



SUBMISSION BY

***THE AUSTRALIAN MOTOR BODY REPAIRERS'
ASSOCIATION***

TO THE

REVIEW OF THE TRADE PRACTICES ACT

JULY 2002

Introduction

The Australian Motor Body Repairers' Association (AMBRA) is the national peak body for the specialist motor trade dedicated to the repair and restoration of motor vehicles. Such repair takes place after motor vehicles incur accident damage. In a large number of instances the major part of the cost of the repair is borne by vehicle owners' insurers.

AMBRA has been established under the Articles of Association of the Motor Trades Association of Australia. AMBRA's affairs are directed by an Executive Committee on which each of the states and territories is represented. AMBRA meets as an Executive Committee on at least two occasions each year to determine policy and direct the activities undertaken in relation to body repair by the National Secretariat of the Motor Trades Association of Australia.

Each state and territory Member of the MTAA Federation has established its own body repair section or division for the purpose of considering issues and activities related to body repair in each jurisdiction as they arise.

At its recent meetings AMBRA has considered the following matters and considered strategies to deal with them:

1. Insurance Domination / Independence of Small Business
2. Code of Conduct – Fair Dealings
3. National True Times Policy
4. Training of Assessors –
5. Training – Education of Members
6. AMBRA's Image
7. Skill Shortages
8. Benchmarking – (Including Standards / Accreditation / Warranties / Rates)
9. Insurance Contracts Act and Cash Settlements with Insurers

Background

Businesses within the automotive body repair sector have always worked under subrogation arrangements with motor vehicle insurance companies. The reality is that automotive body repairers are largely dependent on insurance companies for their work and thus their livelihoods. This has of course resulted in a situation where one party (the insurance company) has a substantial degree of market power relative to the small individual automotive body repairer. The difficulties in this relationship were acknowledged by the (then) Industry Commission in its 1995 report on the motor vehicle insurance and repair sector. It recommended then that a code of conduct be developed for the sector. That has not been achieved largely because there has been a lack of support for it by the insurance companies.

The relationship between repairers and insurance companies has, in recent times, been severely tested as the major insurance companies reposition themselves in the market place. Demutualisation of major insurance companies, particularly of the Insurance Australia Group, which formerly traded as NRMA Insurance, has we believe been a major influence in this changing relationship. The companies have embarked on a series of acquisitions and mergers which has resulted in the emergence of a few very large insurance companies; again NRMA Insurance could be cited as an example of that, whose over-riding concern now appears to be increasing shareholder value; whatever the cost.

In recent years, automotive body repairers have been required to make substantial capital investments in their businesses to meet environmental and occupational, health and safety standards and also to be able to provide the quality of repairs required by both insurance companies and the owners of the vehicles requiring repair. That capital investment has largely been accepted by automotive body repairers as being necessary if they wish to remain in business. Equally, however, those repairers expected that they should be allowed to earn a return on that investment.

Key Issues for Competition Policy

Automotive body repairers have for some time now been the subject of commercial behaviour by insurance companies, principally by the Insurance Australia Group and its subsidiaries, which has in our view severely impacted on the ability of repairers to provide quality repairs to vehicles, caused unnecessary damage to small businesses and had little or no impact on premiums; which appear to continue to increase. In Western Australia, when the Insurance Australia Group took over SGIO some premiums increased dramatically.

At the time of the introduction of the GST, the Insurance Australia Group (and some other insurance companies) significantly reduced the margin they allowed repairers for parts; this had such an impact on repairers, particularly in New South Wales, that many found their viability severely threatened. Some subsequent assessments are that repairers' gross profits have been reduced by up to 50 per cent as a result of the Insurance Australia Group's unilateral action. At the same time, SGIO reduced the materials component of the paint rate, in anticipation of paint costs falling on the

introduction of the GST. Unfortunately for repairers paint costs did not fall; in fact they rose (and have in some cases further increased since then). SGIO however has not increased the hourly paint rate it allows repairers. Again this severely impacts on repairers viability; and of course allows the insurer to keep its costs down.

More recently SGIC and SGIO have both conducted tenders for their repair work in respectively South Australia and Western Australia. MTAA and its Members had serious concerns about those tender processes. The Companies proposed that body repairers submit times and rates for repair work in advance, without allowing repairers any consideration for differences between models, makes and size of vehicles. Repairers were asked to complete the tender document for repair times and rates without any knowledge of the range of vehicles that they will actually be asked to repair. That of course remains a completely unknown factor, but is actually what determines the cost of repair work. To require that repairers submit, as part of the tender requirements, some supposed average time and rate based on some guess as to what work they might receive in the future is, we believe, totally unconscionable and irrelevant to the actual cost of an individual repair. Crash repairs are by nature unique as is each and every collision incident. The repair activity is therefore more akin to project work in each case. This project work is in all other industries priced on an individual basis by the service provider. The insurer should not be empowered to arbitrarily prescribe a dollar value to such unique project work.

Repairers believe that they should be asked to tender for work based on the actual and individual repair work that a damaged vehicle requires to restore it to its pre-accident condition. To be asked, as our Western Australian repairers were, to submit prices for generic repair jobs and for the tender then to be assessed on the basis of those figures is inequitable. No allowance was made for the actual time and cost of the repair to the repairer's business. It is absolutely impossible for automotive body repairers to arrive at an accurate average figure for the removal and replacement of parts or painting when they do not know the make or model of vehicles requiring repair that they are likely to receive under the tender arrangements.

The situation has been further exacerbated in that repairers believe that SGIO and SGIC employees suggested pricing levels which would be acceptable to the Companies. Repairers in relation to these tender documents were placed in a "no-win" situation. Either they priced consistently with the pricing levels which were 'suggested' to them or they will not get further work from the insurer. Repairers who have submitted and won tenders fear that at the rates and times they have agreed to it may be that their businesses ultimately will be unviable. Insurance Australia Group has 25 to 30 per cent of the market in Western Australia. For some repairers though Insurance Australia Group represents between 50 and 80 per cent of their business.

Questions of Market Power

Repairers are in a position where they have no market power, no bargaining power and have effectively been 'told' by the insurer what will be acceptable in terms of rates and times; irrespective of the actual requirements of any particular repair task. MTAA, MTA WA and MTA SA and the repairers themselves believed such conduct to be in breach of the unconscionable conduct provisions of the Trade Practices Act. The Association raised its concerns about these tender processes with the Australian Competition and Consumer Commission but the ACCC decided against taking any action.

It would seem reasonable that the insurance companies would want to deal with repairers who have invested in the latest technology and who have kept themselves informed of the latest developments in the repair sector and who perform high quality repairs to vehicles. However, the recent tender processes of the Insurance Australia Group seem to repairers to not be about providing quality repairs for vehicles, but about providing the cheapest repairs. That is not in the interests of the owners of vehicles, who have a right to have their vehicles restored to their pre-accident status and who have an expectation that that will indeed happen, or our small business repairer members who do not want to see the quality of their repairs and the safety of their customers' vehicles compromised.

The recent round of mergers and acquisitions in the insurance sector and the conduct of the large market players, such as the Insurance Australia Group, in seeking to reduce their costs through tender processes will inevitably lead to rationalisation in the automotive body repair sector. That will mean loss of employment in the sector, the loss of apprenticeship opportunities as remaining repairers seek to reduce their own costs in an effort to remain viable and in the long term a loss of skills in the sector.

As a result there is considerable concern about the future for many small automotive body repairers. They are efficient and highly skilled operators, but as individuals they have no market power in their dealings with insurance companies. Cost cutting by insurance companies will lead to reductions in the quality of repairs as repairers are forced to compromise in their own work standards in the face of the attacks on their businesses by insurance companies.

The introduction of a code of conduct between insurance companies, repairers and consumers would assist in identifying each parties' rights and responsibilities. A code would promote improved cooperation and relations in the motor vehicle repair industry to achieve high standards of motor vehicle repairs in the interests of consumers and the wider community. Importantly, such a code would require insurers to disclose to the public the basis on which repairs are to be carried out, including the use of non-genuine and second-hand parts.

Matters of Public Interest

Insurance companies and motor body repairers

The following extract from the House of Representatives Hansard of 26 February 2001 (speech by Mr Anthony Byrne MP, Member for Holt) illustrates the difficulties that one small motor body repairer had with an insurance company and the manner in which market power or relational power can be misused:

“I rise today to highlight what I consider is extraordinary behaviour within the car insurance industry by some of its major players. When I say ‘extraordinary behaviour’, I mean standover tactics, bullying and the ripping off of motorists and the accident repair industry. This extortion must be investigated by the ACCC. To date, they appear reluctant to do so. Many motorists are suffering because of their inaction, and many small businesses are hitting the fence because of the practices of large insurers in the car repair industry, especially the Royal Automobile Club of Victoria. The car repair industry itself has 1,500 accident repair centres in Victoria. Seventy per cent of the moneys for the repair of cars comes from insurance companies. Accident repair centres have received no increase in payments from the insurance companies for the last three years, even though the costs of parts and other things have increased by some 23 per cent. With the introduction of the GST there was no increase in payments to accident repairers as well. Deloitte estimated that a \$400 million to \$500 million windfall came to insurance companies through not allowing an increase for these accident repair centres.

Insurance companies told the ACCC that they would pass this on to consumers. I believe the consumers are still waiting for this. There have been longrunning battles between car manufacturers and insurance companies over the costs of spare parts. Car manufacturers have a markup of between 100 per cent and 1,000 per cent on spare parts for cars. The ACCC in its former guise looked into this in the eighties. Insurance companies appeared to be cutting on quality and on paying accident repair centres to address this cost problem. There is, however, in the midst of this, a David of the industry who has brought these matters to light. He is Gerry Raleigh, who is the owner of Kerry Panels. He has an excellent reputation in the industry, being an approved repairer for Ferrari, Eunos, Toyota and Audi. Gerry lost over \$90,000 in turnover last year because he fought the RACV over their policies. He has beaten the RACV many times in court when rectifying cars previously repaired in their accident repair centres or RACV approved repairers.

He is a small man fighting a Goliath in the industry. As a result of his victories when seeking proper repairs for clients of the RACV, they have reacted by bullying him, removing business from his shop and then having the audacity to check over 14 repairs he had previously done for them to try to find faults. They found nothing. David Herford of the

RACV has continuously slandered him on 3LO and 3AW but never produced evidence. Mr Herford knows that Mr Raleigh and Kerry Panels cannot afford to sue him for defamation. Let me give some indication of the support or lack of support for these claims. The ACCC has been approached numerous times by the VACC; the state minister for small business, Marsha Thomson; Tony Robinson; the AWU Secretary, Bill Shorten; and Don Nardella. To date, it appears too difficult for the ACCC to look into. They want nice easy examples from persons reliant upon insurance companies for their livelihood.

Both Peter Reith and Louise Asher thought it was important that small business was protected from unfair practices, but they have done nothing about this. The report by Jack Hammond QC into the practices of the RACV and like companies on behalf of the Victorian Automobile Chamber of Commerce stated that in his opinion the RACV had **breached the Trade Practices Act by using contracts that limited competition, misusing market power, exclusive dealing and unconscionable conduct.** The ACCC, in its response to Jack Hammond, in February this year said:

‘While, on balance, RACV’s actions may be considered inflexible, unfair or unreasonable, they are unlikely to be viewed as being so against conscience as to warrant a court’s intervention.’

They are telling us that something is not quite right but that they do not wish to push it further. It appears to me that the only way we will catch crooks in the car insurance industry is to have a private inquiry undertaken by the ACCC where the insurance companies simply are not able to find out who put in submissions. In this way, we could stop retribution against good people like Gerry Raleigh. Only in this way will the ACCC fully understand the practices of these insurance companies.”¹ (emphasis added)

However, the influence of insurance companies market power is not confined necessarily to their dealings with individual repairers. In mid-2001 SGIC and SGIO (both of whom are owned by IAG) distributed tender documents to motor body repairers in South Australia and Western Australia respectively, which repairers were invited to complete in order to be considered for motor body repair work.

The companies were proposing that body repairers submit times and rates for repair work in advance, without allowing repairers any consideration for differences between models, makes and size of vehicles. Repairers were asked to complete the tender document for repair times and rates without any knowledge of the range of vehicles that they would actually be asked to repair. That of course is a completely unknown factor, but is actually what determines the cost of repair work. To require that repairers submit in advance, as part of the tender requirements, some supposed average time and rate based on some guess as to what work they might receive in

¹ Byrne, Anthony MP, House of Representatives Hansard, 26 February 2001

the future was, MTAA believes, totally unconscionable and irrelevant to the actual cost of an individual repair.

The situation was further exacerbated in that repairers believed that SGIO and SGIC employees had been suggesting pricing levels which would be acceptable to the companies. Repairers in relation to these tender documents were thus in a “no-win” situation. Either they priced consistently with the pricing levels which were ‘suggested’ to them or they would not get further work from the insurer. If they did price at the rates and times suggested then it was likely that their businesses would be unviable.

IAG/SGIO has 25 to 30 per cent of the market in Western Australia. For some repairers though IAG/SGIO represents between 50 and 80 per cent of their business. In relation to the tender document, the repairers were in a position where they have no market power, no bargaining power and they were effectively being ‘told’ by the insurer what would be acceptable in terms of rates and times; irrespective of the actual requirements of any particular repair task. MTAA, MTA WA and MTA SA and the repairers themselves believe such conduct to be in breach of the unconscionable conduct provisions of the Trade Practices Act. The Association has raised its concerns about these tender processes with the Australian Competition and Consumer Commission.

In Western Australia, the SGIO advised some repairers that they had successfully tendered. It did, however, also advise that *“unfortunately the tenders received in the remaining zones are not competitive”*. SGIO invited unsuccessful tenderers *“to submit another tender as their best and final offer”*.

In South Australia, the tender proposed by SGIC was for a short time suspended and blame for that was placed on the actions of what was described as *“MTA”*. However repairers were further advised that they might *“expect a site visit and audit compliance check within the next few weeks”*. That visit was apparently to be used to discuss *“future business relationships”*.

More recently in tender documents submitted to regional repairers in South Australia, SGIC stipulates that one of the mandatory requirements of the tender process is that:

‘SGIC network repairers are to provide lifetime repair guarantee on all workmanship. SGIC will supply the warranty booklets. The guarantee section must be completed by the repairer and given to every SGIC customer upon completion of repairs.’

The SGIC warranty brochure (to be given by repairers to insureds) states that:

*‘Subject to the terms and conditions, **SGIC gives you a lifetime guarantee** on the quality and workmanship of repairs made to your vehicle, relating to this claim from the date of collection. **SGIC warrants** that all the repairs have been performed by tradesmen to a trades standard and that it has restored your vehicle as near as practicable to its pre-accident condition.’* (emphasis added)

The terms and conditions of the guarantee refer to SGIC's liability; yet the tender document makes it clear that it is the repairer's responsibility. Of course, if the repairers do not agree to provide SGIC's clients with the lifetime guarantee, then they will not have submitted a 'conforming' tender and will presumably not be considered for inclusion in SGIC's approved repairer scheme.

In NSW the behaviour of IAG in relation to its preferred repairers has been a matter of serious concern to repairers and their representative associations. At the time of the introduction of the GST, NRMA Insurance (and some other insurance companies) significantly reduced the margin they allowed repairers for parts; this had such an impact on repairers, particularly in New South Wales, that many found their viability severely threatened. Some subsequent assessments are that repairers' gross profits were reduced by up to 50 per cent as a result of NRMA Insurance's unilateral action.

AMBRA Executive Committee Consideration

At its most recent meeting on 6 March 2002 the AMBRA Executive Committee considered the *Small Business Charter of Fairness* adopted by MTAA prior to the 2001 Federal election and then considered the following key matters related to Fair Trading in the body repair sector:

- . the unique problems faced by small business in the body repair sector;
- . the need for amendments to the Trade Practices Act to prevent abuse of market power;
- . the need for amendments to the Trade Practices Act to facilitate collective bargaining; and
- . the need for a Code of Conduct to regulate relations between consumers, insurers and repairers

As a result AMBRA adopted a Charter of Fairness.

AMBRA Charter of Fairness

1. Strengthen the Trade Practices Act to give the ACCC greater power to prevent abuse of market power by insurance companies and other big businesses
2. Allow motor body repairers the right (under the Trade Practices Act) of collective negotiation
3. Create a 'small business as consumers' division of the ACCC
4. Amend the Insurance Contracts Act 1974 to provide for the disclosure of insureds' rights in the event of their vehicles requiring repair under an insurance policy
5. Introduce a mandatory code of conduct (under the Trade Practices Act and relevant state and territory fair trading legislation) to regulate commercial relationships between insurers and motor body repairers with a view to ensuring the interests of consumers are paramount in the repair of damaged vehicles
6. Prohibit insurance companies from presenting motor body repairers with contracts on the basis that no negotiation will be entered into on terms and conditions
7. Prohibit termination or removal of 'approved/preferred repairer status' without just cause
8. Introduce a 'true times' policy for motor vehicle repair cost quoting systems
9. Insurers to allow all eligible repairers the option to join approved/preferred repairer schemes; unless there are recognised franchise arrangements in place, where the repairers would have rights under the Franchising Code of Conduct
10. Appoint a Small Business Ombudsman

Conclusions and Recommendations

AMBRA therefore recommends that the Review of the Competition provisions of the Trade Practices Act should

- . amend Section 46 of the TPA to insert an “effects” test;
- . amend Section 51AC to specify the behaviour that would be deemed to be unconscionable and a breach of good faith;
- . amend Section 45 of the TPA to provide a safe harbour to enable body repair businesses to collectively negotiate with a insurance companies;
- . create a new industry Code which in the interests of transparency and insureds’ rights would better manage the provision of services by body repairers that are carried out at the expense of insurance companies;
- . set up an industry Ombudsman with powers to impose dispute resolution upon consumers, repairers and insurance companies. and
- . provide the ACCC with the power to supervise and where necessary intervene in the interests of fairness in the making of agreements between insurance companies and classes of repairers particularly those seeking to tender for work through approved, accredited and quality repairer schemes.

Fair Trading Coalition

AMBRA has sought to raise with the Review matters of specific concern to body repairers. There are a number of other issues that have been formally raised for consideration by the Review by the Fair Trading Coalition (FTC). AMBRA supports the submission made by the FTC and believes that the matters canvassed therein should be given close and careful consideration.

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