

Review of the Motor Vehicle Insurance & Repair Industry Code of Conduct

2010

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- The evolution, strategies and performance of dealer groups;
- The meaning and implications of regulation;
- Sustainability in retailing;
- Retailing scenarios in 2020;
- The implications for the industry of alternative propulsion systems;
- Benchmarking manufacturer, NSC and retailer websites; and
- Exploring customer needs and expectations in sales and after-sales.

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Executive Summary

The Review of the Motor Vehicle Insurance and Repair Industry Code of Conduct (hereafter referred to as the Code) was undertaken in December 2009 and January 2010. The Review was primarily organised on the basis of written submissions received from interested stakeholder parties who operate under the Code. A full outline of the scope and process of the Review is contained in the 'Scope and Process of the Review' section of this report.

The Review was undertaken to assess the performance of the Code, particularly in relation to whether it was operating in accordance with its Preamble and Principles, and whether the parties to the Code were meeting their obligations to it.

The Review was not commissioned to address matters not expressly addressed by the Code.

For the most of its history, the body repair sector in Australia was largely unregulated, except for standard business, vehicle and service liability issues, and applicable environmental regulations. However, in 2006 a voluntary national industry code was established, and in 2007 a mandatory code was enacted in New South Wales. The Code arose following the recommendations of the Productivity Commission's inquiry in 2004 and 2005. It found there were "...serious issues of dispute between the body repair and insurance industries that affect fair trading and transparency, and impact on efficiency". (Productivity Commission, 2005) The Commission's inquiry followed a number of other related inquiries and reviews (such as the 1995 Industry Commission inquiry; various Senate inquiries concerning issues such as the *Designs Act* and introduction of a *Late Payment Commercial Debts* bill from 1995 to 2004; and in 2002 and 2003 the ACCC investigation of relevant *Trade Practices Act* breaches. The ACCC later facilitated industry roundtable discussions and publication of an issues paper that attempted to introduce piecemeal solutions to manage the repairer and insurer relationship.¹

The Code provides a governance structure to the sector to manage the traditionally adversarial relationship between body repairers and motor vehicle insurers. It provides a conciliation process to manage disputes between the parties to the Code, and stipulates a set of common agreements on a range of areas frequently in dispute between repairers and insurers. In that light, the Code operates to provide an agreed framework regulating the relationship between motor vehicle insurers and repairers.

The Code's form and text are a clear result of complex negotiations and compromises. The Review recognised that the present Code is perceptive of the ongoing relationship difficulties that have historically existed between the two parties.

As a reflection of that history, perusal of the Code reveals many clauses that are imprecisely written. This inevitably has led to various, if not conflicting, interpretations between and among

¹ Chieux, T., & Colanzi, R., *Crash or crash through: a comparison of the Australian & European body repair sectors* (2008), ICDPA, Australia, p13-14

repairers and insurers. In the operational context that almost two million insurance repair claims are processed annually by motor vehicle insurers, it is perhaps inevitable that disputation will occur from time to time.

The Review prepared its report noting that there are slightly different local market features in play in some states and territories, and as a result the nature of the relationships between some insurers and repairs have particular local characteristics. In preparing its observations on the operation of the Code, the Review consequently provides its observations and findings based on a national perspective. It was beyond the scope of the Review to consider issues specific to local/state markets.

The Review received a number of comments from both insurers and repairers addressing competition and commercial imbalances identified between the two parties, such as:

- The ability of the Code to enforce a “level playing field between insurers and repairers”;
- The inherent power imbalance between insurers and repairers, with one submission stating that “...repairers are reliant on insurers for insurance business, as they have no choice. On the other hand, insurers are not reliant on a particular repairer as they have many choices”, and
- Specific operational issues with quotation, job approval/authorisation and distribution systems as operated by insurers.

The Code’s Preamble is quite specific in stating there should be no attempt to stipulate industry-specific matters such as “minimum hourly rates or prices” or “types of parts to be used”. It was therefore beyond the scope of the Review to assess the specific claims and examples offered by repairers and their representatives addressing these or similar matters. However, it is worth noting the consistency and frequency that such issues were raised for the information of the Review.

The Review considered individual and aggregated examples wherever possible, and tested whether the cited examples contravened the Principles of the Code or specific clauses. Many examples offered to the Review were only supported by anecdotal evidence supplied in confidence by repairers or through their respective industry representative. As such, it was often difficult to measure and determine whether the contravention claimed was specific to one or a small number of repairers or systematic across the industry.

In addition to competition issues, the Review received a number of detailed examples of operations and practices allegedly followed by both insurers and repairers and evidence of direct contravention of the Code, or practices followed that were suggested to not be in keeping with the general spirit of the Code. Many of these examples were beyond the immediate scope of the Review to consider, or determine the general level of practice across the sector. Additionally, a number of technical repair issues raised with the Reviewers were beyond the scope of the Review to assess in terms of the respective merits and claims and their direct

application to the operation of the Code. Many of these issues referred to detailed operational issues with regard vehicle repairers, such as use of authorised OEM parts, parts replacement and repair methodologies that do or do not comply with original OEM specifications. Claims were also made concerning suggestions of consumer steering and parts sourcing, which at face value warranted further investigation, but again were outside the immediate parameters of the Review.

A number of submissions commented at length on the overall performance of the Code, and on its near-future operation. A number of conflicting claims were made as to what the Code does and does not regulate, and examples of diverse contradictory interpretations of key sections, words and phrases contained in the Code. An example of this is the following comments received by the Review:

- (Comment from an insurer): "From inception, the Code was intended to be developed as a 'Principles' based Code rather than being overly prescriptive or regulatory in its nature."
- (Comment from a repairer representative organisation): "While the repair industry notes that the Code is a "principles based Code", they (examples cited to the Review) highlight the narrow interpretation insurers take with the Code."

The Reviewers were faced with working through a series of claims and counter-claims made by repairers and their representative bodies, and insurers. For example, some insurers cited a recent increase in the number of Internal Dispute Resolution (IDRs) and, to a lesser extent, External Dispute Resolution (EDRs) applications timed to deliberately coincide with the Review. Equally, some industry representatives claimed they had observed an increase in co-operation from insurers per the Code, again timed to coincide with the Review. These were claims that were beyond the resources of the Review to confirm or reject.

As to an overall assessment of the operations of the Code, the Review noted the findings made in September 2008 by the New South Wales Commissioner for Fair Trading (OFT), which conducted its own assessment on the operation of the Code in that state and found that:

- "The provisions of the Code are widely known and understood within the Motor Vehicle Repair and Insurance industries;
- Effective procedures are in place in the Office of Fair Trading to record and respond to complaints about the operation of the Code;
- The Code continues to have the support of the Motor Vehicle Repair and Insurance industries;
- The parties to the Code are continuing to work together in a spirit of amity to strengthen its provisions;

- The Code is operating satisfactorily as an applicable industry code of conduct for the purposes of Part 5E of the Fair Trading Act; and
- The Code should continue to operate as an applicable industry code of conduct in its current form."

However, despite the findings of the OFT, the Review has observed that there is a clear demarcation at least in relation to perceptions between repairers and insurers about the performance of the Code. The level of demarcation is evident in the following comments.

From insurers:

1. "...the Code has done much to improve the relationship between the repair and insurance sectors ... that is not to say the Code has resolved all issues between insurers and repairers. Some of these issues are simply outside the scope of the Code, and cannot, and in our view should not, be addressed as to do so would restrict competition, encourage inefficiencies and inevitably lead to higher costs for the consumer."
2. "...the Code is working well, contributing to improved relations between Repairers and Insurers."
3. "...the Code is working well, providing a clear pathway for resolution of disputes."
4. "While some areas of the Code may continue to be a source of healthy tension between the parties, both with regard to interpretation and operation, our firm view is that the Code is delivering on its objectives as set down in its Preamble and Principles and that the relationship between insurers and repairers has undergone significant change since its introduction."
5. As an indication of commitment to the Code, a number of insurers detailed their respective compliance costs with regards to meeting the principles and stipulations in the Code, through amending printed and electronic documentation such as PDSs and NSR documentation, and conducting internal staff training addressing matters raised in the Code.
6. Insurers cited the low number of IDRs and EDRs lodged, particularly when referenced (in ratio terms) to the overall number of repairs undertaken. The suggestion is made that the low ratio is indicative that disputation is low and that disputes with repairers are typically resolved well before repairers have recourse to enact the dispute resolution processes available through the Code.
7. Insurers made the point that the Code was geared to regulate their behaviour, however, there were limited provisions to penalise or confirm repairers' compliance with the Code.

Conversely, in their submissions repairers and representative organisations indicated an emerging lack of confidence in the present provisions of the Code, while appreciating that at

least initially it was a significant step towards improving the overall relationship between insurers and repairers. However, without significant reform to the Code, many repairers indicated they questioned its medium to long-term viability. A number of criticisms were raised:

1. That the Code should be mandated across all states and territories. Unanimously, repairers and repairer representatives indicated strong dissatisfaction that the Code was not mandated across the country with its associated legal protections;
2. Many of the criticisms with the format of the Code related to a perceived inability of the Code to address the commercial imbalances with insurers. The most frequent comment was that insurers were by default focused on bottom-line assessment and cost reduction. While accepting that negotiations over price were not subject to the Code, a number of repairers indicated that the inability to negotiate this industry issue through the Code was a significant structural flaw;
3. The issue was raised that the Code was not sufficiently prescriptive to stipulate technical requirements for the repair of damaged vehicles, in terms of the physical repair but also with the selection of most appropriate genuine and non-genuine parts. Repairers also indicated there was an expectation that the Code should help with directly accessing vehicle manufacturers' technical repair specifications;
4. The ongoing primary contact point for repairers with insurance companies is assessors. Repairers indicated consistent concern about the operations of a number of assessors. Many repairers and their representatives respected that senior management in most insurance companies may be/are committed to the Code and Principles, however, the same commitment was claimed not to have migrated to or been demonstrated at the "shop floor level" or assessor level; and
5. Repairers raised the issue of the lack of independent 'policing', or monetary compensation or fines, for Code contraventions by insurers as a means to confirm compliance with the Code.

The specific findings of the Review are listed from page 12 of this report.

The summary conclusion of the Review centres on three main observations:

1. Across the sector, the Code in its present format has provided a means to improve the overall relationship between repairers and insurers. However, repairers have indicated to the Review a progressive loss of confidence in the Code to address continuing underlining industry operational issues between repairers and insurers;
2. Insurers indicated their continuing broad support for the Code. However, a small number of insurers suggested the need for a rewrite of the Code to amend and include provisions that provide insurers with means to enforce repairer compliance with the Code, for example, the ability to initiate IDRs against repairers;

3. The Review observed the need for improved communication and education for both insurers and repairers about the principles and provisions contained in the Code, and about issues that the Code does not specifically and directly address.

Scope & Process of the Review

The Review of the Code was undertaken based on the requirements established by the Code, and the brief received by the Reviewers from the Code Administration Committee (CAC):

- “In accordance with the Code, the priority for the review should be a consideration of whether the Code has operated in accordance with the provisions of the Preamble and Principles of the Code, as contained on page 5 and 7 of that document respectively. The review should also consider whether the current clauses of the Code operate in a manner which support or detract from the Preamble and Principles of the Code.
- While the focus of the review is not intended to canvass matters outside the scope of the guidelines provided in the Preamble and Principles of the Code, other than where such matters directly impact on the Code’s ability to deliver on these stated objectives, should a matter, or matters, be regularly and consistently raised by participants in the review process these matters should be noted and reported on as an addendum to the review document.
- The review will gather information and views from interested parties, and report on these to the CAC.”

The Review process was undertaken as follows:

- The CAC engaged the services of ICDPA to conduct the External Review.
- Written submissions were received from all interested parties who operate under the Code, and were received by the Reviewer no later than 4pm on Wednesday 25th November, 2009. Eighteen submissions were received and were treated in confidence by the Review.
- The Reviewers had sole and exclusive access to written submissions and supporting documentation.
- An optional two-day, face-to-face session was available to interested parties. Eight meetings were held in Sydney on December 9 (for repairer and industry representatives) and December 10 (for motor vehicle insurer representatives). Attendees were offered the opportunity to provide any additional relevant information to the Review in writing within two weeks of the face-to-face sessions.
- A guide for submissions was prepared to assist in this process and was available on the Code website (www.abrcode.com.au).

The Review, and supporting details, were displayed and promoted through the Code’s website (www.abrcode.com.au) and through repairer industry representatives.

Specific findings

Clause 1 – Principles of the Code

***Finding:** Insurers and repairers indicated their broad agreement with the historical intent of the Principles contained in the Code.*

Clause 3 - Definitions

***Finding 1:** A small number of definitional inconsistencies were identified that could be appropriately modified without serious change to the intent, format or performance of the Code.*

***Finding 2:** The definitions of which parties can be and are subject to the Code should be assessed and appropriately amended.*

***Finding 3:** The definition of Approved Assessor Course may need to be reconsidered, along with publication of the criteria necessary to meet relevant course requirements plus more prominent promotion by the CAC of such courses and their availability.*

***Finding 4:** Consideration should be given to the definition of terms such as “safety” and “structural” per generic repair methodology, if not within the Code then as a statement of agreement between repairers and insurers who are party to the Code.*

***Finding 5:** The definition of “upfront” may need to be reassessed given the provisions contained in Clause 9 of the Code.*

Clause 5 – Network Smash Repairer Schemes

***Finding:** There were no direct conclusions to be drawn specifically to this clause of the Code, except perhaps for the need to further improve communication and information exchanges on NSR agreement terms and conditions between insurers and repairers.*

Clause 6 – Estimate, Repair and Authorisation Process

***Finding 1:** Clauses 1.2(c) and 1.4(c) and 7.4 are, at face value, contradictory and a source of definitional confusion and may affect the application of Clause 6.*

***Finding 2:** An agreed tighter definition and or interpretation of the phrases “as far as practicable” and “of all obvious damage” may be required for the interpretation and application of Clause 6.1.*

***Finding 3:** Clause 6.3 is confusing and possibly contradictory, and should be reviewed.*

***Finding 4:** Sub-clause 6.4 appears to have been incorrectly inserted in Clause 6. It may be more appropriate to reinsert Sub-clause 6.4 into the body of Clause 4 – “Insurer and Repairer Relations”.*

Clause 7 – Repair Warranties

***Finding:** That Clause 7.4 be amended to not conflict with Clauses 1.2 (c) and 1.4 (c) of the Code.*

Clause 8 – Payment Terms

***Finding:** Payment frequency to repairers has significantly improved since the establishment of the Code.*

Clause 9 – Disclosure Obligations

***Finding:** The Review did not find sufficient and immediate evidence that insurers were not complying with the Code. The Review noted that Clause 9.5 of the Code is limited to telephone communication, but does not address other communication methods such as fax, email and websites.*

Clause 10 – Repair Dispute Resolution & Clause 11 – Dispute Resolution Process

***Finding 1:** The Review found that clauses 10.1 (a) through to (d) are especially difficult to follow with respect to determining what is disputable under the Code, and may need to be redrafted.*

***Finding 2:** The Review noted the need for additional and improved education of repairers about the IDR and EDR processes available under the Code.*

***Finding 3:** The Review noted the need to consider the possible introduction of a provision(s) for insurers through the Code to enforce repairer compliance with the Code.*

Clause 12 – Administration

***Observation 1:** To consider the incorporation of a seventh board position in the form of an independent chairperson (independent of both repairers and insurers) to the CAC.*

***Observation 2:** The CAC should publish a list of recognised approved assessor courses.*

***Observation 3:** The CAC should publish an aggregated statement detailing results, findings and outcomes arising from IDRs and EDRs.*

Clause 1 – Principles of the Code

The majority of submissions received from repairers and insurers offered little to no direct criticism of the Principles in the Code. There was a strong indication that repairers and insurers appreciated the stated intent of the Principles to improve trust and the transparency in the relationship between the two parties. However, the two parties differed in relation to the direct operation and application of the Code. The issues of difference will be further addressed in the following sections of this report.

Clause 1. Finding: Insurers and repairers indicated their broad agreement with the historical intent of the Principles in the Code.

Clause 3 – Definitions

The Review received a number of comments about the composition of the definitions contained in the Code. In addition, the Review received suggestions about amending and modifying the definitions list and including additional definitions.

Below is a list of specific issues raised in a number of submissions. In terms of terminology used in the Code, a number of inconsistencies were identified that could be appropriately modified without serious change to the intent, format or performance of the Code.

- The term “NSR” is defined in the Code as a network smash repairer; however the Preamble of the Code refers to a “PSR” in Clause (b). No definition for a PSR is provided under Clause 3 – Definitions, or through the body of the Code.
- The term “Parties” is defined as “... the applicant and the respondent to a dispute arising under clauses 10 and 11 of this Code”. Clauses 10, 11.1 and 11.2 refer specifically to repairers and insurers, while Clause 11.3 references applicants and respondents.
- The term “Signatories to the Code” is defined as those insurers, repairers and repairer representative organisations who are listed in the Code’s Register of Signatories and who have agreed to be bound by the provisions of the Code and have not ceased to be bound by the Code. A number of submissions highlighted that the full list of repairer representative organisations at the time of the Review were not provided on the Code’s website as being signatories to the Code. In the interests of completeness, the list of all signatories should be regularly updated.

Clause 3. Finding 1: A small number of definitional inconsistencies were identified that could be appropriately modified without serious change to the intent, format or performance of the Code.

A number of claims were made about which entities (aside from repairers, repairer representative organisations, and motor vehicle insurance companies) should be party to the provisions of the Code. A number of repairer submissions indicated that insurance companies were attempting to circumvent the Code by using other business entity formats, such as fleet management companies and self-insurers to act on behalf of the insurance company. A number of insurers stated instances where factoring agents (which had assumed the relevant debts of repairers in relation to late or non-payment from an insurance company) were endeavoring to use the Code to organise payment of outstanding invoices. It would appear that the definitions of which parties are explicitly subject to the Code should be assessed and definitions tightened accordingly.

Clause 3. Finding 2: The definitions of which parties can be and are subject to the Code should be assessed and appropriately amended.

Repairers and their representatives raised concern over the definition of "Approved Assessor Course" and the subsequent issues of assessor industry experience and training. There was confusion among repairers as to the number and type of such courses available, and the criteria used to enable a course to be titled or more appropriately described as "approved". Additionally, repairers suggested that insurers conducting "in-house" courses for the training of assessors contravened the Code principle of transparency and disclosure. A number of insurers indicated that they conducted I-CAR training of assessors, and that sessions were often conducted jointly with NSR repairers. Additionally, insurers made the suggestion that the term "assessors" focused only on insurance staff, and that there should be an amendment to the Code to include assessors contracted and/or employed by repairers.

Clause 3. Finding 3: The definition of Approved Assessor Course may need to be reconsidered, along with publication of the criteria necessary to meet relevant course requirements, plus more prominent promotion by the CAC of such courses and their availability.

A number of submissions raised concerns over the interpretation of terms concerning issues such as "safety" and "structural" linked to generic repair methodology. It was observed there was no single agreed repairer industry definition or general agreement with insurers about the precise definition and interpretation of these or similar terms. This issue links to concern about the interpretation of the definition of parts and OEM genuine repair specifications, and agreed repairer and insurer repair methodology.

Clause 3. Finding 4: Consideration should be given to considering the definition of terms such as 'safety' and 'structural' per generic repair methodology, if not within the Code then as a statement of agreement between repairers and insurers that are party to the Code.

The majority of repairer submissions raised concerns about the definition of the term "upfront", especially when referenced in application to Clause 9 – Disclosure Obligations. (See comments

specific to this Clause later in this report). A number of examples were provided with specific reference to product disclosure statements, which at face value suggested non-compliance with the term. Insurers offered a different and more general interpretation of the term to the repairers, which they claim fulfils their necessary obligations with the Code.

Clause 3. Finding 5: The definition of “upfront” may need to be reassessed given the provisions contained in Clause 9 of the Code.

Clause 4 – Insurer & Repairer Relations

As indicated in a number of submissions, both Clause 4 – Insurer and Repairer Relations and Clause 6 – Estimate, Repair and Authorisation Process are arguably the most disputable and contentious provisions in the Code.

The Review received a number of anecdotal and detailed examples of operations and practices allegedly followed by insurers and repairers, with supporting evidence of direct contravention of the Code and especially Clauses 4 and 6. However, many of these examples were beyond the scope of the Review to consider or, importantly, determine the general level and frequency of practice across the sector. Nonetheless, they represent important matters that should be considered in terms of keeping within the spirit of the Code.

The most frequent issue raised concerned sections 4.1 and 4.2, especially the agreed criteria establishing the level of training and experience of insurer assessors, with reference to the changing nature of the technical and technological repair standards required with contemporary vehicles. Repairers suggested that this should also include instances of assessors changing agreed repair methods and dictating replacement parts to be used that could conflict with the original vehicle manufacturers’ specifications. Insurers countered the claim, detailing the levels of training and experience expected of their assessors. They also highlighted instances whereby assessors undertook I-CAR training and attended courses organised through I-CAR, along with NSR repairers. Plus in a limited number of cases, insurers financially subsidised training for NSR repairers.

The Review considered that the primary level of disputation centered on the insurer assessor and repairer interactions and (often) personal relationships. Repairers detailed a number of examples, situations and allegations suggesting assessors were often using their ability to allocate repair work as a means of controlling (if not in some cases allegedly deliberately affecting the viability of) repairers. The number and type of allegations made by repairers prima face suggest that there is a need to examine the allegations more closely. As many of the allegations were beyond the scope of this Review, it was not possible to comprehensively work through the various and numerous allegations made.

Clause 5 – General comments

Insurers for the most part indicated that Clause 5 was performing well, establishing a number of “minimum standards” that facilitated transparency in the relationship between the two parties, but was not so specific or prescriptive to exclude normal competitive arrangements. Conversely, repairers and their representatives indicated to the Review that any response to this Clause should be viewed through the perspective of the “balance of power” relationship between insurers and repairers. Repairers argued that even with the minimum standards detailed in the Code, by default, repairers have no option (so as to ensure their viability) other than to agree to the contents of the NSR agreement, despite suggested or perceived possible conflicts with the Code. While specific and anecdotal evidence was provided to the Review by repairers supporting their claim, it was nonetheless difficult for the Review to confirm the widespread and systemic practice of such strategies/tactics, or in fact whether such strategies were limited to a single insurer.

Clause 5.1 Notification of Opportunities to Apply for NSR Status

No specific comments were received by the Review specifically addressing this issue.

Clause 5.2 Disclosure of Information on NSR schemes

Whether insurers complied with this provision of the Code was a significant point of disagreement between repairers and insurers. Insurers indicated they provided relevant information to repairers via multiple media. Conversely, repairers stated that some insurers had not updated their websites for a period of time, nor provided relevant information on their websites. From a cursory perspective, the Review found that there appeared to be inconsistent practice with regards to information dissemination to repairers.

Clause 5.3 Term of Agreement

The majority of submissions received, overall, did not comment at length about this provision.

Clause 5.4 Extensions of NSR Status

Only one example was provided to the Review concerning a recent series of terminations of agreements by an insurer. The Review was not in a position to determine how widespread this situation and particular circumstances were across the sector.

Clause 5.5 Termination of NSR Agreements after a Breach by a Repairer

One example was provided to the Review concerning a recent series of terminations of agreements by an insurer, as discussed in the above section. However, no specific examples were provided concerning a termination of an agreement as a result of a singular issue or series of breaches by a repairer.

Clause 5.6 Termination of NSR Agreements Based on Performance

The comments received about this clause of the Code primarily focused on differences in interpretations concerning termination clauses contained in particular NSR agreements, and the

various business strategies employed by insurers to manage their NSR networks. It was beyond the scope of the Review to consider each NSR agreement, or consider differences in interpretations between conflicting parties who are or have been in dispute over the termination provisions of a particular NSR agreement.

Clause 5.7 Termination of NSR Agreements Where There is No Breach by a Repairer

One example frequently provided to the Review by repairers concerned a recent series of terminations of agreements by an insurer. Based on that one example, the Review was not in a position to determine how widespread this situation and particular circumstances were across the sector.

Clause 5.8 Termination of NSR Agreements – Special Circumstances

The Review received no specific comments about the performance of this provision of the Code.

***Clause 5. Finding:** There were no direct conclusions to be drawn specifically to this clause to the Code, except perhaps the need to further improve communication and information exchanges on NSR agreement terms and conditions between insurers and repairers.*

Clause 6 - Estimate, Repair & Authorisation Process

As per Clause 4 of the Code, Clause 6 was equally as contentious for insurers and repairers. In the past year it appears that the majority of IDRs lodged and processed were mostly concerned with contraventions of clauses 6.2 and 6.3 of the Code.

A source of confusion was immediately obvious to the Review. The Code specifically provides in the Principles, through Clauses 1.2(c) and 1.4 (c), that repairs are carried out "...in accordance with accepted industry standards and practices", while 7.4 refers to a repair "that differs from that recommended by the Repairer". The two clauses, when read together, have raised a level of confusion for both insurers and repairers, and a commented source of friction between the two parties. This is especially so when it concerns Clause 6 in repairers determining a visual extent of damage and the structure of estimates concerning the level of work and repairs required.

***Clause 6. Finding 1:** Reading clauses 1.2(c) and 1.4 (c) and 7.4 are at face value contradictory and a source of definitional confusion, and may affect the application of Clause 6.*

Insurers responding to the Review indicated that they had disclosed in full to repairers (through NSR-related agreements and other relevant documentation predominantly available through websites) details about their estimation process. They argued that this process was fair and transparent as required by Clause 6.1.

The majority of repairer and representative submissions suggested that Clause 6 was generally interpreted by insurers too broadly, and in the obvious favour of insurers. Numerous examples were received from repairers and repairer organisations about assessors (the strong suggestion is arbitrarily) altering repair methodologies, revising repair time estimates and amending repairer quotations. The suggestion was that “fair and transparent negotiations” between repairer and insurer (through the assessment process) does not occur. An area where confusion may arise, as suggested by repairers, is that some insurers do not stipulate a specific repair methodology, leaving it to the particular repairer to determine the repair method. Consequently, confusion may arise and the accusation leveled about the lack of transparency of insurers’ assessing processes and a lack of information about how insurers are determining and comparing estimates on the basis of completeness of repair and price competitiveness. The resulting claim made by repairers is that the cheapest quotation is most often successful despite not necessarily quoting for all “obvious” or expected non-visible damage.

In contrast, insurers argued that the assessors’ primary duty of care is to ensure that the repairs they authorise for the damaged vehicle are undertaken. In reference to the Code as a principles-based agreement, insurers especially stated that it cannot be prescriptive on every possible repair possibility and scenario. The comment was received that occasionally, as part of the estimation and repair process, repairers and assessors may and do disagree - for example on an appropriate “time allowance” to complete a particular repair. An example cited by an insurer involved a repairer who used an estimation methodology that was inconsistent with the insurer’s published methodology, and consequently came to a final price that exceeded the amount the insurer would have been required to pay on the pre-agreed basis.

The primary function or element that was subject to the most discussion by submitters was the assessment process - in particular the role and performance of insurer assessors. The main contentious issue centers on Clause 6.1, through which repairers argue it is not possible to provide a comprehensive quote, particularly where there is significant damage that could not be examined without dismantling the vehicle. In response, insurers cited clause 6.1 of the Code, which provides that “Insurers will ensure the estimation process is fair and transparent and *as far as is practicable*” (emphasis added). This provision was specifically raised in the circumstance of a competitive quotation system. Insurers operating such a system stated that competing repairers offered a quotation on the same visible damage and the repairer was selected on the basis of who had provided the most appropriate repair methodology and complete quotation. It is on that basis that the repairer with the most complete and competitive quotation will be awarded the work.

Clause 6. Finding 2: *An agreed tighter definition and or interpretation of the phrases “as far as practicable” and “of all obvious damage” may be required for the interpretation and application of Clause 6.1.*

A number of submissions raised the issue that the wording of Clause 6.3 appears to be confusing and possibly contradictory. The difficulty appears to rest on the position of the word “unless”. It is suggested that wording of clause 6.3 be reviewed.

Clause 6. Finding 3: *Clause 6.3 is confusing and possibly contradictory, and should be reviewed.*

A number of submitters suggested to the Review that Sub-clause 6.4 appeared to be incorrectly inserted in Clause 6, and it might be more appropriate to reinsert the clause into the body of Clause 4 – Insurer and Repairer Relations.

Clause 6. Finding 4: *Sub-clause 6.4, appears to be incorrectly inserted in Clause 6. It may be more appropriate to reinsert Sub-clause 6.4 into the body of Clause 4 – Insurer and Repairer Relations.*

Clause 7 – Repair Warranties

The majority of submissions received by the Review addressing Clause 7 focused on Sub-clauses 7.4 and especially clause 7.5, which provide a confirmation of the liability position between insurers and repairers.

Submissions from insurers suggested that the lack of substantial recourse to this provision through the IDR or EDR process reinforced the insurers’ position that in the great majority of cases, the repairer and insurance assessor can and do effectively negotiate the appropriate repair method for the damaged vehicle.

However, a number of submissions both from insurers and repairers detailed an inherent contradiction within the Code, and the direct simultaneous application of Clauses 1.2 (c) and 1.4 (c) that provides that repairs are carried out “...in accordance with accepted industry standards and practices”, while Clause 7.4 refers to a repair “that differs from that recommended by the Repairer”. A number of submissions suggested a possible reform to the Code on this point by amending clause 7.4 to replace “...that differs from that recommended by the Repairer” with the provision contained in the Principles clause 1.2 (c) that insurers will not require repairers to carry out repairs that are not in accordance with accepted industry standards and practice.

Clause 7. Finding: *That Clause 7.4 be amended to not conflict with Clauses 1.2 (c) and 1.4 (c) of the Code.*

Repairers and repair organisations were adamant in their claims that insurer behaviour with regard to changing estimates, quotation prices and repairer methodologies subsequently placed a long tail or life-time liability for any repair work they had undertaken. A great deal of anecdotal and anonymous evidence was provided by repairers to support this claim. The essential issue appeared to centre on the largely personal relationship between a repairer and the insurance assessor(s). It was beyond the scope of the Review to examine the matter

further, but there appeared at face value to be a significant repairer concern about the levels and frequency of disagreement concerning changing estimates, quotation prices and repairer methodologies pre and post the final estimate/quotation being accepted, that may warrant further attention outside of this Review process.

Clause 8 – Payment Terms

Overall, the majority of submissions received indicated that arrangements between insurers and repairers concerning late payment issues had substantially improved since the inception of the Code. One repairer organisation stated that this clause was unarguably the most successful provision in the Code. While some examples were cited concerning late payment, for the most part they appeared to be caused by a genuine lack of understanding within insurers' accounts payable departments about the 30-day provision in the Code, rather than any specific strategic or tactical reason to delay or withdraw payment. A number of insurers indicated to the Review that their policy was to pay invoices received within a 14 to 28-day period. For the most part, delays appeared to have been caused by standard operating procedures, such as when disputes over invoices did not match previously agreed authorised totals, and other accounting verification processes.

Insurers indicated to the Review that they had received claims for payment from third parties such as factoring agents for outstanding invoices that have been 'purchased' from repairers. Insurers have indicated that some factoring agents are subsequently claiming to seek redress via the Code. An example cited was a small number of IDR notices recently lodged with insurers concerning requests for payment where the invoice has been assigned to a third party factoring agent. However, factoring agents are not a party to the Code. As factoring agents are not a party to the Code, it was outside the scope of the Review to consider the relationship per this provision between factoring agents and insurers. However, the suggestion was that while nonetheless a debt may still be outstanding from insurers, some repairer organisations have taken it upon themselves to effectively lobby on behalf of factoring agents affected.

Nonetheless, overall repairers claimed that as a result of this provision in the Code, the payment frequency and levels of dispute with insurers had substantially improved.

Clause 8. Finding: *Payment frequency to repairers has significantly improved since the establishment of the Code.*

Clause 9 – Disclosure Obligations

Clause 9 provides minimum standards and disclosure regarding choice of repairer, parts to be used, and repair warranties offered.

The Review received a number of allegations concerning insurer standards and level of compliance. However, on issues concerning contravention of this clause of the Code, only a small number of relevant IDRs had been lodged against insurers in the past two years.

The primary criticism received from repairers centered on the provision of information about customer choice or “choice of repairer”. In particular, a number of submissions referenced Clause 9.1, which requires: “...Insurers will clearly state, in unambiguous and plain language, upfront in their product disclosure statements, their policy in relation to choice of Repairer.” Repairers were especially critical of insurers, arguing that the Code had not achieved its stated aim to better inform consumers on matters of choice of repairer. A number of submissions provided examples of insurers’ product disclosure statements (PDSs) as supporting evidence of the lack of direct referencing, or of difficulty in immediately locating the relevant provision(s) in the PDS.

Given the number of motor vehicle insurers and insurance products available, it was beyond the scope or resources of the Review to test the claims made about standards and levels of disclosure and compliance in individual PDSs. However, across a small select sample of PDSs, the Review found that insurers had either made or were in the process of providing specific information, especially concerning customer choice for both present and prospective clients, and also within agreements for present and future repairers participating in NSR arrangements. A number of insurers are providing the information through hard copy documentation or information contained on websites and in electronic documentation. Insurers particularly highlighted that they had made/were making these provisions clear to customers/clients and especially to repairers, who could determine to participate in an NSR arrangement that had a specific policy on customer choice.

Repairers and repairer organisations also commented on the behaviour of insurers per Clause 9.5 of the Code, concerning disclosure through telephone enquiries and sales. The Review noted the criticisms, however insurers made the point that as part of their (prospective and present) customer interactions, they fully declared their policy on repairer choice. It was beyond the scope of the Review to conduct an audit of telephone conversations (and similar) between customers and insurers in order to satisfactorily test this claim. However, the Review does note that Clause 9.5 is limited to telephone communication, and does not address other communication methods such as fax, email, websites etc.

***Clause 9. Finding:** The Review did not find sufficient and immediate evidence that insurers were not compliant with the Code. The Review noted that Clause 9.5 of the Code is limited to telephone communication, but does not address other communication methods such as fax, email and websites.*

Clauses 10 & 11 – Dispute Resolution Procedures & Process

In responding to this clause of the Code, comments principally addressed two matters:

1. The process of lodging, proceeding and implementing findings and determinations arising from the Internal Dispute Resolution (IDR) and External Dispute Resolution (EDR) processes.
2. Questions of interpretation of which issues are disputable under the Code. The Code sets out that only Clauses 4 to 9 are disputable, however the Principles are not. Yet, a number of IDRs have been lodged citing contravention of the Principles with follow-up references to alleged contraventions of one or more of Clauses 4 to 9.

Insurers cited the low number of IDRs and EDRs lodged since the inception of the Code, particularly in relation (in ratio terms) to the total number of repairs undertaken and insurance claims processed. The suggestion is made that the low ratio is indicative that overall disputation is low and that disputes between the parties are often resolved well before enacting the dispute resolution processes available through the Code. However, in a number of submissions, insurers cited what they considered to be examples of “frivolous” disputation lodged through the IDR system. A frequently cited example was the lodgment of IDRs in circumstances whereby a repairer had been unsuccessful with their quotation and estimate.

Some insurers cited an increase in the number of IDR and, to a lesser extent, EDR applications timed to coincide with the commencement of the Review. One repairer organisation counter-claimed that it had observed an increase in “...co-operation from insurers, again timed to coincide with the Review of the Code”. Given the low number of IDRs that have been lodged, it is difficult to determine if a spike in numbers is a result of: a) deliberate tactics to possibly influence or highlight one party’s position as far as the Review is concerned; b) emerging developments; and/or c) an indication of repairers increasingly understanding the dispute provisions available through the Code.

Despite this, the Review considered that insurers appeared to be generally supportive of the present dispute resolution system and dispute provisions in the Code.

However, submissions received from repairers and repairer organisations were particularly critical of operational procedures followed through the IDR and EDR processes. The following is a brief summary of some of the major claims made:

- Owing to the suggested lack of compliance by insurers to the provision contained in the Code requiring acknowledgment of an IDR lodgment within five business days, one repairer organisation has resorted to creating and making available to its members a template form to be filled and submitted to the relevant insurer stipulating this provision;
- A number of submissions commented on the typical processes followed in an IDR. The most immediate concern was that the process was administered and managed by the

insurer. The Code is silent on the process to be followed in an IDR. However, the Review considered that the IDR process was not specifically designed to be “independent” of the insurer, as it is organised to be a continuation of the “internal” insurer review process;

- Concerning the low number of IDRs lodged, repairer organisations argued that aggrieved repairers had typically not lodged IDR claims for fear of retribution from insurers. The Review was not able to satisfactorily confirm or disprove this claim. In response, insurers resolutely denied the claim, questioning how could “...an issue be recorded if not brought forward for resolution?” Repairers only provided anecdotal evidence to the Review and also cited occasions whereby some repairers did not have their NSR arrangement renewed as evidence of insurer “retribution”. The Review was unable to confirm the validity of that evidence.
- Repairers claimed that after following the IDR/EDR pathway and successfully resolving their claim, they received no compensation (financial or otherwise); nor was the insurer – especially through the EDR process – subject to any penalty (financial or otherwise) for a contravention. A number of repairers and repair organisations submitted that the Code lacked provision for an independent “policing or monitoring” body to observe and enact provisions concerning contraventions of the Code.
- Repairers and repairer organisations suggested that the CAC should aggregate all relevant results, findings and outcomes of the IDRs and EDRs lodged and make available copies of all results, findings and outcomes to interested parties to help all parties become better informed of dispute trends, thus leading to better resolutions of potential and existing disputes.
- Comments were received concerning the quality and especially experience (both direct industry and mediation experience) of third-party mediators officiating EDRs. It was beyond the scope of the Review to examine this claim.

The provision of the IDR and EDR system is an important feature of the Code. Given the low number of IDRs in particular that are lodged, at face value it seems that that mechanism available to repairers through the code is infrequently used. The provision is clearly only available for repairers – insurers cannot lodge similar proceedings against repairers. The Review does note, however, that Sections 10.1 (a) through to (d) are especially difficult to follow for a lay person with respect to determining what is disputable under the code. This, in part, is adding additional tension between the parties to the Code.

***Clause 10. Finding 1:** The Review finds that Clauses 10. 1 (a) through to (d) are especially difficult to follow with respect to determining what is disputable under the Code, and may need to be redrafted.*

The Review notes there appears to be an overall need for additional and improved education of repairers of the IDR and EDR processes available under the Code, addressing issues such as the lodging of claims, the format followed in IDR and EDR sessions, and expectations about resolutions and findings possible through the IDR and EDR process.

Clause 10. Finding 2: *The Review noted the need for additional and improved education of repairers about the IDR and EDR processes available under the Code.*

A number of insurance companies made a specific point in their submissions that the Code as designed is organised to regulate their behaviour towards repairers, and that there was no provision contained in the Code for insurers to take relevant steps through the Code to regulate the behaviour of repairers. The same insurers suggested the need to introduce into the Code provisions that provide insurers with means to enforce repairer compliance with the Code, for example, the ability to initiate IDRs or similar against repairers.

Clause 10. Finding 3: *The Review noted the need to consider the possible introduction of a provision(s) for insurers through the Code to enforce repairer compliance with the Code.*

Clause 12 - Administration

Comments received outside the scope of the Review

A number of comments were received by the Review that were considered by the Review to be outside of its scope. However the Review notes the following issues per the administration of the Code, plus a general observation about the access to technical repair information.

A number of submissions to the Review raised a series of issues concerning the administration of the Code. The majority of comments were raised not specific to the current provisions contained in the Code (Clause 12), but rather were made in order to suggest reforms to the administration of the Code. The significant issues raised are summarised as follows, and the Review made 3 observations, as noted.

Most comments focused on the structure and membership composition of the Code Administration Committee (CAC).

The CAC comprises three appointees from the Motor Trades Association of Australia (MTAA) and three appointees from the Insurance Council of Australia (ICA). It is responsible for the administration, monitoring and promotion of the Code.

Submitters pointed to the fact that the CAC comprises three representatives each from repairers and insurers, and comment was made about the governance issues that may arise on contentious issues and the lack of a casting/deciding vote. A number of submitters suggested the incorporation of a seventh board position in the form of an independent chairperson, (independent of both repairers and insurers). A suggestion made was for "government" to nominate a prospective appointee.

Clause 12 Observation 1: *To consider the incorporation of a seventh board position in the form of an independent chairperson (independent of both repairers and insurers) to the CAC.*

A number of submissions also raised concerns about the level of communication and information flows from the CAC to Code parties. For example, repairers pointed to a lack of published information detailing and listing the recognised approved assessor courses as per the definition of such in Clause 3 of the Code.

Clause 12 Observation 2: *The CAC to publish a list of recognised approved assessor courses.*

Repairer and repairer organisations also suggested that the CAC should aggregate all relevant results, findings and outcomes of the IDRs and EDRs lodged and make available copies of all results, findings and outcomes to interested parties to help all parties become better informed of dispute trends, leading to better resolutions of potential and existing disputes.

Clause 12 Observation 3: *The CAC should publish an aggregated statement listing detailing results, findings and outcomes of IDRs and EDRs.*

A final matter raised, that was outside the scope of the Review, concerned detailed operational issues with regard vehicle repairs, such as use of authorised OEM parts, parts replacement and repair methodologies that do or do not comply with original OEM specifications, and parts sourcing. The majority of repairer and repairer organisation submissions stated the difficulty the sector had experienced in sourcing relevant and timely repair based technical and diagnostic information especially from OEM(s) and or associated providers. The Review noted the observation, and that the issue may be more appropriately considered outside of this Review process.

Review Media Release

Code Administration Committee

**PO Box 7115 MELBOURNE VIC
8004 www.abrcode.com.au**

Motor Vehicle Insurance and Repair Industry Code of Conduct

EXTERNAL REVIEW OF THE CODE

IMPORTANT NOTICE TO ALL SMASH REPAIRERS AND INSURANCE COMPANIES

In 2004, at the request of the Federal Government, the Productivity Commission conducted an inquiry into the relationship between the insurance and smash repair industries. The Commission handed down its final report on the 17th March 2005, (Inquiry Report No. 34), containing a number of recommendations, but primarily calling for the establishment of a voluntary Code of Conduct to promote transparent, informed, effective and co-operative relationships between smash repairers and insurance companies.

In 2005 the then Federal Minister for Small Business, the Hon Fran Bailey MP, responded to these recommendations by setting up an industry taskforce charged with the responsibility of developing a voluntary Code of Conduct. The Implementation Taskforce was made up of representatives from the major insurance companies and repair trade associations and took six months of intensive consultation to agree on the content of the Motor Vehicle Insurance and Repair Industry Code of Conduct (Code). This Code came into effect from 1st September 2006. A short time later the Code became a Statutory Code in New South Wales. A copy of the Code can be found on the Code website at www.abrcode.com.au.

Section 12.2 (f) of the Code requires the Code Administration Committee (CAC) to conduct:

“...an external review of the operation of the Code every three years from the commencement of the Code”.

The CAC conducted an initial internal review of the Code in 2007, and included its findings in the 2007 Annual Report, which can be found on the Code website, together with a copy of the 2008 Annual Report which was released in April 2009. As the Code has now been in place for 3 years repairers, insurance companies and their respective associations, are invited to participate in this external review of the Code.

SCOPE OF REVIEW:

In accordance with the Code, the priority for the review should be a consideration of whether the Code has operated in accordance with the provisions of the Preamble and Principles of the Code, as

contained on page 5 and 7 of that document respectively. The review should also consider whether the current clauses of the Code operate in a manner which support or detract from the Preamble and Principles of the Code.

While the focus of the review is not intended to canvass matters outside the scope of the guidelines provided in the Preamble and Principles of the Code, other than where such matters directly impact on the Code's ability to deliver on these stated objectives, should a matter, or matters, be regularly and consistently raised by participants in the review process these matters should be noted and reported on as an addendum to the review document.

The review will gather information and views from interested parties, and report on these to the CAC.

PROCESS FOR REVIEW:

The external review will be conducted through the following process:

- Written submissions (in the format outlined in the Guide for Submissions) will be considered by the reviewers from all interested parties who operate under the Code;
- An optional 2 day face-to-face session will be held in Sydney. Day 1 will be for repairers and Day 2 for insurers. These sessions are to allow interested parties who operate under the Code to put forward their views directly to the reviewer;
- the views of those attending face-to-face sessions are to be supported by a written submission (prior to the face to face meetings). Any anecdotal comment will not be accepted without evidence being provided to support any matters raised;
- any additional material/views are to be submitted to the reviewer in writing within 2 weeks of the face-to-face sessions; and
- interested parties who operate under the Code should submit their views in writing to the external reviewer. A Guide for Submissions has been prepared to assist in this process, and this is available on the Code website (www.abrcode.com.au).

The CAC has engaged the services of **ICDPA** to conduct the External Review. Further details may be obtained from your local trade association, from the Code website (www.abrcode.com.au) or from the external reviewers directly:

Mr Graeme
Addison ICDPA
8 Moralla Road
Kooyong Vic
3144

All contact should be via email to: graeme@icdp.net

TIME FRAME FOR REVIEW:

All written submissions are to be received by the reviewer no later than **4.00 pm on Wednesday 25th November, 2009.**

The Reviewer will also be holding optional face-to-face review sessions providing interested parties who operate under the Code with an opportunity to speak directly with the reviewers, in support of the matters raised in their written submission.

These sessions will be held in Sydney on **Wednesday 9th December, 2009** for repairers and on **Thursday 10th December, 2009** for insurers.

The first day session (for repairers) will be held at **MTA-NSW, 43 Brisbane Street, Darlinghurst** and the second day session (for insurance companies) at **ICA Level 4, 56 Pitt Street, Sydney**. Each session will commence at 10am.

Should you wish to participate in one of these sessions please register your intention on the CAC website (www.abrcode.com.au) by **4.00 pm on 25th November, 2009**. Participants will be responsible for all costs associated with their attendance at these face to face sessions.

James McCall

Chairman

Code Administration Committee

Guide for Submissions To The 2009 Review

MOTOR VEHICLE INSURANCE AND REPAIR INDUSTRY CODE OF CONDUCT SCOPE

OF REVIEW:

In accordance with the Motor Vehicle Insurance and Repair Industry Code of Conduct, the priority for the review will be a consideration of whether the Code has operated in accordance with the provisions of the Preamble and Principles of the Code, as contained in *Section 1-Principles of the Code* outlined on page 5 and 7 of that document. The review will also consider whether the current clauses of the Code operate in a manner that support or detract from the Preamble and Principles of the Code.

While the focus of the review is not intended to canvass matters outside the scope of the guidelines provided in the Preamble and Principles of the Code, other than where such matters directly impact on the Code's ability to deliver on these stated objectives, should a matter, or matters, be regularly and consistently raised by participants in the review process these matters will be noted and reported on as an addendum to the review document.

The review will gather information and views from interested parties who operate under the Code and report on these to the Code's Administration Committee (CAC). Those persons making submissions should address some or all of the following:

Section 1–Principles of the Code

Does the Code work effectively to promote transparent, informed, effective and co-operative relationships between smash repairers and insurance companies.

In accordance with this, does the Code meet the stated objectives of having vehicles repaired in accordance with documented manufacturers' technical specifications, without compromising vehicle warranty conditions, while having regard to the age and condition of the vehicle?

If not, please detail why, providing any supporting evidence available.

Section 3–Definitions

Are any of the Definitions preventing any section of the Code from being applied in accordance with the stated principles? If so, please specify which definitions and how.

Section 4–Insurer and Repairer Relations

Repairers and Insurers –

Do repairers and Insurers comply with their obligations under this Section of the Code? If not please detail how and provide any supporting evidence.

Are any of the provisions in this Section preventing the Code from being applied in accordance with the stated principles?

If so please detail how, providing any supporting evidence.

Section 5–Network Smash Repairer Schemes

5.1 Notification of opportunities to Apply for NSR Status

Do insurers comply with their obligations under this Section of the Code? If not please detail the nature of non-compliance, providing any supporting evidence.

5.2 Disclosure of Information on NSR schemes

Do insurers comply with their obligations under this Section of the Code? If not please detail the nature of non-compliance, providing any supporting evidence.

5.3 Term of Agreement

Do insurers comply with their obligations under this Section of the Code? If not please detail the nature of non-compliance, providing any supporting evidence.

5.4 Extensions of NSR Status

Do insurers comply with their obligations under this Section of the Code? If not please detail the nature of non-compliance, providing any supporting evidence.

5.5 Termination of NSR Agreements After a Breach by a Repairer

Do insurers comply with their obligations under this Section of the Code? If not please detail the nature of non-compliance, providing any supporting evidence.

5.6 Termination of NSR Agreements Based on Performance

Do insurers comply with their obligations under this Section of the Code? If not please detail the nature of non-compliance, providing any supporting evidence.

5.7 Termination of NSR Agreements where there is no breach by a repairer.

Do insurers comply with their obligations under this Section of the Code? If not please detail the nature of non-compliance, providing any supporting evidence.

5.8 Termination of NSR Agreements where there is no breach by a repairer.

Do insurers comply with their obligations under this Section of the Code? If not please detail the nature of non-compliance, providing any supporting evidence.

Section 6 -Estimate, Repair and Authorisation Process

Do insurers comply with their obligations under this Section of the Code? If not please detail the nature of their non-compliance, providing any supporting evidence.

Are any of the provisions in Section 6 preventing the Code from being applied in accordance with the stated principles? If so please detail how, providing any supporting evidence.

Section 7-Repair Warranties

Do insurers and repairers comply with their obligations under this Section of the Code? If not please detail the nature of their non-compliance, providing any supporting evidence.

Are any of the provisions in Section 7 preventing the Code from being applied in accordance with the stated principles? If so please detail how, providing any supporting evidence.

Section 8-Payment Terms

Do insurers comply with their obligations under this Section of the Code? If not please detail the nature of non-compliance, providing any supporting evidence.

Are any of the provisions in Section 8 preventing the Code from being applied in accordance with the stated principles? If so please detail how, providing any supporting evidence.

Section 9–Disclosure Obligations

Do insurers and repairers comply with their obligations under this Section of the Code? If not please detail the nature of non-compliance, by providing any supporting evidence.

Are any of the provisions in Section 9 preventing the Code from being applied in accordance with the stated principles? If so please detail how, providing any supporting evidence.

Section 10 and Section 11–Dispute Resolution Procedures and Process

Are Repairers and Insurers following the procedures and processes in accordance with their obligations under this Section of the Code? If not please detail the nature of their non-compliance, providing any supporting evidence.

Are the internal and external dispute resolutions processes outlined in this Section being used effectively and if not, what suggestions can be offered to improve these.

Process for lodging of Submissions:

The CAC has engaged the services of **ICDPA** to conduct the external review of the Code. Written submissions, in the form outlined above, are to be submitted directly to the Reviewer:

Mr Graeme Addison
ICDPA

8 Moralla Road

Kooyong Vic 3144

All contact should be via [email:graeme@icdp.net](mailto:graeme@icdp.net)

Time Frame for Review:

All written submissions are to be received by the reviewer no later than **4.00 pm on Wednesday 25th November, 2009**. The Reviewer will also be holding optional face-to-face review sessions providing interested parties who operate under the Code with an opportunity to speak directly with the reviewers, in support of the matters raised in their written submission.

Review of the Motor Vehicle Insurance & Repair Industry Code of Conduct

These sessions will be held in Sydney on **Wednesday 9th December, 2009** for repairers and on **Thursday 10th December, 2009** for insurers. The first day session (for repairers) will be held at **MTA-NSW, 43 Brisbane Street, Darlinghurst** and the second day session (for insurance companies) at **ICA Level 4, 56 Pitt Street, Sydney**. Each session will commence at 10am.

Should you wish to participate in one of these sessions please register your intention on the CAC website (www.abrcode.com.au) by 4.00 pm on 25th November, 2009. Participants will be