



1 July 2025

Mr George Manos

Chair

Motor Vehicle Insurance and Repair Industry Code Administration Committee

via email: codereview@mviricode.com.au

Dear Mr Manos

Motor Vehicle Insurance and Repair Industry Code of Conduct

The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) welcomes the opportunity to provide feedback on the Draft Motor Vehicle Insurance and Repair Industry Code of Conduct (the code).

The Review of the Motor Vehicle Insurance and Repair Industry Code of Conduct by Dr Michael Schaper in April 2023 (the Schaper Review) and subsequent consultation on updating the code is an important and much needed opportunity for the Motor Traders Association of Australia (MTAA) and the Insurance Council of Australia (ICA) to strengthen the code.

A strengthened code should enhance the standards and practice by which all participants in the motor vehicle repair industry operate. It must facilitate effective, robust and independent dispute resolution processes. It must ensure fairness for the hard-working small businesses who are the majority of vehicle repairers, and who too often find themselves disadvantaged by a power and resource imbalance compared to large insurers. And it must aid the industry in reinforcing the value of self-regulation and support public confidence.

We recommend changes to strengthen the code including:

- providing clear and fair timeframes for resolution of disputes
- insurers to collaborate with the repair industry to improve repair estimation methodology
- establishing a list of accredited dispute resolution providers
- establish mechanisms for monitoring compliance by participants and improve data collection of disputes
- monitor dispute resolution to address concerns about retribution
- strengthen transparency and human oversight of the use of Artificial Intelligence for motor vehicle assessments
- enabling accredited repairers to determine what inputs are required including whether to use original equipment manufacturer parts or non-original equipment manufacturer parts.

Recommendation 1: Clarify timelines for resolving repair disputes to help businesses resume operations as quickly as possible

The issue of timeliness of repair dispute resolution has been a longstanding concern in the industry. The Schaper Review identified the potential to improve communication following a lodgement of dispute, which are now submitted online. We consider that dispute lodgements should be acknowledged in real time to ensure a more efficient and transparent resolution process.



Delays in resolving disputes not only disrupt commercial relationships but can impact consumers awaiting vehicle repairs or claim outcomes. The code should set timeframes for dispute resolution processes under the code. Timely assessment and efficient repair coordination are beneficial for all parties and essential to promoting consumer trust in both repairers and insurers. Delays can result in extended vehicle downtime, increased costs for consumers needing alternative transport, insurers potentially paying for alternative transport, and repairers storing damaged vehicles.

We note, the draft code provides guidance on repair disputes but has not specified a time frame for when a repair dispute can be referred to an Adjudicator, if it has not been resolved between the parties. We encourage the ICA and the MTAA to find an industry appropriate time frame that supports the timely resolution of a repair dispute.

Additionally, the code drafters should specify the timeframe for the Code Administration Committee (CAC) to appoint an Adjudicator. The code drafters may wish to consider the Franchising Code of Conduct and its provisions that require an alternative dispute resolution (ADR) practitioner to be appointed within 14 days of the request. By clearly communicating timeframes parties can be reassured that the resolution of repair disputes is prioritised and resolved efficiently, enabling businesses to get on with the operation of their business.

Departure from these expectations should only be allowed in exceptional circumstances, such as when a natural disaster causes a short-term surge in work for repairers and insurers. In these circumstances, insurers should still use their best endeavours to respond promptly to repairers.

Recommendation 2: Require insurers to collaborate with the repair industry to improve their repair estimation methodology.

Repair shops have expressed ongoing concerns that insurance company estimates systemically underestimate the labour time required to complete repairs. These estimates do not reflect the complexity or variability of real-world repair tasks. This is particularly true for newer vehicle models with increasingly advanced technologies and complex drivetrains. The draft code enables repairers to separately cost components relating to the repair and acknowledges that there are ongoing changes within the industry which relate to the development of realistic times and rates. However, insurers can issue their preferred estimation methodology to be used by repairers, which may not reflect the true cost of labour.

The code should require insurers to develop fair and practical estimation methodology that reflects the additional time taken by repairs to complete repairs that are increasing in complexity due to technological advances. It is important that repair estimation methodology reflects the true costs of repairs including labour and component parts.

Recommendation 3: Maintain a list of code approved ADR providers

The dispute resolution process has been an ongoing concern for the industry. Several respondents to the review suggested that a *'binding mechanism would [be] the only way to make the code effective, redress imbalance of power in some commercial relationships and ensure effective*



*resolution of disputes.*¹ Section 10.3 (b) of the new code remedies this issue by allowing either party to the dispute to request binding adjudication by an adjudicator.

An independent panel of accredited ADR providers is essential to allow insurers and repairers with access to qualified, impartial professionals experienced in resolving commercial disputes in a timely, efficient and objective manner. Information about the process of accessing these ADR practitioners should be made available on relevant websites, code guidance documents and with industry associations.

The ASBFEO and state small business commissioners are experienced in facilitating ADR processes and can explain the process to complainants who are often unfamiliar with dispute resolution processes. The committee may wish to use the existing ADR panels such as provided by ASBFEO or the State Small Business Commissioners. Using these existing ADR resources and experts will assist code participants to resolve their disputes in an efficient and timely manner.

Recommendation 4: To ensure the ongoing effectiveness of the code the CAC should establish mechanisms for monitoring compliance by participants and improving data collection relating to disputes that are both resolved between parties and escalated to ADR practitioners.

The CAC plays an integral role promoting industry adherence to standards of behaviour, regulatory requirements, legal standards and ethical practice. The Schaper Review highlighted concerns about the CAC's lack of independence, resourcing and inability to enforce the code. Dr Schaper also raised concerns about the lack of widespread industry knowledge about the code and its role in resolving disputes.²

The Australian Competition and Consumer Commission (ACCC) provides guidelines on developing effective industry codes of conduct. The guidelines emphasise the importance of operating effective complaints handling and the integral role of a code administration committee in monitoring and accountability. Further, the ACCC guidelines state that commercially significant sanctions are necessary to ensure a code achieves credibility, compliance and builds stakeholder confidence. We support Dr Schaper's recommendation that the CAC should be strengthened by making it an incorporated entity, and that the addition of an independent chair would allow them to make impartial decisions to enforce the code.

We recognise the draft code has included a section on the CAC detailing its establishment, role and powers including sanctions for contraventions of the code. However, the Schaper Review raised concerns about the limited data available regarding the volume and value of disputes between insurers and motor vehicle repairers. Further, the review noted that there was no mechanism to measure the effectiveness of the code.

To address these concerns the CAC should be resourced to effectively monitor compliance with the code, improve data collection about disputes and develop criteria to measure the

¹ Dr Michael Schaper, *Review of the Motor Vehicle Insurance and Repair Industry Code of Conduct*, Dr Schaper, April 2023, p 10

² Dr Michael Schaper, *Review of the Motor Vehicle Insurance and Repair Industry Code of Conduct*, Dr Schaper, April 2023

effectiveness of the code. Additionally, the CAC should include in its annual report information relating to the dispute such as:

- parties to the dispute
- the nature and frequency of disputes
- how the complaint was resolved
- time taken to resolve the dispute
- type of sanction applied.

Recommendation 5: The CAC should monitor dispute resolution under the code to identify whether parties are working constructively to resolve disputes and are not engaging in retributive actions.

The Schaper review cautioned that the low number of disputes raised in recent years may reflect a caution amongst repairers that raising a dispute could jeopardise their commercial relationship with insurance companies.³ Representations made to us have also raised similar concerns and is reflective of our experience assisting small businesses that have disputes with larger businesses. Often the disputes between a large and small business arise from the power imbalance, where the more powerful party can determine the pricing of goods and services and the commercial terms and conditions.

To address concerns about power imbalance, the CAC should take a more proactive role in monitoring dispute outcomes. This could include following up with ADR practitioners to assess whether parties engaged constructively and in good faith. In addition to the CAC monitoring the outcomes of ADR processes the Motor Trades Association of Australia (MTAA) or its state branches could consider forming dedicated support teams to guide repairers through the dispute resolution process.

Recommendation 6: The CAC should strengthen transparency and oversight of the use of Artificial Intelligence (AI) in motor vehicle damage assessment.

Using AI in motor vehicle damage assessment and for the estimation of repair costs, whether by repairers or insurers, must not come at the expense of fairness, accuracy, and the application of professional, accredited expertise. The code must require transparency and human accountability where AI is used.

The code should mandate that assessments generated using AI are reviewed and approved by trained, accredited assessors. Mandating human review ensures accountability and adherence to standards will help prevent erroneous outputs delaying repairs or compromising safety.

The use of AI tools to assess damage or influence repair decisions must be transparent and communicated to all parties.

³ Dr Michael Schaper, *Review of the Motor Vehicle Insurance and Repair Industry Code of Conduct*, Dr Schaper, April 2023, p 11



Recommendation 7: The code should contain a presumption in favour of an accredited repairer exercising their professional expertise in choosing parts, processes and materials to complete a repair.

The motor vehicle repair industry has ongoing concerns over instances where insurers insist repairers use non-Original Equipment Manufacturer (OEM) parts, usually where there is a cost saving. The draft code at Clause 6.4 references not limiting the right for fair and transparent negotiation between insurer and repairers. However, the clause goes on to state that an “insurer may not unreasonably or arbitrarily alter a Repair Estimate unless the Insurer insists on changing the repair process, parts or materials to be used (subject to sub-clause 7.2(c))”. The ability here for an insurer to insist on part, process or material is problematic, particularly given the significant power imbalance between insurers and repairers. Repairers who comply with the insurer’s insisted approach are liable for issues that arise despite it not being their choice. Both repairers and consumers are affected by added time and cost to repairs where issues arise.

The code at Clause 7.2 does attempt to address this by offering repairers an indemnity against direct loss or liability caused by complying with such a requirement. However, this indemnity is limited and remedial and does not address the power imbalance between insurers and repairers essential to the fair and transparent negotiation the code purports to uphold.

The code should contain a strong presumption in favour of the accredited repairer exercising their professional expertise in choosing parts, processes and materials to complete a repair. This is not to say that original parts should always be preferred to other options. Only that the selection of parts for repair must be fit for purpose, in compliance with regulatory requirements, and reflect professional expertise of repairers, not just the lowest cost for insurers.

As an addendum to this point, representations have been made to the ASBFEO regarding the behaviour of certain vehicle manufacturers who may be disadvantaging accredited motor vehicle repairers by making claims over the right to repair their vehicles - going so far as to warn owners their vehicles may be rendered inoperative if the company discovers a third party has made repairs to it. Though this code is unlikely to offer a remedy to this, we believe such behaviour will affect this code if left unchecked. This behaviour risks competition, potentially pushing repair costs up for consumers and insurers, and endangers the livelihoods of hard-working small businesses in the motor vehicle repair industry. We hope that progress on expanding the right to repair and industry engagement can effectively address this.

If you require any further information, please do not hesitate to contact us on advocacy@asbfeo.gov.au.

Yours sincerely

The Hon Bruce Billson

Australian Small Business and Family Enterprise Ombudsman