

CODE ADMINISTRATION COMMITTEE

Code

Administration

ANNUAL REPORT 2017

Committee

The Motor Vehicle Insurance and Repair Industry Code of Conduct (Code) has been in operation since 1st September 2006. The Code is voluntary in all states and territories of Australia, other than New South Wales where it is mandatory. Over 2,000 smash repairers are signatories to the Code and over 30 Insurance companies, representing most major participants in motor vehicle insurance, are also signatories to the Code.

The Code Administration Committee (CAC), which is made up of three appointees from the Motor Trades Association of Australia (MTAA LTD.) and three appointees from the Insurance Council of Australia (ICA) is responsible for the administration, monitoring and promotion of the Code. In accordance with Section 13.2 (c) of the Code, the CAC has produced this Annual Report, for the period of 1 September 2016 to 31 August 2017.

Meetings of the CAC

A number of changes were made to representatives of the ICA during the period. Representing the ICA are:

- Mr Peter Hartman – Allianz Insurance;
- Mr Brett Wallace – Suncorp Insurance, replacing Mr Rob Bartlett – Suncorp Insurance; and
- Mr Stephen Palmer – Insurance Australia Group, replacing Mr Rod McDougall – Insurance Australia Group.

Representing the MTAA are:

- Mr Graham Judge – Motor Traders' Association of NSW;
- Mr Ben Kunstler – Victorian Automobile Chamber of Commerce; and
- Mr Richard Dudley – MTAA (non-permanent representative).

Mr Jeff Williams – Specific Prestige resigned from the committee leaving a temporary absence for one MTAA representative as of the end of the reporting year. Mr Richard Dudley – MTAA is acting as a temporary MTAA representative until a permanent replacement is appointed.

Mrs Candace Barron commenced her role on the committee as the representative of the Australian Small Business and Family Enterprise Ombudsman, serving as a non-voting observer for the 2017 calendar year.

The CAC would like to acknowledge the valuable contribution made by Mr Bartlett, Mr McDougall and Mr Williams to the committee and the administration of the Code.

The CAC met face to face on five occasions as well as eight teleconferences during the reporting period.

Code Administration and Website

In accordance with the provisions of Section 13 of the Code the CAC carried out a variety of administrative duties, including the ongoing maintenance and updating of the Code website. The CAC will continue to promote the Code website, from which copies of the Code, annual reports and other general information can be obtained, and where full details on access to internal and external dispute resolution is available.

The Code website is located at: www.abrcode.com.au. Signatories to the Code and other interested parties are encouraged to visit the website to obtain more information on the Code and its operation.

CAC engaged IMA to develop a new website with greater functionality than the existing site. The website is currently in the development phase.

Review of the Code

During the reporting period, the CAC conducted an expedited review of the 2016 Code in conjunction with the NSW Government. This review considered a number of recommendations put forward by the NSW Government. The CAC completed negotiations in April 2017.

After robust discussions, a number of NSW Government recommendations and other amendments were agreed by all parties. It was agreed that the outcomes reached should provide the stakeholders with a Code of Conduct that will suit an industry that has changed considerably since the inception of the Code in 2006. A new version of the Code replete with numerous changes, was announced for a go live date of 1 May 2017.

Some of the key outcomes agreed to are:

- Implementation of expert determination rules as part of the dispute resolution process. It has been agreed by both parties to review this process eighteen months after its commencement.
- New requirements on repairers to ensure their estimators have the skills and qualifications necessary for the role.
- Deadlines for insurers to carry out assessments after receiving an estimate from a repairer.
- Reporting obligations on insurers to report to government regulators incidences where a signatory has disregarded their due diligence and care towards the safety of a vehicle.

The new Code was set for commencement on 1 May 2017. This is a significant achievement, with all Committee members committing a large amount of time and their valuable experience in reaching a balanced approach, and purposeful changes. It should be remembered that agreement from the MTAA and ICA is required and that CAC members reflect the instructions provided by their respective organisations.

As of the end of the 2017 reporting period, the 2006 Code remained law in NSW. However, the CAC expects the NSW Government to recognise the 1 May 2017 Code early in the next reporting period.

Dispute Resolution under the Code (Internal Dispute Resolution/Mediation/Expert Determination)

One of the key principles of the Code is the provision of efficient, accessible and transparent dispute resolution to address disputes arising between individual repairers and individual insurers. There are now three levels of dispute resolution available under the Code at the time of writing.

Motor Vehicle Insurance and Repair Industry Code of Conduct

Where issues cannot be resolved between repairers and insurers at the local level the matter can be raised through the insurer's internal dispute resolution (IDR) mechanism.

Disputes that cannot be resolved following IDR can then be raised through the Code's mediation mechanism. The CAC has appointed Resolution Institute to provide repairers and insurers nationally with an easily accessible and cost effective mediation service. Signatories are also entitled to use the Small Business Commissioners' offices for disputes in NSW, South Australia, Victoria and Western Australia.

Where the parties are unable to agree to a resolution through mediation, the new Code now provides for a new third level of dispute resolution. Expert determination is a mechanism whereby an independent third party is appointed to issue a final and binding order on the parties, resolving the dispute in the form of a written decision.

While the CAC is required to report annually on mediation disputes, with the agreement of all parties it has been, and will continue to be, the CAC's intention where possible to report on both IDR, mediation and expert determination disputes under the Code.

While the development of an electronic system to track internal disputes lodged by repairers is ongoing, the Code requires an IDR and mediation to be lodged through the CAC website. The website requirement allows the CAC to track the numbers of IDRs more closely, with the Chairman tasked to undertake this while an automated reporting system is developed.

Three hundred and ninety seven IDRs were lodged via the website during the 2017 reporting period. This tracking method will give greater transparency to IDRs and the issues they relate to. The numbers appear to have increased from previous years; until analysis of the IDR's is completed no meaningful conclusions can be drawn. Of the IDRs received all have been lodged by repairers.

Twenty five mediations were lodged via the website during the 2017 reporting period. There have been some disputes raised directly with some state Small Business Commissioners, it is not known if these were Code related or not as no data has been advised to the CAC from these sources.

One application for expert determination was lodged during the 2017 reporting period. This dispute related to an incident that occurred prior to the implementation of expert determination and the CAC has not yet resolved whether the new determination process can apply retrospectively.

Role of CAC in Dispute Resolution

Signatories to the Code are reminded that the Code Administration Committee plays no part in resolving disputes between insurers and repairers, beyond its responsibility to establish and maintain an easily accessible dispute resolution mechanism to support the Code.

Repairers unable to resolve a dispute with an insurance company at the local level can find details for access to IDR, mediation and determination options on the Code website (www.abrcode.com.au), or can contact their local trade association for further assistance.

Where evidence of systemic non-compliance with the Code on a company or industry wide basis is identified, either by repairers or insurers, such issues can be elevated to the CAC for consideration through the ICA or the MTAA (or other state trade associations), but otherwise the CAC plays no direct role in the dispute resolution process, or its outcome.

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The CAC also serves as a consultative body where questions arise as to the correct interpretation of any clause in the Code.

Summary

The Code continues to assist both repairers and insurers to achieve a balance of fairness in their dealings with each other. However, the CAC is confident that the agreements reached by ICA and MTAA representatives at the time of writing will provide a clearer pathway for both sides of the industry. Changes to the Code have received mixed reviews but there is general support for the ongoing reform agenda of the Code Committee. The work of the CAC continues on arbitration and further improvements.

In reaching these agreements the CAC also believes that while there will always be instances of dispute it is hoped that the new Code once released will be a behavioural change document leading to greater transparency between the two sides of industry.

The CAC acknowledges the input from MTAA Members and Insurance Council of Australia Members for their contributions which has assisted the CAC in their deliberations during the review of the Code.

Peter Hartman

Chairman - Code Administration Committee November 2017

Insurance Company Signatories to the Code

AAMI

Aioi Insurance Co Ltd

Allianz Australia Insurance Limited

AMP

Apia

Auto & General Insurance Company Limited

Bingle.com.au

CGU

Coles Insurance

Commonwealth Insurance Ltd

GIO

Insure My Ride

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Just Car Insurance

Lumley

National Transport Insurance

NRMA Insurance

QBE Insurance (Aust) Ltd

RAA Insurance Ltd

RAC Insurance

RACQ Insurance

RACV

SGIC

SGIO

Shannons

Suncorp – GIO

Swann Insurance

TIO

VERO Insurance Ltd

Youi Insurance

Zurich Australian Insurance Limited