



# **Review of the Motor Vehicle Insurance and Repair Industry (MVIRI) Code of Conduct**



**Independent Review by  
Dr Michael Schaper  
for the MVIRI Code Administration Committee**

**April 2023**

**Acknowledgements:**

The independent reviewer wishes to thank the Code Administration Committee for their assistance during the review process.

**Contact details for reviewer:**

**Dr Michael Schaper**

Michael.schaper@gmail.com

Mobile: 0423 731 311

© April 2023

Perth, Western Australia

## Contents

Executive Summary	3
<b>1. Introduction</b>	<b>5</b>
1.1 Background	5
1.2 Major Elements of the Code	5
1.3 Current Governance & Operational Arrangements	7
1.4 Past Reviews of the Code	7
1.5 Recent Regulatory and Technological Changes	8
<b>2. Methodology: The Review Process</b>	<b>9</b>
<b>3. Stakeholder Views and Responses</b>	<b>9</b>
3.1 Dispute Resolution	10
3.2 Awareness and Accessibility of the Code	12
3.3 Compliance	13
3.4 Governance Issues	13
3.5 Other Issues	14
<b>4. Recommendations</b>	<b>16</b>
Recommendation 1: Clarify and strengthen provisions relating to dispute resolution processes	16
Recommendation 2: Update the Code's language, format and presentation	17
Recommendation 3: Undertake greater public promotion of the Code	18
Recommendation 4: Work more closely with regulators	19
Recommendation 5: Update the Code website URL and contents	20
Recommendation 6: Introduce sanctions for breaches of the Code	21
Recommendation 7: Appoint an independent CAC chair and deputy chair	22
Recommendation 8: Clarify CAC governance, membership, voting and training	24
Recommendation 9: Incorporate the CAC as a formal legal entity	25
Recommendation 10: Better resource the CAC	26
Recommendation 11: Codify practices relating to the use of artificial intelligence	26
Recommendation 12: Review educational requirements	27
Recommendation 13: A greater consumer focus	27
Recommendation 14: Clarify the role of third party representatives	28
Recommendation 15: Change the frequency and focus of future Code reviews	29
<b>References</b>	<b>31</b>
<b>Appendix 1: Terms of Reference</b>	<b>32</b>

**The following acronyms have been used in this report:**

<b>ACCC</b>	Australian Competition & Consumer Commission
<b>AFSL</b>	Australian Financial Services Licence
<b>AI</b>	Artificial intelligence
<b>ASBFEO</b>	Australian Small Business & Family Enterprise Ombudsman
<b>CAC</b>	Code Administration Committee
<b>ICA</b>	Insurance Council of Australia
<b>IDR</b>	Internal dispute resolution
<b>MTAA</b>	Motor Trades Association of Australia
<b>MVIRI</b>	Motor vehicle insurance and repair industry
<b>NSR</b>	Network smash repairer
<b>NSW</b>	New South Wales
<b>SA</b>	South Australia
<b>SBC</b>	Small Business Commissioner
<b>ToR</b>	Terms of Reference

## Executive Summary

Automotive smash repairs are an important issue within the Australian economy. There are an estimated 4,500 repairers providing these services, with almost all of this work ultimately funded (in whole or part) by insurance firms. Each year, some 1.5 million smash repairs are documented in Australia, and they form the single biggest group of consumer retail claims in the Australian insurance industry.

Since 2006, the relationship between smash repairers and insurers has been, in part, codified under a voluntary Motor Vehicle Insurance and Repair Industry (MVIRI) Code of Conduct. This was originally developed and has been subsequently administered jointly by the Insurance Council of Australia and the Motor Trades Association of Australia.

A review of the Code was conducted over the period December 2022-April 2023, under the terms of reference listed in Appendix 1.

The review was asked to focus on the following 5 issues:

1. The effectiveness of dispute resolution processes under the MVIRI Code
2. Awareness and accessibility of the Code
3. Compliance with the Code
4. Governance of the Code and the CAC
5. Other issues pertinent to the effective governance and operation of the Code

A range of stakeholders were consulted in the review process, including government bodies, regulators, members of the CAC, insurers and other parties. In total, 21 interviews were undertaken with 35 participants, along with 2 parties lodging written submissions.

The review comes at a time of significant change. The Code has now become mandatory in two state jurisdictions (NSW and SA), and may also be extended to Tasmania. At the same time, traditional work practices in the industry are changing as increased automation and artificial intelligence is starting to become more significant. However, in recent years the number of parties using the Code appears to have declined significantly.

Amongst stakeholders, the overall view is that while the main aspects of the current system are operating satisfactorily, there is a need for change in some areas. These responses suggest the need for a number of reforms. 15 specific recommendations have been made, with accompanying detailed next steps:

### **Recommendation 1: Clarify and strengthen provisions relating to dispute resolution**

Shorten timeframes for written acknowledgement of receipt of a dispute. Remove the mandatory requirement for a written report for all mediations. Educate more widely.

### **Recommendation 2: Update the Code's language, format and presentation**

Make the Code easier to read and follow. Update sequencing and presentation. Remove or rewrite outdated text. Ensure it is legally rigorous if contested in legal proceedings.

### **Recommendation 3: Undertake greater public promotion of the Code**

Educate stakeholders about the activities and achievements of the Code. Compile a comprehensive list of key stakeholders. Publish update bulletins regularly. Consider also using social media.

### **Recommendation 4: Work more closely with regulators**

Engage more proactively with Small Business Commissioners, the ACCC, state governments and other bodies who have an interest in the Code.

### **Recommendation 5: Update the Code website URL and contents**

Improve the accessibility and ease of use of online information. Consider adopting a more user-friendly URL. Rewrite website content to make it easier to understand the scheme.

### **Recommendation 6: Introduce sanctions for breaches of the Code**

Empower the CAC to remove parties who do not comply with the Code. Monitor compliance by member parties. Require all new membership applications to be approved by the CAC.

### **Recommendation 7: Appoint an independent CAC chair and deputy chair**

Adopt contemporary best practice by creating two additional members of the CAC, who can provide an independent perspective, enhance governance, and drive external engagement.

### **Recommendation 8: Clarify CAC governance, membership, voting and training**

Introduce 3 year terms for CAC members, and maximum term limits. Offer training in corporate governance. Ensure more gender diversity.

### **Recommendation 9: Incorporate the CAC as a formal legal entity**

Adopt an association, company or other corporate structure for the CAC. Ensure this entity holds the assets, intellectual property and finances of the CAC.

### **Recommendation 10: Better resource the CAC**

Provide an annual operating budget for the work of the CAC, rather than continuing to rely on voluntary labour. Employ a part-time administrator. Remunerate independent members.

### **Recommendation 11: Codify practices relating to the use of artificial intelligence**

Address the issues emerging from the growing use of AI. Begin an active education campaign to inform the industry of these.

### **Recommendation 12: Review educational requirements**

Update the education and qualification-related provisions of the Code. Actively examine if signatories are providing adequate education and training to their assessor and estimator staff.

### **Recommendation 13: A greater consumer focus**

Explicitly recognise the importance of consumers within the preamble of the Code.

### **Recommendation 14: Clarify the role of third party representatives**

Define a “third party representative,” and provide a mechanism for them to sign up to the Code if they wish. Spell out their roles, rights and responsibilities within the Code.

### **Recommendation 15: Change the frequency and focus of future Code reviews**

Reduce the frequency of Code reviews; consider examining decarbonisation, artificial intelligence, training needs; data trends; and future legal status of the Code in the next review.

## 1. Introduction

This chapter provides a brief overview of the major provisions of the Code, its history, and current governance and operational arrangements.

### 1.1 Background

The motor vehicle repair industry is a sector of significant economic activity. Whilst specific data is often hard to obtain in the public domain, industry estimates suggest there are some 1.5-1.7 million repairs undertaken each year through approximately 4,500 automotive repair traders.

Motor vehicle repairs are the largest single insurance claim for Australian consumers. Amongst the retail insurance sector, there were 1.76 million smash claims made in the 2020-21 financial year alone, representing 45% over the total 3.9 million claims made by consumers nationally; this figure is much larger than claims made for either personal property or for homes. Australians hold 16.2 million automotive insurance policies, which is also the biggest component of the 36.4 million retail policies in existence (General Insurance Code Governance Committee 2022: 36, 39).

The industry has also experienced a number of contentious issues. Since much smash repair work is performed by repairers and paid for through insurance, there is often a marked imbalance in power between some parties. Consumers are also important, but often do not have a direct contractual relationship with the repairers.

Throughout most of the 20<sup>th</sup> century, the motor body repair sector in Australia was largely unregulated, with no specific legal framework catering to the unique issues found in the dealings between motor vehicle insurers and motor vehicle repairers. Instead, commercial business relations between these two groups were governed by general corporate, competition and fair trading legislation (Addison & Colanzi 2010:5).

A number of inquiries into the relationship between these parties were conducted in the 1990s and early 2000s. These included a 1995 Industry Commission inquiry; various Senate inquiries from 1995 to 2004 concerning issues such as the *Designs Act* and introduction of a Late Payment Commercial Debts bill; and an ACCC investigation of possible breaches of the *Trade Practices Act*. The ACCC also undertook a number of industry roundtable discussions on these and related issues (Addison & Colanzi 2010:5).

Following this, a more detailed inquiry into the state of the industry was conducted by the federal government's Productivity Commission in 2004 and 2005. The Commission identified the existence of a marked imbalance of power between the parties; examined a number of serious dispute points between the body repair and insurance industries; and recommended the introduction of a voluntary industry code of practice (Productivity Commission 2005), which eventually came into effect in September 2006.<sup>1</sup>

### 1.2 Major Elements of the Code

The current iteration is a voluntary industry code consisting of 13 principal clauses, along with an introductory preamble and two appended schedules. The Code has historically been a voluntary one in all parts of Australia except NSW, where it has long been a mandatory industry code under that state's *Fair Trading Act*.<sup>2</sup> A mandatory code commenced in South Australia in February 2023, and is discussed in more detail in Section 1.5 below.

Contrary to some perceptions, the Code covers more than just dispute resolution. It also deals with a range of other issues in the relationship between smash repairers and insurance companies.

<sup>1</sup> A more detailed discussion of the early history of the Code can also be found in the written reports of the 2010 and 2013 reviews.

<sup>2</sup> More specifically, the NSW Fair Trading Act requires parties in that state to comply with any relevant industry code of conduct.

Clause 1 of the Code lays out a set of general principles. Clause 2 discusses the scope and how parties (both insurance companies and smash repairers) may become signatories to the Code. Clause 3 provides a relatively comprehensive set of definitions of key terms.

Subsequent parts of the Code spell out expected behaviours and processes in the dealings between repairers and insurers. Clause 4 covers estimations, the role of motor vehicle assessors and that of estimators. The CAC also has responsibility for approving the training units to be completed by approved motor vehicle assessors (Clause 4.3) and estimators (Clause 4.4).

The operations of, and ability to participate in, network smash repairer schemes are spelt out in Clause 5. Estimations and authorisations are discussed in Clause 6, and repair warranties in the following Clause 7. Payment terms are covered in Clause 8, and a number of disclosure and behavioural provisions are covered in Clause 9.

Specific dispute resolution mechanisms are covered in Clauses 10, 11 and 12. The Code essentially provides for a three-tier model of dealing with disputes: the first mechanism is notification via the Code website, accompanied by an informal determination by the insurer. If this does not conclude the matter, parties may seek formal internal dispute resolution within the relevant insurer’s IDR framework. After that lies an opportunity to seek formal mediation.

To access this, complainants (usually smash repairers) are expected to visit the website and lodge a dispute online, which then goes automatically to the relevant insurance company and CAC chair. This means that the website has a particularly important role to play, both as a source of basic information for interested parties, and as the tool through which formal disputes and grievances are lodged.

The latest amendments to the Code became effective in May 2017. According to the Annual Reports of the CAC, the number of known disputes dealt with since then is as shown in Table 1 below.

**Table 1: Lodgements Under The Code**

2018	2019	2020	2021	2022
343	242	61	78	76

*Source: CAC secretariat and Annual Reports, as published on the [ABRcode.com.au](http://ABRcode.com.au) website.<sup>3</sup>*

The reported figures are low, given the overall number of insurance claims made each year. The figures also indicate that the total number of lodgements has declined significantly in recent years, which may be due to a number of causes, including (but not necessarily limited to) reduced driver activity during Covid; improved relations between parties; lack of repairer knowledge of the Code; or disputes being settled outside the Code framework.

The published data does not include the number of lodgements which were resolved between the parties.

Reports to state Small Business Commissioners (SBCs) and ASBFEO are not always included in the figures in Table 1, as they are often dealt with directly by SBC mediators. These bodies are not required to notify the CAC of any disputes they deal with.

The value of a typical or “average” dollar value of a dispute lodged under this mechanism is not known, as such whole-of-industry data is not currently collected.

As the Australian economy recovers from the impact of Covid, the impact of that pandemic on the sector is still being assessed. Several industry participants have claimed that it lead to dramatic reduction in business volumes during lockdowns and movement restrictions, and has since lead to a post-Covid inflationary surge squeezing repairer margins.

<sup>3</sup> The shown figures include “disputes known to the CAC,” which can differ from the numbers formally lodged via the CAC (for example, they may include matters lodged directly by a repairer with an insurer rather than through the Code website). For a more detailed analysis, refer to each of the individual Annual Reports.

Clause 13 spells out the role, composition and responsibilities of the Code Administration Committee. This is discussed in more detail below.

### 1.3 Current Governance & Operational Arrangements

Under the Code, the oversight, general management and operations of the scheme are the responsibility of the CAC. This includes promotion of the Code; monitoring compliance; appointing mediators; oversight of the website; producing an annual report; and commissioning reviews.

It is important to note that the CAC is an administrative body, not a dispute resolution entity *per se*; it does not serve as a “court of final appeal” for complaints whose disputes are not finalised under the mediation processes spelt out in Clause 12.

Under Clause 13 of the Code, the CAC consists of six persons, appointed for two year terms, of which three are nominated by the MTAA and the ICA respectively. Members can be re-appointed for further terms. The chair of the committee is appointed from within the six members on a year-by-year basis, and is also responsible for arranging the administrative support for the CAC’s work. The CAC is formally required to meet at least twice a year. Advice provided to the reviewer states that the CAC typically meets quarterly.

There are no additional standing orders, board charters or constitution, nor is the CAC a formally incorporated entity.

At present, the Code must be reviewed every three years, and the CAC is responsible for this process.

Some information about disputes arising under the Code is also collected by the CAC. As the administrator of the website, it is able to gauge the number of IDR complaints lodged through the website, as well as the number of requests for formal mediation.

The Committee also has the capacity to amend the Code from time to time. The provisions of this are only generally discussed, with Clause 13(h) stating that “changes to the Code can be made by the CAC only on a consensual basis.” Consensual is not defined.

### 1.4 Past Reviews of the Code

It is now almost seventeen years since the Code was promulgated, and since that time, its operations and effectiveness have been examined on a number of occasions.

A first review was conducted by ICDPA in late 2009-early 2010 (see (Addison & Colanzi 2010:5). This evaluation received eighteen written submissions and held a number of face-to-face workshops with business, industry and insurer participants.

The ICDPA report reached a number of conclusions and put forward several suggestions for change. Chief amongst these were a finding that the Code had generally improved the relationship between insurers and smash repairers; the need to make a number of amendments to the wording and powers of the Code; and a suggestion that greater education and information be disseminated throughout the industry.

Another review took place in 2013 October-December 2013 (Executive Counsel Australia 2013). This report is also publicly available online. Based largely on written submissions<sup>4</sup>, followed up with a number of interviews, it formed the view that the Code was generally working satisfactorily, but that cases of bullying and intimidation still existed. Its other concluding recommendations included not only changes to some of the wording and operation of the Code, but also suggested

---

<sup>4</sup> The number of written submissions and personal interviews was not stated.

the introduction of binding dispute resolution mechanisms, perhaps through arbitration<sup>5</sup> or by the creation of a federal government ombudsman for the sector. More awareness-raising and education of the sector was advocated, as was the inclusion of independent members onto the CAC.

The most recent assessment of the Code occurred in late 2016-early 2017. This was not an external or public process, but rather a series of internal discussions between stakeholders regarding the amendment of some of the Code wording. As such, no formal report exists from this review. Nonetheless, this resulted in a number of amendments that took effect from the beginning of May 2017.

## 1.5 Recent Regulatory and Technological Changes

Since the last review of the Code, there have been a number of changes in dispute resolution availability, mandatory legislative regimes and new trends in the automotive repair sector.

Changes in the legislative and dispute resolution landscape for small businesses have been significant. The MVIRI Code has recently become mandatory in South Australia, commencing in February 2023. This now makes the Code mandatory in both NSW and SA. The issue is also being examined in Tasmania.

The range of dispute resolution services has also grown. In Queensland, the previous office of the Small Business Champion has been effectively converted into a more substantive, conventional Queensland Small Business Commissioner with its own legislation in 2022. Like existing other SBCs found in WA, Victoria, NSW and SA, this office now has a statutory function of “assisting parties in reaching an informal resolution for small business disputes,” as well as providing alternative dispute resolution and mediation services.<sup>6</sup> This gives it scope to provide many of the same services to motor trades disputes as most other SBCs around the country.

A federal *Motor Vehicle Information Scheme* came into effect on 1<sup>st</sup> July 2022. Administered by the ACCC under the auspices of the Competition and Consumer Act, this is a mandatory framework under which motor vehicle repair and service data must be made available to all repairers at a fair price. This will give repairers access to the information needed to service and repair cars; access software updates that help to connect a new spare part with a car; and information about computerised car systems. This is often needed in the diagnosis of faults and their subsequent repair.<sup>7</sup>

Prior to the advent of this scheme, only car manufacturers and their affiliated repairers had guaranteed access to this data, so preventing some independent repairers from competing fairly. It also created additional costs for consumers as well as inconvenience and delays. The Scheme is overseen by the ACCC, who also has capacity to take enforcement action for non-compliance.

The future state of the smash repair industry in Australia is one of likely change and challenges. A number of papers and reports have recently examined emerging trends, including a study conducted for IAG by Tooth & Swansson (2019), and Linchpin SEO (2022).

Broadly speaking, a review of this literature suggests a number of likely forecast developments: a relatively stable level of demand for vehicle repairs; decreasing demands for replacement parts as vehicle reliability increases; no noticeable impact yet on collision reduction (although this is expected to change in future as artificial intelligence becomes more prevalent); a likely increasing skills shortage of qualified repairers; greater complexity and sophistication of vehicles leading to

5 Mediation is a process in which both parties come to a mutually-agreed solution; arbitration requires the imposition of a final outcome by an external third party.

6 See About us - QSBC for more information.

7 More details can be found at Motor vehicle information scheme (MVIS) | ACCC

higher repair fees; more use of car-sharing services (which may depress automotive sales); the ongoing likelihood of more foreign car manufacturers seeking to enter the Australian market; and a substantial increase in the use of digitization, connectivity, and electrification (McKinsey 2016, Tooth & Swansson 2019, Linchpin 2022). Artificial intelligence is likely to be applied in more workplaces and in vehicles. Decarbonisation will lead to a rapidly growing use of more electric vehicles.

All of these changes have the potential to impact on the operations of the Code – although it is sometimes hard to predict in advance exactly how these will play out.

## 2. Methodology: The Review Process

The methodology employed in this review was largely centred around face-to-face interviews with key industry participants, as spelt out in the Terms of Reference in the appendix to this report.

As requested by the CAC, the review was focused on seeking an in-depth evaluation from a number of key stakeholders able to offer detailed insights into the operation of the Code. As such, no public call for submissions or open workshops were held.

Desk-top research was undertaken to provide background material and latest research data on the code and the smash repair sector. This involved an examination of the ABRcode.com.au website, prior review reports, the annual reports of the CAC, and associated documents. In addition, a substantive review of research literature and published public commentary was also conducted.

Personal interviews formed the substantive basis of the feedback obtained in this review. To obtain this, a range of potential stakeholders was identified by the reviewer, including those nominated by the CAC.

The CAC specifically requested that “... *The following stakeholders should be consulted as part of the review process, at a minimum: Insurance Council of Australia; Motor Trades Association of Australia; Small Business Commission (each state or territory).*”

Interviews took place across January-March 2023, principally by telephone, on-line meeting facilities and, in some cases, face-to-face meetings. These were semi-structured meetings utilising a number of basic key questions (as spelt out in the Terms of Reference), but also providing an opportunity for respondents to discuss or elaborate on any other particular aspects of the Code, or to raise issues not directly mentioned in the starting questions.

Respondents included regulators, current and previous Small Business Commissioners, members of the CAC, insurers and other parties. In total, 21 interviews were undertaken with 35 participants, along with 2 parties lodging written submissions. A small number of unsolicited comments were also received from LinkedIn and by email.

All responses were collected on the basis of respondent confidentiality, and as such the feedback provided in this report has been de-identified.

## 3. Stakeholder Views and Responses

Stakeholders provided a wide range of views, issues and ideas, which are discussed below. Many of these have in turn helped form the basis for the reform recommendation subsequently discussed in Section 4 of this report. The commentary below provides an overview of this feedback at a high level, accompanied by selected illustrative anonymised quotes, and as such is not an exhaustive listing of all details.

Overall, most respondents were of the view that the Code has made a useful ongoing contribution to business relationships within the smash repair sector, and should be retained. There were no submissions or views arguing that the Code should be abolished. This positive endorsement across the sector is perhaps most concisely summed up by the following comment from one respondent:

“Although the MVIRI does not address all aspects of the insurer-repairer relationship, it has been effective in improving inter-industry relations while maintaining the efficiency and competitiveness of the motor repair sector.”

There seemed limited appetite amongst most respondents for a wholesale revision of the Code and its ambit, with most submissions only recommending minor changes. This attitude was perhaps best summed up in this way:

*“I don’t think anything needs to fundamentally change. It works well in providing the rules of engagement, and it works. It’s ironed out a lot of problems, compared to 15 years ago.”*

In the Terms of Reference for the review, the CAC requested that issues be examined under five thematic headings. These were:

1. Effectiveness of dispute resolution processes under the MVIRI Code
2. Awareness and accessibility of the Code
3. Compliance with the Code
4. Governance of the Code and the CAC
5. Other issues pertinent to the effective governance and operation of the Code (including the changing regulatory and technology environment, and the role of third party agents)

A summary of major respondent feedback and commentary is accordingly grouped below under these topics.

### **3.1 Dispute Resolution**

The issue of mandatory dispute resolution was raised by a number of parties, with several respondents suggesting that a binding mechanism would be the only way to make the Code effective, redress imbalances of power in some commercial relationships, and ensure effective resolution of complaints:

*“Mandatory would ensure that everyone is playing under the same rules.”*

Several mechanisms were suggested, including a power for binding arbitration, a mandatory national code under federal or state laws, or an insurer commitment to abide by the decisions of an independent party. Similar suggestions have been raised in previous reviews of the Code, but not yet actioned.

However, whilst this view was expressed by a number of industry participants, it was not generally supported by government agencies, regulators or the like. As one party noted:

*“Regulators are not really that keen on having arbitration powers.”*

Another party argued:

*“They [smash repairers] would like government to take over and arbitrate outcomes, but Small Business Commissioners don’t want to do that. It would require a lot more resources, legislative change, and making binding decisions on both parties. And of course in some cases the decisions may well go against the small business repairer.”*

Similarly, the idea of an ombudsman with binding powers was also put forward by some industry participants, but also met with reluctance from regulators and other arms of government, principally for the following reason:

*“A dedicated independent ombudsman for a particular industry is expensive, twiddling their thumbs a lot of the time, and existing services might be a better tool.”*

Regulator and government respondents also noted that, although they occasionally received complaints from smash repairers about potential breaches of the law (such as alleged violations of the Code, state *Fair Trading Act* laws, competition law or other statutes), very few of these were found to be valid:

*“Every time we looked at a complaint, the insurer in question had pretty logical reasons for what they did, prices they paid, etc.”*

Another noted that:

*“There’s also a lot of hidden issues which no one has ever been able to prove, such as screwing down prices. We only get a low level of complaints [from repairers], but then again that has always been the case. We think this is due to a number of reasons – fear of retribution for making a complaint; the nature of the consumer-business link; the backing of the consumer.”*

It was noted by many respondents that many of the complaints lodged under the Code did not allege a potential breach of any element of the Code itself, but were instead an expression of dissatisfaction with some other aspect of the repairer-insurer relationship. Notwithstanding that, most insurers reported that they still chose to deal with such matters, rather than excluding them. There were also occasions where a conflict existed as to whether or not a matter was covered by the Code, and that it might be desirable to get greater clarity as to what matters did (or did not) fall under the Code.

Participants also commented that the approved determination scheme appeared to be little used, and that it can be confusing:

*“The approved determination scheme seems a bit confusing - is it intended to operate as commercial arbitration under the Commercial Arbitration Act model uniform legislation in each state or not? Or is it not arbitrated? ... it’s not clear.”*

The Schedules attached to the Code are meant to provide users with a signpost to access various mediation services. However, several respondents noted that these are difficult to find online and would be better placed alongside the Code text, to improve ease of access.

Also raised was the issue of the cost of dispute resolution, with some respondents reporting it was difficult to know in advance what this might be. Others noted that parties are likely to face different fees depending on which resolution service they used:

*“There is often a substantial difference in the cost of mediation, and often it’s unclear whether or not a particular state SBC will offer mediation under the Code free or charge parties, and if they charge them, how much this will be.”*

Participants recommended that this information should be publicly available.

The timeframe under which dispute resolution and other functions of the Code operate was also raised. Interviewees noted that these had seemingly not improved since the Code was first introduced, although in the intervening time business processes and automation had significantly sped up the capacity to deal with things more promptly. These concerns related to a number of different aspects under the Code, including claims that the 5 day timeframe for assessment under Clause 4.2 (c) was not being honoured; that the 30-day payment period set out in Clause 8 should be shortened; and that the 3 working days needed under Clause 11.2 (d) was too long.

Another issue raised was the existing level of data reported about usage of the Code and its dispute resolution provisions. Several interviewees suggested that more information was needed about the performance of the scheme, arguing that the current count of disputes notified was insufficient to critically evaluate the overall effectiveness of the Code. As one party suggested:

*“There would be benefit in enhancing the tracking, aggregating and more comprehensive reporting of IDR and EDR data, which at present is done manually. This would require a modest investment from insurance*

*and repair industries ... and could improve the administration of the Code and also improve engagement with relevant agencies."*

Another commented:

*"There needs to be more statistics - no data other than initial outcomes. Did COVID significantly change the business environment and mediation process, since there are almost no external resolution issues since then? Or is it not promoted enough?"*

### **3.2 Awareness and Accessibility of the Code**

There was a widespread perception that the Code is not currently well promoted or known, and that levels of knowledge about its contents and its achievements are not well understood by either industry members or external bodies. Typical of these sentiments were the following observations:

*"I've never seen a communication from the Code committee. There's no publicity. So if I was a smash repairer, I wouldn't know what to do. There is a significant problem as to publicising the code."*

*"I don't believe most smash repairers know about the existence of the Code. It just not there."*

*"We don't get information about the CAC and its activities - no minutes, or annual report, or an update."*

*"I don't get a sense that there is much awareness of the Code in the industry, nor information sharing."*

Insurers, however, reported that there was a satisfactory level of knowledge within their community about the Code:

*"There is a generally good level of understanding within insurers..."*

The relationship between the Code and SBCs particularly appears to be in need of work. Few SBCs indicated that they undertook many cases relating to the Code; heard little from the CAC; and only appeared to receive in the vicinity of half a dozen queries or complaints a year.

One regulatory respondent also noted:

*"The CAC doesn't appear to be active in raising awareness of the Code ... There is no sharing of info from the CAC about referrals or dispute resolution... As a group, the Small Business Commissioners haven't really discussed smash repair issues in a long time."*

They also reported that there seemed no systems in place by which they could report back to the CAC on the outcome of any dispute resolution which they themselves undertook. As such, there appears to be room for significant improvements in sharing information between the CAC and Commissioners.

At the same time, respondents also noted that there did appear to be a small number of particularly well-educated repairers who understood the Code and frequently used dispute notification as a starting point for negotiations. As one insurance sector respondent stated:

*"We're finding that while some of the repairers don't understand the scope of the Code, there is also a small cohort who know the Code and lodge serial disputes. We want repairers to use it, but most of them don't understand it."*

There was a widespread view that the current website was in need for substantial revision. Suggestions included a rewriting of the text; a reformatting of its current layout; more user-friendly language; and a more easily navigable structure. One suggestion was:

*"A plain English revision, restructuring and reformatting of the document would improve its readability and accessibility."*

Another said simply:

*“God help you if you are a repairer trying to understand the document or website. Surely we could produce a plain language version.”*

### 3.3 Compliance

Several compliance and enforcement issues were raised during the interviews. These related to enforcement, language, penalties and mediator reports.

One particular issue identified within the compliance framework was the enforceability of the Code. One interviewee noted that:

*“...there are fundamental issues with the drafting of the code. Much of it is not enforceable in a practical sense. It is a mix of both high-order behavioural expectations and specific dispute resolution items.”*

In a similar vein, another party noted:

*“The language of the Code is hard to understand. Some of it hasn’t been tested in law – and may be in future, given it’s a mandatory code in both NSW and SA.”*

One respondent also noted that the adoption of the Code in both states may eventually generate a need for greater formality in the proceedings of the CAC, warning that a court action *“...may well see the CAC meeting processes, minutes, and formality one day being tested in court.”*

Several deficiencies in enforcing the Code were also noted, especially since it is voluntary in nature. A major issue was the ongoing lack of:

*“...capacity to sanction people who refuse to do what they are required to under the Code. There is room for the CAC to remove people from the list of signatories – give it some teeth. Some people today can get the benefits of being a member, but don’t have to comply. Nor can the CAC reject an application from a party not of good character.”*

Several interviewees also advocated for the introduction of formal penalties, especially if combined with the creation of a mandatory code.

Finally, some existing compliance-related reporting aspects of the Code were seen as being redundant:

*“The Code requires that, in the event of an unsuccessful mediation, the mediator must prepare a written report – but that report cannot be used elsewhere in most circumstances. So why is it needed? Are things being overcooked? It’s got no use.”*

### 3.4 Governance Issues

There was a significant difference of opinion in regards to the future governance of the Code, most particularly through the activities of the CAC.

In general, some parties believed that the current system was working well and had little need for alteration:

*“These days the culture of the CAC is generally pretty good. Remember that any decisions we make have to go back to our respective parent bodies [MTAA and ICA] to get approval.”*

*“We support the current CAC structure. Consensus style decision-making is important for ensuring that there is buy-in from both industries.”*

However, the majority of other parties interviewed were of the view that a number of reforms would be desirable. A central one amongst these was the creation of an independent chair, which was frequently raised. Typical of these perspectives was the following statements:

*"An independent chair is an absolute minimum. 2 or 3 independents might be needed, to change the culture and embed the practices."*

*"I see great value in having an independent."*

Other similar comments included the following:

*"The split structure of governance is a problem. The governance stuff is important. The way it's currently designed means you can't always address things, especially if people vote along party lines. Reforming governance can help ensure the Code works better."*

*"Both the MTA and ICA has interconnected networks and it would be good to have an independent chair to counterbalance that."*

Diversity within the CAC was also raised. The current gender imbalance was noted by some, with only one female member on the current six member CAC. This was seen as out of kilter with contemporary governance practices and societal norms.

A number of interviewees noted the absence of any consumer orientation in the Code and the work of the CAC. Several people argued that it was time for the CAC and Code to also address consumer issues:

*"The governance and mindset of the CAC now needs to change. The members' first responsibility should be the protection of consumers, effective management of the Code, and the best interests of the industry."*

As one respondent noted:

*"The consumer's relationship is with the insurer; so is the repairer's. They don't have a relationship with each other, and little repeat work. If the consumer doesn't complain, the repairer's grievance doesn't have as much credibility."*

One respondent also suggested that specific provision should be made for regional representation on the CAC.

Support and adequate resourcing of the CAC was raised by several parties, who expressed concerns over the essentially voluntary nature of its operations and the lack of apparent capacity to undertake additional work or promotion of the system:

*"We are relying on a third party [the CAC] without resources or skills to do the job. A purely voluntary approach is not sufficient. We need the ability to deliver education and communications; understanding of stakeholders; ensuring mediation services are working appropriately."*

*"Someone needs to own the Code. Maybe a few hours a week. To start talking about what does the website look like, what training is needed."*

*"It might need an operating budget; should come from ICA and MTAA equally."*

The role of the NSW SBC in sending an observer to CAC meetings was also raised by several respondents. Whilst some suggested it should cease, others were supportive of its continuing presence. Respondents in other jurisdictions raised queries as to whether or not observers might also be needed from South Australia and any other future states or territories which also make the Code mandatory.

### **3.5 Other Issues**

Respondents were asked to consider if there were any other issues which the review might also address. Four topics were raised: the role of third party representatives; the emerging role of artificial intelligence; education and training responsibilities; and environmental sustainability.

*Third party representatives.* Many parties noted that there had been a growing use of third party representatives since the last review of the Code. For example, smash repairers often use external

consultants to handle claims processing and related matters. Likewise, insurance firms sometimes used outside parties for claims handling and recovery of moneys. At present the Code is silent on the role of these parties. But as was noted:

*"Claims handling is a financial service, so these providers should have an Australian Financial Services License [AFSL]. Most don't."*

It was noted that the VACC has already previously published advice on this issue (VACC 2021), but the issue is not addressed within the Code or by any of the current work of the CAC.

Several respondents argued that the role and responsibilities of these representatives should be explicitly addressed within the Code. It was also noted that there is no current provision for third parties to sign up to the Code.

*Artificial intelligence.* AI was identified by numerous respondents as an important emerging issue. Although there were few specific suggestions, many interviewees believed that it should be considered within the framework of the Code. As one respondent stated:

*"AI is already in place – take a picture and it starts writing a quote. This allows you to use less qualified assessors, so there's no need for a skilled estimator. We need to think about this in the Code."*

Another pointed out that:

*"... minor damage is now actually more critical than was previously the case, because AI means that every component plays a part in assessing/sensing/determining the safety of the vehicle. This is a far cry from the time when only essential items like a chassis were central to the safety of a car."*

A third respondent commented:

*"AI is already here, and utilised in many places ... you need for the CAC to prepare and educate parties about role of AI in the Code, and to clarify issues around AI. This includes disputes based on AI and AI-generated quotes which are based on images. Overall, the role of Code-approved assessors in AI needs looking at."*

*"There may be a role for the MVIRI to ensure fairness and transparency of repair estimation processes as adoption of AI becomes more widespread."*

It was also pointed out that AI is unlikely to remove all human presence from the motor vehicle smash repair process. As one industry player noted:

*"AI works in predicting claims costs; but isn't going to necessarily do the physical work of the machine. It can't perform the work, so only a small amount can be done by robots."*

*Education and training.* Several parties noted that the Code already makes reference to the CAC playing a role in educating industry participants, but in practice this does not occur:

*"Clause 4.3 mentions Code approved assessors, but there is no list of these, no compliance of these, and some of the courses set out in the list don't exist."*

Education issues were identified as perhaps needing updating, with another respondent indicating:

*"We do need to look at the educational requirements that the Code requires CAC to look at. We might need to revise those clauses, because the industry has changed and qualifications systems have changed. Assessment is often compliance as much as estimation checking. Needs exploring."*

*Sustainability.* Environmental issues were also raised by a small number of respondents. It was suggested that the move to a net-zero decarbonised economy and society is already having an impact on the automotive trades, and that the Code might need to be revised to take these issues into account:

*"Australia is far advanced in recycling, green parts, environmental issues in repairer shops ... so now we need to begin thinking about a Repair Shop Sustainability Rating scheme, which is already used in the UK."*

Some respondents suggested that there were also other issues that were likely to have an impact on the MVIRI sector, but were not yet fully tested or understood. For example, the federal government's 2022 *Motor Vehicle Information Scheme* was seen as one such variable, but no respondents suggested any specific actions or changes to the Code yet in response to its introduction.

#### 4. Recommendations

The following recommendations are presented not in any particular order of priority, but rather are shown sequentially under the most relevant Term of Reference item.

Given the current limited resources available to the CAC, each of the recommendations concludes with a series of simple action steps that can be easily undertaken to begin implementing the suggested changes.

The review does not make a formal recommendation *per se* as to whether the Code should be mandatory or voluntary, as this was not one of the specified Terms of Reference. However, a comment on this issue is included in the discussion of Recommendation 15.

#### Term of Reference #1: Effectiveness of dispute resolution processes

#### Recommendation 1: Clarify and strengthen provisions relating to dispute resolution processes

Several respondents to the review have put forward suggestions to improve the operations of the Code's existing dispute resolution mechanisms.

The current timeline under Clause 11.2 (d) for acknowledgement of receipt of a dispute is three working days. Given the lodgement of disputes is done online, it might be reasonable to shorten this timeframe.

Clause 11.3(i) requires that, in the event of an unsuccessful mediation, the mediator must prepare a written report – but that report cannot be used elsewhere in most circumstances (unless agreed to by both parties). It may therefore be appropriate to remove a mandatory requirement for the preparation of a written report, and replace it with a requirement that a report will be produced if requested by either of the parties.

The collection of more data may also be useful, including outcomes achieved under the Code. At present the publicly-available information contained in the annual reports is limited and does not measure outcomes, such as number of cases closed successfully.

Several respondents noted that many parties in the sector seemed unclear about how dispute resolution under the Code worked, what issues were in (or out) of its scope, its timeframes, costs and whether matters were binding or not. A vigorous education campaign by the CAC (as discussed further in other recommendations) would help address many of these issues.

#### Recommendation 1: Implementation suggestions

- Amend Clause 11.2 (d) so that the written acknowledgement of receipt of a complaint occurs within one working day of its lodgement.
- Amend Clause 11.3 (i) so that a written statement will be prepared only if requested by either an applicant or respondent.
- Collect and publish more data about the outcome of dispute resolution under the Code.
- Undertake more vigorous education of the sector about dispute resolution availability.

## Recommendation 2: Update the Code's language, format and presentation

The written the Code will need a considered, careful and thorough rewrite.

This is becoming increasingly important. With the Code now mandatory in two state jurisdictions (originally NSW, and now also South Australia), and the real possibility it may also be extended to a third one (Tasmania) in the near future, the document will require a greater degree of clarity, especially if it is enforced in the courts.

There are several deficiencies with the current wording of the Code. The language in some parts is vague. At times it is quite formal, and in other parts colloquial and difficult to understand. Some of the content is outdated. The sequencing and presentation of clauses should also be reconsidered.

A rewrite of the entire document is therefore suggested, to be undertaken by a person with both legal training and a working knowledge of how industry codes of conduct operate.

For example:

- Much of the preamble is outdated and needs tidying up. References to the Productivity Commission review could be removed, and statements written in the future tense (such as “the Code will...” ) should now be stated in the present tense (“the Code exists to ...”).
- There is an overlap between much of the content in the preamble and Clause 1. For convenience, these should be merged into a rewritten, consolidated Clause 1.
- The prefatory statements in Clause 2 (“The Code is mandatory in New South Wales and is a voluntary Code in other jurisdictions across Australia ...”) will need rewording, given that the South Australian mandatory provisions have now taken effect.
- If a new URL is adopted for the Code as per the other recommendations in this report, then the definitions in Clause 3 will need to amend the current statement “Code Website means abrcode.com.au.”
- Several respondents also suggested that the term “manufacturer” needs to be included in the list of definitions in Clause 3.
- The list of training courses in Clause 4.3 (b)(iii) may be out of date.
- Schedule 1 of the Code (“Approved Mediation Providers”) is intended to show a list of approved mediation advisers. However, the current list does not include the ASBFEO, or the Queensland Small Business Commissioner.
- The contents of Schedule 2 (“Approved Determination Providers”) should also be checked for currency. At present only two SBCs (NSW and Victoria) are listed as having capacity to provide these services. It would be beneficial to consider whether to include the South Australian SBC and ASBFEO, and any other SBCs interested in being so listed.
- Whilst some parts of the Code text are numbered, others paragraphs are not. For consistency and ease of reference, all paragraphs in the text should be numbered.
- The website copy of the Code does not include Schedules 1 and 2, and should do so. These are currently found in another part of the website ([Code Of Conduct | Dispute Resolution \(abrcode.com.au\)](#)) and are not easy to find for first time readers.

The above points are not an exhaustive list, as other parts of the Code text also need review.

Many respondents to the review also expressed a strong interest in the making the wording of the Code simpler and easier to understand. At the same time, other parties also pointed out that some

of the current language is vague and may not stand up in a court of law should a dispute be tested in jurisdictions where the Code is now mandatory.

For this reason, the CAC needs to address a seeming paradox: making the language more user-friendly, but also more legally rigorous.

The review recommends that this can be best dealt with by embracing the use of plain language, user-friendly explanations in all of its promotional, engagement and explanatory work (such as material on the website), whilst at the same time reviewing and strengthening the legal rigour of the formal Code itself.

This will require the use of legal advice, and as such the current review has not attempted to put forward any suggested wording. However, as noted earlier, the CAC are strongly encouraged to engage a suitable legal practitioner for this purpose.

### **Recommendation 2: Implementation suggestions**

- Adopt a simpler, more user-friendly written style within the website and any other public-facing education and engagement documents.
- Engage a qualified legal practitioner to review and suggest any rewording to the Code that might be needed.
- Review and merge the existing preamble and Clause 1.
- Amend the first paragraph of Clause 2 of the Code.
- Amend the definition of Code Website in Clause 3.
- Define the term “manufacturer” in Clause 3.
- Update the list of approved mediation advisers in Schedule 1.
- Consider including the ASBFEO and the Queensland Small Business Commissioner in Schedule 1.
- Consult with ASBFEO and SA SBC regarding their inclusion in Schedule 2.
- Number all paragraphs in the document.
- Schedules 1 and 2 are not attached to the complete version of the current Code which is available online to the public ([Code of Conduct \(abrcode.com.au\)](http://abrcode.com.au)). These should be added to provide readers with a complete iteration of the Code.
- Ensure that Schedules 1 and 2 are henceforth attached to all electronic and print versions of the Code.

### **Recommendation 3: Undertake greater public promotion of the Code**

A common remark made by most of the interviewees was the apparent lack of public visibility of the Code. Many stated that they heard and saw little of the Code; that it did not generate a great deal of public discussion or media interest; and they did not receive many updates (if any) about the current status or recent developments relating to the Code.

Whilst it has not been possible to measure the level of smash repairer knowledge about the Code, it appears likely that this will also be low.

A poorly-informed target community can often lead to low usage of the scheme in the first instance.

However, it may also create less obvious, but equally important, longer-term risks, including misunderstandings about what the Code does (and does not) cover; limited awareness of an insurer's and repairer's rights; diminishing interest and support for the Code amongst governments and regulators; and misinformed public debate. This has the potential to create adverse policy problems for both insurance firms and the motor trades sector.

For this reason, a more active level of engagement with key stakeholders, and more public visibility of the Code, is strongly recommended.

This need not be a complex or resource-intensive project. There are several small steps that can be undertaken which are comparatively "low hanging fruit": simple measures to quickly and significantly raise the profile of the Code.

For example, if the Code is to be reconfigured to genuinely be more user- and business-friendly, there must also be an easy point of contact. Provision of a phone number and/or email by which businesses can speak directly to a person would be a useful forward.

The CAC should also seek to build a wide database of businesses, insurers, regulators, Small Business Commissioners, state and federal parliamentarians, state/federal Ministers and Shadow Ministers, motor vehicle and small business media, automotive training and education bodies, industry associations, dispute mediators and other stakeholders with an interest in the Code. Other interested parties should also be able to do so – and the easiest way to provide this is an online registration at the website homepage.

This database can in turn be used to distribute updates on the Code and the work of the CAC. At a minimum, stakeholders should be sent a copy of the Annual Report each year. Ideally, a news bulletin every six months would also keep parties informed.

The CAC should meet regularly with key stakeholders, to discuss issues of common concern and raise the Code's profile (as per other recommendations in this chapter).

Finally, it might also be worthwhile considering producing some simple introductory online material to educate stakeholders on the basic elements of the Code. This could be done on YouTube or social media. This is a practice already undertaken by a number of other voluntary industry codes.

### **Recommendation 3: Implementation suggestions**

- Insert a phone number/email contact point on the home page of the website.
- Produce regular (six monthly or quarterly) bulletins on the Code for stakeholders.
- Compile a list of known existing stakeholders, based on the input of CAC members.
- Create a registration function on the website for stakeholders to sign up to bulletins.
- Consider using social media, and preparing a YouTube introductory video.

### **Recommendation 4: Work more closely with regulators**

Raising visibility with key government and regulatory bodies is also critically important. In the absence of regular periodic contact with these parties, interest in, and support for, the work of the Code is likely to continue to decline.

The review received numerous comments from public sector bodies that they knew little about the current role of the Code, did not receive regular updates about the issues in the sector, and that as a result involvement in the Code had waned.

This is occurring at the same time that the involvement of regulators and governments is increasing.

If anything, this should provide impetus for more – not less – engagement with government.

There is value in the CAC (or a representative, such as the chair) meeting at least once a year with the principal federal regulator, the ACCC, and offering also to collectively update the Small Business Commissioners/ASBFEO annually at one of their regular national SBC forums.

A similar offer should also be made to other arms of government that have a potential interest in the work of the Code, including the NSW, South Australian and Tasmanian governments.

Finally, the issue of SBC representation as an observer to the proceedings of the CAC will need to be reconsidered. This practice originally began when the Code was only mandatory in NSW, and as such the invitation to attend has only been extended so far to the NSW SBC. With SA now also having a mandatory Code, it may be worth consulting with the national body of SBCs (that is, the national Small Business Commissioner’s forum, which includes all state bodies plus ASBFEO) to determine their joint preference as to how many SBCs – and who – should attend in future.

#### **Recommendation 4: Implementation suggestions**

- Request a regular update meeting with the ACCC small business unit and the national SBC forum.
- Institute regular meetings with state government agencies where the Code is currently or likely to become mandatory.
- Consult with the national SBC forum as to their preferred future attendance at CAC meetings.

#### **Recommendation 5: Update the Code website URL and contents**

The website is central to the effective functioning of the Code. It is the primary source of public information; the repository of its records (such as annual reports, the Schedule of approved mediation advisers, the Schedule of approved determination providers, and the definitive written version of the Code); and the only means by which signatories can initiate a matter to be referred to dispute resolution. It therefore needs to be easily useable and reader-friendly.

However, at present the site does not achieve this. There are several weaknesses with the current online arrangements, including difficulty in finding the site; a complex structure; wording; user friendliness; and poor ease of use.

The website is difficult to find if one is not already familiar with it. It is based around a URL ([www.ABRcode.com.au](http://www.ABRcode.com.au)) that is not intuitively obvious. Indeed, it is easy to mistake for [www.abr.com.au](http://www.abr.com.au), which is a commercial research product, the Australian Business Register, offered by private sector firm Equifax. Likewise, [www.ABR.com](http://www.ABR.com) is the site for a US firm, American Barcode.

The acronym ABR (presumably short for “automobile body repairs”) is not used or referenced within the Code, is not part of the common language used by businesses when discussing the Code, and is not well known to the public.

Instead, it may be more appropriate for the website to have a title and URL that is more intuitively obvious to users, especially those within the small business repairer community. Possible names might include [www.smashrepaircode.au](http://www.smashrepaircode.au), [www.smashcoderepair.net.au](http://www.smashcoderepair.net.au) or [www.mviricode.org.au](http://www.mviricode.org.au).<sup>8</sup> All of these sites, for example, are currently available for registration at the time of the writing of this report, and cost less than \$20 a year.

The Code website would also benefit from a rewrite of much of its material so as to have a greater focus on the needs of its two primary stakeholders: smash repairers and insurance firms. Much

<sup>8</sup> The use of an “asn.au”, “org.au” or “net.au” suffix instead of “com.au” may also help build confidence that this is a non-profit dispute resolution service, rather than a commercial business.

of the material contained within it requires readers to “click through” multiple links to access, and there is little contextual background to explain the more formal document.

Moreover, it currently focuses on explaining the rules and processes, emphasising formal procedures and steps, rather than a plain language, all-at-a-glance explanation of what the Code can (and cannot) do.<sup>9</sup> It would benefit from a rewriting to ensure that most pages succinctly display key information up front to readers.

The two Schedules to the current Code are not attached to the online text version of the Code, and instead require readers to actively search and find them. This should be corrected.

The current site does not provide contact details for external readers. The “contact us” page is a one-way email system that does not give readers any information. Whilst this is helpful in ensuring that dispute complainants do not mis-direct their grievances, and eliminates frivolous emails, it makes it difficult for governments, mediators, industry groups and the media to contact the CAC.

Finally, in due course the CAC may also wish to develop a social media presence.

### Recommendation 5: Implementation suggestions

- Adopt a more user-friendly URL and register this.
- Over time, transition material to the new site. Retain the old legacy abrcode.com.au URL as a precaution to prevent other parties using it, and to redirect existing visitors.
- Have the website structure, format and text rewritten. Test any proposed rewrites with a small focus group of smash repair operators and external parties who are unfamiliar with the current code.
- Adopt a generic email address and phone number to allow parties to contact the CAC as needed. Place this information on the homepage of the website.

### Term of Reference #3: Compliance with the Code

#### Recommendation 6: Introduce sanctions for breaches of the Code

A substantial current weakness of the Code is the lack of penalties for failure to comply with its provisions, and its inability to prevent undesirable parties from joining.

Existing Clause 2.1 (“Signatories”) governs membership issues, but at present does so in a cursory manner which fails to deal with these matters. It allows an automatic ability for any party to join the Code if they wish, and to resign at any time if they wish. However, the CAC has no stated powers to block admission or expel parties.

As such, there is currently no capacity to sanction signatories who refuse to do what they are required to under the Code. Moreover, the CAC cannot expel a non-compliant member, nor can it prevent a party from joining, even if the applicant may not be of good character.

Many parties value their membership of the Code, and see it as a desirable aspect of both internal practice and external stakeholder management. But if other parties can join and remain members whilst flouting the rules of the Code, its value will be demeaned.

Providing the CAC with capacity to both expel non-compliant members, and to actively vet new applicants, will help give it with some additional degree of rigour and compliance. This is especially important because there are limited other enforcement options available.

<sup>9</sup> An example of a voluntary code website with an intuitively obvious URL and simple, easy-to-read format is that of the Indigenous Art Code About | Indigenous Art Code

A voting mechanism will also need to be inserted into the Code to govern admission and expulsion procedures.

Finally, the CAC should be encouraged to more actively monitor compliance with the Code. At the moment, it is difficult to independently check that parties to the Code are complying with all its provisions. To do so, however, the CAC will need to be properly resourced – an issue discussed elsewhere in these recommendations.

#### **Recommendation 6: Implementation suggestions**

- Amend Clause 2.1 so that an application for admission is also contingent upon a majority vote of approval by the CAC.
- Amend Clause 2.1 so that the CAC can (by a majority vote) eject an existing member for failure to comply with the Code, or if they are not of good character.
- The CAC should more actively monitor member compliance with the Code.

#### **Term of Reference #4: Governance of the Code and the CAC**

#### **Recommendation 7: Appoint an independent CAC chair and deputy chair**

The CAC would benefit from the creation of an independent chairperson, responsible for the conduct of its meetings and oversight of its general activities between meetings. An independent deputy should also be considered, to expand the breadth of views within the CAC, support the chair in her or his work, and to step in if the chair is incapacitated.

An independent chair can be seen as impartial, and working in the best interests of the sector as a whole. An independent chair can speak to government, regulators and the broader community in a way an industry representative cannot. Currently there is no individual voice for the Code and for both the insurance and smash repair sector.

There are other significant potential benefits in the appointment of an independent chair as well. Not only would it provide a means of resolving deadlocks that may arise from time to time, it will also lead to the provision of a wider range of views. It may also help prevent groupthink over contentious issues, ensure that external concerns and perceptions are taken into account by the CAC, and serve as a focal point for driving good governance.

This is not a new suggestion. It was identified as an issue as long ago as the very first review conducted in 2010, in which ICDPA recommended “the incorporation of a seventh board position in the form of an independent chairperson (independent of both repairers and insurers) to the CAC” (Addison & Colanzi 2010:25). In 2013, Executive Counsel’s review findings included a recommendation that there not only be an independent chair, but two others independent members (Executive Counsel Australia 2013: 5, 27).

ASIC has also previously stated a preference that industry codes of conduct should have a compliance or administrative oversight committee that includes not only the affected parties, but also independent members (ASIC 2017). The ACCC has also provided similar recommendations (ACCC 2011: 10).

As the ACCC has noted, independent directors are usually best appointed by the board itself. Ideally, such a person should hold AICD qualifications (such as membership of the Institute, and having completed the Company Directors Course), as well as substantial board experience. The person should preferably also have some knowledge or experience of other dispute resolution schemes and industry codes. To reinforce their neutrality, it would be desirable if they came from outside the automotive industry.

As Table 2 below indicates, many other code oversight bodies already make provision for independent representation.

**Table 2: Membership Composition of Other Similar Bodies**

Code Committee	Sponsoring Entity	Composition
Buy Now Pay Later Code Compliance Committee	Australian Finance Industry Association	3 persons: independent chair, 1 x industry, 1 x consumer
Life Insurance Code Compliance Committee	Financial Services Council	3 persons: independent chair, 1 x industry, 1 x consumer
Casual Mall Licensing Code of Practice	Shopping Centre Council of Australia/National Retail Association	11 persons: independent chair, 5 x industry, 5 x consumer
Australian Financial Complaints Authority	AFCA	9 persons: independent chair, 4 x industry, 4 x consumer
Telecommunications Consumer Protection Code	Telecommunications Industry Ombudsman	9 persons: 3 independent directors (1 as chair), 3 x industry, 3 x consumer

The chair will need to have both a deliberative and a casting vote in the proceedings of the CAC. Combined, these measures should ensure that the chair is able to break any voting deadlocks which might occur.

This position will also need to be remunerated. Whilst there are no fixed fees for such roles, payment of a chair role will range from a low of around \$20,000 (usually for a body that meets quarterly, and has few other time commitments) to about \$50,000 (for a body meeting 4-6 times a year, and/or with work expected outside of those meetings).

The role should be appointed for at least a three-year term and be eligible for re-appointment, subject to the proposed term limits discussed elsewhere in these recommendations. The ideal candidate could be recruited by invitation, or else the position should be advertised nationally and selected after an active recruitment campaign.

If implemented, these proposals will require amendments to the existing provisions of Clause 13.

#### **Recommendation 7: Implementation suggestions**

- Amend Clause 13.1 (b) of the Code to allow for an independent chair and deputy chair.
- Delete Clause 13.1 (e) of the Code, which mandates rotation of the chair role between ICA and MTAA representation.
- Amend Clause 13.1 to state that the chair will have both a deliberative vote and, in the event of a tie, a casting vote.
- Clause 13.1 should also include formal provision for the deputy chair to act as chair if the chair is incapacitated or absent.
- Develop a set of selection criteria for the independent chair and deputy chair.
- Advertise and recruit for the roles by invitation; or through a variety of media, the AICD director jobs board; or engage a recruitment consultant to manage the process on behalf of the CAC.

## Recommendation 8: Clarify CAC governance, membership, voting and training

Some comparatively small-scale changes could also be made to enhance governance of the Code. Whilst seemingly minor, in total they can substantially enhance the professionalism of the body. These relate to the CAC's terms of office, voting thresholds, gender diversity, director training, data governance and access to CAC minutes.

A first issue is the term of office for CAC members. At present, CAC members are only appointed for two year terms, and it might be more effective to instead make this three years.

Many director, board or committee roles in Australia are now appointed for three year periods, recognising that it may take a year or more for a new member to become fully familiar with their responsibilities, work schedule, policy issues and the processes of an organisation.

A second consideration is the total number of terms that a CAC member can serve (that is, "term limits"). At present, members are eligible for re-appointment for an indefinite number of terms, allowing them to serve *ad infinitum*. This is contrary to contemporary best practice governance in Australia, and in many other code oversight committees.<sup>10</sup> For example, the AICD typically suggests that directors should serve no more than three terms (or a total of nine years on any body).

Thirdly, it might be desirable to amend and clarify the rules governing amendment to the Code. At present, Clause 13.1 (h) simply states that "Changes to the Code can be made by the CAC only on a consensual basis." This is a somewhat vague definition, subject to different interpretations, and may effectively give every member on the CAC a veto power over any reforms.

With the appointment of an independent chair, it may be more appropriate to adopt a more formal convention numerical threshold, such as requiring the support of at least two-thirds of all the members of the CAC – which would mean 6 of the 8 members if there was to be both an independent chair and an independent deputy chair as well. This is sufficient to prevent any one group dominating the process.

Another issue is the level of female representation on the CAC. More consideration needs to be given to balancing genders. At present there is only one female member of the board. This is at odds with contemporary social mores and corporate governance, wherein women are actively encouraged to participate in the governance of industry regulatory bodies. Both the MTAA and ICA should be encouraged to appoint more women to the CAC – at a minimum, there should be at least one woman nominated by each party.

Likewise, if two independent directors are appointed, at least one should be female.

Training for CAC members is also worth considering. It would be desirable if all members of the CAC were offered the opportunity to undertake professional development (such as the AICD Company Directors Course, or similar).

The CAC is also encouraged to more actively oversee data governance. The website system for dispute resolution has been a useful tool, but since that time, cybersecurity and data breaches have become more prevalent, and the responsibilities of governing committees for such issues has also grown. There is no evidence to suggest any problem exists at present, but a proactive approach is strongly encouraged before any issues emerge.

The review also suggests that CAC minutes should be made public as a default approach. Current Clause 13.3 of the Code has been interpreted to infer that the minutes of the CAC are confidential, but this is not explicitly stated and is open to clarification. The review suggests this issue be clarified in any rewrite of the Code text.

---

<sup>10</sup> For example, the maximum term for a member of the Australian Banking Association's Banking Code of Practice oversight body is 9 years.

### **Recommendation 8: Implementation suggestions**

- Amend Clause 13.1 (c) to read “Members of the CAC shall hold office for a period of three (3) years, and may be re-nominated for up to two additional terms, up to a total of 9 years, subject to sub-clause 13.1 (d) of the Code;”
- Amend Clause 13.1 (h) to so that changes to the Code can be made by the CAC only with the approval of at least 2/3 of the voting members.”
- Both the MTAA and ICA should be encouraged to each nominate at least one woman to the CAC.
- If two independent directors are appointed, at least one should be female.
- All CAC members should be offered enrolment in the AICD Company Directors Course, or similar professional development.
- The CAC should have an external party review its data governance and cybersecurity measures.
- Clarify Clause 13.3 to explicitly address confidentiality of CAC minutes.

### **Recommendation 9: Incorporate the CAC as a formal legal entity**

As presently constituted, the CAC operates as an informal body without any legal structure behind it. It would be desirable to adopt a more formal approach.

In its current unincorporated state, members of the CAC have limited protection should legal proceedings be instituted by any other party. This exposes each of the committee members to a level of risk that many may find unacceptable, and can serve as a means of reducing the pool of potential committee members.

Moreover, the lack of an enduring legal structure prevents the CAC from holding or managing any financial resources, except in a personal individual capacity. This is far from best practice corporate governance.

At present ownership of the website URL and all other intellectual property relating to the Code is unclear. It would be desirable to hold all of this within one corporate entity.

Finally, the lack of a corporate entity means that the CAC may be considered by some third parties (such as government and regulators) as lacking in sufficient credibility to be considered as a reputable dialogue partner.

The review recommends that the CAC consider incorporation, either as a proprietary limited company or as an incorporated association – the optimal choice should be selected after seeking appropriate professional legal advice. The entity should also provide appropriate director and professional indemnity insurances for all CAC members.

### **Recommendation 9: Implementation suggestions**

- Seek legal advice as to incorporation of the CAC.
- Identify key physical and intellectual assets relating to the Code, and transfer their ownership to an incorporated CAC.
- Ensure all directors of the incorporated entity are insured for their responsibilities.

## Recommendation 10: Better resource the CAC

It appears that all of the work currently involved in the operations of the Code, apart from website maintenance, is being done on a voluntary basis by members of the CAC, or by the ICA and MTAA on their behalf. There is a need for more appropriate resourcing.

At present, any and all work to promote the Code, properly manage its day to day operations, raise its profile with stakeholders, and administer its work, is being done on a minimal basis according to individual capacity to contribute. Whilst this voluntary effort is commendable, it is far from being best practice.

The review believes that the Code needs an administrator who can assist for a small number of hours each week, direct queries, undertake engagement and promotional work, and prepare CAC meetings and minutes. This, and other reforms suggested in this report (such as independent members of the CAC), will accordingly need to be resourced with sufficient staffing and financial support.

A preferred approach would therefore be for the CAC to develop an annual operating budget for its work. This is likely to cover:

- Fees payable to the independent chair (likely to be in the vicinity of \$20-50,000 + travel and director insurance costs)
- Fees, travel and insurance for a deputy chair (approx. \$20-\$30,000 p.a.)
- Fees for a part-time administrator (likely to be \$30-40,000 p.a.)
- Money for promotion and awareness raising (an initial amount might be \$20-\$30,000)

This cost excludes any company formation costs. It is suggested that these funds be paid equally by ICA and MTAA.

Whilst payment to independent members of the CAC is seen as reasonable, payment to the other CAC members is not suggested at this stage. ICA and MTAA representatives on the CAC are not paid currently any sitting fees, but apparently rather undertake these tasks in their capacity as employees of these bodies.

### Recommendation 10: Implementation suggestions

- Develop a simple annual budget for the CAC.
- Open a corresponding bank account for these moneys.
- All expenses should be tabled at CAC meetings for scrutiny.

### Term of Reference #5: Other pertinent issues

## Recommendation 11: Codify practices relating to the use of artificial intelligence

Some forms of artificial intelligence (AI) are already having an impact on the smash repair industry, on the nature of work performed, and in how insurance claims are assessed and processed. In future, AI may also be applied to some basic forms of dispute resolution. There is scope for the CAC to clarify some of these issues, and to educate parties about role of AI in the Code.

Some of the issues which may need addressing could include:

- Should insurers be required under the Code to advise repairers that an assessment/estimation has been done by AI rather than by a person?
- What rights do smash repairers have to dispute assessments/estimations made using AI? Are they the same as currently exist under the Code?

- What are the operating rules (algorithms) and assumptions employed in an AI assessment?
- Should insurers advise repairers if an IDR matter is dealt with by AI rather than a person? If this is the case, should repairers have the right to request their matter be handled by a person instead?

#### **Recommendation 11: Implementation suggestions**

- The CAC consider the above-listed questions and how they should be addressed in the Code.
- The CAC begin an active education campaign to advise firms in the industry about AI and its implications.

#### **Recommendation 12: Review educational requirements**

The Code lays out a number of educational and qualification-related processes. For example, Clause 4.3 covers a definition of what constitutes a Code approved assessors, including scope for persons to be recognised in this role if they have completed a Certificate IV vehicle loss assessing course. Likewise, Clause 4.4 defines an approved estimator as being someone who has completed “CAC approved units, as set by the CAC from time to time.”

However, there appears to be no information in the public domain (such as the website) with any information on these courses. There is no list of approved assessors or estimators, nor a list of the formal courses which might allow a person to qualify with these rules to the satisfaction of the CAC.

The current list of courses for assessors in 4.3 (b) (iii) appears to be redundant.

A more vigorous approach to education and certification of minimum standards (for both estimators and assessors) is required across the industry. Clause 4.4 (c), for example, stipulates that signatories should ensure estimators are provided with ongoing training or development, but there is no evidence on the public record to suggest compliance with this is being undertaken. The CAC should consider an active campaign to encourage firms to do so.

#### **Recommendation 12: Implementation suggestions**

- Clause 4.3 (b) should be revised to take into account current educational courses required to qualify as a Code approved assessor.
- Clause 4.4 should be revised to take into account current educational courses required to qualify as a Code approved estimator.
- The CAC should consider asking signatory insurance firms to confirm that suitable training and development is being undertaken for their assessors and estimators.

#### **Recommendation 13: A greater consumer focus**

At present, there is no obligation on parties to the Code to consider the role and needs of consumers. Mention of consumer interests is minimal, with only the first sentence of the opening preamble referring *inter alia* to the promotion of consumer confidence.

At the same time, as mentioned earlier in this report, automotive policies and claims are the single biggest group of retail insurance held by Australian consumers. As such, there is a valid argument that they need to be considered within the smash repair dispute resolution system.

A stronger consumer focus is not only good for consumers. It also will enhance the credibility of the Code, and ensure that the focus of its work is not simply addressing the needs of insurers and/or repairers.

A commitment to consumer welfare and interests is also common practice amongst many other industry codes. Its absence from the current Code was remarked upon by a number of government/regulatory interviewees.

The review strongly suggests that the governance responsibilities and mindset of the CAC should take consumer interests into its work and management of the Code.

This could be addressed by including an explicit reference to the CAC's role in the protection of consumers, effective management of the Code, and the best interests of the industry.

#### **Recommendation 13: Implementation suggestions**

- The preamble of the Code should be amended to make explicit mention to protection of consumer interests.
- Clause 13 should be amended to state that the CAC's responsibility should also include the protection of consumers, effective management of the Code, and the best interests of the industry.

#### **Recommendation 14: Clarify the role of third party representatives**

The role of third-party representatives in disputes should be explicitly addressed, as they are not currently mentioned or referred to anywhere in the Code. This is despite the fact that several respondents to the review indicated that the use of such parties is becoming increasingly common.

It would therefore be sensible to explicitly recognise their role in dispute resolution, and to require minimum standards of behaviour, just as the Code already spells a number of expectations for both repairs and insurers (in the Code preamble and in Clause 1).

This should include an obligation to act fairly and professionally towards dispute management staff; act in the best interests of the dispute applicant; and avoid lodging disputes that are out of scope.

The exact nature of the requirements to be made of third party representatives should be considered and agreed upon by the CAC. For this reason, the review does not suggest any specific form of words, but rather encourages both the MTAA and the ICA to examine the address.

The review also recommends that third party bodies have the capacity to sign up to the Code. Whilst existing Clause 2.1 regarding signatories to the Code does not expressly exclude such entities from joining, neither does it formally recognise them. It would be preferable to clarify this situation.

Allowing third parties to become signatories would expand the ambit of the Code; raise greater industry awareness of the Code; and allow the CAC to sanction errant behaviour by such parties in future.

Finally, it was also suggested that third party representatives engaged in claims handling might well be providing a financial service, and as such should have an obligation under the Code to obtain an Australian Financial Services License (AFSL).

#### Recommendation 14: Implementation suggestions

- Clause 2 should be amended so as to explicitly allow third party organisations to apply to join the Code if they wish.
- Approval of such members, and their expulsion, should be on the same grounds as is proposed to apply to insurers and repairers (see Recommendation 6 above).
- Insert a new Clause 11.5 that spells out the roles, rights and limitations upon third party representatives.
- Amend the list of definitions in Clause 3 to specifically define a “third party representative.”
- The CAC should consider whether it wishes to impose an ASFL obligation on third party representatives engaged in claims handling.

#### Recommendation 15: Change the frequency and focus of future Code reviews

The frequency of reviews is itself in need of some revision. Whilst Clause 13.2 (f) of the current Code requires the CAC to conduct “...an external review of the operation of the Code every three years,” in practice these do not always occur triennially. Moreover, it is questionable as to whether or not a review every three years is an effective use of CAC resources.

Review of an industry code is generally considered good practice by most regulators and governance specialists, as the ACCC (2011) has noted in its guidance for the operations of voluntary industry codes. It provides a valuable opportunity for participants, industry bodies and administrators to assess the value and effectiveness of the scheme.

However, this current report is only the fourth review since 2006, indicating that reviews are actually taking place less frequently than every three years. In the seventeen years between the launch of the Code and the current report, there has been approximately one enquiry every four years.

A mandated requirement to review triennially puts the CAC at risk of breaching its own rules, and is somewhat at odds with broader practice. Indeed, many dispute resolution services today tend to conduct their reviews on a longer time cycle than the MVIRI, and it is not uncommon to see these occurring up to 5 years apart.

Too short a review process may mean that the CAC finds itself overseeing and administering one review and then, shortly afterwards, another. This prevents it from addressing the issues already raised in previous reports. It also requires funding that could be used to meet the annual operating expenses of the CAC..

It is also suggested that the next review pay especial attention to a number of issues raised during the current study, which are likely to be significant by the date of the next scheduled Code review. These include environmental and sustainability issues; the impact of AI; analysis of IDR data collected by the CAC and SBCs; and education trends in the smash repair sector.

Other potential areas may also be worth exploring, such as the impact of the *Motor Vehicle Information Scheme* that came into effect in July 2022.

A final issue which a future review may need to consider is whether the Code should remain voluntary in nature, given recent and potential future legal changes within various states. Given that the Code is currently in a state of transition (mandatory in NSW and SA; being considered in Tasmania), it would be timely to consider this issue during the next review.

### **Recommendation 15: Implementation suggestion**

- Amend Clause 13.2 (f) to require an external review every four or five years.
- Include the following issues amongst the Terms of Reference for the next review:
- decarbonisation and sustainability; the impact of AI; analysis of IDR data collected by the CAC and SBCs; education trends in the smash repair sector; and legal status of the Code.

## References

- Addison, Graeme & Colanzi, Roberto (2010) *Review of the Motor Vehicle Insurance & Repair Industry Code of Conduct*, Melbourne: ICDPA.
- Australian Competition & Consumer Commission (2011) *Guidelines for Developing Effective Voluntary Industry Codes of Conduct*, Canberra: ACCC.
- Australian Securities & Investments Commission (2017) *Submission To The ASIC Enforcement Review Position and Consultation Paper 4 - Industry codes in the financial sector*, July, Sydney: ASIC [online] ASIC - Submission to the 'Industry codes in the financial sector' consultation (treasury.gov.au)
- Executive Counsel Australia (2013) *A Review of the Motor Vehicle Insurance and Repair Industry Code of Conduct: Report prepared for the Code Administration Committee*, December, Canberra: Executive Counsel.
- General Insurance Code Governance Committee (2022) *Annual Report 2020-21*, April, Melbourne: General Insurance Code Governance Committee [available online [www.insurancecode.org.au/about/about-the-code](http://www.insurancecode.org.au/about/about-the-code) ]
- Linchpin (2022) *Auto Repair Marketing & Industry Trends Shaping 2023* (available online at Auto Repair Marketing & Industry Trends Shaping 2023 By Linchpin SEO) Ann Arbor, Michigan: Linchpin SEO.
- McKinsey (2016) *Disruptive Trends That Will Transform The Auto Industry* (available online at [auto 2030 report jan 2016.pdf](https://www.mckinsey.com/industries/automotive/our-insights/disruptive-trends-that-will-transform-the-auto-industry) (mckinsey.com))
- Productivity Commission (2005) *Smash Repair and Insurance, Productivity Commission Inquiry Report No. 34*, Canberra: Productivity Commission.
- Schaper, M.T. (2016) "Small Business, The Law and Access To Justice: Issues and Challenges" in Clark, D.; McKeown, T. & Battisti, M. (eds.) *Rhetoric and Reality: Building Vibrant and Sustainable Entrepreneurial Ecosystems*, Melbourne: Tilde Press, pp.21-35.
- Tooth, R. & Swanson, J. (2019) *A Review of Smash Repair Industry Trends – An Independent Report Commissioned By IAG*, July, Sydney: Sapere Research Group. (available online at [insurance-australia-group-iag-002.pdf](https://www.insurance-australia-group-iag-002.pdf) (yaffa-cdn.s3.amazonaws.com))
- VACC (2021) "Insurance Regulations – Claims Handling and Settling Service" Bulletin *Industry Divisions*, 13 October, Melbourne: VACC.

## Appendix 1: Terms of Reference



### Terms of Reference

#### Motor Vehicle Insurance and Repair Industry Code of Conduct Review 2022

##### A. Background

The Code Administration Committee (CAC) is required to undertake a review of the Motor Vehicle Insurance and Repair Industry (MVIRI) Code of Conduct every three years. The CAC is committed to ensuring that the MVIRI continues to promote:

- transparent, informed, effective and co-operative relationships between smash repairers and insurance companies
- efficient, accessible and transparent processes for resolving disputes between insurers and repairers
- professionalism in managing the repair of motor vehicles

To that end, the CAC is seeking to commission an independent external review of the MVIRI Code to identify any key issues as well as recommendations for improvements. This review will be the fourth review since the MVIRI inception in 2006, which was established following the [2005 Productivity Commission Review into Smash Repair and Insurance](#).

##### B. Scope of the Review

###### 1. Effectiveness of dispute resolution processes under the MVIRI

A core component of the MVIRI is to facilitate timely and expedient resolution of disputes between insurers and repairers. Accordingly, the CAC believes that it is critical to establish whether the dispute resolution process under the MVIRI remains effective and fit-for-purpose. To that end the CAC wishes to understand:

- a. whether disputes are being resolved in a timely manner;
- b. the extent to which complainants understand the scope and process for lodging disputes under the MVIRI; have sufficient knowledge or confidence in lodging a dispute; have the necessary support when lodging a dispute under the MVIRI;
- c. the extent to which respondents understand their obligations in responding to a dispute and have in place appropriate processes and procedures for managing disputes under the MVIRI;
- d. the extent to which dispute mediators and determination providers (or parties that could be called on to resolve a dispute) can reasonably apply the provisions of the MVIRI when deciding a determination.

## 2. Awareness and accessibility of the MVIRI

It is important for the CAC that the MVIRI remains accessible and that relevant stakeholders to the MVIRI have a mutual understanding regarding the intent and meaning of the provisions within the MVIRI. To that end, this review will:

- a. Identify areas of ambiguity within the MVIRI – including specific MVIRI provisions and definitions
- b. Consider opportunities for improving the MVIRI's readability and accessibility

## 3. Compliance with the MVIRI

The MVIRI is effective only to the extent its signatories commit to it. The CAC is interested in understanding how effective existing signatory processes are for ensuring compliance with the MVIRI (i.e., section 4 of the Code). In addressing this question, the review should also have regard to current processes for detecting, preventing and remedying breaches to the MVIRI.

## 4. Governance of the MVIRI and the CAC

As per Clause 13.1(b) of the MVIRI, the CAC structure consists of three appointees of the Insurance Council of Australia (ICA) and three appointees of the Motor Trades Association of Australia (MTAA). Whilst this structure intends to provide equal representation for both industries, there are occasions where this has served to delay progress on issues due to fundamental disagreements between the two industries. The CAC intends for the review to explore alternative options for CAC governance which can resolve instances of deadlock on matters which are critical to the operation and administration of the code.

## 5. Other issues pertinent to the effective governance and operation of the MVIRI

The CAC also wishes to understand external factors that may have an impact on the effective governance and operation of the MVIRI now or in the future and, to understand whether these factors may be addressed through the MVIRI. The review may consider the impact of the following issues that have been brought to the CAC's attention:

- a. The changing regulatory environment** – since the last review of the MVIRI in 2017, there have been regulatory reviews in Western Australia and South Australia into the smash repair and insurance industry, with the latter review resulting in legislation mandating the compliance of the MVIRI.
- b. Impact of new technology** – given the growing availability of big data and artificial intelligence, many industries are progressing towards increasing automation of business processes. The review should consider whether the MVIRI remains appropriate for modern technologies and processes.
- c. Fee-based dispute and claims representation** – there is a growing trend towards the use of third-party claims handlers by insurance customers in handling claims and repair processes as well as repairers using third party organisations to lodge and manage dispute processes under the MVIRI. The CAC wishes to understand whether there is need or scope to address the use of third-party agents in the MVIRI, noting that some third-party agents are subject to existing regulatory regimes

### **C. Deliverables**

The reviewer will deliver:

1. a review plan outlining the methodology for conducting the review, to be agreed by the CAC;  
and
2. an evidence-based report with findings and recommendations for items 1 to 5

### **C. Timeframe**

The review report should be completed by no later than three months from the commencement of the review.

### **D. Stakeholder consultation**

The following stakeholders should be consulted as part of the review process, at a minimum:

- Insurance Council of Australia
- Motor Trades Association of Australia
- Small Business Commission (each state or territory)

----

### **MVIRI Code Administration Committee**

Stephen Jenkins – Chair (MTAA)

Brett Wallace – (ICA)

George Manos – (ICA)

Kaes Cillessen – (MTAA)

Kathy Zdravevski – (MTAA)

Peter Hartman – (ICA)