MOTOR VEHICLE INSURANCE
AND REPAIR INDUSTRY

Code of Conduct

2007 Annual Report

Contents

1 Executive Summary

In 2005, the then Federal Minister for Small Business, the Hon. Fran Bailey MP, responded to recommendations contained in the 2005 Productivity Commission Inquiry into the smash repair and insurance industries by setting up an industry taskforce, charged with the responsibility of developing a voluntary Code of Conduct.

The Implementation Taskforce developed and agreed the new Motor Vehicle Insurance and Repair Industry Code of Conduct within six months. The Code was formally launched on 1 September 2006, less than a year after the establishment of the Implementation Taskforce.

The Code is voluntary in all states and territories of Australia, other than New South Wales where it is mandatory. Over 2000 smash repairers are signatories to the Code and 20 insurance companies, representing almost all major participants in the insurance sector, have also become signatories to the Code.

A Code Administration Committee (CAC), which is made up of three appointees from the Motor Trades Association of Australia (MTAA) and three appointees from the Insurance Council of Australia (ICA), was established in July 2006 to oversee the implementation, promotion and administration of the Code. This also included producing a written review of the first year of the Code's operation.

In preparing its twelve monthly review, the CAC canvassed the ICA, representing the insurer signatories and the Motor Trades Association of Australia, who through its member bodies represents the bulk of the smash repairer signatories.

The ICA advised that there is a common feeling of satisfaction among insurers with the introduction and operation of the Code. Insurers acknowledged that the introduction of the Code required a significant review of their respective processes, a requirement for increased staff training, and in some cases, a change to the manner in which they approached aspects of the smash repair process.

Insurers identified that the Code is open to differing interpretations, in particular in relation to provisions contained in Section 6. However, it is the insurers' view that this in no way demonstrates any deficiency in the Code, which the insurers maintain is evidenced by the fact that there have been very few officially lodged disputes. Insurers also made the point that they felt many of the disputes raised by smash repairers related to pricing and/or allocation of work and were not necessarily matters covered by the Code.

MTAA commented that the existence of the Code has been a positive step for the industry and has facilitated an operating environment that has led to the avoidance of situations that might have otherwise resulted in an official dispute. However, MTAA also believes that the Dispute Resolution Process (DRP) has not been utilised to anywhere near the extent that anecdotal reported concerns about possible breaches of the Code would indicate. MTAA suggests this is due to repairers being reluctant to seek a remedy to a dispute, through the filing of a formal complaint within the DRP framework, for fear of damaging their relationship with insurers.

In addition, further anecdotal reports indicate a scepticism by repairers as to the sincerity and fairness of the DRP as it is claimed that in almost all cases raised through Internal Dispute Resolution (IDR), the insurance staff member addressing the issue does not consult with the repairer, but rather only contacts other insurance company staff on the matter, then issues a response.

The repairers, through official IDRs and the previously mentioned anecdotal reports, have identified that the most common areas of dispute relate to Sections 6, 7 and 8 of the Code and to a lesser extent Sections 1, 4, and 9. In addition, comments from repairers suggest that the more prevalent issues of concern relate to the estimate, repair and authorisation process (Section 6) and, in particular, clause 6.3.

Repairers also claim that in most instances the grounds for dispute seem to arise at the assessor/repairer level. Repairers maintain this is particularly concerning given the need for many repairers to maintain long term relationships with assessors for insurance companies for which they are preferred repairers. It also suggests that some assessors are not necessarily as familiar with the Code and its operation as would be expected.

Repairers also report that information of relevance to the Code for repairers, such as details on insurers' websites on how to submit an Internal Dispute notification, who to submit it to and other contact details are generally hard to find. Similarly, access to insurers' Product Disclosure Statements and details relating to their estimation methodologies (in accordance with clause 6.2(a)) can also be difficult for repairers to obtain.

It is the view of MTAA that while reports from repairers indicate insurers, in the main, acknowledge the Code and seek to conduct their business relationships with repairers in accordance with it, there is also a belief that some insurers, or at least some of their staff or agents, anecdotally, do not.

Both ICA and MTAA, while acknowledging the improvement the Code has made to industry relations, suggest that a renewed effort be undertaken by the CAC on promoting the Code and the rights and obligations of the various parties under the Code.

In view of the comments made by ICA and MTAA, on behalf of their respective constituencies, and the fact that the CAC also identified other matters, which were potentially holding back the full benefit of the Code such as assessor courses and access to technical information, the CAC makes eight recommendations.

Recommendations

Recommendation 1 - No change to current wording of Code

Recommendation 2 - Ongoing education / promotion

Recommendation 3 – Additional insurance company signatories to Code

Recommendation 4 – Website disclosure on choice of repairer

Recommendation 5 – Improvements to IDR/EDR processes

Recommendation 6 - Improve operation of clauses 6.1 and 6.3

Recommendation 7 - Recognition of approved assessor courses

Recommendation 8 – Access to technical information

2 Overview of First 12 Months

2.1 Introduction

In 2005, the then Federal Minister for Small Business, the Hon. Fran Bailey MP, responded to recommendations contained in the 2005 Productivity Commission Inquiry into the smash repair and insurance industries by setting up a taskforce of industry representatives charged with the responsibility of developing a voluntary Code of Conduct to improve the relationship between insurance companies and smash repairers.

The first meeting of the Implementation Taskforce was held in Melbourne on 14 November 2005 and six months and 10 meetings later, the Taskforce finally agreed on the content of the new Motor Vehicle Insurance and Repair Industry Code of Conduct (Code).

2.2 Code commencement

The Code commenced operation on 1 September 2006, less than a year after the establishment of the Implementation Taskforce. This was a significant achievement, and would not have been possible without all parties approaching the negotiations in a spirit of goodwill and with a genuine desire to improve the relationship between insurance companies and the smash repair industry.

Pursuant to clause 12.1 of the Code, a Code Administration Committee (CAC) was established in July 2006 to oversee the implementation, promotion and administration of the Code. The CAC is made up of three appointees from the Motor Trades Association of Australia (MTAA) and three appointees from the Insurance Council of Australia (ICA).

MTAA representatives on the CAC are Gunther Jurkschat from VACC (Chairman), Sue Scanlan from MTAA and James McCall from MTA-NSW. ICA representatives are Chad Vigar from IAG, Tim Jeffcoat from Suncorp and Maureen Joseph from AAMI.

2.3 Rollout dates

A rollout schedule for implementation of the Code was agreed with Sections 1, 2, 3, 4, 7, 8 and 12 coming into effect on 1 September 2006. Sections 6, 10 and 11 were implemented on 31 October 2006 and Sections 5 and 9 on 30 March 2007.

2.4 Participation levels

The Code is voluntary in all states and territories of Australia, other than NSW where the Government has legislated to make the Code mandatory. It is therefore pleasing to note how well repairers and insurers have supported this initiative.

All repairer representative organisations have signed up their smash repair members to the Code, with over 2000 repairers now being signatories to the Code. In addition, 20 insurance companies, representing almost all major players in the insurance sector, have become signatories to the Code (See Appendix One).

2.5 Code Administration Committees activities

The CAC has met eight times since its formation, and thanks are extended to the employers who have covered all expenses associated with their staff representatives' attendance at CAC meetings.

The CAC has established a Code website (www.abrcode.com.au) to provide repairers and insurers with easily accessible information on the Code, and its dispute resolution provisions. LEADR mediation has been appointed as the External Dispute Resolution provider for the Code. The CAC has also promoted the existence and provisions of the Code through articles in smash repair magazines and trade journals.

In addition, clause 12.2 (c) specifies the CAC is required to produce a publicly available annual report on the Code, and this report also incorporates a review of the first year of the Code's operation.

2.6 Dispute resolution statistics

Given the levels of conflict that have existed between insurance companies and smash repairers in the past it is pleasing to report the number of official disputes raised in the first year of the Code's operation have been minimal.

As at 1 September 2007, there have been 23 IDR matters raised by repairers against signatory insurance companies. Only two of these disputes proceeded to the stage of External Dispute Resolution (EDR), and as at 1 September, one of those disputes remained unresolved and the other was still in the process of being mediated under the provisions of the Code.

2.7 12 month review of the operation of the Code

As the Code was introduced in September 2006, and only became fully operational in March 2007, it is to be expected there will be sections of the Code where additional clarification and/or education may be warranted.

In conducting their 12-month review of the Code, the CAC sought the views of insurance companies and smash repairers, primarily through the ICA and the MTA A, who provided their respective members' views as summarised below.

3 Repairer and insurer identified issues

3.1 Insurer comments

The ICA provided comments on the first year of operation of the Code on behalf of insurance company signatories and made a number of key points.

From the insurers' perspective there is a common feeling of satisfaction with the operation of Code and a view that its introduction has proceeded "relatively smoothly". Insurers commented that the introduction of the Code required a significant review of their respective processes and a requirement for increased staff training, and in some cases a change in the manner in which some insurers approached aspects of the smash repair process.

There is a strong belief among insurers that the implementation of the Code has seen a significant overall improvement in the relationship with repairers and, in particular, non-preferred repairers, by opening up channels of communication and providing clarification in a number of "grey areas". More specifically, some insurers believe that there has also been a considerable improvement in communication between their respective assessing areas and the repairers they deal with on a regular basis.

Insurers did acknowledge that the Code is open to differing interpretations, in particular in relation to provisions contained in Section 6. However, it is the insurers' view that this is the result of compromises made between the parties in drafting the Code, and in no way demonstrates any deficiency in the Code.

The insurers make the point that there have been very few disputes officially registered which they suggest indicates that many disputes that arise are being resolved between insurers and repairers without having to resort to the formal dispute resolution process. Insurers also were of the belief that many of the disputes related to pricing and/or allocation of work and were not necessarily matters covered by the Code.

Insurers acknowledge that there is a need to continue to further promote the Code, through an education process outlining the rights and obligations of signatories.

3.2 Repairer comments

MTAA, which through its member bodies represents the vast majority of smash repairers, consulted with those members and compiled a summary of the comments made.

It is positive to note that reports from MTAA members also suggest that the existence of the Code has, on a number of occasions, allowed parties to be "reminded" of their obligations under the Code, thus avoiding a situation that might have otherwise resulted in an official dispute.

It is fair to say that the most significant issue raised by repairers is that the Dispute Resolution Process (DRP) has not been utilised to anywhere near the extent that reported concerns about possible breaches of the Code would suggest. While there has been limited experience with the External Dispute Resolution process, anecdotal reports provided to MTAA on the IDR process suggest that the reason for this is due to repairers being reluctant to seek a remedy to a dispute, through the filing of a formal complaint within the DRP framework, for fear of damaging their relationship with insurers.

In addition, further anecdotal reports indicate a scepticism by repairers as to the sincerity and fairness of the DRP as it is claimed that in almost all cases raised through IDR the insurance staff member addressing the issue does not consult with the repairer, but rather only contacts other insurance company staff on the matter, then issues a response.

Repairers believe that as part of the IDR process they should be contacted by the relevant insurer, to discuss the basis for their dispute. This would assist in improving the overall confidence of repairers in the Code's dispute resolution processes.

From the repairers' perspectives, the most common areas of dispute as evidenced by official IDRs and the previously mentioned anecdotal reports, are those that relate to Sections 6, 7 and 8 of the Code. Some repairers have indicated that the operation of the clause on payments (clause 8.1) has caused concern, which, in some cases, has required the lodgement of a formal internal dispute notice. In addition, disputes (or anecdotal reports suggesting a basis for dispute) under Sections 1, 4, and 9 are reported.

However, comments from repairers suggest that the more prevalent issues of concern relate to the estimate, repair and authorisation process (Section 6) and in particular clause 6.3. It is the view of MTAA that clauses 6.1 and 6.3 will continue to raise issues for repairers and will likely be the areas of the Code where most disputes arise.

In particular, repairers believe that some insurers are not complying with Clause 6.1, which states "Insurers will ensure the estimation process is fair and transparent and as far as is practicable, that estimates are comprehensive, complete and inclusive of all obvious damage" with reports that work has been authorised by insurers on the basis of incomplete, and therefore 'cheaper', estimations provided to them.

Repairers also claim that in most instances the grounds for dispute seem to arise at the assessor/repairer level. Repairers maintain this is particularly concerning given the need for many repairers to maintain long-term relationships with assessors for insurance companies for which they are preferred repairers. It also suggests that some assessors themselves are not necessarily as familiar with the Code and its operation as would be expected.

Repairers also report that information of relevance to the Code for repairers, such as details on insurers' websites on how to submit an internal dispute notification, who to submit it to and other contact details is generally hard to find. Similarly, access to insurers' Product Disclosure Statements and details relating to their estimation methodologies (in accordance with clause 6.2(a)) can be difficult for repairers to obtain.

It is the view of MTAA that while reports from repairers indicate insurers, in the main, acknowledge the Code and seek to conduct their business relationships with repairers in accordance with it, there is also a belief that some insurers, anecdotally, do not. Whether these circumstances occur by design, directive or by shortcomings in awareness of the Code at some level, needs to be identified by further monitoring.

MTAA also believes that repairers' scepticism with the dispute resolution process; their fear of damaging their relationship with insurers in the event of them formalising a dispute under the DRP and perceptions of the imbalanced power relationship between insurers and repairers also need to be addressed. MTAA suggests that one way in which these issues could be addressed is a renewed focus by the CAC on promoting the Code and the rights and obligations of the various parties under the Code.

4 CAC recommendations

Following consideration of the views expressed by ICA and MTAA in relation to the Code, and having regard to matters addressed during its first year of operation, the Code Administration Committee has made a number of recommendations in accordance with its responsibilities under clause 12.2 of the Code.

These recommendations are intended to address issues raised and to promote even greater co-operation between smash repairers and insurance companies as the Code enters its second year of operation.

Recommendation 1 - No change to current wording of code

It is the view of the CAC that at this juncture in the life of the Code it is deemed not necessary to change the wording in the current Code nor is there a need to add or remove any clauses.

In making this recommendation the CAC recognises that there are a limited number of aspects of the Code that seem to be generating the most concerns and disputes. It is the CAC's belief that a further education/promotion effort should be undertaken in the first instance to address these concerns.

Recommendation 2 - Ongoing education/promotion

While insurers and repairer representative organisations have actively promoted the Code and its rights and obligations during its first year of operation, comments from both ICA and MTAA suggest that there is a need for ongoing promotion of the Code by both parties, and the CAC concurs with these comments.

The CAC therefore requests that both insurer signatories and repairer representative organisations consider a further round of education about, and promotion of, the Code and recommends that one area of particular focus be Section 6 of the Code.

Recommendation 3 - Additional insurance company signatories to Code

The CAC is extremely happy with the number of insurers who have agreed to sign up to the Code (refer Appendix 1). These signatories account for around 95 per cent of all repairs undertaken by insurance companies nationally. However, there is concern that a number of larger insurers have not yet agreed to become signatories to the Code. Of particular concern is the RACQ, which has a large market share in Queensland though it is not a significant national player. This organisation has simply refused to respond to any approaches from insurers or the CAC to become a signatory to the code.

The CAC has agreed that it will write to the relevant Federal Minister requesting that the Minister write to RACQ Insurance encouraging that organisation to become a signatory to the Code.

Recommendation 4 – Website disclosure on choice of repairer

Clause 9.1 of the Code states *"Insurers will clearly state, in unambiguous and plain language, upfront in their Product Disclosure Statement (PDS), their policy in relation to choice of repairer."*

Compliance with this provision of the Code was required by 30 March, 2007.

While some insurance companies have included a reference to "Choice of Repairer" in the table of contents in their PDS documents, in order to meet the 'upfront' requirement in Clause 9.1, many have yet to do so. Some confusion appears to have arisen as to whether this clause applies only to insurance companies that in some way restrict the consumers' right to choose where their car is repaired in the event of an accident.

The CAC has considered this issue in detail, and consulted with members of the Implementation Taskforce to clarify the original intent of this clause. It is agreed the 'upfront' provision was intended to ensure that where details of the insurer's policy on choice was not included in the first few pages of the PDS that a table of contents reference to this would be included.

The CAC therefore determines that the requirement for 'upfront' disclosure applies to all insurance companies who are signatories to the Code, irrespective of their policy in relation to choice of repairer.

While information on choice of repairer is provided to customers over the telephone when selling a policy, and within the PDS itself, it is also important for all insurers to comply with this provision of the Code when they next up-date their PDS documentation.

Recommendation 5 - Improvements to IDR/EDR processes

The importance of the IDR and EDR provisions within the Code are recognised by both insurers and repairers, and all parties are encouraged to raise issues should they be unable to otherwise resolve a dispute.

In light of repairers comments about the lack of information available via the Code website on some insurers IDR processes and contacts, the CAC has agreed to write to insurers asking if they could establish (and have a link to it from the Code website) either information about their IDR process or, at the least, the relevant IDR complaint contact details.

The CAC believes that this will assist repairers in accessing the Internal Dispute Resolution process and promote increased transparency and confidence in the process.

Insurers are also reminded that where a dispute is raised under Section 11 of the Code, it is a requirement that the insurer provides the repairer with a written acknowledgement of receipt of the dispute notification.

While there have been only two EDR disputes raised to date, the CAC recommends that wherever possible the parties mediate the dispute without the involvement of legal representation. The intent of the taskforce, in establishing the dispute resolution provisions of the Code, was to provide an easily accessible, cost effective dispute resolution process as an alternative to the legal system. In the CAC's view, the involvement of legal representation in the EDR process should be avoided if at all possible.

Recommendation 6 – Improve operation of clauses 6.1 and 6.3

As previously discussed, the levels of dispute arising under clauses 6.1 and 6.3 of the Code are in large part a result of differing interpretations of provisions that attempt to address fundamental issues relating to access to repair work, and the price to be paid for repairs. While accepting some degree of tension may be inevitable in such circumstances, it is clearly in the interests of all parties (including the consumer) to minimise such tension and the CAC believes that the Code provides some guidance in this regard.

The CAC believes insurance companies have a responsibility to ensure their assessors are aware of the provisions of the Code as they apply to the estimate, repair and authorisation process. An ongoing education program for all assessors will ensure they authorise repairs in accordance with the provisions agreed to in the Code, that were intended to at least minimise the potential for disputes.

Equally, MTAA and its members have a responsibility to further discuss, with their smash repair members, the original intent of a number of clauses to ensure repairers expectations are consistent with the agreed position set out in the Code.

Repairers should also be encouraged to utilise the Code's IDR facilities where disputes arise in relation to the assessment process. MTAA has indicated repairers are reluctant to do this for a number of reasons and it is the CAC's view that repairers' confidence in the IDR process, particularly as it applies to how assessments are conducted, could be significantly improved by making the process as transparent as possible.

Examples of how this could be done could include providing the repairer disputing the completeness of a successful quote with a copy of the other quote (protecting the other repairers identity if necessary), or by ensuring the IDR contact point within the insurance company speaks directly with the disputing repairer as part of the review process where appropriate.

Recommendation 7 - Recognition of approved assessor courses

Under the provisions of clause 4.2 (d) (ii) of the Code, the CAC has the ability to approve training courses for assessors. Such courses would allow individuals lacking either the qualifications or experience required to work as an assessor to demonstrate they can meet the required standards by successfully completing an approved course.

While sharing a strong commitment to ensuring all assessors are appropriately qualified to carry out their duties, the CAC also recognises it does not have any specific knowledge or expertise in the area of industry training, and would therefore find it difficult to assess the merit or otherwise of any course presented to it for approval.

The CAC has therefore agreed that the current industry-training standard for panel beating, (AUR05 or its equivalent), would be the appropriate benchmark against which potential courses would be evaluated. In addition, any course approval would be subject to a requirement that it be delivered by a Registered Training Organisation.

To date, the CAC has approved one assessor-training course, with a pre-requisite that candidates seeking to complete this course in order to obtain employment as an assessor must already have a trade qualification as a spray painter or motor mechanic. Pre-requisite qualifications for future courses will be considered on a course-by-course basis.

Recommendation 8 – Access to technical information

Section 1, "Principles of the Code", and more particularly clauses 1.1 to 1.4 seek to establish a high benchmark for smash repairs with the focus on repairs being carried out in a professional manner ensuring the safety and structural integrity of the vehicle, in accordance with manufacturers' specifications. To assist smash repairers in obtaining such information, the CAC approached the Federal Chamber of Automotive Industries (FCAI), with a view to securing manufacturers and importers assistance to seek ready access, at a reasonable cost, to manufactures technical specifications.

Despite originally receiving a warm reception to this request very little has happened and the final communication from the FCAI, though identifying those manufacturers who were prepared to provide information and the format in which it was available, did not address the key issues of ready access and at a reasonable cost.

It is the view of the CAC that what was presented was simply too disparate in methodology and too costly, given the prices quoted and the wide variety of information required by smash repairers, for it to represent a real solution for repairers.

For their part, FCAI members seem disinclined to put forward a simplified method of accessing their respective technical information material, despite acknowledging the importance of ensuring vehicles are repaired to the standards specified under the Code.

The CAC has agreed that it will write to the relevant Federal Minister requesting that the Minister write to the FCAI encouraging that organisation and its members to provide readily accessible collision repair technical data, at a reasonable cost, for all cars made or brought into Australia, so that Code signatories can meet their obligations under the Code.

5 Summary

By any measure, and notwithstanding the issues that have been raised by both the insurance companies and smash repairers, the first year of operation of the Motor Vehicle Insurance and Repair Industry Code can be regarded as a successful and positive one.

The Code is now well established, and generally well understood, by all parties. The level of IDR and EDR disputes, when considered in comparison with the more than one million motor vehicle claims lodged during the same period, is evidence of this; though it is acknowledged that the number of official disputes lodged may not necessarily reflect the real level of disputation.

There seems little doubt that the channels of communication that have been established between insurers and repairers, initially through the Implementation Taskforce, and now through the Code Administration Committee, have done much to improve the relationship between the two parties.

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

The Code Administration Committee believe the Code, in its first year of operation, has delivered on these objectives and given the ongoing goodwill of all parties will continue to do so in the future.

Code Administration Committee
November 2007

APPENDIX 1

Insurance Company Signatories to the Code

AAMI

Allianz Australia Insurance Limited

Apia

Auto & General Insurance Company Limited

CGU

Just Car Insurance

Lumley Australia

National Transport Insurance

NRMA

QBE Insurance

RAA Insurance Limited

RAC Insurance

RACV

SGIC

SGIO

Shannons

Suncorp – GIO

Swann Insurance

TIO

Zurich Australian Insurance Limited