



26 June 2018

Ms Jessica Shaw MLA
Chair
Economics and Industry Standing Committee
WA Legislative Assembly
Parliament House
4 Harvest Tce
West Perth WA 6005

By email: laeisc@parliament.wa.gov.au

Dear Ms Shaw

Committee Inquiry into Western Australia's Smash Repair Industry – ICA submission

Thank you for your letter of 17 May 2018.

The Insurance Council of Australia appreciates the opportunity to provide a submission to the Economics and Industry Standing Committee's Inquiry into Western Australia's Smash Repair Industry.

The Insurance Council of Australia¹ (ICA) is the representative body for the general insurance industry in Australia. Our members provide a range of insurance products including motor vehicle insurance.

Background to the current Repair and Insurance Industry environment

As well as providing specific responses to the terms of reference questions, we also wish to assist the committee by providing some additional background on the current environment in which repairers and insurers operate and the forces influencing and challenging both sectors.

Like most industries, insurers and repairers are operating in an environment experiencing a 'tech-led' change as well as changing demands and expectations from consumers.

¹ The Insurance Council of Australia is the representative body of the general insurance industry in Australia. Our members represent approximately 95 percent of total premium income written by private sector general insurers. Insurance Council members, both insurers and reinsurers, are a significant part of the financial services system. December 2017 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross written premium of \$44.9 billion per annum and has total assets of \$118.6 billion. The industry employs approximately 60,000 people and on average pays out about \$132 million in claims each working day.

Insurance Council members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, commercial property, and directors and officers insurance).

The repair industry in Australia, as well as overseas, is facing some of the biggest structural challenges in its history. These challenges are largely being driven by technology.

In the past traditional mechanics worked with less complicated vehicles and equipment and could fix almost any problem across a broad range of vehicles. This is no longer the case as modern cars become more and more complex through computerisation and the use of new materials. Improved road safety technology is also reducing the amount of repair work available as vehicle accidents decrease.

These changes present significant challenges for many smash repair businesses. To continue to be able to repair modern vehicles quickly repairers must adopt new techniques, skills and invest in new equipment.

The challenges presented by technology, declining repairs and the ongoing shortage of trained repairers and apprentices in WA is placing increased pressure on more traditional repair shop operators. As has occurred in other industries, the impact of new technology is likely to lead to some market consolidation as a means by which repair businesses manage structural challenges, with consolidation toward more technologically advanced capital intensive repair businesses.²

Insurers are part of the broader automotive environment. They do not operate in isolation. Like repair businesses, they are also being forced to evolve with the rapidly changing market dynamics.

The motor vehicle insurance market is highly competitive. Consumers have more choice available to them and demand fast, convenient and quality repairs at the most cost effective and competitive price (the price of their insurance premium). In this way insurers must also explore new business models, including how they manage repair work, in order to continue to meet these expectations.

Smash Repair Work and whether it is being carried out to adequate safety and quality standards

Smash repair work in Australia is generally of a high standard. The high quality of repair work is evidenced by the findings of successive government inquiries, the most significant of these being the Productivity Commission Inquiry in 2005,³ which found that there was no evidence of systemic issues with the safety or quality of repairs undertaken. It is the experience of the ICA and our members that this is still the case and we are not aware of substantive evidence that would indicate otherwise.

² Deloitte report / paint and panel.

³ Productivity Commission Report into Motor Vehicle Insurance and Crash Repairs, 2005, p 66

Insurers in Australia authorise approximately 1.4 million repairs annually. Should systemic quality issues exist records of significant levels of customer complaint would be readily available through a variety of sources, however this is not the case.

As an example, data produced by the Financial Ombudsman Service (FOS⁴), the External Dispute Resolution (EDR) provider for insurance customers, does not appear to indicate a significant consumer issue relating to repair quality. The 2016/17 FOS Annual Review indicates that 15%⁵ of all disputes were finalised by FOS determination. Applying this same percentage to motor vehicle disputes, we estimate that approximately 400⁶ motor vehicle disputes proceeded to determination.

FOS data also would suggest that of the 400 motor vehicle insurance disputes estimated to have been received and determined by FOS in 2016/17 the vast majority of these disputes pertained to insurance coverage with very few related to quality of repair.⁷

Similarly, in November last year the WA Commissioner for Consumer Protection (Mr David Hillyard) observed there has been no evidence of substandard repairs brought to WA Consumer Protection's attention⁸ or evidence of unsafe insurer authorised repairs.⁹ This is backed up by an extensive, in depth, two year investigation program run by WA Consumer Protection (part of the WA Department of Mines, Industry Regulation and Safety) involving individual inspections of vehicles which delivered a "zero result", with no incidents of improper repairs being carried out.¹⁰

Repairing collision damaged vehicles, particularly modern and technologically advanced vehicles, is becoming more and more complex requiring the use of new and more advanced equipment and repair techniques. Smash repairers and insurers work together to ensure vehicles are repaired properly and in the vast majority of cases do this to the highest standard. It is our members' experience that, where repair issues are identified the vast majority of these are of a relatively minor and cosmetic in nature, as opposed to issues that affect the safety of a vehicle.

As well as the numerous statutory and legislative arrangements and safeguards, the high level of competition in the Australian motor vehicle insurance sector provides a natural incentive for insurers (who arrange and fund the majority of smash repairs in Australia) to ensure that repairs are carried out to the appropriate quality and safety standard.

⁴ FOS will be replaced by the Australian Financial Complaints Authority on 1 November 2018.

⁵ FOS 2016-2017 Annual Review, p. 65

⁶ Being 15% of the 2671 motor vehicle insurance disputes lodged at FOS disputes (motor vehicle comprehensive insurance) which are 33% of all domestic insurance disputes. FOS 2016-2017 Annual Review, p 76.

⁷ Ibid.

⁸ Economics and Industry Standing Committee hearing with the Department of Mines Industry Regulation and Safety, Transcript of Evidence, 29 November 2017, p. 2.

⁹ Ibid p 10.

¹⁰ Ibid. p. 4.

While there are a number of well-established insurers in WA that continue to make up a reasonable proportion of the motor vehicle insurance market, they continue to face new competitors through less traditional outlets and other new entrants.

This highly competitive environment alone means insurers can ill-afford to have any tolerance for poor or unsafe repairs, notwithstanding the existing legal and regulatory requirements that, by law, require repairs and ultimately insurers to ensure quality and safe repair work.

The current Motor Vehicle Insurance and Repair Industry Code of Conduct (MVIRI Code)

The MVIRI Code came into effect in 2006, following from the recommendations of the 2005 Productivity Commission Inquiry into the smash repair and insurance industries. This Inquiry sought to improve the relationship between insurers and repairers, in order to provide the consumer with a more efficient and competitive industry. While supporting most of the Commission's recommendations, including a call for the development of a voluntary industry code, the Federal Government also specified what items should, and what should not, be addressed by the MVIRI Code.

The objective of the MVIRI Code is to specify standards of fair-trading, process and transparency in the relationship between insurers and repairers. Importantly, it is not intended or designed to govern or interfere with the commercial relationship between the parties or to in any way reduce competition within this industry sector.

A Code Implementation Taskforce made up of repairer and insurer representatives worked together to agree on the provisions of the MVIRI Code, in line with the government's specifications. The taskforce worked under the auspices of Office of Small Business to ensure the MVIRI Code met the best practice governance and dispute resolution provisions set down in the ACCC guidelines.¹¹

In developing the MVIRI Code insurers and repairer representatives agreed that the MVIRI Code should not and would not address all areas of dispute that may arise between the parties.

The MVIRI Code has helped provide both insurers and repairers with improved certainty, transparency and accountability in their daily dealing with each other which has helped create more effective relationships between the two industries. These more effective relationships ultimately benefit consumers.

¹¹ ACCC Guidelines for non-prescribed voluntary Codes of Conduct available at <http://www.accc.gov.au/publications/guidelines-for-developing-effective-voluntary-industry-codes-of-conduct>



The MVIRI Code is mandatory in NSW.¹² In other jurisdictions the MVIRI Code is voluntary, however all ICA motor insurer members (who insure almost all passenger vehicles in WA) are signatories.

MVIRI Code - Governance Structure

The MVIRI Code continues to operate in accordance with the governance provisions set down for voluntary industry codes of conduct.

The MVIRI is administered by the Code Administration Committee (CAC) comprised of three representatives from the Motor Traders Association of Australia (MTAA) and three representatives from the Insurance Council of Australia. The CAC meets quarterly (every three months).

MVIRI Code - Dispute Resolution

The MVIRI Code provides repairers with access to cost effective dispute resolution mechanism involving internal (IDR) and EDR to resolve matters of dispute arising under the provisions of the MVIRI Code. Details of these dispute resolution options are available on the MVIRI Code website, and have been widely promoted throughout the industry.

Each insurance company is required, under the MVIRI Code, to provide repairers with a contact point for matters of disputes, and specific time frames have been established for dealing with such matters.¹³ The vast majority of disputes are resolved at this level, requiring no further action.

Should a repairer not be happy with the outcome of the internal review the matter can be taken further, through the MVIRI Code's EDR provisions¹⁴ providing for independent mediation to assist the parties to resolve a dispute.

The MVIRI Code was most recently updated in May 2017. As part of this updated MVIRI Code there is now provision for an arbitration process for determining disputes where mediation has been unsuccessful.

The updated code also includes minimum training and experience requirements for all estimators and assessors involved in insurer authorised repairs.¹⁵

The number and outcome of EDR disputes are reported in the CAC Annual Review of the MVIRI Code. By any measure they are small when considered in the context of the number of insurer authorised repairs undertaken each year.

¹² The MVIRI Code has been mandatory in NSW since 2006.

¹³ MVIRI Code, Section 10, p. 15

¹⁴ MVIRI Code, Section 11, p. 16

¹⁵ MVIRI Code, Section 4.3, p. 15

Effectiveness

The MVIRI Code has been successful in regulating the relationship between repairers and insurers as evidenced by the strong support it enjoys from industry parties, and the robust governance and dispute resolution mechanisms that underpin it.

When the MVIRI Code was introduced in 2006 certain areas of dispute had not always been well managed between the smash repair industry and insurers. This did not allow parties to openly discuss and resolve issues.

The MVIRI Code has successfully addressed a number of these issues and where disputes arise there are avenues available to address them. However, and most importantly, the MVIRI Code also recognises the rights of both repairers and insurers to freely structure their business relationships “for the purpose of promoting an efficient and competitive industry.”¹⁶ This was a fundamental principle of the MVIRI Code’s establishment. It is not, and has never been, the intention of the MVIRI Code to interfere with the level of competition in either the smash repair or insurance industry.

Contracts and repairs under insurance policies - protection and knowledge

There are several levels of protection for consumers in respect to repairs carried out under insurance policies.

As mentioned, the motor vehicle insurance market in WA, like the rest of the country, is increasingly competitive. Consumers can choose between a variety of insurers and the type of insurance cover they wish to purchase, with a wide variety of policy options and benefits available.

Some insurers offer lifetime guarantees on the workmanship of their authorised repairer for the lifetime of the vehicle. In addition, most insurers undertake a percentage of quality inspections of authorised repair work.

The MVIRI Code now also places obligations on insurers to report instances where they become aware of any signatory demonstrating a deliberate disregard toward the safety of a vehicle.¹⁷ The MVIRI Code also requires repairers to undertake repair work to the appropriate industry and mandatory standards¹⁸ (such as safety) and similarly forbids insurers from requesting repairers to carry out repairs that do not adhere to these standards.¹⁹

¹⁶ MVIRI Code, Preamble,

¹⁷ MVIRI Code, section 9.7, p. 14

¹⁸ MVIRI Code, section 4.1 (a) and (b), p. 7

¹⁹ MVIRI Code, section 4.2 (a), p. 7



Through the Insurance Policy Product Disclosure Statement (PDS) and other information provided on insurers' websites, consumers are provided with clear and easily accessible information so they can make an informed choice when entering into an insurance contract.

The General Insurance Code of Practice

All ICA members are signatories to and bound by the General Insurance Code of Practice.

The General Insurance Code of Practice operates together with the many laws governing the financial integrity and conduct of the general insurance industry, providing protection for consumers when buying insurance, making a claim as well as ensuring insurers are ultimately responsible for the quality of any repair work they authorise.

Consumers are provided with clear and easily accessible information so they can make an informed choice when entering into an insurance contract, and are further protected to ensure their insurer delivers on these undertakings throughout the claims process including time frames for claims acceptance and dispute resolution.

Should a consumer have a complaint with an insurer the General Insurance Code of Practice provides a complaints and disputes process followed by an EDR process provided by the FOS. The EDR process is provided at no cost to the consumer and FOS's decision is binding on insurers only. It does not affect the consumer's right to pursue legal action should they wish.

The provisions of the MVIRI Code, the General Insurance Code of Practice, insurer obligations under the PDS as well as the quality assurance processes undertaken by insurers provide a high level consumer protection in relation to insurer authorised smash repairs. Other repair work undertaken without the involvement of an insurer are not subject to these provisions and protections. Therefore, we submit there is a greater level of consumer protection when an insurer is involved in a repair.

Legislation

The Insurance Industry is heavily regulated with insurance contracts and arrangements between customers and insurers governed by the Australian Prudential Regulation Authority, the *Insurance Contracts Act 1984*, the *Corporations Act 2001* and the *Australian Securities and Investments Commission Act 2001*. In Western Australia, insurers are also bound by the *Fair Trading Act 2010* in relation to smash repairs.

Furthermore, consumers have access to a range of warranties under Australian Consumer Law, including provisions relating to services being provided with due care and skill, being fit for the specified purpose and being completed within a reasonable time.²⁰

²⁰ Australian Consumer Law, Sections 60, 61 and 62 respectively.

Choice of Repairer

Insurers offer consumers various options in relation to vehicle repairers. It is the ICA's view that there are many options available within the market place to suit varying needs, with consumers well served by the choice of repairer policy options available in the insurance market.

It is important to note that many consumers do not have a preferred smash repairer and may have no experience selecting a repairer and managing the process of repairs to their vehicle. In this situation they may prefer and seek to rely on the recommendation of their insurer in deciding where to have their vehicle repaired.

Similarly, it is the experience of our members that often the primary concern of consumers, when arranging for the repair of their vehicle, is that it is repaired quickly, safely and to a high standard, not which smash repairer will be undertaking the repairs.

While uninsured vehicle owners have the right to choose where to have their car repaired, for an insured vehicle, it is the insurer that contracts with the repairer and takes ultimate responsibility for the cost and quality of the repair work undertaken.

While some insurance policies may extend a right for the policy holder to have some input into the decision about where their car is to be repaired, the contractual relationship underpinning the repair is between the insurer and the repairer.

Of course a vehicle owner who wishes to choose where their car is repaired in the event of a claim is able to do this by purchasing a policy that provides choice of repairer.

The MVIRI Code specifically addresses the issue of disclosure of policy conditions, and repairer choice. In particular, section 9 of the MVIRI Code requires insurers to “*clearly state, in unambiguous and plain language, upfront in their PDS, their policy in relation to choice of Repairer.*”²¹

Similar disclosure requirements are specified in relation to the type of parts used in repairs, guarantees and warranties in the MVIRI Code to ensure consumers are able to make an informed choice regarding their insurance cover.

The Productivity Commission in 2005²² confirmed the findings of previous Inquiries in concluding there is no evidence of consumer detriment from policies placing some restrictions on the level of consumer choice of repairer, and that therefore consumer choice should not be mandated. This view was shared by the Federal Government in their response to the recommendations of the Productivity Commission.

²¹ MVIRI Code, Section 9.1, p 14

²² Productivity Commission Report into Motor Vehicle Insurance and Crash Repairs, 2005

Some state based motor trading associations have, over many years, run consumer campaigns encouraging consumers to only insure with companies offering choice of repairer.

The ICA has no issue with such campaigns that promote choice of repairer. However we object to any suggestion that a decision by a consumer to purchase an insurance policy without choice of repairer may result in a lesser quality of repair, as such allegations are baseless.

There are also some additional costs associated with providing choice of repairer in insurance policies²³. These additional costs are ultimately passed onto consumers by way of higher insurance premiums. Therefore, in order to help maintain motor vehicle insurance affordability, the ICA is of the view that it would be inappropriate to mandate choice of repairer in all insurance policies when this policy option may not be of particular value or importance to many consumers.

Business Practices of Insurers and Repairers

As in all industries, insurers operate a variety of different business models. As an industry body the ICA is not in a position to comment in any detail on these different models.

A small number of insurers have, at certain stages, directly invested resources in repair facilities through joint ventures with the repair industry. This type of direct investment in repair facilities is typically described as vertical integration.

Vertical integration into smash repair work by insurers in Australia remains very low, with repair work done through these facilities making up only a small proportion of all repair work undertaken in WA.

The vast majority of insurer authorised repairs are undertaken by independent repairers, meaning the insurance industry relies on a strong, competitive and highly skilled independent repair industry to maintain their own business operations and serve their customers. It is therefore in the natural interest of insurers to ensure that independent repairers continue to invest in their own businesses and remain profitable.

Insurers' reliance on and support of a strong independent smash repair industry is demonstrated by the ICA's long standing position that independent repairers must be able to freely and easily access accurate and up to date repair information.

The ICA made a submission to the recent ACCC New Car Retailing market study outlining the importance of open access to repair information and specifications in order to provide fair competition between accredited authorised manufacturer and dealer network repairers and independent repair shop operators. This has become even more important in this age of increasing technologically sophisticated and computerised vehicles. The ICA looks forward

²³ Deloitte Access Economics NSW Smash Repair Review, February 2014, p. 42

for improvements being made in this area in light of findings contained in the ACCC new car retailing final report.

The entry of credit-hire into the market and impact on consumers

In recent years credit-hire replacement vehicle businesses have entered the motor vehicle accident replacement vehicle market in Australia. The ICA has concerns on how the business practices of some credit-hire operators is negatively impacting some consumers. These concerns are shared by the ICA's Consumer Liaison Forum, our engagement mechanism with consumer representatives.

The business model of these operators differ from other replacement vehicle and hire car businesses. They generally only provide replacement vehicles to not-at-fault drivers. While a replacement vehicle is provided to the not-at-fault driver, the credit-hire operator will seek the cost of their hire costs directly from the at-fault third party driver.

The daily hire rate for vehicles provided through credit-hire businesses is usually significantly higher than rates provided by other hire car operators. The period of hire usually involves a period of weeks and in some cases, can be months. This can occur in situations where the repair work to the not-at-fault driver's vehicle involves relatively minor damage.

The impact of the credit-hire business model on at-fault drivers is noteworthy, as they are faced with the threat of litigation for exorbitant replacement vehicle costs, which can be thousands of dollars. Sometimes the hire fees sought exceed the cost of the repairs to the not-at-fault drivers' vehicle.

Some repairers play a role within this credit-hire replacement vehicle business model by receiving payments for referrals and commissions from credit-hire businesses.

The ACCC has undertaken investigations into the credit-hire replacement vehicle industry, requiring one operator to make changes to their advertising and promotional material, some of which was found to be misleading.²⁴

However, the ICA remain of the view that consumers, particularly at-fault drivers involved in a motor vehicle accident, continue to be exposed to excessive credit-hire replacement vehicle fees and litigation.

²⁴ <https://www.accc.gov.au/media-release/compass-claims-to-change-advertising-of-its-replacement-vehicles-for-accidents>



Conclusion

We trust these comments are of assistance.

The ICA would be pleased to discuss this submission and the matters raised in the Issues Paper with you further and provide any additional information that may assist.

If any queries please contact Tom Lunn, Senior Policy Advisor, Consumer Outcomes via email tlunn@insurancecouncil.com.au or phone (02) 9253 5122.

Yours sincerely

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