

**Motor Vehicle Insurance**

**and**

**Repair Industry**

**Code of Conduct**

## TABLE OF CONTENTS

<b>PREAMBLE</b> .....	<b>3</b>
<b>1. PRINCIPLES OF THE CODE</b> .....	<b>4</b>
<b>2. SCOPE</b> .....	<b>6</b>
2.1 Signatories to the Code .....	6
<b>3. DEFINITIONS</b> .....	<b>7</b>
<b>4. INSURER AND REPAIRER RELATIONS</b> .....	<b>10</b>
4.1 Repairers .....	9
4.2 Insurers .....	9
<b>5. NETWORK SMASH REPAIRER SCHEMES</b> .....	<b>11</b>
5.1 Notification of Opportunities to Apply for NSR Status .....	10
5.2 Disclosure of information on NSR schemes .....	10
5.3 Term of agreement .....	10
5.4 Extension of Network Repairer Status .....	10
5.5 Termination of NSR Agreement – breach by Repairer .....	12
5.6 Termination of NSR Agreement – based on performance criteria .....	11
5.7 Termination of NSR Agreement – no breach by Repairer .....	12
5.8 Termination of NSR Agreement – special circumstances .....	12
<b>6. ESTIMATE, REPAIR AND AUTHORISATION PROCESS</b> .....	<b>13</b>
<b>7. REPAIR WARRANTIES</b> .....	<b>14</b>
<b>8. PAYMENT TERMS</b> .....	<b>15</b>
<b>9. DISCLOSURE OBLIGATIONS</b> .....	<b>17</b>
<b>10. REPAIR DISPUTE RESOLUTION</b> .....	<b>18</b>
10.1 Matters for Dispute Resolution .....	18
10.2 Notification of Dispute .....	18
10.3 Dispute Resolution Procedure .....	18
<b>11. DISPUTE RESOLUTION PROCESS</b> .....	<b>19</b>
11.1 Application and Principles .....	19
11.2 Internal Dispute Resolution .....	18
11.3 External Dispute Resoluton .....	18
11.4 Conditions .....	19

---

<b>12. ADMINISTRATION</b> .....	<b>21</b>
12.1 Code Administration Committee .....	21
12.2 Role of the CAC .....	21
12.3 Confidential Information .....	22

**ANNEXURE**

Government Response to the Productivity Commission Inquiry Report into Smash Repair and Insurance

Smash Repair and Insurance Industry Implementation Taskforce Terms of Reference

## PREAMBLE

It is in the interests of government, Insurers, policy holders 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 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 and 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 recommendations, there has been no attempt to 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; and
  - particular conditions of guarantees.

At Attachment A are copies of the Australian Government's response to the Productivity Commission's report and the Terms of Reference for the Smash Repair and Insurance Industry Implementation Taskforce setting out the arrangements for the development of the Code, which form part of this Code and should be considered in any interpretation and application of the Code.

## **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.

Insurers and Repairers 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 claimants.

The Code will specify standards of fair-trading, process and transparency in the relationship between Insurers and Repairers. There should not be any interference with 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.

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 Government, state or territory legislation; and
- (c) fulfilling their obligations to the policyholder in accordance with the provisions of the policy and the relevant provisions of the General Insurance Code of Practice relating to insurance claims (annexure 3).

**1.2** Insurers will not require Repairers to carry out repairs that:

- (a) are not in accordance with:
  - i) the documented manufacturers' technical specifications including those supplied by other industry recognised agencies or authorities; or
  - ii) any lawful mandatory specifications and/or standards; or
- (b) use methods that may compromise vehicle warranty conditions; or
- (c) in the absence of (a) and (b) are not in accordance with accepted industry standards and practice,

while having regard to the age and condition of the motor vehicle.

**1.3** 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 Government, state and territory legislation; and
- (c) fulfilling their obligations to the Insurer under provisions of applicable contracts of repair.

**1.4** Repairers will carry out repairs that:

- (a) are in accordance with:
  - (i) the documented manufacturers technical specifications including those supplied by other industry recognised agencies or authorities; or
  - (ii) any lawful mandatory specifications and/or standards; or
- (b) use methods that are consistent with vehicle warranty conditions; or
- (c) in the absence of (a) and (b) are in accordance with accepted industry standards and practice,

while having regard to the age and condition of the motor vehicle.

## **2 SCOPE**

This is a voluntary Code and applies to Insurers and to Repairers or repairer representative organisations that are signatories to the Code. Signatories to the Code agree to be bound by the Code in their dealings with all Code participants within the industry. Signatories to the Code agree that they will promote the Code and encourage non-signatory Repairers and Insurers to become signatories to the Code.

This Code does not give rise to any legal relationship between Insurers and Repairers, other than the obligation to participate in the dispute resolution processes as set out in this Code.

The provisions of this Code are subject to all applicable Australian Government, state and territory laws and all rights and obligations arising under common law.

### **2.1 Signatories to the Code**

A person may become a signatory to this Code by lodging a Code Signatory Notification Form with the CAC.

A person ceases to be a signatory to the Code by lodging a written notice advising the CAC they no longer wish to be a signatory to the Code.

### 3. DEFINITIONS

In this Code:

“Applicant” means the person who starts the EDR process set out in sub-clause 11.3 of the Code.

“Approved Assessor Course” means a course recognised by the CAC.

“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.

“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 sub-clause 12.1 of this Code.

“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 Code Administration Committee.

“Complaint Contact” means a person appointed by the Insurer as its designated Complaint Contact for handling and settling disputes under clause 10 of this Code.

“EDR” means External Dispute Resolution referred to in clause 11.3 of this Code.

“ICA” means the Insurance Council of Australia Limited.

“IDR” means Internal Dispute Resolution established by each of the Insurers 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 the business, engages or authorises Repairers to perform Repairs to Motor Vehicles.

“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 for which a motor vehicle insurance Policy is held.

“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 and 11 of this Code.

“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 motor vehicle insurance and repair industry.

“Policy” means a motor vehicle insurance policy over a motor vehicle issued by an insurance company, who is a signatory to the Code.

“Policyholder” means a person (natural or body corporate) 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 Insurers’ websites.

“Repair” means any work done by a Repairer to repair a motor vehicle or any component, system or part, where the work is covered by a motor vehicle insurance policy and where a claim is or will be made by a claimant including but not limited to:

- (a) dismantling and assembling;
- (b) part and component replacement, adjustment, modification, installation and fitting;  
and
- (c) painting.

“Repairer” means any person lawfully engaged in the business of effecting Repairs to Motor Vehicles.

“Repairer Representative Organisation” means the Motor Trades Association of Australia, any of its member associations or any other trade association representing Repairers.

“Respondent” means the person with whom the Applicant has a dispute.

“Serious Criminal Offence” means any criminal offence under any law of the Australian Government or any state or territory government for which a person would be liable on first conviction to imprisonment for a period of not less than 2 years.

“Signatories to the Code” means those Insurers, Repairers and Repairer Representatives Organisations who are listed on the Code Register of Signatories and who have agreed to be bound by the provisions of this Code and who have not ceased to be bound by the Code.

---

“Sub-let Repairer” means a person or business, 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 carried out by a Sub-let Repairer.

“Upfront” means prominent, obvious and referred to in a table of contents.

## **4. INSURER AND REPAIRER RELATIONS**

### **4.1 Repairers**

In their dealings with Insurers in relation to repairs, Repairers will:

- (a) 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;
- (b) not dismantle a vehicle for the purpose of preparing an estimate unless requested or authorised to do so by the Insurer; and
- (c) not engage in practices designed to hinder or prevent the Insurer or claimant seeking to obtain an alternative quotation.

### **4.2 Insurers**

In their dealings with Repairers in relation to repair work, Insurers will:

- (a) provide Repairers with relevant details relating to the claim that the Repairer requires in order to prepare an estimate or undertake the repair including details of sublet repairs and payments by customers including any excess and contributions;
- (b) not refuse to consider an estimate on unreasonable or capricious grounds;
- (c) pay the agreed amount for all work completed, that has been authorised or requested by the Insurer;
- (d) ensure all assessors engaged by the Insurer are:
  - (i) appropriately trained and have appropriate technical experience; or
  - (ii) have successfully completed an approved assessors course; or
  - (iii) have not less than five years experience as an insurance (motor) assessor;
- (e) not remove a motor vehicle from a Repairer's premises without notifying the Repairer in advance and compensating the Repairer for any legitimate or reasonable towing or storage costs associated with the vehicle and in compliance with relevant legislation; and
- (f) not knowingly ask claimants to drive unsafe motor vehicles for the purposes of obtaining alternative estimates.

## **5. NETWORK SMASH REPAIRER SCHEMES**

### **5.1 Notification of Opportunities to Apply for NSR Status**

- (a) Insurers that have Network Smash Repairer (NSR) schemes will document and publish criteria for membership of those schemes, including information relating to the structure of the scheme.
- (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 contract after it is executed by the Repairer.

### **5.2 Disclosure of information on NSR schemes**

- (a) Insurers will provide Repairers who are members of an NSR scheme with:
  - (i) the criteria/requirements for retaining NSR status;
  - (ii) the circumstances under which a Repairer's status within the NSR scheme can be changed; and
  - (iii) the circumstances under which a NSR status can be 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 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 under 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, Insurers will ensure the estimation process is fair and transparent and as far as is practicable, that estimates are comprehensive, complete and inclusive of all obvious damage.
- 6.2** The parties acknowledge ongoing changes in the Industry in relation to the development of realistic times and rates:
- (a) Insurers will state clearly the estimation methodology to be applied; and
  - (b) Repairers in their estimation methodology may separately cost paint, parts, significant consumables and mandatory government environmental levies 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 Repairers 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 Repairers of the warranty cover the Insurer provides to insureds, including the Insurer's responsibilities under lifetime warranties.
- 7.2** Unless 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 or paint to the extent that the manufacturer, distributor, supplier or importer of the parts 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 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 preferences, the Repairer concerned must be offered the first option to effect required rectification.
- 7.7** Where repairs are undertaken by sub-let repairers 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 work as authorised in the allocated time.



**8. PAYMENT TERMS**

- 8.1** An Insurer's maximum payment terms for repair invoices should not exceed thirty (30) days from receipt of invoice by the Insurer or authorised assessor or agent.
- 8.2** Where the 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 Repairers in and those not in the Insurer's NSR scheme.

**9. DISCLOSURE OBLIGATIONS**

- 9.1** Insurers will clearly state, in unambiguous and plain language, upfront in their Product Disclosure Statements, their policy in relation to choice of Repairer.
- 9.2** Insurers will disclose in their Product Disclosure Statements their policy relating to the use of new, non genuine and recycled parts, sub-let repairs and guarantees and warranties.
- 9.3** Insurers will not make misleading or deceptive statements about the quality, capability or timeliness of Repairers that are not members of an Insurer's NSR scheme;
- 9.4** Repairers will not 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; and
- 9.5** Sub-clauses 9.1, 9.3 and 9.4 also apply to telephone enquiries and sales.

## **10. REPAIR DISPUTE RESOLUTION**

This clause applies to disputes that arise prior to the commencement or completion of repair.

### **10.1 Matters for dispute resolution**

- (a) Where disputes arise relating to the appropriate repair and paint method and where it is believed the safety, structural integrity, presentation or utility of the 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 once the 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.
- (d) Clause 11 will not apply to disputes covered by sub-clauses 10.1(a) and 10.1(c).

### **10.2 Notification of Dispute**

In the event of a dispute under this clause 10, the Repairer must notify the Insurer's complaint contact, providing full details of the dispute and supporting evidence of the concern and the redress sought by the complainant.

### **10.3 Dispute Resolution Procedure**

- (a) Upon notification of a dispute, the Insurer will fully investigate the issue, and the supporting evidence 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.
- (c) 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.
- (d) 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 internal dispute resolution (IDR) mechanism that provides for the prompt, transparent and fair resolution of disputes.
- (b) All disputes should in the first instance be directed through Insurers' IDR mechanisms.
- (c) Insurers will provide to the Repairer a written acknowledgement of the complaint within five business days. Within a further 10 business days, Repairers and Insurers will conclude the IDR process, unless otherwise agreed to by both parties.
- (d) If the Repairer disagrees with the outcome of an IDR process, they can elevate the dispute to External Dispute Resolution (EDR).

### **11.3 External Dispute Resolution**

- (a) To commence an EDR action under the Code, the applicant must lodge a notice of dispute with the CAC or its nominee and the respondent, providing the following information:
  - (i) the nature of the dispute;
  - (ii) what outcome the applicant wants; and
  - (iii) what action the applicant thinks will settle the dispute.
- (b) The applicant and the respondent may then either agree on a mediator, or if the parties cannot agree on a mediator within 2 business days, they must

request the CAC or its nominee to appoint a mediator. The mediator should be appointed within 2 business days.

- (c) Subject to sub-clause 11.3(e), the Mediator may decide the time and place for the conduct of the mediation.
- (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) 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;
- (h) Any statement issued under sub-clause 11.3(g), must remain confidential between the parties to the dispute and the Mediator.
- (i) Disclosure of any statement under sub-clause 11.3(g) to a third party requires the consent of the applicant and the respondent except where disclosure is required by law.
- (j) At the conclusion of the mediation the mediator should advise the CAC in writing whether the mediation was successful or unsuccessful.

#### **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 equally of mediation 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.

## **12. ADMINISTRATION**

### **12.1 Code Administration Committee**

- (a) The Code will be administered by a Code Administration Committee (CAC);
- (b) The CAC will consist of signatories to the Code 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 12.1(d);
- (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.

### **12.2 Role of the CAC**

The CAC will:

- (a) develop a protocol for the appointment, establishment and operation of a national panel of mediators;
- (b) monitor compliance with the Code;
- (c) 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 EDR under the Code; and

- 
- (iii) any other matters the CAC considers relevant to the Code;
  - (d) develop its own administrative procedures and protocols and obtain adequate funding to administer and monitor the Code from ICA and MTAA;
  - (e) advise on the promotion of the Code within the Industry; and
  - (f) 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.

### **12.3 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.

**ANNEXURE****GOVERNMENT RESPONSE TO THE PRODUCTIVITY COMMISSION INQUIRY:  
SMASH REPAIR AND INSURANCE****SUMMARY**

1. The Treasurer asked the Productivity Commission (PC) to examine the relationship between the Australian motor vehicle smash repair industry and the motor vehicle insurance industry on 31 August 2004. The Inquiry involved wide industry consultation and industry stakeholders were invited to make either public or confidential submissions. The Commission also held public hearings in Sydney and Melbourne.
2. The Draft Report was released on 18 November 2004, with the final being presented to Government in March 2005.
3. In formulating the Australian Government response, further consultation was undertaken with industry representatives, including:
  - Australian Automotive Repairers Association (AARA);
  - Motor Traders Association of NSW (MTA NSW);
  - Motor Trades Association of Australia (MTAA);
  - Victorian Automobile Chamber of Commerce (VACC);
  - Allianz Australia Insurance Ltd;
  - Insurance Australia Group (IAG);
  - Insurance Council of Australia (ICA);
  - Promina Group (AAMI); and
  - Suncorp Metway.
4. The Government agrees with the key recommendation of the PC report – that disputation between the parties is serious enough to warrant the introduction of an industry code.
5. The Government's formal response to the PC Report is below.



## GOVERNMENT RESPONSE TO THE PRODUCTIVITY COMMISSION REPORT'S RECOMMENDATIONS

### Recommendation 6.1

The Australian Government should facilitate and promote the development and implementation of an industry-wide code of conduct in respect of the relationship between insurers and repairers as soon as practicable.

### Government Response

6. Agreed. The Government considers that properly formulated codes of conduct that enjoy the support of industry are of benefit to all industry participants.
7. The Government acknowledges that there are problems in the commercial relationship between the smash repair and insurance sectors. The PC Report cites anecdotal evidence of persistent problems occurring between the two parties, particularly in relation to transparency, fair trading and the efficiency of operation of the market. Overwhelmingly, the problems appear to stem from a lack of trust and cooperation between the two industries.
8. The Government considers that the most appropriate way to deal with these problems is through an industry code. Accordingly, the Government will work with industry to develop a voluntary Code along the lines outlined in the PC report based on most of the findings of the PC report.

### Recommendation 6.2

The industry-wide code of conduct should include:

- a.) Matters relating to preferred smash repairer (PSR) arrangements, including requirements to:
  - notify opportunities to apply for PSR status;
  - disclose selection criteria;
  - provide a 'cooling off' period for repairers to consider PSR contract offers;
  - provide that PSR tenure should not automatically cease on transfer of business provided probity and prudential concerns are met; and
  - specify that if an hourly rate is included in a PSR contract then it should be a mutually agreed realistic rate.
- b.) Matters relating to quoting for work and payment, specifying:

- that times and rates, where used, should be realistic times and rates agreed to by insurer and repairer;
  - that paint, parts and significant consumables should be separately costed rather than included in hourly rates;
  - where competitive quotes are sought, that the quotation process should be fair and transparent;
  - that insurers should fully disclose their terms of payment to repairers; and
  - minimum terms of payment where work is not in dispute (for example, 30 days or less).
- c.) Matters relating to quality and safety, and guarantees, including requirements:
- that where an insurer specifies the repair method and/or the quality of parts to be used, the insurer accepts responsibility in writing for the quality and safety consequences of its specifications; and
  - to restrict the guarantee liability of a repairer to work it actually carries out, and then only for an agreed reasonable period – a repairer should not be required to guarantee parts or paint for a period longer than the manufacturer’s warranty.
- d.) Matters relating to consumer choice, including requirements for insurers:
- to clearly explain repairer choice options to consumers when taking out policies and making claims;
  - to avoid making misleading, inaccurate or unjustified comments about the quality and timeliness of repair of non-preferred repairers; and
  - to clearly explain to consumers their policy provisions relating to the use of parts and to guarantees.
- e.) A transparent and independent external dispute resolution mechanism.

### Government Response

9. Agreed in part. The Government acknowledges the importance of transparency in the market. Many of the problems identified in the PC report stem from a lack of clarity in business relationships between insurance companies and smash repair businesses. Transparent markets are innately less vulnerable to manipulation and make risk easier to manage.

10. The Government agrees that it would be desirable for an industry code to include all of the above measures. However, the Government recognises the complexities of moving to a new system of quoting. Further to this, the Government recognises that approximately seventy per cent of the motor vehicle insurance market either do not use, or are moving away from, the *funny time, funny money* (FTFM) method of quoting. Accordingly, the Government recommends that an industry code include provisions to require insurers to state clearly in contractual arrangements whether FTFM is to be the applied quoting methodology.

11. The Government accepts the PC's recommendation that consumer choice should not be mandated. However, in the interests of ensuring consumers are informed of provisions in relation to consumer choice of repairer, the Government recommends that an additional provision be inserted in the code to the effect that:

- Insurers should clearly state, upfront in product disclosure documents, repairer choice options.

12. The Government also supports the view that a transparent and independent external dispute resolution mechanism should be established to deal with issues of a contractual nature and breaches of the code. The dispute resolution system should be based on mediation with the costs being shared by the parties.

### **Recommendation 6.3**

The 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 PSR selection criteria and/or weightings for PSR criteria;
- compulsory choice of repairer;
- requirements to spread work among repairers; and
- particular conditions of guarantees.

### **Government Response**

13. Agreed. The Government agrees that the Code should not attempt to specify or regulate the matters listed in recommendation 6.3.

### **Recommendation 6.4**

If voluntary agreement cannot be achieved between insurers and repairers – that is, between at least the four major insurers and the national body representing repairers (the Motor Trades Association of Australia) – within a period of six months from release of the Government's decision on this report, the Australian Government should develop a code of conduct in accordance with the above findings and recommendations, and the code should be mandated under the Trade Practices Act.

### Government Response

14. Agreed in principle. The Government agrees that there is justification for the development of an industry code of conduct as a cost effective way to improve the relationship between insurers and repairers.

15. The Government is committed to industry self-regulation to address marketplace problems as an alternative to regulation. Therefore, in the first instance, the Government considers that all voluntary approaches should be explored prior to imposing a mandatory industry-wide code of conduct on the parties.

16. Another voluntary option, canvassed in the PC report, but not included in its recommendation, is that of a voluntary code between insurers only. This option has the potential to deliver the desired outcome as the vast majority of obligations (as outlined in recommendation 6.2 of the PC report) in a code would be on insurers, not repairers. Accordingly, if voluntary agreement cannot be reached between the four major insurers and the Motor Trades Association of Australia within six months from the release of this response, the Government will require the four major insurers to develop a voluntary code, in accordance with this response, within an additional three months. The Government considers voluntary options to be the most effective means of improving the deteriorating relationship between the two parties.

17. However, should all voluntary approaches fail, the Government will examine further regulatory options, including the prescription of an industry code under the *Trade Practices Act 1974* (TPA).

18. Further, the Government recommends that an Implementation Taskforce, with representation from the insurance and repair sectors, be established to oversee the development of an industry code for a period of six months. Broadly, the Taskforce will be responsible for developing a voluntary code as outlined in this response. The Taskforce will also provide progress reports and an implementation plan, to Government.

19. The Government will review the situation in nine months from the date of this response, or sooner if required, with a view to assessing the extent to which the problems identified in the PC report have been addressed by industry. Should the review find that significant problems remain, or that no agreement has been reached, the Government will consider the appropriateness of further regulatory options, including the prescription of an industry-wide code of conduct under the *Trade Practices Act 1974*.

## **Smash Repair and Insurance Industry Implementation Taskforce**

### **Terms of Reference**

1. The Taskforce is to draft a voluntary Code of Conduct covering, as a minimum, the following issues:
  - (a) matters relating to preferred smash repairer (PSR) arrangements, including requirements to:
    - i. notify opportunities to apply for PSR status;
    - ii. disclose selection criteria;
    - iii. provide a ‘cooling off’ period for repairers to consider PSR contract offers;
    - iv. provide that PSR tenure should not automatically cease on transfer of business, provided probity and prudential concerns are met;
  - (b) matters relating to quoting for work and payment, specifying:
    - i. where competitive quotes are sought, that the quotation process should be fair and transparent;
    - ii. that insurers should fully disclose their terms of payment to repairers;
    - iii. minimum terms of payment where work is not in dispute (for example, 30 days or less);
  - (c) matters relating to quality and safety, and guarantees, including requirements:
    - i. that where an insurer specifies the repair method and/or the quality of parts to be used, the insurer accepts responsibility in writing for the quality and safety consequences of its specifications;
    - ii. to restrict the guarantee liability of a repairer to work it actually carries out, and then only for an agreed reasonable period – a repairer should not be required to guarantee parts or paint for a period longer than the manufacturer’s warranty;
  - (d) matters relating to consumer choice, including requirements for insurers:
    - i. to clearly explain repairer choice options to consumers when taking out policies and making claims;
    - ii. to clearly state, upfront in product disclosure documents, repairer choice options;
    - iii. to avoid making misleading, inaccurate or unjustified comments about the quality and timeliness of repair of non-preferred repairers;
    - iv. to clearly explain to consumers their policy provisions relating to the use of parts and to guarantees; and
  - (e) a transparent and independent external dispute resolution mechanism.

2. The Taskforce must comprise of a Chairperson, and five representatives from the insurance sector and five from the smash repair sector, that is:
  - (a) 1 representative from the Insurance Australia Group;
  - (b) 1 representative from Allianz Australia Insurance;
  - (c) 1 representative from AAMI;
  - (d) 1 representative from Suncorp Metway;
  - (e) 1 representative from the Insurance Council of Australia;
  - (f) 2 representatives from the Motor Trades Association of Australia;
  - (g) 1 representative from the Australian Motor Body Repairers Association;
  - (h) 1 representative from the Victorian Automobile Chamber of Commerce; and
  - (i) 1 representative from the Motor Traders Association of New South Wales;
3. Each individual member of the Taskforce will exercise one casting vote. The Chair will not exercise a casting vote.
4. The reasonable expenses of the Chair in attending Taskforce meetings will be met by the Office of Small Business (OSB). The Taskforce members listed at 2(a) to (i) above must meet their own expenses in attending Taskforce and Working Group meetings.
5. Secretariat support to the Taskforce, including facilitation of meetings, minute taking, and other administrative duties, will be provided by OSB. OSB will not partake in the Taskforce's negotiations and will not exercise a casting vote.
6. As required, the Taskforce may consult the Australian Competition and Consumer Commission on matters relating to the mechanics of industry codes of conduct. The ACCC will not partake in the Taskforce's negotiations and will not exercise a casting vote.
7. The Taskforce must provide updates to the Minister for Small Business and Tourism on the progress of the drafting of the code, including the delivery of a final report to the Minister by close of business on 10 May 2006.
8. The Taskforce must meet at a mutually agreeable location and as many times as the Taskforce members deem appropriate, but not less than three times before 10 May 2006.
9. The Taskforce may, with the consent of the Chair, form Working Groups responsible for furthering negotiations between Taskforce meetings. The Chair is not required to attend Working Group meetings.