

**MOTOR VEHICLE INSURANCE AND REPAIR INDUSTRY CODE OF CONDUCT –  
commencing 1 May 2017**

**PREAMBLE**

It is in the interests of government, Insurers, Policyholders and Repairers to promote the efficient operation of, and consumer confidence in, professional and competitive Motor Vehicle insurance and repair industries in Australia.

The economic activity created by a competitive Motor Vehicle insurance market and repair Industry market will create and maintain skilled employment, efficient customer service and viable and cost effective Motor Vehicle repair and insurance industries.

The content of the Code and matters covered by it have been guided by the Australian Government's response to the Productivity Commission and the Terms of Reference, set by the Australian Government, for the Smash Repair and Insurance Industry Implementation Taskforce.

Repairers and Insurers acknowledge that for the purposes of promoting an efficient and competitive Industry:

(a) In recognition of Repairers right to freely structure their business arrangements, this Code provides for minimum, Industry-wide, standards in matters such as:

- Transparency, disclosure and fairness in relation to Insurers' NSR schemes;
- Transparency, disclosure and fairness in relation to quotation processes, times and rates, Repairer choice and use of parts;
- Responsibility for quality, safety and warranties;
- Minimum terms of payment; and
- An independent external dispute resolution mechanism.

(b) In recognition of Insurers' right to freely structure their business arrangements, and as required by the Government Response to the Productivity Commission's recommendations, this Code does not specify, on an Industry-wide basis, matters such as:

- minimum hourly rates or prices;
- 'standard' hours for repair jobs;
- types of parts to be used;
- Industry-wide PSR selection criteria and/or weightings for PSR criteria;
- compulsory choice of Repairer;
- requirements to spread work among Repairers; or
- particular conditions of guarantees.

## **1 PRINCIPLES OF THE CODE**

This Code is intended to promote transparent, informed, effective and co-operative relationships between smash repairers and insurance companies, based on mutual respect and open communication.

Signatories agree to observe high standards of honesty, integrity and good faith in conducting their business with each other and in the provision of services to Customers, and observe Australian Law.

The Code will specify standards of fair-trading, process and transparency in the relationship between Insurers and Repairers. There should not be any alteration to the commercial relationships between individual Insurers and Repairers, other than as provided in this Code and in accordance with the principles of the Code.

The Code will provide efficient, accessible and transparent dispute resolution processes for issues arising between individual Repairers and individual Insurers.

The Code should also provide Signatories with access to the Code Website in which disputes can be lodged and recorded.

Insurers and Repairers agree they have a responsibility to ensure vehicle repairs are authorised and carried out in a professional manner and to ensure that the safety, structural integrity, Presentation and utility of the vehicle are restored. In doing so:

1.1 Insurers will authorise repairs covered by the Policy with the objective of:

- (a) restoring the safety, structural integrity, Presentation and utility of the Motor Vehicle;
- (b) complying with relevant Australian law; and
- (c) Fulfilling their obligations to the Policyholder in accordance with the provisions of their Policy and the provisions of the General Insurance Code of Practice relating to insurance claims.

1.2 Repairers will carry out repairs with the objective of:

- (a) restoring the safety, structural integrity Presentation and utility of the Motor Vehicle;
- (b) complying with relevant Australian law; and
- (c) Fulfilling their obligations to the Insurer under the provisions of the applicable contract of repair.

1.3 Signatories agree that at all times they, their staff and their representatives will behave in a professional and courteous manner. This includes not engaging in, condoning, or permitting behaviour that is offensive, harassing, threatening, inappropriate, abusive, bullying or intimidating.

1.4 Signatories should seek to resolve their disputes informally wherever possible.

## **2 SCOPE**

The Code is mandatory in New South Wales and is a voluntary Code in other jurisdictions across Australia and applies to all Signatories. Signatories agree to be bound by the Code. Signatories agree that they will promote the Code and encourage non-Signatory Repairers and Insurers to become Signatories. Repairers and Insurers are encouraged to use the Code as a good practice guide in helping to settle disputes even if they are not Signatories.

This Code does not give rise to any legal relationship between Insurers and Repairers, other than any Code compliance required by law.

Where there is any conflict or inconsistency between this Code and any Australian law, that law prevails.

Nothing in the Code shall override existing legal rights and requirements between Insurers and their Customers.

The provisions of this Code are subject to relevant Australian law, including common law rights and obligations.

Nothing in this Code effects or prohibits the rights of either party to pursue dispute resolution elsewhere.

### **2.1 Signatories**

A Person may become a Signatory by lodging a Code Signatory Notification Form with the CAC.

A Person ceases to be a Signatory by lodging a written notice advising the CAC they no longer wish to be a Signatory.

A Person may be required to comply with this Code by law.

### 3. DEFINITIONS

#### In this Code:

**“Applicant”** means the Person who starts an IDR, Mediation or Determination dispute process set out in clause 10, 11 or 12 of the Code.

**“Approved Determination Provider”** means a person, business, agency or group named in Schedule 2 of the Code.

**“Approved Determination Scheme”** is a dispute resolution process which follows the completion of both IDR and Mediation under this Code, as established by the CAC and published on the Code Website.

**“Approved Mediation Provider”** means a person, business, agency or group named in Schedule 1 of the Code.

**“Assessor”** means an employee, assessing contractor or agent of an Insurer, who is engaged to assess Motor Vehicle accident damage and/or negotiate Repair Estimates between Insurers and Repairers.

**“AUR Training Package”** means a national training package as approved by the Australian Government.

**“Business Ownership Structure”** means the principal owners of the business, or parent entity, which includes any other Person taking a financial interest in the business ownership.

**“CAC”** means the Code Administration Committee established in accordance with subclause 12.1 of this Code.

**“Choice of Repairer Policy”** means an Insurer’s Policy terms in relation to whether it allows the Policyholder any choice, or otherwise, as to selection of Repairer.

**“Claimant”** means a Person covered by a Policy or a Person who has a claim against a Person covered by a Policy.

**“Code”** means the voluntary national Motor Vehicle Insurance and Repair Industry Code as agreed by the Smash Repair and Insurance Industry Implementation Taskforce on 23 May 2006 and any changes as agreed from time to time by the CAC.

**“Code Approved Assessor”** means an Assessor who complies with clause 4.3 of this code.

**“Code Approved Estimator”** means an estimator who complies with clauses 4.4 of this Code.

**“Code Website”** means [www.abrcode.com.au](http://www.abrcode.com.au).

**“Customer”** means a Policyholder and or Claimant.

**“Determination”** means the binding dispute resolution process referred to in clause 12 of the Code.

**“Event”** means an ICA classified event.

**“ICA”** means the Insurance Council of Australia Limited.

**“IDR”** means Internal Dispute Resolution process established by an Insurer under clause 11.2 of this Code.

**“Industry”** means the Motor Vehicle insurance and repair industries in Australia.

**“Insurer”** means a member of the ICA or any other Person who is in the business of insuring Motor Vehicles in respect of property damage and which, in the course of its business, engages or authorises Repairers to perform Repairs to Motor Vehicles.

**“Mediation”** means the mediation process referred to in clause 11.3 of the Code.

**“Mediator”** means an independent Person who is appointed to facilitate discussion between the Parties to a dispute to assist them to find a mutually acceptable resolution to their differences.

**“Motor Vehicle”** means a motor vehicle covered for damage under a Policy or which the Insurer otherwise requests the Repairer to Repair.

**“MTAA”** means the Motor Trades Association of Australia.

**“NSR”** means a network smash repairer being a Repairer promoted by an Insurer under an accreditation scheme operated by the Insurer and who is licensed to use the Insurer’s insignia or trademarks.

**“Parties”** means the Applicant and the Respondent to a dispute arising under clauses 10, 11 or 12 of the Code.

**“Parts Policy”** means the policy established by an Insurer in relation to a Policyholder’s insurance Policy, which explains the use of repair components in the Repair of the Motor Vehicle, which may include, but is not limited to, new, recycled (used or second hand) or non-genuine (aftermarket) or parallel parts.

**“PDS”** means a product disclosure statement required to be issued by an Insurer under Chapter 7 of the Corporations Act 2001.

**“Person”** means an individual or entity within the Industry.

**“Policy”** means a Motor Vehicle insurance policy over a Motor Vehicle issued by an Insurer, who is a Signatory to the Code.

**“Policyholder”** means an individual or entity who holds a Policy for a Motor Vehicle with an Insurer.

**“Presentation”** means the visual appearance of the repair work performed on the Motor Vehicle.

**“Publicly Available”** includes being published on the public pages of an Insurer’s websites.

**“Repair” or “Repairs”** means any work done by a Repairer to repair a Motor Vehicle or any of its components, systems or parts, where the work is covered by a Policy and where a claim is or will be made by a Claimant including but not limited to:

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

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

**“Repairer Representative Organisation”** means the MTAA, any of its member or affiliated associations, or any other trade group or association representing Repairers.

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

**“Serious Criminal Offence”** means any criminal offence under any Australian law for which an individual may be liable on first conviction to imprisonment for a period of not less than 2 years.

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

**“Sub-let Repairer”** means a Person and/or entity, other than the Repairer, who carries out Repairs on a vehicle at the request of, or under contract with, the Insurer.

**“Sub-let Repairs”** means Repairs to be carried out by a Sub-let Repairer.

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

##### **4.1 Repairers:**

(a) will provide estimates and carry out repairs that are in accordance with:

- (i) the documented manufacturer's technical specifications including those supplied by other Industry recognised authorities; or
- (ii) any lawful mandatory specifications and/or standards; or
- (iii) methods that are consistent with standard Motor Vehicle warranty conditions; or
- (iv) current Industry practice;

while having regard to the age and condition of the Motor Vehicle.

(b) will in their dealings with Insurers in relation to Repairs:

- (i) prepare estimates that provide for an appropriate scope of Repairs, ensuring that all Repairs are carried out in a safe, ethical, timely and professional manner and in accordance with the method of Repair and the parts specified by the Insurer and/or its agent;
- (ii) not dismantle a Motor Vehicle for the purpose of preparing an estimate or report unless requested or authorised to do so by the Insurer; and
- (iii) not hinder or prevent the Insurer or Claimant from seeking to obtain an alternative estimate.

(c) may take clear digital images of the vehicle and all damage on the vehicle estimated in accordance with any CAC prescribed guidelines. The CAC may develop guidelines associated with the taking, submission, storage, data security and supply of digital images.

(d) will not commence any insurance Repair without having the relevant Insurer's agreement and authorisation to proceed, excluding emergency repairs subject to a customer's PDS.

##### **4.2 Insurers will:**

(a) not require Repairers to provide estimates, or carry out repairs that are not in accordance with:

- (i) the documented manufacturer's technical specifications including those supplied by other Industry recognised authorities; or
- (ii) any lawful mandatory specifications and/or standards; or
- (iii) methods that are consistent with standard Motor Vehicle warranty conditions; or
- (iv) current Industry practice;

while having regard to the age and condition of the Motor Vehicle.

(b) in their dealings with Repairers in relation to Repair work:

- (i) provide Repairers with relevant details relating to the insurance claim that the Repairer reasonably requires in order to prepare an estimate or undertake the Repair, including their Parts Policy, details of Sub-let Repairs and payments by Customer including any excess or contribution charges;
- (ii) consider estimates in a fair and transparent manner, and will not refuse to consider an estimate on unreasonable or capricious grounds;
- (iii) pay the agreed amount for all work completed, that has been authorised or requested by the Insurer;
- (iv) not remove a Motor Vehicle from a Repairer's premises without notifying the Repairer in advance and in writing, and compensating the Repairer for any legitimate or reasonable towing or storage costs associated with the Motor Vehicle and in compliance with relevant law; and
- (v) not knowingly ask Claimants to drive unsafe or unroadworthy Motor Vehicles.

(c) in non-Event periods, consider estimates and commence assessor communication with the Repairer within:

- for the period commencing 1 July 2017, an average of five (5) working days per repairer from the system receipt of the repairer's estimate subject to 4.2(d) and the reasonable availability of the vehicle and /or the customer's availability.

(d) If the time period in clause 4.2(c) cannot be achieved for an estimate/s due to vehicle location, repair complexity, periods of high volume or staffing shortages, the repairer must be notified of the delay and the reason for the delay, and a new assessing timeframe agreed.

#### **4.3 CODE APPROVED ASSESSORS**

(a) In the assessment of a Motor Vehicle under this Code, Signatories will only utilise the services of a 'Code Approved Assessor'.

(b) A Code Approved Assessor is a Person who, by no later 12 months after commencing their employment has:

- (i) a trade qualification and a minimum of five years of post-apprenticeship experience in their profession as a panel beater, spray painter or motor mechanic; or
- (ii) more than five years of experience as a motor insurance Assessor; or
- (iii) completed the CAC approved units, as set by the CAC from time to time, of the Certificate IV Vehicle Loss Assessing Course, being in the first instance August 2015, and until further such review:

- AURVNA4001 Provide vehicle loss assessment and identify repair requirements;
- AURVNA4004 Apply insurance knowledge to vehicle loss assessment;
- AURVNN4001 Evaluate vehicle bodywork for damage and identify repair requirements;
- AURVNP4001 Evaluate vehicle paintwork for damage and identify refinish requirements; and
- AURVNA4002 - Provide vehicle total loss assessment;

or their equivalent in the AUR Training Package.

(c) Signatories who employ a Code Approved Assessor must ensure that they are provided with ongoing training and/or development through their employer or via membership of a relevant professional body.

(d) Insurers who utilise the services of independent Code Approved Assessors must require that those Assessors have access to ongoing training and/or development through their employer or via membership of a relevant professional body. This provision only takes effect in any contracts entered into or renewed after the implementation date of the Code.

#### **4.4 CODE APPROVED ESTIMATORS**

(a) In the estimation of a Motor Vehicle under the Code, Signatories will only utilise the services of a Code Approved Estimator, except when providing paintless dent repair estimates.

(b) A Code Approved Estimator is a Person who, by no later than 12 months after commencing their employment, has:

- (i) a trade qualification as a panel beater, spray painter or motor mechanic; or
- (ii) more than five years of experience in a motor trade or as an estimator; or
- (iii) completed the CAC approved units, as set by the CAC from time to time.

(c) Signatories who employ Code Approved Estimators should ensure that those estimators are provided with ongoing training and/or development.



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

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

- (a) Insurers that have NSR schemes will document and publish criteria for membership of those schemes, including information relating to the structure of such schemes.
- (b) Insurers will provide mechanisms for Repairers to register their interest in joining an NSR scheme. These mechanisms will be documented and Publicly Available.
- (c) Insurers will confirm a Repairer's registration of interest in writing and provide details of the criteria used by the Insurer to select a member of an NSR scheme.
- (d) Insurers will provide Repairers with a fourteen (14) day 'cooling off' period for consideration of an NSR agreement after it is executed by the Repairer.

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

- (a) Insurers will provide Repairers who are members of its NSR scheme with:
- (i) the criteria/requirements for retaining NSR status;
  - (ii) the key measures used to establish the performance of the Repairer;
  - (iii) regular information as to the Repairer's performance against key contractual measures;
  - (iv) the circumstances under which a Repairer's status within the NSR scheme can be changed;
- and,
- (v) the circumstances under which a NSR status can be terminated, withdrawn, suspended or removed.

### **5.3 Term of Agreement**

All NSR scheme agreements must be for a fair and reasonable term of not less than three (3) years, giving consideration to the time and investment a Repairer has had to make to gain and/or maintain accreditation under an NSR scheme.

### **5.4 Extension of Network Repairer Status**

In the event of any change in the Business Ownership Structure of a Repairer who is a member of an NSR scheme, the Repairer must advise the Insurer and provided the Insurer's existing NSR selection criteria are maintained and performance standards and probity and prudential concerns are met, the Insurer will provide the business NSR status for the remainder of the term of the original NSR agreement. If not, the membership may be terminated notwithstanding clause 5.

### **5.5 Termination of NSR Agreement – breach by Repairer**

- (a) This clause applies if:
- (i) a Repairer breaches an NSR agreement; and
  - (ii) the Insurer proposes to terminate the NSR agreement, and sub-clause 5.8 does not apply.
- (b) The Insurer must:
- (i) give to the Repairer reasonable notice that the Insurer proposes to terminate the agreement because of the breach;
  - (ii) tell the Repairer what the Insurer requires to be done to remedy the breach; and
  - (iii) allow the Repairer a reasonable time to remedy the breach.
- (c) For sub-clause 5.5(b)(iii), the Insurer does not have to allow more than thirty (30) days.
- (d) If the breach is remedied in accordance with sub-clauses 5.5(b)(ii) and 5.5(b)(iii), the Insurer cannot terminate the agreement because of that breach, unless the Repairer has in the previous three years been in breach and has been advised in writing that any further serious breach will result in the termination of the agreement.

### **5.6 Termination of NSR Agreement – based on performance criteria**

An Insurer may only terminate an NSR agreement based on a Repairer failing to meet performance criteria or standards, if:

- (a) the performance criteria or standards and the consequences of failure to meet such performance criteria or standards were disclosed to the Repairer prior to entering into the agreement;
- (b) the Repairer fails to meet those performance criteria or standards;

- (c) the breach by the Repairer was subject to written notice by the Insurer to the Repairer advising of the detail of the breach and the Insurer provided the Repairer with a reasonable period of time in which to meet the performance criteria or standards; and
- (d) the Insurer has treated the Repairer fairly in relation to the application and enforcement of performance criteria and standards.

**5.7 Termination of NSR Agreement – no breach by Repairer**

Other than at the expiry of the term of agreement, where a Repairer is not in breach of an NSR scheme agreement, an Insurer may not unreasonably terminate the agreement unless:

- (a) the Insurer provides at least twelve (12) months' notice of its intention to terminate the agreement; or
- (b) the Repairer requests or consents in writing to terminate the agreement earlier.

**5.8 Termination of NSR Agreement – special circumstances**

Insurers do not have to comply with sub-clauses 5.5, 5.6, or 5.7 if a Repairer:

- (a) no longer holds a licence that the Repairer must hold to carry on its repair business;
- (b) becomes a bankrupt, insolvent or enters external administration;
- (c) is convicted of a Serious Criminal Offence;
- (d) is fraudulent in connection with the operation of the repair business or engages in serious misconduct; or
- (e) agrees to terminate the NSR agreement.

## **6. ESTIMATE, REPAIR AND AUTHORISATION PROCESS**

6.1 Where competitive estimates are sought:

- (a) Insurers will ensure the estimation process is fair and transparent;
- (b) Insurers will require that estimates are comprehensive, complete and inclusive of all obvious damage; and
- (c) Repairers will provide estimates in accordance with sub-clause 4.1(a).

6.2 Signatories acknowledge ongoing changes in the Industry in relation to the development of realistic times and rates, such that:

- (a) Insurers will state clearly the preferred estimation methodology to be applied;
- (b) Subject to sub-clause 6.2(a), Repairers may submit an estimate in realistic times and rates recognising the Insurer's right to obtain an alternative estimate; and
- (c) Repairers in their estimation methodology may separately cost paint, parts, significant consumables and mandatory government environmental levies/charges in so far as they apply to a repair.

6.3 Without limiting Insurers' and Repairers' rights to fair and transparent negotiation, the Insurer may not unreasonably or arbitrarily alter the Repairer's estimate unless the Insurer insists on changing the repair process, parts or materials to be used (subject to sub-clause 7.4).

6.4 While Insurers may enter into commercial arrangements with Repairers that specify performance targets, Insurers will not unduly influence any Repairer to submit estimates on the basis of inducements of further work.

## **7. REPAIR WARRANTIES**

7.1 An Insurer will provide details in writing to the Repairer of the warranty cover the Insurer provides to its Customer including the Insurer's responsibilities under any lifetime warranty.

7.2 Unless otherwise required by law, Repairers will provide Insurers with a warranty in respect of their workmanship for a period of three (3) years from the date of repair unless a longer period is offered.

7.3 Repairers shall only be required to provide a guarantee for parts and/or paint to the extent that the manufacturer, distributor, supplier or importer of the parts and/or paint is so liable under an express warranty or under the law, other than to the extent that the quality of the repair arising from the use of the parts and/or or paint arises from faulty workmanship.

7.4 If repairs are carried out under a contract between the Insurer and a Repairer, where an Insurer requires a Repairer to use a repair method or part that differs from that recommended by the Repairer, and the Insurer and Repairer are unable to reach agreement to that change, the Insurer will provide such a requirement in writing.

7.5 Where the Insurer provides a written requirement under sub-clause 7.4 the Insurer agrees to pay the direct loss or liability incurred by the Repairer by reason of a quality, structural, Presentation or safety defect caused by complying with the requirement. The Repairer must immediately notify the Insurer of any claim made against the Repairer that may give rise to a claim under this sub-clause. The Insurer is not liable to pay any loss or liability incurred by the Repairer to the extent that the loss or liability arises from faulty workmanship.

7.6 Where issues of workmanship arise, and where practicable, including taking into account Customer preference, the Repairer concerned must be offered the first option to effect required rectification.

7.7 Where repairs are undertaken by a Sub-let Repairer at the Insurer's direction the Insurer will take full responsibility for any claim that may arise from the repair by the Sub-let Repairer and reimburse any reasonable costs incurred by the principal Repairer as a result of an Insurer's nominated Sub-let Repairer not completing the Repairs as authorised in the allocated time.

**8. PAYMENT FOR REPAIRS**

8.1 In the ordinary course of business, an Insurer must pay agreed Repair costs no more than 30 days from settlement of the insurance claim or receipt by the Insurer or their agent of the final Repair invoice.

8.2 Where the Repairs undertaken, price, work or documentation is disputed, payment of the undisputed component will be paid in accordance with the payment terms of sub-clause 8.1.

8.3 Insurers will disclose alternative payment arrangements, if any, between those Repairers in, and those Repairers outside, of the Insurer's NSR scheme.

## **9. SIGNATORY OBLIGATIONS**

9.1 Insurers will ensure their Product Disclosure Statement (PDS) refers to their Choice of Repairer Policy with an unambiguous identifier and page reference in the PDS's table of contents, and which sets out its Choice of Repairer Policy clearly and in plain language at the page referenced.

9.2 Insurers will clearly and in plain language explain their Parts Policy in;  
(a) their PDS with reference in the PDS's table of contents; and  
(b) related communications with Repairers.

9.3 Signatories will not:

- (a) make misleading or deceptive statements about the quality, capability or timeliness of a Repairer or group of Repairers;
- (b) make misleading or deceptive statements about the quality, safety or timeliness of Repairs based on who the Insurer is or the approach the Insurer uses to allocate repairs or manage claims;
- (c) engage in statements, actions or behaviour designed or intended to prevent or discourage a Customer from having any necessary rectification work following a Repair undertaken at the Repairer who completed the original Repairs.

9.4 Repairers will provide sufficient evidence to an Insurer to substantiate their claims for costs in relation to parts and work undertaken in a Repair for that Insurer.

9.5 Sub-clauses 9.1 and 9.3 also apply to telephone enquiries and Insurers websites.

9.6 The obligations under Sub-clauses 9.1 and 9.2 commence upon an Insurer next updating its PDS (or Supplementary PDS) following the commencement of this sub-clause.

9.7 Where it becomes known that a Signatory shows a deliberate disregard to their due diligence and care towards the safety of the vehicle, an Insurer is required to report the matter to the appropriate government regulator and notify the Repairer of that report.

## **10. REPAIR DISPUTE RESOLUTION**

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

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

(a) Where disputes arise relating to the appropriate Repair and where it is believed the safety, structural integrity, Presentation or utility of the Motor Vehicle will be compromised by the proposed repair method, and the dispute cannot be resolved under clauses 1 and 7, the provisions of clause 10 apply.

(b) Where there are repair disputes which arise prior to the completion of Repairs to a Motor Vehicle other than those described in 10.1(a) and 10.1(c) the Parties will at first instance use the provisions of clause 10. This does not prevent either party subsequently pursuing the matter under the provisions of clause 11 and 12 once the Motor Vehicle has been repaired.

(c) Disputes relating to the amount to be paid for Repairs, or differences of opinion as to the preferred Repair method, other than those outlined in sub-clause 10.1(a), are matters for individual Repairer/Assessor negotiation and cannot be disputed under the provisions of clauses 10 or 11 or 12.

(d) Clause 11 or 12 will not apply to disputes covered by sub clauses 10.1(a) and 10.1(c).

### **10.2 Notification of Dispute**

(a) In the event of a dispute under this clause 10, a dispute must be registered through the Code Website.

(b) The dispute notification must contain:

- (i) the names and contact details of the Applicant and the Respondent;
- (ii) adequate information about the nature of the dispute;
- (iii) specific reference to the relevant clause(s) of this Code and the reason(s) why the Respondent is alleged to be non-compliant with the Code;
- (iv) adequate supporting documentation about the dispute; and
- (v) an explanation as to what outcome the Applicant seeks.

(c) The Applicant will not seek to hinder others by submitting a dispute under the Code that is not specifically applicable to the Code.

(d) A dispute notification is invalid if it is lodged more than forty five (45) days after acceptance of payment for Repairs.

### **10.3 Dispute Resolution Procedure**

(a) Upon notification of a Repairer-initiated dispute, the Insurer will properly investigate the issue, including the supporting information provided by the Repairer and will within two business days make a determination.

(b) As part of this process, the Insurer will consider the relevant information, may inspect the Motor Vehicle and will discuss the dispute with the Repairer, including the reasons supporting the determination.

(c) If the Respondent agrees to a face-to-face meeting, a neutral location is to be identified, if practicable, unless otherwise agreed between the Parties.

(d) If the Repairer disagrees with the determination of the Insurer the Repairer retains the right to refuse to carry out the repairs and in that case the Insurer may transfer the vehicle to another Repairer.

(e) The Insurer agrees to report to the CAC on an annual basis detailing the number, nature and outcome of disputes raised under clause 10.

## **11. DISPUTE RESOLUTION PROCESS**

This clause applies to disputes arising from clauses 4 to 9 of the Code and disputes over contractual arrangements.

### **11.1 Application and Principles**

(a) The procedure in this section applies to all disputes relating to alleged non-compliance with the Code and to disputes of a contractual nature but does not apply to disputes which are described in sub-clause 10.1(a) and 10.1(c).

(b) Insurers and Repairers agree that disputes relating to alleged non-compliance with the Code and to disputes of a contractual nature, should be resolved promptly, transparently and fairly.

### **11.2 Internal Dispute Resolution**

(a) Each Insurer will establish an IDR mechanism that provides for the prompt, transparent and fair resolution of disputes.

(b) Disputes must in the first instance be registered through the Code Website, whereupon the CAC will immediately advise the relevant Insurer of the IDR dispute lodgement.

(c) The dispute notification must contain:

- (i) the names and contact details of the Applicant and the Respondent;
- (ii) adequate information about the nature of the dispute;
- (iii) specific reference to the relevant clause(s) of the Code and the reason(s) why the Respondent is alleged to be non-compliant with the Code;
- (iv) supporting documentation about the dispute;
- (v) an explanation as to what outcome the Applicant seeks.

(d) Insurers will provide to the Repairer a written acknowledgement of the complaint within three (3) business days. Repairers and Insurers will conclude the IDR process within nine (9) clear business days following CAC notification, unless otherwise agreed to by both Parties.

(e) If the Repairer disagrees with the outcome of an IDR process, they can elevate the dispute to Mediation.

### **11.3 Mediation**

(a) To commence a Mediation action under the Code, the Applicant must lodge a notice of dispute with the CAC through the Code Website or its nominee and the Respondent, providing the following information:

- (i) the names and contact details of the Applicant and the Respondent;
- (ii) adequate information about the nature of the dispute;
- (iii) specific reference to the relevant clause(s) of this Code and the reason(s) why the Respondent is alleged to be non-compliant with the Code;
- (iv) supporting documentation about the dispute;
- (v) an explanation as to what outcome the Applicant seeks

(b) The Applicant and the Respondent may then either agree on a Mediator, or if the Parties cannot agree on a Mediator within two business days, the Applicant may nominate an Approved Mediation Provider as set by the CAC in Schedule 1 of the Code.

(c) Subject to sub-clause 11.3(e), the Mediator may decide the time and place for the conduct of the Mediation. In doing so, the Mediator is to ensure that location is neutral and acceptable to both Parties.

(d) Any face-to-face Mediation under this Code must be conducted in the state or territory in which the repairs took place and within a reasonable distance of the Repairer's premises, unless otherwise agreed by the Parties.

(e) The Parties participating in the Mediation should try to resolve the dispute within 15 business days of the notification of the dispute, unless otherwise agreed to by both Parties.

(f) Those participating in the Mediation must have the authority to enter into an agreement to settle the dispute.

(g) An observer may attend a Mediation at the invitation of either party to a dispute but only if both Parties to the dispute agree, and if the observer has agreed to be bound to confidentiality.



- (h) An observer who is attending the Mediation with the agreement of both Parties may additionally act as an adviser or a representative of a party to a dispute during the Mediation if both Parties further agree.
- (i) If the Mediation does not result in an outcome acceptable to both the Applicant and the Respondent, or the dispute proves incapable of resolution by Mediation, the Mediator will provide a written statement to the Applicant and the Respondent setting out:
- (i) the Parties to the dispute;
  - (ii) an outline of the dispute; and
  - (iii) a list of unresolved issues.
- (j) Any statement issued under sub-clause 11.3(i) must remain confidential between the Parties to the dispute, the Mediator and any observers or other participants present at the Mediation.
- (k) Disclosure of any statement under sub-clause 11.3(i) to a third party requires the consent of the Applicant and the Respondent except where disclosure is required by law.
- (l) At the conclusion of the Mediation the Mediator should advise the CAC in writing whether the issues were resolved, partly resolved or not resolved.
- (m) The Mediator may seek part payment by the Parties prior to the commencement of a Mediation, the pre-payment being equivalent to the cost of the minimum time of Mediation (as set by the nominated Mediator) with the payment split equally between the Parties.
- (n) The result of the Mediation or documents related to the Mediation remain confidential unless the CAC is provided with the express written approval and agreement of both Parties to the dispute, or except where such disclosure is required by law.
- (o) Participation in Mediation is mandatory for Signatories.

#### **11.4 Conditions**

- (a) This clause does not affect the right of a party to take legal action in relation to a dispute.
- (b) The Parties will share the costs of Mediation equally under this sub-clause 11.4, unless they agree otherwise.
- (c) The Parties must pay for their own costs of attending the Mediation.
- (d) The Parties must mediate in good faith.
- (e) If a party has commenced dispute resolution and/or mediation outside of this Code the party cannot revert to the Code's dispute resolution process until the dispute resolution and/or mediation has been finalised.

## **12. Approved Determination Scheme under the Code**

12.1 The CAC shall establish an Approved Determination Scheme for the resolution of matters under the Code.

12.2 The Approved Determination Scheme will be available on the Code Website.

12.3 Determination using the Approved Determination Scheme may be sought by Signatories via the Code Website.

12.4 Determination using the Approved Determination Scheme can only proceed after IDR and Mediation processes have been concluded.

12.5 The CAC will review the Approved Determination Scheme 12 months from the date of commencement.

12.6 The CAC will identify Approved Determination Providers in Schedule 2 of the Code.

12.7 Participation in Determination is mandatory for Signatories. Signatories agree to be bound by the Approved Determination Scheme and the decision of the determination provider.

### **13. ADMINISTRATION**

#### **13.1 Code Administration Committee**

- (a) The Code will be administered by the CAC;
- (b) The CAC will consist of Signatories being:
  - (i) three appointees of ICA; and
  - (ii) three appointees of MTAA.
- (c) Members of the CAC shall hold office for a period of two (2) years, but may be re-nominated for further two (2) year periods subject to sub-clause 13.1(d) of the Code;
- (d) The ICA and MTAA can replace or substitute their respective appointees at any time and for any reason, but in the spirit of the Code each will endeavour to ensure continuity of representation at CAC;
- (e) The members of the CAC will elect one of their number as chairperson for a 12 month period on the basis that an appointee of ICA and an appointee of MTAA will rotate as chairperson and the first rotation shall be determined by lot;
- (f) The chairperson will be responsible for arranging for administrative support for the CAC activities;
- (g) The CAC will meet at least two times a year, but may meet more frequently as required; and
- (h) Changes to the Code can be made by the CAC only on a consensual basis.

#### **13.2 Role of the CAC**

The CAC:

- (a) will develop a protocol for the appointment, establishment and operation of a national panel of Mediators;
- (b) will monitor compliance with the Code;
- (c) will produce a publicly available annual report on the Code and provide a copy of the report to the relevant Australian Government Minister. The report will include:
  - (i) an assessment of Insurer and Repairer compliance with the Code;
  - (ii) the number and type of applications for Mediation under the Code; and
  - (iii) any other matters the CAC considers relevant to the Code;
- (d) will develop its own administrative procedures and protocols and obtain adequate funding to administer and monitor the Code from ICA and MTAA;
- (e) will advise on the promotion of the Code within the Industry; and
- (f) will conduct an initial internal review of the operation of the Code 12 months after the commencement of operation of the Code on 1 September 2006. This is to be followed by an external review of the operation of the Code every three years from the commencement of the Code;
- (g) may be consulted on interpretation of any clause in this Code;
- (h) may receive from Signatories or others information related to alleged breaches of the Code;
- (i) may refer alleged breaches of the Code to the appropriate government regulator.

#### **13.3 Confidential Information**

The appointees to the CAC must not disclose any confidential information acquired in the course of their appointment to the CAC unless required by law to do so.