that incident anymore.'"*⁴⁹⁸
- Onus on the customer to arrange their own repairs.⁴⁹⁹
- Customers could feel pressured or encouraged to give up their right to choice of repairer.⁵⁰⁰

⁴⁹³ Committee Hansard, 4 December 2019, p. 62.

⁴⁹⁴ Committee Hansard, 4 December 2019, p. 62.

⁴⁹⁵ Committee Hansard, 16 October 2019, p. 6.

⁴⁹⁶ Committee Hansard, 16 October 2019, p. 30.

⁴⁹⁷ MTAA, Submission 25, p. 8.

⁴⁹⁸ Committee Hansard, 14 October 2019, p. 14.

⁴⁹⁹ Mr Skothos, Chairman, South Australian Body Repair Specialists Division and Vice Chairman, AMBRA Committee Hansard, 14 October 2019, p. 14.

⁵⁰⁰ MTA, Submission 36, p. 22.

- May encounter a requirement to disclose information about the cash settlement on future insurance applications.⁵⁰¹

Crash repairers expressed concerns over the 'two -quote model' of cash settlement, whereby customers could be forced to accept the lesser of two quotes estimating the costs of repairing the vehicle.

The Committee heard the following concerns about this model:

- The second quote is lower because it is obtained the quote from one of their preferred network repairers or prepare the quote using FTFM rates.⁵⁰²
- This figure may be 'low-balled' and "*not represent the real cost of repair to the policyholder*" who could potentially face further out of pocket expenses to pay the gap between the cash settlement and an independent repairer's bill.⁵⁰³
- Multiple submissions cited a case heard before the Australian Financial Complaints Authority (AFCA), whereby an insurer cash-settled a customer via the two-quote model.⁵⁰⁴ AFCA found against the insurer which it deemed to have not fulfilled its policy obligations.⁵⁰⁵ Moreover, AFCA determined that "*the existence of two quotes does not prove that the higher quote is unreasonable.*"⁵⁰⁶ Furthermore, that "*where there is no evidence that the higher quote from an insured's preferred repairer is unreasonable, the insurer is required to settle the claim in accordance with that quote.*"⁵⁰⁷ AFCA found that "*the effect of the 'choice of repairer' benefit is that the complainant is entitled to have their car repaired by their chosen repairer, and the insurer is liable for the reasonable costs charged by that repairer.*"⁵⁰⁸
- The MTA described this "*predatory*" practice that "*encouraged*" policyholders to accept lower cash settlements based on partner repairer quotes as "*unscrupulous, unethical and ... to the detriment of both consumers and non-preferred repairers*".⁵⁰⁹
- The MTA also submitted that the lower cash settlement compromised a vehicle's potential resale value, "*where a lower value repair is conducted, while also failing to return the vehicle to pre-accident condition, as stated in their PDS.*"⁵¹⁰

Insurers also provided evidence of cash settlements to customers for 'writing-off' vehicles when they considered them uneconomical to repair.⁵¹¹ This involved the insurer paying market value rates to possess the vehicle.

Mr Khabbaz of FinishLine Collisions provided an example of a "*fairly big barney*" about a car being written-off by an insurer at his premises:

⁵⁰¹ Dr Graham McDonagh, *Submission 37*, p. 8.

⁵⁰² MTAA, *Submission 25*, p. 9; *Submission 37*, p. 7.

⁵⁰³ For example, the difference between the two quotes in the AFCA case was significant - \$5,654.40 and \$2,430.31 (*Submission 25*, p. 9, 18). Also, *Submission 37*, p. 2 and a confidential submission provided more evidence.

⁵⁰⁴ MTA, *Submission 36*, pp. 13, 22; *Submission 25*, p. 18; *Submission 37*, p. 9.

⁵⁰⁵ *Submission 36*, pp. 13, 22; *Submission 25*, p. 18.

⁵⁰⁶ *Submission 25*, p. 18.

⁵⁰⁷ *Submission 36*, pp. 13, 22; *Submission 25*, p. 18.

⁵⁰⁸ *Submission 25*, p. 18.

⁵⁰⁹ *Submission 36*, pp. 27-28.

⁵¹⁰ *Submission 36*, p. 31.

⁵¹¹ Dr Graham McDonagh, *Submission 37*, p. 6.

We had a client come to us who wanted a repair... The repairs were about \$5,000 or \$6,000. The insurer said to the client, 'We don't like it there. Take it to one of our other repairers; they can do it for \$3,000....' The client insisted that it stay there. The repairs were genuine. They weren't inflated or anything like that. So they wrote the car off and cash settled her. She wasn't happy."⁵¹²

In his submission, Hon Stephan Knoll MP, the then Minister for Transport, Infrastructure and Local Government outlined concerns that insurers were writing-off vehicles for financial reasons that did not align with the *Motor Vehicles Act 1959* and, more particularly, the *Motor Vehicles Regulations 2010*.⁵¹³ Specifically, some vehicles were written-off even though "it may be possible to repair the nominated vehicle with second-hand parts, and therefore the definition in the Regulations that a vehicle must be 'a total loss for insurance purposes' may not be fulfilled."⁵¹⁴

The Committee heard the following ways customers could be disadvantaged by cash settlements for written-off vehicles:

- Inconvenience of purchasing a replacement vehicle;
- Possible low-balling of market-value cash settlements and⁵¹⁵
- Customers losing the value of existing policy premiums by having accidents partway into policies they had already paid for (e.g. an accident 3 months into a pre-paid 12-month policy). In this case, they would not be reimbursed the difference.⁵¹⁶

The MTA described cash settlements as "another option for the insurer to isolate the customer's preferred repairer from competing fairly in the market".⁵¹⁷ Mr Dudley from the MTAA articulated the power of an insurer to cash settle a customer to avoid paying for more expensive repairs outside their preferred network:

When a problem becomes too difficult, then the car insurer has options available to it, including the cash settlement of the policyholder's claim and a range of other issues, and that is after we have gone through quite a lot of argument and pain in terms of a consumer being able to exercise their freedom of choice in taking that vehicle when it needs repairs to a repairer of their choice ... the consumer who still wishes to have their vehicle repaired has been offered a cash settlement as an alternative because the car insurer is not willing to actually pay the fair and reasonable quote that has been developed by the consumer's repairer of choice. The cash settlement has become an option simply because they don't wish to pay that fair and reasonable price over and above what they are willing to pay their own aligned or owned repairers.⁵¹⁸

Similarly, repairers perceived cash settling as a strategy to stop issues escalating into serious disputes.⁵¹⁹ Mr Dudley noted that "many cases have been raised and, on top of that, when it all becomes

⁵¹² *Committee Hansard*, 30 October 2019, p. 29. A confidential submission contained another example of a customer unhappy with a written-off vehicle.

⁵¹³ Department for Planning, Transport and Infrastructure, *Submission 3*, p. 1.

⁵¹⁴ *Submission 3*, p. 1.

⁵¹⁵ Dr Graham McDonagh estimated 10-20 per cent below market value unless "an agreed value option exists or the consumer can prove a higher preaccident value" (*Submission 37*, p. 6). A confidential submission also contained evidence.

⁵¹⁶ Mr Raymond Khabbaz, Director, FinishLine Collision, *Committee Hansard*, 30 October 2019, p. 30; *Submission 37*, p. 2.

⁵¹⁷ MTA, *Submission 36*, p. 22. See also, *Submission 37*, p. 5.

⁵¹⁸ *Committee Hansard*, 13 May 2020, p. 97.

⁵¹⁹ Mr Khabbaz, *Committee Hansard*, 30 October 2019, p. 30. The Committee also heard evidence at an in camera hearing about cash settlements being used in this way.

*terribly difficult, we have noticed that on certain occasions, the consumer has been offered a cash settlement as opposed to having the vehicle repaired".*⁵²⁰

Insurers provided differing perspectives of cash settlements. Mr Bartlett from Suncorp argued that cash-settled customers who lost warranties with insurers could claim for warranties with repairers instead under Australian Consumer Law.⁵²¹ He also stated that Suncorp preferred to cash settle customers "as little as possible."⁵²² In a later hearing, Mr Bartlett confirmed this by stating that "cash settlement was something we absolutely try to avoid ... as a percentage of our repairs, it would be in the very, very low single figures ..."⁵²³ Suncorp later provided a response but requested that it remain confidential.⁵²⁴

In their submission, IAG indicated use of the two-quote model to cash settle policyholders for repairs if a price dispute could not be resolved. The process went as follows:

- a) the repairer and IAG disagreed on a quote
- b) IAG engaged a second quote from an alternative repairer to persuade the first repairer to drop the price if the customer continued to exercise their freedom of choice to engage the original repairer
- c) then IAG "will generally seek to cash settle our policyholder for the amount set out in the alternate quote".⁵²⁵

In a Committee hearing, Mr Johns from IAG provided the following statistics about their cash settlements:

- In 2018-19, IAG processed 29,396 claims;
- Of this figure, 3,736 were deemed a total loss (e.g. written-off), representing 12.7 per cent; and
- 411 were cash settled, representing 1.4 per cent of claims.⁵²⁶

The RAA submitted that it "rarely engages in cash settlements for repair, however, occasionally RAAI may agree to a cash settlement should the insured customer make this request".⁵²⁷ In its response to Questions on Notice arising from a Committee hearing, the RAA provided the below table which states that 2.42 per cent of repairs conducted at non-approved repairers were cash settled while 0.04 per cent of repairs conducted at RAA approved repairers were cash settled.⁵²⁸

⁵²⁰ *Committee Hansard*, 13 May 2020, p. 97.

⁵²¹ *Committee Hansard*, 4 December 2019, p. 73.

⁵²² Mr Bartlett, Executive Manager, Major Contract Operations, Suncorp Group, *Committee Hansard*, 4 December 2019, p. 73.

⁵²³ *Committee Hansard*, 22 July 2020, p. 123.

⁵²⁴ Mr Rob Bartlett, Executive Manager, Major Contract Operations, Suncorp Group, *Response to Questions on Notice*, 21 August 2020, p. 1.

⁵²⁵ IAG, *Submission 24*, p. 8.

⁵²⁶ *Committee Hansard*, 22 July 2020, p. 130.

⁵²⁷ RAA Group, *Submission 43*, p. 4.

⁵²⁸ RAA Group, *Response to Questions on Notice*, 30 July 2020, p. 1.

Table 6.1 - RAA Motor Vehicle Repair Jobs, Financial Year 2019-20

Type of Repairer	Number of Jobs	Percentage of Total	Number of Jobs Cash Settled	Percentage of Jobs Cash Settled
RAA Approved Repairer	25,047	91.56%	9	0.04%
Non-approved Repairer	2,310	8.44%	56	2.42%
Total	27,357	100%	65	0.24%

Source: RAA Group, *Response to Questions on Notice*, 30 July 2020, p. 1

COMMITTEE VIEW

The Committee regards the current insurer practice of forcing customers to accept a cash settlement instead of repairing vehicles as questionable.

Customers who have paid premiums for motor vehicle policies expect a fair process that puts them back on the road in a timely manner without unnecessary out of pocket expenses. They do not expect to become unsuspecting victims of a breakdown in negotiations between the crash repairer and the insurer.

The Committee considers that cash settlements are being used to conclude stalemates when parties cannot come to a resolution on the value of a crash repair job. A cash settlement breaks the deadlock but to the potential detriment of the consumer. The Committee regards the loss of warranties, inconveniences and potential implications on future insurance cover as unsatisfactory outcomes for consumers.

The Committee is particularly concerned by the two-quote model of cash settlement that benefits the insurer at the expense of the customer. The insurer pays out a lower total based on a figure quoted by one of its preferred network providers, while the customer may face a significant out of pocket gap between the cash settlement and the actual cost of repairing the vehicle. The Committee considers it unacceptable that loyal customers who renew their motor vehicle insurance policies year after year may face additional out-of-pocket repair costs because their crash repairer and their insurer cannot agree on a price. The Committee considers it particularly abhorrent that customers with choice of repairer could potentially be cash settled for the lower value of crash repairs at a preferred network provider and then have to make up the difference of a higher repair bill at the repairer of their choice, having potentially already paid higher policy premiums for freedom of choice.

The Committee considers this use of the two-quote model unacceptable in the light of the AFCA determination which found insurers liable for the costs of a higher quote as long as it was not 'unreasonable'. It acknowledges an inherent issue with the process of obtaining quotes in that preferred network providers could potentially 'low-ball' quotes to make another quote appear comparatively unreasonable. The Committee is disappointed that insurers have not incorporated AFCA's findings into their policies or PDS' and continue to disadvantage the customers who rely on them to act in good faith during a potentially stressful time in their lives.

The Committee urges a more thorough examination into the actions and strategies insurers use to cash settle customers for crash repairs.

Recommendation 11: The South Australian Government review the practices used by motor vehicle insurers to force their customers to accept a cash settlement instead of repairing the vehicle, and make it mandatory for insurers to publicly report on the numbers of cash settlements made to customers compared to repairs made to vehicles.

ABBREVIATIONS

AAMI	Australian Associated Motor Insurers Limited
ACCC	Australian Competition and Consumer Commission
ACL	Australian Consumer Law
AFCA	Australian Financial Complaints Authority
AMBRA	Australian Motor Body Repairers Association
ASIC	Australian Securities and Investment Commission
CAC	Code Administration Committee
CEO	Chief Executive Officer
Code of Conduct	Motor Vehicle Insurance and Repair Industry Code of Conduct
CGU	CGU Insurance Limited
EDR	External Dispute Resolution
FTFM	Funny Time, Funny Money
GIO	Government Insurance Office
IAG	Insurance Australia Group
ICA	Insurance Council of Australia
IDR	Internal Dispute Resolution
MTA	Motor Trade Association of South Australia
MTAA	Motor Trades Association of Australia
NRMA	National Roads and Motorists' Association Limited
OEM	Original Equipment Manufacturer
OSBC	Office of the Small Business Commissioner
PDS	Product Disclosure Statement
PSR	partner smash repairer
RAA	Royal Automobile Association
RAAI	Royal Automobile Association Insurance

RACV	Royal Automobile Club of Victoria
SBC	Small Business Commissioner
S.M.A.R.T.	Small Medium Accident Repair Technology
Suncorp	Suncorp Group

APPENDIX A: LIST OF SUBMISSIONS

No.	Name	Date received
1	Mr Fred Hiscock	21/07/2019
2	Suncorp Group	29/08/2019
3	Department of Planning, Transport and Infrastructure	03/09/2019
4	FinishLine Collision	03/09/2019
5	Confidential	03/09/2019
6	Confidential	03/09/2019
7	Confidential	03/09/2019
8	Confidential	03/09/2019
9	Confidential	03/09/2019
10	Confidential	03/09/2019
11	Mr Linton Price	03/09/2019
12	I-CAR Australia	04/09/2019
13	Auto Transformers	04/09/2019
14	Confidential	05/09/2019
15	Mr Dale Lellmann	05/09/2019
16	CRASH2000 Automotive Body Repairs	05/09/2019
17	Confidential	05/09/2019
18	Waikerie Crash	05/09/2019
19	Confidential	05/09/2019
20	Mr Sam Pates	05/09/2019
21	Confidential	06/09/2019
22	Confidential	06/09/2019
23	Confidential	06/09/2019
24	Insurance Australia Group (IAG)	06/09/2019
25	Motor Trades Association of Australia (MTAA)	06/09/2019

26	CAPPA Motor Bodies	06/09/2019
27	Confidential	06/09/2019
28	Ron Gray Crash Repairs	06/09/2019
29	Confidential	06/09/2019
30	Confidential	06/09/2019
31	Confidential	06/09/2019
32	Confidential	06/09/2019
33	Confidential	06/09/2019
34	Confidential	06/09/2019
35	Office of the Small Business Commissioner	06/09/2019
36	Motor Trade Association of South Australia (MTA)	06/09/2019
37	Confidential	11/09/2019
38	Confidential	11/09/2019
39	Insurance Council of Australia	12/09/2019
40	Confidential	12/09/2019
41	Confidential	13/09/2019
42	Confidential	13/09/2019
43	RAA Group	16/09/2019
44	Australian Competition and Consumer Commission (ACCC)	16/09/2019
45	Commercial Crash Repairs	17/09/2019
46	Confidential	18/09/2019
47	Confidential	18/09/2019
48	Confidential	20/09/2019
49	Confidential	20/09/2019
50	Australian Association of Progressive Repairers (AAPR)	25/09/2019
51	Mr Adrian Van Der Wijngaart	19/12/2019
52	Confidential	29/05/2020

53	Confidential	29/05/2020
----	--------------	------------

APPENDIX B: LIST OF WITNESSES

<p>16 October 2019 – Kingston Room, Old Parliament House, Adelaide</p> <ol style="list-style-type: none"> 1. Mr Paul Unerkov, Chief Executive Officer, Motor Trade Association of South Australia 2. Mr Paul Back, Industry Engagement Specialist, Motor Trade Association of South Australia 3. Mr Tom Skothos, Chairman, South Australian Body Repair Specialists Division and Vice Chairman, Australian Motor Body Repairers Association 4. Mr Jeff Williams, Former Chairman, South Australian Body Repair Specialists Division and Former Chairman, Australian Motor Body Repairers Association
<p>30 October 2019 – Kingston Room, Old Parliament House, Adelaide</p> <ol style="list-style-type: none"> 5. Mr David Cavuoto, Managing Director, Commercial Crash Repairs 6. Mr Raymond Khabbaz, Director, FinishLine Collision 7. Mr Jason Mallia, Workshop Manager, Auto Transformers 8. Mr Andrew Mitchell, Owner, Auto Transformers 9. Mr Aldo Verdnik, Director, Crash2000 Automotive Body Repairs
<p>13 November 2019 – Kingston Room, Old Parliament House, Adelaide</p> <ol style="list-style-type: none"> 10. Mr John Chapman, Small Business Commissioner, Office of the Small Business Commissioner
<p>27 November 2019 – Kingston Room, Old Parliament House, Adelaide</p> <ol style="list-style-type: none"> 11. Mr Tom Lunn, Senior Policy Manager, Insurance Council of Australia 12. Mr Peter Hartman, Member, National Motor Insurance Committee, Insurance Council of Australia; and Chair, Motor Vehicle Insurance and Repair Industry Code of Conduct Administration Committee 13. Mr Steven Fitzpatrick, Executive General Manager, Insurance Supply Chain, Insurance Australia Group Limited 14. Mr Troy Johns, Specialist, Industry Relations, Supply Chain, Insurance Australia Group Limited
<p>4 December 2019 – Balcony Room, Parliament House, Adelaide</p> <ol style="list-style-type: none"> 15. Mr David Russell, Chief Executive Officer, RAA Insurance 16. Ms Jayne Flaherty, General Manager, Government and Public Policy, RAA Group 17. Ms Hayley Cain, Senior Manager, Claims, RAA Insurance 18. Mr Rob Bartlett, Executive Manager, Major Contract Operations, Suncorp Group 19. Mr Georgia Lovell, Senior Adviser, Government, Industry and Public Policy, Suncorp Group 20. Mr Todd Finney, Executive Manager, Specialist Motor Claims, Suncorp Group
<p>4 March 2020 – Kingston Room, Old Parliament House, Adelaide (Evidence In Camera)</p> <ol style="list-style-type: none"> 21. In Camera Witness 1 22. In Camera Witness 2 23. In Camera Witness 3 24. In Camera Witness 4 25. In Camera Witness 5
<p>13 May 2020 – Old Parliament House Chamber, Old Parliament House, Adelaide</p> <ol style="list-style-type: none"> 26. Mr Richard Dudley, Chief Executive Officer, Motor Trades Association of Australia Limited

3 June 2020 – Old Parliament House Chamber, Old Parliament House, Adelaide (Evidence In Camera)

- 27. In Camera Witness 1
- 28. In Camera Witness 2
- 29. In Camera Witness 3

22 July 2020 – Old Parliament House Chamber, Old Parliament House, Adelaide

- 30. Mr Rob Bartlett, Executive Manager, Major Contract Operations, Suncorp Group
- 31. Ms Georgia Lovell, Senior Adviser, Government, Industry and Public Policy, Suncorp Group
- 32. Mr Todd Finney, Executive Manager, Specialist Motor Claims, Suncorp Group
- 33. Mr Troy Johns, Specialist, Industry Relations, Supply Chain, Insurance Australia Group Limited
- 34. Mr Daniel Muller, Motor Assessing Manager, RAA Group
- 35. Mr Craig Richards, Senior Inhouse Lawyer, RAA Group

Responses to Questions on Notice

Mr Raymond Khabbaz, Director, FinishLine Collision, 19 November 2019.

Ms Sally Warner, Senior Manager Public Policy, RAA Group, 9 December 2019.

Ms Veronica Newman, Government Relations Manager, IAG, 10 December 2019.

Ms Georgia Lovell, Senior Adviser, Government Industry and Public Policy, Suncorp Group, 27 December 2019.

Mr Richard Dudley, Chief Executive Officer, MTAA, 8 June 2020.

Ms Veronica Newman, Government Relations Manager, IAG, 29 July 2020.

Ms Sally Warner, Senior Manager Public Policy, RAA Group, 30 July 2020.

Mr Rob Bartlett, Executive Manager, Major Contract Operations, Suncorp Group, 21 August 2020.

APPENDIX C: MOTOR VEHICLE INSURANCE AND REPAIR INDUSTRY CODE OF CONDUCT

MOTOR VEHICLE INSURANCE AND REPAIR INDUSTRY CODE OF CONDUCT – commencing 1 May 2017

PREAMBLE

It is in the interests of government, Insurers, Policyholders and Repairers to promote the efficient operation of, and consumer confidence in, professional and competitive Motor Vehicle insurance and repair industries in Australia.

The economic activity created by a competitive Motor Vehicle insurance market and repair Industry market will create and maintain skilled employment, efficient customer service and viable and cost effective Motor Vehicle repair and insurance industries.

The content of the Code and matters covered by it have been guided by the Australian Government's response to the Productivity Commission and the Terms of Reference, set by the Australian Government, for the Smash Repair and Insurance Industry Implementation Taskforce.

Repairers and Insurers acknowledge that for the purposes of promoting an efficient and competitive Industry:

(a) In recognition of Repairers right to freely structure their business arrangements, this Code provides for minimum, Industry-wide, standards in matters such as:

- Transparency, disclosure and fairness in relation to Insurers' NSR schemes;
- Transparency, disclosure and fairness in relation to quotation processes, times and rates, Repairer choice and use of parts;
- Responsibility for quality, safety and warranties;
- Minimum terms of payment; and
- An independent external dispute resolution mechanism.

(b) In recognition of Insurers' right to freely structure their business arrangements, and as required by the Government Response to the Productivity Commission's recommendations, this Code does not specify, on an Industry-wide basis, matters such as:

- minimum hourly rates or prices;
- 'standard' hours for repair jobs;
- types of parts to be used;
- Industry-wide PSR selection criteria and/or weightings for PSR criteria;
- compulsory choice of Repairer;
- requirements to spread work among Repairers; or
- particular conditions of guarantees.

1 PRINCIPLES OF THE CODE

This Code is intended to promote transparent, informed, effective and co-operative relationships between smash repairers and insurance companies, based on mutual respect and open communication.

Signatories agree to observe high standards of honesty, integrity and good faith in conducting their business with each other and in the provision of services to Customers, and observe Australian Law.

The Code will specify standards of fair-trading, process and transparency in the relationship between Insurers and Repairers. There should not be any alteration to the commercial relationships between individual Insurers and Repairers, other than as provided in this Code and in accordance with the principles of the Code.

The Code will provide efficient, accessible and transparent dispute resolution processes for issues arising between individual Repairers and individual Insurers.

The Code should also provide Signatories with access to the Code Website in which disputes can be lodged and recorded.

Insurers and Repairers agree they have a responsibility to ensure vehicle repairs are authorised and carried out in a professional manner and to ensure that the safety, structural integrity, Presentation and utility of the vehicle are restored. In doing so:

1.1 Insurers will authorise repairs covered by the Policy with the objective of:

- (a) restoring the safety, structural integrity, Presentation and utility of the Motor Vehicle;
- (b) complying with relevant Australian law; and
- (c) Fulfilling their obligations to the Policyholder in accordance with the provisions of their Policy and the provisions of the General Insurance Code of Practice relating to insurance claims.

1.2 Repairers will carry out repairs with the objective of:

- (a) restoring the safety, structural integrity Presentation and utility of the Motor Vehicle;
- (b) complying with relevant Australian law; and
- (c) Fulfilling their obligations to the Insurer under the provisions of the applicable contract of repair.

1.3 Signatories agree that at all times they, their staff and their representatives will behave in a professional and courteous manner. This includes not engaging in, condoning, or permitting behaviour that is offensive, harassing, threatening, inappropriate, abusive, bullying or intimidating.

1.4 Signatories should seek to resolve their disputes informally wherever possible.

2 SCOPE

The Code is mandatory in New South Wales and is a voluntary Code in other jurisdictions across Australia and applies to all Signatories. Signatories agree to be bound by the Code. Signatories agree that they will promote the Code and encourage non-Signatory Repairers and Insurers to become Signatories. Repairers and Insurers are encouraged to use the Code as a good practice guide in helping to settle disputes even if they are not Signatories.

This Code does not give rise to any legal relationship between Insurers and Repairers, other than any Code compliance required by law.

Where there is any conflict or inconsistency between this Code and any Australian law, that law prevails.

Nothing in the Code shall override existing legal rights and requirements between Insurers and their Customers.

The provisions of this Code are subject to relevant Australian law, including common law rights and obligations.

Nothing in this Code effects or prohibits the rights of either party to pursue dispute resolution elsewhere.

2.1 Signatories

A Person may become a Signatory by lodging a Code Signatory Notification Form with the CAC.

A Person ceases to be a Signatory by lodging a written notice advising the CAC they no longer wish to be a Signatory.

A Person may be required to comply with this Code by law.

3. DEFINITIONS

In this Code:

"Applicant" means the Person who starts an IDR, Mediation or Determination dispute process set out in clause 10, 11 or 12 of the Code.

"Approved Determination Provider" means a person, business, agency or group named in Schedule 2 of the Code.

"Approved Determination Scheme" is a dispute resolution process which follows the completion of both IDR and Mediation under this Code, as established by the CAC and published on the Code Website.

"Approved Mediation Provider" means a person, business, agency or group named in Schedule 1 of the Code.

"Assessor" means an employee, assessing contractor or agent of an Insurer, who is engaged to assess Motor Vehicle accident damage and/or negotiate Repair Estimates between Insurers and Repairers.

"AUR Training Package" means a national training package as approved by the Australian Government.

"Business Ownership Structure" means the principal owners of the business, or parent entity, which includes any other Person taking a financial interest in the business ownership.

"CAC" means the Code Administration Committee established in accordance with subclause 12.1 of this Code.

"Choice of Repairer Policy" means an Insurer's Policy terms in relation to whether it allows the Policyholder any choice, or otherwise, as to selection of Repairer.

"Claimant" means a Person covered by a Policy or a Person who has a claim against a Person covered by a Policy.

"Code" means the voluntary national Motor Vehicle Insurance and Repair Industry Code as agreed by the Smash Repair and Insurance Industry Implementation Taskforce on 23 May 2006 and any changes as agreed from time to time by the CAC.

"Code Approved Assessor" means an Assessor who complies with clause 4.3 of this code.

"Code Approved Estimator" means an estimator who complies with clauses 4.4 of this Code.

"Code Website" means www.abrcode.com.au.

"Customer" means a Policyholder and or Claimant.

"Determination" means the binding dispute resolution process referred to in clause 12 of the Code.

"Event" means an ICA classified event.

"ICA" means the Insurance Council of Australia Limited.

"IDR" means Internal Dispute Resolution process established by an Insurer under clause 11.2 of this Code.

"Industry" means the Motor Vehicle insurance and repair industries in Australia.

"Insurer" means a member of the ICA or any other Person who is in the business of insuring Motor Vehicles in respect of property damage and which, in the course of its business, engages or authorises Repairers to perform Repairs to Motor Vehicles.

"Mediation" means the mediation process referred to in clause 11.3 of the Code.

"Mediator" means an independent Person who is appointed to facilitate discussion between the Parties to a dispute to assist them to find a mutually acceptable resolution to their differences.

"Motor Vehicle" means a motor vehicle covered for damage under a Policy or which the Insurer otherwise requests the Repairer to Repair.

"MTAA" means the Motor Trades Association of Australia.

"NSR" means a network smash repairer being a Repairer promoted by an Insurer under an accreditation scheme operated by the Insurer and who is licensed to use the Insurer's insignia or trademarks.

"Parties" means the Applicant and the Respondent to a dispute arising under clauses 10, 11 or 12 of the Code.

"Parts Policy" means the policy established by an Insurer in relation to a Policyholder's insurance Policy, which explains the use of repair components in the Repair of the Motor Vehicle, which may include, but is not limited to, new, recycled (used or second hand) or non-genuine (aftermarket) or parallel parts.

"PDS" means a product disclosure statement required to be issued by an Insurer under Chapter 7 of the Corporations Act 2001.

"Person" means an individual or entity within the Industry.

"Policy" means a Motor Vehicle insurance policy over a Motor Vehicle issued by an Insurer, who is a Signatory to the Code.

"Policyholder" means an individual or entity who holds a Policy for a Motor Vehicle with an Insurer.

"Presentation" means the visual appearance of the repair work performed on the Motor Vehicle.

"Publicly Available" includes being published on the public pages of an Insurer's websites.

"Repair" or "Repairs" means any work done by a Repairer to repair a Motor Vehicle or any of its components, systems or parts, where the work is covered by a Policy and where a claim is or will be made by a Claimant including but not limited to:

- (a) dismantling or assembling;
- (b) part or component replacement, adjustment, modification, installation or fitting; or
- (c) painting.

"Repairer" means any Person lawfully engaged in the business of effecting Repairs to Motor Vehicles in Australia.

"Repairer Representative Organisation" means the MTAA, any of its member or affiliated associations, or any other trade group or association representing Repairers.

"Respondent" means the Person with whom the Applicant has a dispute.

“Serious Criminal Offence” means any criminal offence under any Australian law for which an individual may be liable on first conviction to imprisonment for a period of not less than 2 years.

“Signatories” means those Insurers, Repairers and Repairer Representative Organisations which are listed on the Code register of Signatories and which have agreed to be bound by the provisions of this Code and which have not ceased to be bound by the Code.

“Sub-let Repairer” means a Person and/or entity, other than the Repairer, who carries out Repairs on a vehicle at the request of, or under contract with, the Insurer.

“Sub-let Repairs” means Repairs to be carried out by a Sub-let Repairer.

4. INSURER AND REPAIRER RELATIONS

4.1 Repairers:

- (a) will provide estimates and carry out repairs that are in accordance with:
 - (i) the documented manufacturer's technical specifications including those supplied by other Industry recognised authorities; or
 - (ii) any lawful mandatory specifications and/or standards; or
 - (iii) methods that are consistent with standard Motor Vehicle warranty conditions; or
 - (iv) current Industry practice;while having regard to the age and condition of the Motor Vehicle.
- (b) will in their dealings with Insurers in relation to Repairs:
 - (i) prepare estimates that provide for an appropriate scope of Repairs, ensuring that all Repairs are carried out in a safe, ethical, timely and professional manner and in accordance with the method of Repair and the parts specified by the Insurer and/or its agent;
 - (ii) not dismantle a Motor Vehicle for the purpose of preparing an estimate or report unless requested or authorised to do so by the Insurer; and
 - (iii) not hinder or prevent the Insurer or Claimant from seeking to obtain an alternative estimate.
- (c) may take clear digital images of the vehicle and all damage on the vehicle estimated in accordance with any CAC prescribed guidelines. The CAC may develop guidelines associated with the taking, submission, storage, data security and supply of digital images.
- (d) will not commence any insurance Repair without having the relevant Insurer's agreement and authorisation to proceed, excluding emergency repairs subject to a customer's PDS.

4.2 Insurers will:

- (a) not require Repairers to provide estimates, or carry out repairs that are not in accordance with:
 - (i) the documented manufacturer's technical specifications including those supplied by other Industry recognised authorities; or
 - (ii) any lawful mandatory specifications and/or standards; or
 - (iii) methods that are consistent with standard Motor Vehicle warranty conditions; or
 - (iv) current Industry practice;while having regard to the age and condition of the Motor Vehicle.
- (b) in their dealings with Repairers in relation to Repair work:
 - (i) provide Repairers with relevant details relating to the insurance claim that the Repairer reasonably requires in order to prepare an estimate or undertake the Repair, including their Parts Policy, details of Sub-let Repairs and payments by Customer including any excess or contribution charges;
 - (ii) consider estimates in a fair and transparent manner, and will not refuse to consider an estimate on unreasonable or capricious grounds;
 - (iii) pay the agreed amount for all work completed, that has been authorised or requested by the Insurer;
 - (iv) not remove a Motor Vehicle from a Repairer's premises without notifying the Repairer in advance and in writing, and compensating the Repairer for any legitimate or reasonable towing or storage costs associated with the Motor Vehicle and in compliance with relevant law; and
 - (v) not knowingly ask Claimants to drive unsafe or unroadworthy Motor Vehicles.
- (c) in non-Event periods, consider estimates and commence assessor communication with the Repairer within:
 - for the period commencing 1 July 2017, an average of five (5) working days per repairer from the system receipt of the repairer's estimate subject to 4.2(d) and the reasonable availability of the vehicle and /or the customer's availability.

(d) If the time period in clause 4.2(c) cannot be achieved for an estimate/s due to vehicle location, repair complexity, periods of high volume or staffing shortages, the repairer must be notified of the delay and the reason for the delay, and a new assessing timeframe agreed.

4.3 CODE APPROVED ASSESSORS

(a) In the assessment of a Motor Vehicle under this Code, Signatories will only utilise the services of a 'Code Approved Assessor'.

(b) A Code Approved Assessor is a Person who, by no later 12 months after commencing their employment has:

- (i) a trade qualification and a minimum of five years of post-apprenticeship experience in their profession as a panel beater, spray painter or motor mechanic; or
- (ii) more than five years of experience as a motor insurance Assessor; or
- (iii) completed the CAC approved units, as set by the CAC from time to time, of the Certificate IV Vehicle Loss Assessing Course, being in the first instance August 2015, and until further such review:

- AURVNA4001 Provide vehicle loss assessment and identify repair requirements;
- AURVNA4004 Apply insurance knowledge to vehicle loss assessment;
- AURVNN4001 Evaluate vehicle bodywork for damage and identify repair requirements;
- AURVNP4001 Evaluate vehicle paintwork for damage and identify refinish requirements; and
- AURVNA4002 - Provide vehicle total loss assessment;

or their equivalent in the AUR Training Package.

(c) Signatories who employ a Code Approved Assessor must ensure that they are provided with ongoing training and/or development through their employer or via membership of a relevant professional body.

(d) Insurers who utilise the services of independent Code Approved Assessors must require that those Assessors have access to ongoing training and/or development through their employer or via membership of a relevant professional body. This provision only takes effect in any contracts entered into or renewed after the implementation date of the Code.

4.4 CODE APPROVED ESTIMATORS

(a) In the estimation of a Motor Vehicle under the Code, Signatories will only utilise the services of a Code Approved Estimator, except when providing paintless dent repair estimates.

(b) A Code Approved Estimator is a Person who, by no later than 12 months after commencing their employment, has:

- (i) a trade qualification as a panel beater, spray painter or motor mechanic; or
- (ii) more than five years of experience in a motor trade or as an estimator; or
- (iii) completed the CAC approved units, as set by the CAC from time to time.

(c) Signatories who employ Code Approved Estimators should ensure that those estimators are provided with ongoing training and/or development.

5. NETWORK SMASH REPAIRER SCHEMES

5.1 Notification of Opportunities to Apply for NSR Status

- (a) Insurers that have NSR schemes will document and publish criteria for membership of those schemes, including information relating to the structure of such schemes.
- (b) Insurers will provide mechanisms for Repairers to register their interest in joining an NSR scheme. These mechanisms will be documented and Publicly Available.
- (c) Insurers will confirm a Repairer's registration of interest in writing and provide details of the criteria used by the Insurer to select a member of an NSR scheme.
- (d) Insurers will provide Repairers with a fourteen (14) day 'cooling off' period for consideration of an NSR agreement after it is executed by the Repairer.

5.2 Disclosure of information on NSR schemes

- (a) Insurers will provide Repairers who are members of its NSR scheme with:
 - (i) the criteria/requirements for retaining NSR status;
 - (ii) the key measures used to establish the performance of the Repairer;
 - (iii) regular information as to the Repairer's performance against key contractual measures;
 - (iv) the circumstances under which a Repairer's status within the NSR scheme can be changed; and,
 - (v) the circumstances under which a NSR status can be terminated, withdrawn, suspended or removed.

5.3 Term of Agreement

All NSR scheme agreements must be for a fair and reasonable term of not less than three (3) years, giving consideration to the time and investment a Repairer has had to make to gain and/or maintain accreditation under an NSR scheme.

5.4 Extension of Network Repairer Status

In the event of any change in the Business Ownership Structure of a Repairer who is a member of an NSR scheme, the Repairer must advise the Insurer and provided the Insurer's existing NSR selection criteria are maintained and performance standards and probity and prudential concerns are met, the Insurer will provide the business NSR status for the remainder of the term of the original NSR agreement. If not, the membership may be terminated notwithstanding clause 5.

5.5 Termination of NSR Agreement – breach by Repairer

- (a) This clause applies if:
 - (i) a Repairer breaches an NSR agreement; and
 - (ii) the Insurer proposes to terminate the NSR agreement, and sub-clause 5.8 does not apply.
- (b) The Insurer must:
 - (i) give to the Repairer reasonable notice that the Insurer proposes to terminate the agreement because of the breach;
 - (ii) tell the Repairer what the Insurer requires to be done to remedy the breach; and
 - (iii) allow the Repairer a reasonable time to remedy the breach.
- (c) For sub-clause 5.5(b)(iii), the Insurer does not have to allow more than thirty (30) days.
- (d) If the breach is remedied in accordance with sub-clauses 5.5(b)(ii) and 5.5(b)(iii), the Insurer cannot terminate the agreement because of that breach, unless the Repairer has in the previous three years been in breach and has been advised in writing that any further serious breach will result in the termination of the agreement.

5.6 Termination of NSR Agreement – based on performance criteria

An Insurer may only terminate an NSR agreement based on a Repairer failing to meet performance criteria or standards, if:

- (a) the performance criteria or standards and the consequences of failure to meet such performance criteria or standards were disclosed to the Repairer prior to entering into the agreement;
- (b) the Repairer fails to meet those performance criteria or standards;

- (c) the breach by the Repairer was subject to written notice by the Insurer to the Repairer advising of the detail of the breach and the Insurer provided the Repairer with a reasonable period of time in which to meet the performance criteria or standards; and
- (d) the Insurer has treated the Repairer fairly in relation to the application and enforcement of performance criteria and standards.

5.7 Termination of NSR Agreement – no breach by Repairer

Other than at the expiry of the term of agreement, where a Repairer is not in breach of an NSR scheme agreement, an Insurer may not unreasonably terminate the agreement unless:

- (a) the Insurer provides at least twelve (12) months' notice of its intention to terminate the agreement; or
- (b) the Repairer requests or consents in writing to terminate the agreement earlier.

5.8 Termination of NSR Agreement – special circumstances

Insurers do not have to comply with sub-clauses 5.5, 5.6, or 5.7 if a Repairer:

- (a) no longer holds a licence that the Repairer must hold to carry on its repair business;
- (b) becomes a bankrupt, insolvent or enters external administration;
- (c) is convicted of a Serious Criminal Offence;
- (d) is fraudulent in connection with the operation of the repair business or engages in serious misconduct; or
- (e) agrees to terminate the NSR agreement.

6. ESTIMATE, REPAIR AND AUTHORISATION PROCESS

6.1 Where competitive estimates are sought:

- (a) Insurers will ensure the estimation process is fair and transparent;
- (b) Insurers will require that estimates are comprehensive, complete and inclusive of all obvious damage; and
- (c) Repairers will provide estimates in accordance with sub-clause 4.1(a).

6.2 Signatories acknowledge ongoing changes in the Industry in relation to the development of realistic times and rates, such that:

- (a) Insurers will state clearly the preferred estimation methodology to be applied;
- (b) Subject to sub-clause 6.2(a), Repairers may submit an estimate in realistic times and rates recognising the Insurer's right to obtain an alternative estimate; and
- (c) Repairers in their estimation methodology may separately cost paint, parts, significant consumables and mandatory government environmental levies/charges in so far as they apply to a repair.

6.3 Without limiting Insurers' and Repairers' rights to fair and transparent negotiation, the Insurer may not unreasonably or arbitrarily alter the Repairer's estimate unless the Insurer insists on changing the repair process, parts or materials to be used (subject to sub-clause 7.4).

6.4 While Insurers may enter into commercial arrangements with Repairers that specify performance targets, Insurers will not unduly influence any Repairer to submit estimates on the basis of inducements of further work.

7. REPAIR WARRANTIES

7.1 An Insurer will provide details in writing to the Repairer of the warranty cover the Insurer provides to its Customer including the Insurer's responsibilities under any lifetime warranty.

7.2 Unless otherwise required by law, Repairers will provide Insurers with a warranty in respect of their workmanship for a period of three (3) years from the date of repair unless a longer period is offered.

7.3 Repairers shall only be required to provide a guarantee for parts and/or paint to the extent that the manufacturer, distributor, supplier or importer of the parts and/or paint is so liable under an express warranty or under the law, other than to the extent that the quality of the repair arising from the use of the parts and/or paint arises from faulty workmanship.

7.4 If repairs are carried out under a contract between the Insurer and a Repairer, where an Insurer requires a Repairer to use a repair method or part that differs from that recommended by the Repairer, and the Insurer and Repairer are unable to reach agreement to that change, the Insurer will provide such a requirement in writing.

7.5 Where the Insurer provides a written requirement under sub-clause 7.4 the Insurer agrees to pay the direct loss or liability incurred by the Repairer by reason of a quality, structural, Presentation or safety defect caused by complying with the requirement. The Repairer must immediately notify the Insurer of any claim made against the Repairer that may give rise to a claim under this sub-clause. The Insurer is not liable to pay any loss or liability incurred by the Repairer to the extent that the loss or liability arises from faulty workmanship.

7.6 Where issues of workmanship arise, and where practicable, including taking into account Customer preference, the Repairer concerned must be offered the first option to effect required rectification.

7.7 Where repairs are undertaken by a Sub-let Repairer at the Insurer's direction the Insurer will take full responsibility for any claim that may arise from the repair by the Sub-let Repairer and reimburse any reasonable costs incurred by the principal Repairer as a result of an Insurer's nominated Sub-let Repairer not completing the Repairs as authorised in the allocated time.

8.PAYMENT FOR REPAIRS

8.1 In the ordinary course of business, an Insurer must pay agreed Repair costs no more than 30 days from settlement of the insurance claim or receipt by the Insurer or their agent of the final Repair invoice.

8.2 Where the Repairs undertaken, price, work or documentation is disputed, payment of the undisputed component will be paid in accordance with the payment terms of sub-clause 8.1.

8.3 Insurers will disclose alternative payment arrangements, if any, between those Repairers in, and those Repairers outside, of the Insurer's NSR scheme.

9. SIGNATORY OBLIGATIONS

9.1 Insurers will 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.

9.2 Insurers will clearly and in plain language explain their Parts Policy in;
(a) their PDS with reference in the PDS's table of contents; and
(b) related communications with Repairers.

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;
- (c) engage in statements, actions or behaviour designed or intended to prevent or discourage a Customer from having any necessary rectification work following a Repair undertaken at the Repairer who completed the original Repairs.

9.4 Repairers will provide sufficient evidence to an Insurer to substantiate their claims for costs in relation to parts and work undertaken in a Repair for that Insurer.

9.5 Sub-clauses 9.1 and 9.3 also apply to telephone enquiries and Insurers websites.

9.6 The obligations under Sub-clauses 9.1 and 9.2 commence upon an Insurer next updating its PDS (or Supplementary PDS) following the commencement of this sub-clause.

9.7 Where it becomes known that a Signatory shows a deliberate disregard to their due diligence and care towards the safety of the vehicle, an Insurer is required to report the matter to the appropriate government regulator and notify the Repairer of that report.

10. REPAIR DISPUTE RESOLUTION

This clause applies to disputes that arise prior to the commencement or completion of a Repair.

10.1 Matters for dispute resolution

(a) Where disputes arise relating to the appropriate Repair and where it is believed the safety, structural integrity, Presentation or utility of the Motor Vehicle will be compromised by the proposed repair method, and the dispute cannot be resolved under clauses 1 and 7, the provisions of clause 10 apply.

(b) Where there are repair disputes which arise prior to the completion of Repairs to a Motor Vehicle other than those described in 10.1(a) and 10.1(c) the Parties will at first instance use the provisions of clause 10. This does not prevent either party subsequently pursuing the matter under the provisions of clause 11 and 12 once the Motor Vehicle has been repaired.

(c) Disputes relating to the amount to be paid for Repairs, or differences of opinion as to the preferred Repair method, other than those outlined in sub-clause 10.1(a), are matters for individual Repairer/Assessor negotiation and cannot be disputed under the provisions of clauses 10 or 11 or 12.

(d) Clause 11 or 12 will not apply to disputes covered by sub clauses 10.1(a) and 10.1(c).

10.2 Notification of Dispute

(a) In the event of a dispute under this clause 10, a dispute must be registered through the Code Website.

(b) The dispute notification must contain:

- (i) the names and contact details of the Applicant and the Respondent;
- (ii) adequate information about the nature of the dispute;
- (iii) specific reference to the relevant clause(s) of this Code and the reason(s) why the Respondent is alleged to be non-compliant with the Code;
- (iv) adequate supporting documentation about the dispute; and
- (v) an explanation as to what outcome the Applicant seeks.

(c) The Applicant will not seek to hinder others by submitting a dispute under the Code that is not specifically applicable to the Code.

(d) A dispute notification is invalid if it is lodged more than forty five (45) days after acceptance of payment for Repairs.

10.3 Dispute Resolution Procedure

(a) Upon notification of a Repairer-initiated dispute, the Insurer will properly investigate the issue, including the supporting information provided by the Repairer and will within two business days make a determination.

(b) As part of this process, the Insurer will consider the relevant information, may inspect the Motor Vehicle and will discuss the dispute with the Repairer, including the reasons supporting the determination.

(c) If the Respondent agrees to a face-to-face meeting, a neutral location is to be identified, if practicable, unless otherwise agreed between the Parties.

(d) If the Repairer disagrees with the determination of the Insurer the Repairer retains the right to refuse to carry out the repairs and in that case the Insurer may transfer the vehicle to another Repairer.

(e) The Insurer agrees to report to the CAC on an annual basis detailing the number, nature and outcome of disputes raised under clause 10.

11. DISPUTE RESOLUTION PROCESS

This clause applies to disputes arising from clauses 4 to 9 of the Code and disputes over contractual arrangements.

11.1 Application and Principles

(a) The procedure in this section applies to all disputes relating to alleged non-compliance with the Code and to disputes of a contractual nature but does not apply to disputes which are described in sub-clause 10.1(a) and 10.1(c).

(b) Insurers and Repairers agree that disputes relating to alleged non-compliance with the Code and to disputes of a contractual nature, should be resolved promptly, transparently and fairly.

11.2 Internal Dispute Resolution

(a) Each Insurer will establish an IDR mechanism that provides for the prompt, transparent and fair resolution of disputes.

(b) Disputes must in the first instance be registered through the Code Website, whereupon the CAC will immediately advise the relevant Insurer of the IDR dispute lodgement.

(c) The dispute notification must contain:

- (i) the names and contact details of the Applicant and the Respondent;
- (ii) adequate information about the nature of the dispute;
- (iii) specific reference to the relevant clause(s) of the Code and the reason(s) why the Respondent is alleged to be non-compliant with the Code;
- (iv) supporting documentation about the dispute;
- (v) an explanation as to what outcome the Applicant seeks.

(d) Insurers will provide to the Repairer a written acknowledgement of the complaint within three (3) business days. Repairers and Insurers will conclude the IDR process within nine (9) clear business days following CAC notification, unless otherwise agreed to by both Parties.

(e) If the Repairer disagrees with the outcome of an IDR process, they can elevate the dispute to Mediation.

11.3 Mediation

(a) To commence a Mediation action under the Code, the Applicant must lodge a notice of dispute with the CAC through the Code Website or its nominee and the Respondent, providing the following information:

- (i) the names and contact details of the Applicant and the Respondent;
- (ii) adequate information about the nature of the dispute;
- (iii) specific reference to the relevant clause(s) of this Code and the reason(s) why the Respondent is alleged to be non-compliant with the Code;
- (iv) supporting documentation about the dispute;
- (v) an explanation as to what outcome the Applicant seeks

(b) The Applicant and the Respondent may then either agree on a Mediator, or if the Parties cannot agree on a Mediator within two business days, the Applicant may nominate an Approved Mediation Provider as set by the CAC in Schedule 1 of the Code.

(c) Subject to sub-clause 11.3(e), the Mediator may decide the time and place for the conduct of the Mediation. In doing so, the Mediator is to ensure that location is neutral and acceptable to both Parties.

(d) Any face-to-face Mediation under this Code must be conducted in the state or territory in which the repairs took place and within a reasonable distance of the Repairer's premises, unless otherwise agreed by the Parties.

(e) The Parties participating in the Mediation should try to resolve the dispute within 15 business days of the notification of the dispute, unless otherwise agreed to by both Parties.

(f) Those participating in the Mediation must have the authority to enter into an agreement to settle the dispute.

(g) An observer may attend a Mediation at the invitation of either party to a dispute but only if both Parties to the dispute agree, and if the observer has agreed to be bound to confidentiality.

- (h) An observer who is attending the Mediation with the agreement of both Parties may additionally act as an adviser or a representative of a party to a dispute during the Mediation if both Parties further agree.
- (i) If the Mediation does not result in an outcome acceptable to both the Applicant and the Respondent, or the dispute proves incapable of resolution by Mediation, the Mediator will provide a written statement to the Applicant and the Respondent setting out:
 - (i) the Parties to the dispute;
 - (ii) an outline of the dispute; and
 - (iii) a list of unresolved issues.
- (j) Any statement issued under sub-clause 11.3(i) must remain confidential between the Parties to the dispute, the Mediator and any observers or other participants present at the Mediation.
- (k) Disclosure of any statement under sub-clause 11.3(i) to a third party requires the consent of the Applicant and the Respondent except where disclosure is required by law.
- (l) At the conclusion of the Mediation the Mediator should advise the CAC in writing whether the issues were resolved, partly resolved or not resolved.
- (m) The Mediator may seek part payment by the Parties prior to the commencement of a Mediation, the pre-payment being equivalent to the cost of the minimum time of Mediation (as set by the nominated Mediator) with the payment split equally between the Parties.
- (n) The result of the Mediation or documents related to the Mediation remain confidential unless the CAC is provided with the express written approval and agreement of both Parties to the dispute, or except where such disclosure is required by law.
- (o) Participation in Mediation is mandatory for Signatories.

11.4 Conditions

- (a) This clause does not affect the right of a party to take legal action in relation to a dispute.
- (b) The Parties will share the costs of Mediation equally under this sub-clause 11.4, unless they agree otherwise.
- (c) The Parties must pay for their own costs of attending the Mediation.
- (d) The Parties must mediate in good faith.
- (e) If a party has commenced dispute resolution and/or mediation outside of this Code the party cannot revert to the Code's dispute resolution process until the dispute resolution and/or mediation has been finalised.

12. Approved Determination Scheme under the Code

12.1 The CAC shall establish an Approved Determination Scheme for the resolution of matters under the Code.

12.2 The Approved Determination Scheme will be available on the Code Website.

12.3 Determination using the Approved Determination Scheme may be sought by Signatories via the Code Website.

12.4 Determination using the Approved Determination Scheme can only proceed after IDR and Mediation processes have been concluded.

12.5 The CAC will review the Approved Determination Scheme 12 months from the date of commencement.

12.6 The CAC will identify Approved Determination Providers in Schedule 2 of the Code.

12.7 Participation in Determination is mandatory for Signatories. Signatories agree to be bound by the Approved Determination Scheme and the decision of the determination provider.

13. ADMINISTRATION

13.1 Code Administration Committee

- (a) The Code will be administered by the CAC;
- (b) The CAC will consist of Signatories being:
 - (i) three appointees of ICA; and
 - (ii) three appointees of MTAA.
- (c) Members of the CAC shall hold office for a period of two (2) years, but may be re-nominated for further two (2) year periods subject to sub-clause 13.1(d) of the Code;
- (d) The ICA and MTAA can replace or substitute their respective appointees at any time and for any reason, but in the spirit of the Code each will endeavour to ensure continuity of representation at CAC;
- (e) The members of the CAC will elect one of their number as chairperson for a 12 month period on the basis that an appointee of ICA and an appointee of MTAA will rotate as chairperson and the first rotation shall be determined by lot;
- (f) The chairperson will be responsible for arranging for administrative support for the CAC activities;
- (g) The CAC will meet at least two times a year, but may meet more frequently as required; and
- (h) Changes to the Code can be made by the CAC only on a consensual basis.

13.2 Role of the CAC

The CAC:

- (a) will develop a protocol for the appointment, establishment and operation of a national panel of Mediators;
- (b) will monitor compliance with the Code;
- (c) will produce a publicly available annual report on the Code and provide a copy of the report to the relevant Australian Government Minister. The report will include:
 - (i) an assessment of Insurer and Repairer compliance with the Code;
 - (ii) the number and type of applications for Mediation under the Code; and
 - (iii) any other matters the CAC considers relevant to the Code;
- (d) will develop its own administrative procedures and protocols and obtain adequate funding to administer and monitor the Code from ICA and MTAA;
- (e) will advise on the promotion of the Code within the Industry; and
- (f) will conduct an initial internal review of the operation of the Code 12 months after the commencement of operation of the Code on 1 September 2006. This is to be followed by an external review of the operation of the Code every three years from the commencement of the Code;
- (g) may be consulted on interpretation of any clause in this Code;
- (h) may receive from Signatories or others information related to alleged breaches of the Code;
- (i) may refer alleged breaches of the Code to the appropriate government regulator.

13.3 Confidential Information

The appointees to the CAC must not disclose any confidential information acquired in the course of their appointment to the CAC unless required by law to do so.