

VICTORIAN AUTOMOTIVE CHAMBER OF COMMERCE

VACC response to the 2025 draft Motor Vehicle Insurance and Repair Industry Code of Conduct Review

June 2025



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Preamble

The Victorian Automotive Chamber of Commerce (VACC) welcomes the opportunity to provide this response on the draft Motor Vehicle Insurance and Repair Industry (MVIRI) Code of Conduct (the draft Code). As the peak body representing automotive retail businesses across Victoria and Tasmania, VACC has long supported a fair, sustainable, and technologically progressive motor vehicle insurance and repair industry. Our position is guided by the principles of professionalism, integrity, and equity—principles that must be reflected in any regulatory framework seeking to govern the relationship between insurers and repairers.

It is with those principles in mind that VACC makes it unequivocally clear: we do not support the current draft Code. The draft Code, as it stands, is not fit for purpose. It fails to address entrenched power imbalances, disregards the professional expertise of repairers, and lacks the structural reform required to ensure the integrity and viability of a truly self-regulating industry.

Further, the structure and operation of the Code Administration Committee (CAC) require urgent reform. The CAC must be more representative of the industry it governs, more transparent in its processes, and more accountable to all stakeholders—including consumers. It must be empowered—and indeed obligated—to enforce the Code, uphold procedural fairness, and draw upon the necessary technical and commercial expertise to adjudicate complex matters, particularly as vehicles and repair technologies continue to evolve rapidly.

Repairers are highly skilled professionals whose work underpins both road safety and consumer confidence. They are best placed to prepare Repair Estimates that reflect the proper work methods and parts required to return a vehicle to manufacturer standards, in line with OEM specifications and industry best practice. These estimates are grounded in technical expertise, practical experience, and a commitment to safe, quality repairs.

Yet rather than being respected for this vital role, Repairers continue to be subjected to processes that marginalise their expertise, compromise their business viability, and impose unrealistic, insurer driven constraints on the preparation of Repair Estimates. For too long, Repairers' assessments of genuine repair costs—including appropriate hourly rates—have been disregarded in favour of achieving outcomes imposed by Insurers.

The current draft Code not only fails to address this imbalance, it threatens to entrench it. Provisions such as Clause 6.2(c), which purports to grant Repairers "permission" to include essential costs—such as paint, parts, consumables and mandatory environmental levies—are emblematic of the broader problem.

These costs are not discretionary; they are fundamental to the delivery of a safe and compliant repair. The notion that repairers require permission to include them highlights a concerning shift in authority and further legitimises insurer overreach.

Just as Repairers are required to meet strict timeframes—typically five business days to produce a Repair Estimate—so too should Insurers be held to an equivalent standard. If Repairers are expected to prepare accurate, methodologically sound estimates under tight deadlines, there is no reasonable basis for Insurers to delay acceptance or rejection. The absence of reciprocal obligations only

reinforces the power imbalance and leads to costly inefficiencies, delays in vehicle repairs, and increased pressure on small and medium-sized businesses. VACC also considers the number of days for an estimate and an assessment completion requires further discussion to ensure the appropriate amount of days allocated to each party are fair and equitable.

True self-regulation, if it is to remain viable in this sector, must aim to replicate the outcomes of a fair and competitive market. This includes ensuring that Repair Estimates reflect appropriate work methods and parts in line with OEM standards and best industry practice, and that these are not overridden or dismissed in pursuit of insurer cost minimisation. It also requires robust governance, enforceable standards, and a genuine commitment to balancing the interests of all parties—especially the consumer, who ultimately depends on a safe, timely, and properly repaired vehicle.

In developing this response, VACC has drawn on the expertise of leading legal professionals to ensure a considered and rigorous analysis of the draft Code. The Hon. Michael Whitten KC—one of Australia's pre-eminent barristers—was engaged to examine the draft Code with particular attention to whether it reflects bias toward either repairers or insurance companies, its interaction with existing laws and to highlight technical issues in its drafting. His insights have been instrumental in identifying areas where the Code fails to support a fair and balanced regulatory framework. Mr Daniel Clough, an experienced barrister, and leading expert on competition law, has prepared the following submission on behalf of VACC, in consultation with our members across the automotive repair sector. Their combined expertise ensures this submission is not only legally sound but grounded in the practical realities facing the industry.

VACC looks forward to continuing engagement on this important issue and to working constructively toward a regulatory framework that genuinely respects the role and expertise of repairers, addresses structural power imbalances, and delivers fair and sustainable outcomes for the industry and the public it serves.

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1. Introduction

1. The Victorian Automotive Chamber of Commerce (**VACC**) welcomes the opportunity to make this submission in response to the 2025 draft Motor Vehicle Insurance and Repair Industry Code of Conduct (the draft Code).
2. The VACC represents members in all facets of the automotive retail industry in Victoria and Tasmania. Members range from new and used vehicle dealers (passenger, truck, commercial, motorcycles, recreational and farm machinery), repairers (mechanical, electrical, body and repair specialists, i.e. radiators and engines), vehicle servicing (service stations, vehicle washing, rental, windscreens), parts and component wholesale/retail and distribution and aftermarket manufacture (i.e. specialist vehicle, parts or component modification and/or manufacture), towing operators, tyre dealers and automotive dismantlers and recyclers.
3. The VACC commissioned The Hon Michael Whitten KC to advise upon the draft Code. His report is attached to this submission.
4. The comments made in the Whitten report concerning aspects of the technical drafting of the draft Code are self-explanatory. The VACC does not propose to reiterate those in this submission, which is directed to more fundamental issues.
5. Where capitalised terms are used in this document, the definitions in the draft Code are adopted unless the context indicates to the contrary.
6. The current draft Code is not fit for purpose and requires substantial reform.
7. The VACC, unequivocally, does not support the draft Code or the draft CAC Charter in its current form.

2. Market structure and regulation

8. The structural imbalances of power between Insurers and Repairers in the motor vehicle insurance and repair industry has long been recognised.
9. On 17 March 2005, the Productivity Commission published its Smash Repair and Insurance Report (No. 34). In that Report at p 7, the Productivity Commission made the following observations:
 - 9.1. Major insurers particularly wield strong negotiating power in their dealings with the generally much smaller repairers.
 - 9.2. The problems perceived by repairers about PSR arrangements, lifetime warranties for repair work and quotation systems, for example, could be less pronounced if negotiating strength were more evenly balanced between insurers and repairers.

- 9.3. Although implementation of amendments to competition and consumer legislation may make some difference, it is likely that the negotiating power of the major insurers will remain strong.
10. The Productivity Commission Report was perhaps too optimistic. Since the Report, the motor vehicle insurance and repair industry has experienced increased concentration of market power in the hands of insurers, increased complexity in motor vehicle repairs, and the rise of the use of artificial intelligence in the assessment and estimation of motor vehicle repairs.
11. Ultimately, the interests of consumers are at risk from Insurer dominance, lack of training and independence of assessors and estimators, and the associated pressures on Repairers merely to survive, let alone invest in the necessary physical and human capital necessary to keep up with technological advancements in motor vehicle repair.
12. If self-regulation is to be viable in future in the motor vehicle insurance and repair industry, it should aim to produce outcomes that approximate those that would result from a competitive market. It should address the imbalances in market power between Insurers and Repairers, and ensure integrity in the process of producing, assessing and accepting Repair Estimates with appropriate work method and parts. Ultimately, it must promote the interests of consumers.

3. CAC Restructure and Roles

13. The VACC argues that the current structure and functions of the Code Administration Committee (the **CAC**) require reform, and considers that:
 - 13.1. it should be more representative of the interests of the wide range of Participants and consumers;
 - 13.2. it should have the expanded roles described below, with the technical expertise to conduct those roles; and
 - 13.3. it should be expressly obliged to conduct those roles, enforce the Code, and set appropriate and specific rules for procedural fairness.
- A. *Restructuring CAC to be more representative and effective*
14. The CAC is structurally dominated by the Insurance Council of Australia (**ICA**) and the Motor Trades Association of Australia (**MTAA**). The memberships of those two organisations comprise a broad range of stakeholder interests, however.
15. Two categories of stakeholder, especially, should have representation on the CAC: namely consumers and independent repairers. The CAC should have members with technical expertise in various aspects of the motor vehicle insurance and repair industry, to give it greater insight into the concepts and issues relevant to the industry. It should also have independent legal members to assist with matters concerning the interpretation and application of the Code

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and proper process. Such a mix of representation and expertise on Boards and Committees is commonplace and good practice.

16. Further, VACC's members perceive that the CAC, with only six seats shared by the ICA and MTAA, currently tends to be dominated by personalities, potentially impeding its objectivity. Whether or not that is a fact, the perception undermines the CAC's support amongst many Participants.
17. VACC recommends that the CAC should be expanded to 12 seats plus an independent Chair with legal and industry expertise. ICA and MTAA should each be limited to their existing three seats. The remaining seats should be occupied by independent members: a consumer advocate, a small business advocate, two technical experts and two lawyers with industry experience.
18. The CAC should also accommodate two observers from government regulators including the Australian Competition and Consumer Commission.

B. Expanded roles and obligations for the CAC

19. The CAC should have the following roles in addition to those proposed in the Code:
 - 19.1. approving and monitoring a standard training course and ongoing periodic training for Assessors and Estimators;
 - 19.2. accrediting and monitoring the behaviour of Assessors and Estimators;
 - 19.3. withdrawing accreditation from Assessors and Estimators;
 - 19.4. sanctioning Insurers who have declined to accept a Repair Estimate without proper reasons in writing; and
 - 19.5. monitoring the use of AI in the assessment and estimation process;
 - 19.6. sanctioning Insurers who have relied on AI without full disclosure of the procedure or without ensuring human oversight and responsibility;
 - 19.7. maintaining a panel of independent Adjudicators with relevant technical expertise; and
 - 19.8. appointing independent Adjudicators with relevant technical expertise to conduct a binding Adjudication upon the request of an Initiator or Respondent in a Repair Dispute.
20. The CAC should vigilantly enforce the Code. It should prepare and publish procedural rules in accordance with principles of procedural fairness. It should publish written reasons and keep and publish data on all disputes brought under the Code. Clause 1.3 of the proposed CAC Committee Charter is inadequate in that respect.

21. From the outset, the Code should include the CAC's specific policies, procedures and guidelines in relation to its roles and obligations. Amendments should require a two third's majority of CAC members.
22. Where the Code is made compulsory in certain States and Territories, consideration should be given to seeking legislation that confers jurisdiction on the relevant civil and administrative tribunals of those States and Territories to review decisions of the CAC.
23. In any event, the complaints process in Clause 6 of the proposed CAC Committee Charter is inadequate, as it merely requires the CAC Chair to make recommendations to the CAC or appoint an independent person to make recommendations to the CAC in the event of a conflict of interest. The CAC should not decide upon its own breaches of the Code or the Charter.

C. Clause 9.4 - Sanctions by the CAC

24. Clause 9.4 empowers CAC to impose several sanctions on a Participant "if the CAC reasonably determines that the Participant has contravened this Code".
25. The powers conferred by Clause 9.4 are quasi-judicial, which emphasises the importance of the recommendations made above that:
 - 25.1. the Code should include specific procedural rules from the outset, to ensure procedural fairness;
 - 25.2. the CAC should be restructured to ensure it has independent members with the necessary technical and legal expertise; and
 - 25.3. consideration should be given to obtaining legislation to allow appeal to State and Territory civil and administrative tribunals.
26. The purpose of the sanctions under Clause 9.4(d) also appears to be limited to specific deterrence. There should be express reference to the purpose of achieving general deterrence.
27. Clause 9.4 is also far too vague for it to be fair and effective for such important purposes. Especially:
 - 27.1. What is the meaning of "reasonably" determine? There is no apparent purpose for the insertion of the word "reasonably" except as a vague substitute for proper procedural rules and criteria.
 - 27.2. What is the meaning of "sum of money ... of a reasonable amount that will deter the Participant from contravening the Code in future" in Clause 9.4(d)? Although paragraphs (d)(i) to (vi) provide guidance, especially that the size and resources available to the relevant Participant will be relevant to the amount, there is no indication of what is intended by "reasonable amount". The CAC should produce guidelines along with a redrafted Code.

28. The sanctions should include provision for the CAC to require a Participant in breach of the Code to pay compensation to other affected Participants. The Code should also expressly address the treatment of the parties' costs of participating in the process, and whether legal representation should be allowed.
29. A redrafted Clause 9.4 should ensure that the process is not susceptible to abuse by Participants with deep pockets.
30. It should also be made clear that resolution of a dispute between Participants through the Part 5 dispute resolution process does not excuse a Participant from sanctions being imposed by CAC.

4. Improving Behaviour of Participants

A. Clause 3.1 – Proper Conduct

31. The VACC agrees with the aspirational statements in Clause 3.1(a) and (b), that all Participants must act in good faith towards each other and not engage in misleading or deceptive conduct. However, such statements are practically meaningless without specific rules and independent enforcement by the CAC. Those are dealt with further below.
32. Clause 3.1(c)(iii) provides that Participants must not engage in misleading or deceptive conduct that involves withholding information “that it is in the interests of another Participant to have knowledge of”. That goes too far. It is vague and could have unanticipated consequences. The prohibition of misleading and deceptive conduct, including non-disclosure, in the Australian Consumer Law is sufficient.

B. Clause 3.6 – Reporting to Government Regulators

33. Clause 3.6 should be deleted or expanded to cover Insurer conduct. It requires Insurers and Repairers to “report to the appropriate government regulator any Participant that displays a deliberate breach of their duty of care owed to Customers in respect of the Repairs to a Motor Vehicle and notify the Participant who has engaged in the alleged conduct”. Unless the Clause is expanded expressly to cover Insurers' misleading or deceptive conduct or breaches of contract, the limitation to breaches of duty of care is biased against Repairers.
34. Clause 3.6 could also result in disputes between Repairers, who might speculate about the “deliberateness” of a perceived breach of duty of care and make unnecessary reports for fear of being in breach of the Code for failing to do so. Nothing prevents Insurers and Repairers from making reports voluntarily. It should not be compulsory.

5. Accountability and Training of Assessors and Estimators

A. Clauses 5.1 and 5.2 – Training and Accountability

35. Clauses 5.1 and 5.2 are inadequate. The proposed requirement that Code Approved Assessors and Estimators receive “ongoing training and/or development through their employer or via membership of a relevant professional body” fails to achieve objective standards of expertise and independence that consumers and the industry require.
36. Assessors and Estimators should be experts, fully informed in proper methods of repair, and objective and independent. Due to the increasing complexity of repairs, consumers are not able to assess or estimate a repair for themselves. The expertise and independence of Assessors and Estimators are critical to protect consumers from the potential for bias and self-interest of Insurers and Repairs, and to promote efficiency in the motor vehicle insurance and repair industry.

B. Accreditation by the CAC

37. Assessors and Estimators should be accredited by the CAC before they can offer services in the industry. Accreditation should only be granted to Assessors and Estimators who have successfully completed a comprehensive training course reflecting best industry practice, approved and monitored by the CAC. As in other industries, they should be required to engage in continuing education to remain fully informed of technological developments.
38. It should also be a condition of accreditation that Assessors are independent. Accreditation should be withdrawn by the CAC if an Assessor is found to have deliberately or negligently failed to make an assessment in accordance with best industry practice.
39. The Code should include specific rules for the appropriate standards of objectivity and expertise that are expected of Assessors and Estimators, their specific training obligations, an accreditation process and its criteria, and the process for withdrawal of accreditation by the CAC.

6. Obligations on Insurers

A. Clause 5.3(a) – Payment for Repair Estimates

40. Repairers are in the best position to prepare a Repair Estimate that reflects the proper work method and parts for a repair in accordance with OEM methods and best industry practice. Insurers should respect their estimates of the genuine costs of repair, including on hourly rates, which for too long have been ignored to achieve a repair cost imposed by the Insurer.
41. Importantly, Repairers often spend significant money, time and effort in preparing Repair Estimates, especially in circumstances where large numbers of Repair

Estimates are required, such as after a natural disaster. For those Repairers who are unsuccessful in winning the work, there is no compensation for those costs.

42. In a competitive market, in which the market power of Insurers and Repairers were balanced, Repairers would be likely to recover those costs.
43. Further, in a competitive market, it is unlikely that Insurers would reject a Repair Estimate prepared by Repairers that reflects the true costs of a repair in accordance with proper OEM methods and parts and best industry practice.

B. Clause 5.3(b) – Proper Consideration of Repair Estimates

44. Clause 5.3 does nothing to achieve those goals. Clause 5(b)(ii), for example, which provides that Insurer must act reasonably and professionally when considering Repair Estimates, is too vague to be much more than a platitude. Clause 5(b)(iii), which provides that Insurers will “pay the agreed amount that has been authorised or requested by the Insurer for all work completed” adds nothing and causes confusion as to the meaning of an amount that is “requested” by the Insurer.
45. The drafting is symptomatic of a market in which Insurers dominate Repairers and effectively compel them to prepare Repair Estimates that meet the Insurer’s pre-determined cost rather than the true costs of a proper repair.
46. The Code should require Insurers to pay Repairers for their reasonable costs in preparing a Repair Estimate requested by the Insurer.
47. The Code should also require Insurers to accept a Repair Estimate that they have requested unless it is not a genuine estimate of the costs of a repair in accordance with proper OEM methods and materials and best industry practice, and the Insurer has explained those reasons in writing. The CAC should issue guidelines concerning the aspects of a proper Repair Estimate, including that it is acceptable to include hourly rates and make provision for genuine OEM methods and materials where applicable.
48. Furthermore, the Code should prohibit Insurers and Repairers from influencing or attempting to influence Assessors from conducting their tasks on the merits, irrespective of who engages them.
49. Consumers deserve that level of quality of goods and services. They deserve transparency from Participants. Repairers deserve to be respected for their professionalism not driven out of business by Insurers with market dominance effectively imposing unrealistic methods in the preparation of Repair Estimates.
50. It follows that Clause 5(b)(iv), which provides that Insurers will not remove a Motor Vehicle from a Repairer’s premises without prior written notice and without compensation for “any legitimate or reasonable towing or storage costs associated with the Motor Vehicle”, is inadequate. The drafting simply assumes the market power of an Insurer to reject a genuine Repair Estimate without explanation and fails to give proper compensation to the Repairer for all the costs involved in preparing the Repair Estimate.

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C. Clause 6.2 – Methodology of Repair Estimates

51. Clause 6.2 reflects Insurers' market dominance. It subordinates Repairers to the Insurer's preferred methodology for preparing a Repair Estimate.
52. Clause 6.2(a) provides that "Insurers will clearly state the preferred estimation methodology to be used by Repairers". The drafting is vague but appears to refer to the Insurer's subjective preference rather than some objective benchmark. There is no obligation whatsoever on Insurers to adhere to any objective criteria for accepting or rejecting a Repair Estimate.
53. Similarly, Clause 6.2(b) (which is subject to Clause 6.2(a)) provides that Repairers "may" submit a Repair Estimate in realistic times and rates "recognising the Insurer's right to obtain an alternative estimate". There is no justification or explanation for why an Insurer ought not accept a Repair Estimate with "realistic times and rates".
54. Insurers' assertion of control over the Repair Estimate process is further reflected in Clause 6.2(c), which purports to give Repairers permission to include separate costs for paint, parts, significant consumables and mandatory government environmental levies and charges in their Repair Estimates.
55. The draft Code proposes these clauses as if they are appropriate for a renewed voluntary regime of self-regulation, yet they amount to no regulation at all. If anything, they codify Insurers' market dominance and absolute control over the preparation and acceptance of Repair Estimates, whether or not those Repair Estimates refer to realistic times and rates.
56. Accordingly, the VACC repeats the proposals made in the context of Clause 5.3(b), above.

D. Clause 6.4 – Alteration of Repair Estimates

57. As drafted, Clause 6.4 appears to entitle an Insurer to unreasonably or arbitrarily alter a Repair Estimate if the Insurer insists on changing the repair process, parts or materials to be used. Presumably that is not the intended meaning, although it is consistent with the market dominance exerted by Insurers.
58. The more fundamental concern with Clause 6.4 is that it plainly reserves for Insurers the power to dictate the repair process or the parts or materials to be used. As explained above, the Code should prohibit Insurers from declining a Repair Estimate without good reasons, provided in writing.

E. Clause 6.5 – Commercial Arrangements

59. Clause 6.5 provides that Insurers may "enter into commercial arrangements with Repairers that specify performance targets" and that Insurers "will not unduly influence any Repairer to submit estimates on the basis of inducements of further work". Remarkably, and unacceptably, those provisions expressly validate Insurers' leverage of their market power to influence Repair Estimates.

- 60. Further, the Clause fails in its attempt to limit Insurers from “unduly” influencing Repairers. That part of the Clause is drafted as a statement of intent rather than a prohibition. And there is no explanation of when influence becomes “undue”.
- 61. Clause 6.5 therefore reinforces the market influence that Insurers exert over Repairers, while doing nothing to regulate it.
- 62. While Insurers and Repairers should be free to enter commercial arrangements, the Code should assume that Insurers’ use of such commercial arrangements to influence Repair Estimates is a misuse of market power.

F. Clause 8 – Time Limits for Payment

- 63. Clause 8.1 provides that Insurers must pay agreed Repair costs within 30 days of the earlier of settlement of the insurance claim of the Customer or receiving the final invoice for the Repairer.
- 64. It is essential for Repairers, especially small businesses, to have certainty of cash flow.
- 65. There appears to be no reason why Insurers, as large commercial enterprises, should delay payment of Repairers’ invoices for 30 days. The Code should require payment within no more than 14 days.
- 66. Having to bear the costs of materials and sub-contractors while waiting for payment from Insurers is a disproportionately heavy financial burden on Repairers. And many repairs must be done in stages, sometimes over a considerable period.
- 67. The time frames for payment in the Code should apply to all invoices issued by a Repairer, including invoices for supplementary work, and not be limited to receipt of the final invoice for a Repair.
- 68. Importantly, the Code should expressly provide that payment on an invoice should not be delayed by the commencement of a dispute resolution process.

7. Obligations on Repairers

A. Clause 5.4(d) – Substantiating Repair Estimates

- 69. Clause 5.4(d) provides that Repairers, “when providing a Repair Estimate, must provide sufficient evidence to an Insurer to substantiate their claims for costs in relation to parts and work undertaken in a Repair for that Insurer”. There is nothing to indicate the meaning of “sufficient information”, including whether it is subjectively whatever the Insurer deems to be sufficient.
- 70. Assuming “sufficient information” is an objective test, rather than subjective to the Insurer, it should not displace the onus on the Insurer to explain why a Repair Estimate is not a genuine estimate of the costs of a repair in accordance with proper OEM methods and materials and best industry practice. It is difficult to

conceive of a situation in which an Insurer would not have sufficient information to provide such an explanation.

B. Clause 5.5 – Times to Provide and Accept Repair Estimates

71. Clause 5.5(a) requires Repairers to provide a Repair Estimate within 5 Business Days of receiving a Motor Vehicle for repairs. By contrast, Clause 5.5(b) provides that an Insurer must review a Repair Estimate and merely “initiate communication with the Repairer within 5 Business Days of receiving the estimate through the Insurer’s preferred communication channel”.
72. As explained above, it is essential for Repairers, especially small businesses, to have certainty of cash flow. It is also in the interests of consumers that their repairs be progressed as soon as possible.
73. Just as Repairers are subject to a strict timeframe, Insurers should decide to accept or decline a Repair Estimate within a strict period. If Repairers can be expected to produce a Repair Estimate within 5 Business Days, there seems little reason why Insurers should not be subject to the same time limit to make their decision.
74. Nonetheless, it is recognised that circumstances might arise in which Insurers and Repairers reasonably require extra time. The Code should allow for reasonable extensions of time by agreement, provided that the applicant for an extension of time provides a substantive written explanation for the request. The Code should require Insurers and Repairers act reasonably in relation to such requests, and to acknowledge expressly that the interests of consumers (especially to obtain an appropriate repair in the shortest reasonably time) are of paramount importance. The number of days for an estimate and an assessment completion requires further discussion to ensure the appropriate amount of days allocated to each party are fair and equitable.

8. Repair Warranties

A. Clause 7.2(a) – Compulsory Repairer Warranties

75. Clause 7.2(a) requires Repairers to provide Insurers with a warranty for three years from the date of Repair.
76. According to the Clause, the warranty must be “a like warranty” with respect to the warranty that the Insurer provides to the consumer. There is no provision for negotiation. The Insurer merely must provide to the Repairer a copy of the Insurer’s Repair Warranty.
77. Repairers have no influence over the terms of a warranty between Insurers and consumers. The Code should not impose such commercial arrangements with Repairers, especially universally applicable terms such as a 3-year warranty. Rather, the Code should regulate good behaviour between Insurers and Repairers by requiring genuine negotiation in good faith between them concerning the terms of any warranty provided by a Repairer.

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B. Clause 7.2(b) – Warranties for Third Party Materials

78. Clause 7.2(b) also imposes commercial terms on Repairers, effectively requiring Repairers to warrant third party parts and paint.
79. The Code should not intrude on such commercial arrangements between Repairers and Insurers. In any event, it is unnecessary, as the regime of statutory guarantees under the Australian Consumer Law should suffice.
80. Further, the drafting is vague. Under the Clause, Repairers must provide a Repair Warranty for third party parts and paint, even if there is no corresponding supplier warranty, “to the extent that the quality of repair arising from use of parts and/or paint arises from faulty workmanship”. There is no explanation of the meaning of “quality of repair” or “faulty workmanship”. This again emphasises the point that the Code should not impose commercial terms on Repairers, and the regime of statutory guarantees under the Australian Consumer Law should suffice.

C. Clause 7.2(c) – Warranties where Insurers Dictate Repair Methods or Parts

81. This Clause raises especially problematic issues. It applies where an Insurer “insists and instructs that Repairs are carried out requiring a Repairer to use a repair method or part that differs from that recommended by the Repairer”. The Clause provides for a limited indemnity by the Insurer for the Repairer for claims made against the Repairer.
82. The first problem arises from the assertion of control by the Insurer over the repair method and parts, despite the recommendations of the Repairer. Such control could only arise from Insurers’ use of their market power. As explained above, the Code should prohibit Insurers from declining Repair Estimates, with their recommended methods and parts, without proper reasons, explained in writing.
83. The second problem also arises from the assertion of control by the Insurer over the repair method and parts. Specifically, it arises from Insurers compelling Repairers to use methods or parts that are not recommended or supplied by Original Equipment Manufacturers (**OEMs**).
84. The use of non-OEM methods and parts could be an acute problem for consumers in two respects:
 - 84.1. it might void the manufacturer’s warranty; and
 - 84.2. it might result in a lower quality Repair.
85. Both problems could expose Repairers to liability to consumers, through no fault of the Repairers other than their compliance with the dictates of Insurers exercising market power.
86. The third problem is that the indemnity proposed in Clause 7.2(c)(ii) is inadequate and vague, for the following reasons:

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- 86.1. It is limited to “direct loss or liability incurred by the Repairer by reason of a quality, structural, Presentation or safety defect caused by complying with the requirement”. There should be no such limitation. If Insurers are to be allowed to “insist and instruct” a Repairer to use methods and parts against the Repairer’s recommendations, the Insurer should provide a comprehensive indemnity for all consequential loss flowing from that dictate.
- 86.2. It is further limited by a vague exception “to the extent that the loss or liability arises from faulty workmanship”. There is no explanation of the meaning of “faulty workmanship”. The issue creates significant scope for dispute.
87. Insurers should be fully accountable for their decisions to “insist and instruct” Repairers to use certain methods and parts against a Repairer’s recommendations, limited only by intentional fault or gross negligence by the Repairer.
88. Insurers should also be transparent with their decisions to “insist and instruct” a Repairer to use certain methods and parts. To protect consumers and Repairers, the Code should require Insurers to obtain express consents and releases from consumers for the use of parts and methods against the Repairer’s recommendations, especially where that involves the use of non-OEM methods and parts.
89. The Code should also require Insurers to facilitate a contractually binding agreement between the consumer and the Repairer to that effect, to limit the prospects of a dispute between the consumer and the Repairer and avoid the need for the Repairer to rely on an indemnity from the Insurer in the event of a claim by the consumer.

9. Dispute Resolution Process

- A. *Clause 9.2 – Role of the CAC in maintaining a national panel of Adjudicators*
90. Clause 10.3(c) provides that the CAC will appoint an Adjudicator to conduct an Adjudication.
91. In Clause 12.3, the definition of “Adjudicator” means “a person or panel of persons, free from conflict of interest, appointed by the CAC to adjudicate Repair Disputes in accordance with this Code”.
92. Clause 9.2 provides for the roles of the CAC. While they include “developing a protocol for the appointment, establishment and operation of a national panel of mediators”, they do not include similar provisions with respect to Adjudicators.
93. Clause 9.2 should expressly provide that the CAC has the role of maintaining a national panel of independent Adjudicators with relevant technical and legal expertise to conduct Repair Disputes.

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B. Clause 10.3(b) – Compulsory Adjudication of Repair Disputes

94. The dispute resolution procedures under the Code should be mandatory. Indeed, Clause 10.4 prohibits parties from commencing proceedings in relation to a General Dispute until after the Initial Conference and Mediation processes are exhausted.
95. There is no such provision in Clause 10.3(b) preventing the commencement of litigation in relation to a Repair Dispute. There is no apparent reason for that omission. Clause 10.3(b) should include a limitation on the commencement of litigation in similar terms to those in Clause 10.4.

C. Clause 10.3(b) – Costs of Adjudication

96. Clause 10.3(b) also provides that the cost of a binding Adjudication is to be shared equally between the Initiator and the Respondent. However, in a dispute between a Repairer and an Insurer, it is inevitable that the cost will be a greater proportion of the Repairer's financial resources.
97. The Adjudicator should have the discretion to determine that a party pay the costs of the adjudication, and in what proportions.

D. Clause 10.3(c) – Appointment of the Adjudicator

98. In addition to the abovementioned role of the CAC to maintain a national panel of independent Adjudicators with relevant expertise to conduct Repair Disputes, Clause 10.3(c) should expressly require CAC to appoint an Adjudicator from that panel and ensure that the Adjudicator has the necessary technical and legal expertise to resolve the specific Repair Dispute in question. It is also essential that the Adjudicator be independent.

E. Clause 10.4(d) – Mediation in General Disputes

99. General Dispute is defined in Clause 12.3 to mean "any dispute between an Initiator and a Respondent that is not a Repair Dispute". Clause 10.4(d) provides for the Initiator or the Respondent to refer the "Repair Dispute" (presumably the intention is "General Dispute") to a Mediation.
100. There should be express provision for the costs of the Mediation to be shared equally by the Initiator and the Respondent. There should also be express provision for the Mediation to be confidential and subject to negotiation privilege.
101. To deter further litigation, compliance with a settlement agreement reached at a Mediation should be mandatory under the Code and not merely a matter of contract. That is, if a Court were to find that a party breached a settlement agreement obtained at a Mediation, the CAC should be empowered to impose sanctions on the party in breach, in addition to whatever relief the Court has ordered against that party.

10. Regulation of Artificial Intelligence

A. *Clause 6.3 – Use of AI in Assessments and Estimations*

102. Clause 6.3 provides, in summary, that Code Approved Assessors and Code Approved Estimators may use AI and other technology, while acting with care, skill and diligence, while remaining responsible for the contents of documents produced by AI, and while ensuring they have proper policies to provide oversight of such documents.
103. For such an important issue, it is concerning that the drafting is so vague. The use of AI provides yet another means by which Insurers, via Assessors and Estimators, exert control over the methods used by Repairs to prepare their Repair Estimates.
104. Without proper regulation, the AI is simply a “black box” upon which Assessors and Estimators blindly rely, for a result that Insurers impose on Repairers and, ultimately, consumers
105. Despite the aspirations of Clause 6.3, it is impossible for Assessors and Estimators to comply with it unless:
 - 105.1. they have sufficient understanding of how the AI addresses the relevant task, so they may have confidence in it; or
 - 105.2. they conduct the task themselves and compare their results with those generated by the AI.
106. The second of those alternatives eliminates the efficiency advantage of using AI. Therefore, regulation must direct attention to the first alternative, that is, to enhance the ability of Assessors and Estimators and stakeholders such as Repairers, to understand what data the AI considers and how it processes that data.

B. *Better regulation of the use of AI*

107. Effective regulation of the use of AI in the assessment and estimation of repairs is essential for:
 - 107.1. preserving the ability of Repairers to adopt what they properly consider to be the most appropriate method of providing a genuine estimate of the costs of a repair in accordance with proper OEM methods and materials and best industry practice; and
 - 107.2. ensuring and monitoring the independence and accuracy of Assessors and Estimators, and the application of their expertise.
108. The first of those issues is likely to be resolved if, as explained above, Repair Estimates prepared by Repairers using their preferred methodology must be accepted by Insurers unless they can show good reasons to decline it. It follows

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that Repairers' methodologies would take precedence over an assessment generated by AI.

109. The second of those issues is likely to be resolved if the Code requires full disclosure of the procedure utilising the AI and ensuring human oversight and responsibility. At minimum that would require transparency regarding the identification of the AI being used and the data sources for that AI, the extent to which that AI is used elsewhere in the world and for what tasks, and some form of monitoring of the accuracy of the AI.
110. Insurers could be required to commission and publish regular studies that compare over time the results of human assessments and estimates with the results generated by AI with respect to the same vehicle repairs.
111. In any event, Insurers, and not only Assessors and Estimators, should be held responsible for the results generated using AI. Repairers should be entitled to dispute the results generated by AI, and the onus should be on the Insurer to prove that the results generated by AI were appropriate.
112. Further, Insurers should be required to inform consumers of the use of AI in the assessment and estimation of vehicle repairs.

11. Conclusions

113. The market power of Insurers in the motor vehicle insurance and repair industry is dominant and increasing. So too are the complexities of repairs and assessments, exacerbated by Insurers' exponential adoption of artificial intelligence. More than ever before, the industry requires regulation in the interests of consumers and Participants.
114. The 2017 Code is not fit for purpose and the CAC requires substantial reform. Nonetheless, the VACC cannot support the draft Code or the draft CAC Charter.
115. Whether the regulation of the industry continues to occur under a voluntary industry code, or perhaps some form of mandatory industry code, depends upon the willingness of Insurers and other major stakeholders to acknowledge the need for profound structural reform and to address the imbalance of market power between Insurers and Repairers.

12. Contact

VACC Industry Divisions

E. policy@vacc.com.au

P. 9829 1111

Hon Michael Whitten KC

Barrister Arbitrator Mediator

Mr Peter Jones
CEO
Victorian Automotive Chamber of Commerce

29 April 2025

Dear Mr Jones,

Review of the draft 2025 Motor Vehicle Insurance and Repair Industry Code of Conduct

Please see attached, as requested, a report on my review of the draft 2025 Motor Vehicle Insurance and Repair Industry Code of Conduct.

Thank you for your instructions.

If I may be of any further assistance, please let me know.

Yours faithfully,



Michael Whitten KC

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In the matter of

THE VICTORIAN AUTOMOTIVE CHAMBER OF COMMERCE

and a review of the

**DRAFT 2025 MOTOR VEHICLE INSURANCE AND REPAIR
INDUSTRY CODE OF CONDUCT**

by

Michael Whitten KC

April 2025

Introduction

1. I have been instructed by the Victorian Automotive Chamber of Commerce (“VACC”) to conduct a review of a draft new Motor Vehicle Insurance and Repair Industry (“MVIRI”) Code of Conduct (“the draft Code”).
2. The evident purpose of the draft Code is to regulate aspects of the commercial relationship between the Motor Trades Association of Australia (“MTAA”)¹ and the Insurance Council of Australia (“ICA”). The draft has been prepared and promulgated by the MVIRI Code Administration Committee (“CAC”).
3. By email to my clerk, Anna Svenson, dated 18 March 2025, a representative of the VACC explained the brief, relevantly, as follows:

“The matter at hand is a request to conduct a review of the Motor Vehicle and Insurance Industry Code of Conduct’s latest document received for review of the industry in, from what I can see as the Insurance Industry’s attempt to prevent numerous things including but not limited to consumer disputes against insurers, allowing repairs to be affected in respect of manufacturers specifications and warranty requirements under ACL, the reasonable assessment processes, the repairers ability to adequately carry out their duty of care to the consumer, the ability of any rectification repairs to be performed by repairers other than the initial cost controlled insurer driven repairer and adopting a process/agreement with an industry as a

¹ The Motor Trades Association of Australia (MTAA) is the peak body representing the interests of the automotive retail sector across the nation. MTAA’s member associations include the Motor Traders’ Association of New South Wales, the Victorian and Tasmanian Automobile Chamber of Commerce, the Motor Trade Association of South Australia and Northern Territory, the Motor Trade Association of Western Australia, and the Motor Trades Association of Queensland. At the national level, MTAA acts as a unified voice, representing the interests of the automotive sector to the federal government and influencing key policy decisions. Its work includes identifying and addressing issues impacting the sector and advocating for the needs of automotive businesses through ongoing discussions with government.

whole which has not been disclosed to the consumer at [the] time of polic[y] inception.

This MVIRI Code of Conduct is labelled as an alleged legitimate attempt in restoring smooth insurer & repairer relations further to minimise the current Insurers imbalance of power over the repair industry, yet I have grave concerns in respect of its sincerity & validity.”

4. The said email contained a link to the draft Code and the following “key issues” or questions for the review:
 - (a) Is there an imbalance of power in the draft Code?
 - (b) Does the draft Code compromise repairers’ obligations under Australian Consumer Law (“ACL”)?
 - (c) Does the draft Code compromise the repairers' duty of care to the vehicle owner?
 - (d) Does the draft Code breach the Privacy Act?
 - (e) Does the draft Code breach an Insurer’s obligations to a consumer, including disclosure obligations?
 - (f) Is the draft Code clear, transparent and without ambiguities?
 - (g) Is there case law on the use of artificial intelligence in determining the reasonableness of any amount and/or assessment of a consumer’s property loss?
 - (h) Is there any anti-competitive behaviour in the draft Code?
5. On 1 April 2025, I spoke with the representative of the VACC and obtained further information on the background to the review and clarification of some of the above instructions. For instance, I was advised that a comparative analysis of the draft new Code against the existing 2017 Code of Conduct would not be required.
6. On 8 April 2025, I received a call from Ms Imogen Garcia Reid, the VACC’s Executive Manager, Policy and Communications, who confirmed the ambit of the review, instructions received (as per above) and timeframe for delivery of my report.

A contextual background

7. Throughout most of the 20th century, the motor body repair sector in Australia was largely unregulated, with no specific legal framework catering to the unique issues found in the dealings between motor vehicle insurers and motor vehicle repairers. Instead, commercial business relations between the two groups were governed by general corporate, competition and fair-trading legislation.
8. Several inquiries into the relationship were conducted in the 1990s and early 2000s, including a 1995 Industry Commission inquiry, various Senate inquiries from 1995 to 2004 and an ACCC investigation into possible breaches of the [then] *Trade Practices Act*. The ACCC also conducted a number of industry roundtable discussions on those and related issues.
9. Subsequently, in 2004 and 2005, a more detailed inquiry into the state of the industry was conducted by the federal government’s Productivity Commission. The Commission identified the existence of a marked imbalance of power between the parties,² examined a number of serious dispute points between the body repair and insurance industries and recommended the introduction of a voluntary industry code of practice, which eventually came into effect in September 2006.³
10. Since then, the relationship between repairers and insurers has been, in part, codified under an MVIRI Code of Conduct (“the Code”), as originally developed and subsequently administered jointly by the ICA and the MTAA.
11. The Code has been reviewed and updated multiple times. The most recent changes occurred in 2017,⁴ by introducing, inter alia, the current dispute resolution process and a website to help the CAC oversee the Code [**Annexure A hereto**].⁵

² According to the ACCC, the relationship between automotive insurers and repairers in Australia has historically been marked by a power imbalance, with insurers often dominating the process and repairers facing challenges in accessing information and negotiating fair terms, leading to industry inquiries and the development of a code of conduct: ACCC media release, “ACCC welcomes new law on motor vehicle service and repair information”, 18 June 2021.

³ Review of the Motor Vehicle Insurance and Repair Industry (MVIRI) Code of Conduct by Dr Michael Schaper for the MVIRI Code Administration Committee April 2023.

⁴ Commencing 1 May 2017.

⁵ Explanatory Memorandum: Draft Motor Vehicle Insurance and Repair Industry (MVIRI) Code of Conduct.

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12. Since the introduction of the Code, both the insurance and repair industries have experienced significant changes, including advancements in vehicle technology, shifts in the types of repairs needed, and changes in how businesses operate. Additionally, New South Wales and South Australia have passed laws making the Code mandatory for insurers and repair businesses operating in those states.
 13. In 2022, and “[t]o keep the Code relevant in this evolving environment, especially given new legislative requirements and the CAC’s responsibilities under the Code”, the CAC launched an external review of the Code.⁶
 14. The Terms of Reference for that review identified five key areas, namely:⁷
 - (a) effectiveness of the Dispute Resolution process under the Code;
 - (b) awareness and accessibility of the Code;
 - (c) compliance with the Code;
 - (d) governance of the Code and the CAC; and
 - (e) other issues pertinent to the effective governance and operation of the Code such as:
 - (i) the changing regulatory environment;
 - (ii) the impact of new technology; and
 - (iii) fee-based disputes and claims representations.
 15. In April 2023, Dr Michael Schaper delivered a report in which he made the following recommendations for an updated Code of Conduct:⁸
 - (a) clarify and strengthen provisions relating to dispute resolution;
 - (b) update the Code’s language, format and presentation;
 - (c) undertake greater public promotion of the Code;
 - (d) work more closely with Regulators;

⁶ Ibid.

⁷ Explanatory Memorandum: Draft Motor Vehicle Insurance and Repair Industry (MVIRI) Code of Conduct.

⁸ Review of the Motor Vehicle Insurance and Repair Industry (MVIRI) Code of Conduct by Dr Michael Schaper for the MVIRI Code Administration Committee April 2023, referred to in the Explanatory Memorandum to the new draft Code: https://www.abrcode.com.au/site/DefaultSite/filesystem/documents/2023%20MVIRI%20Code%20Review_Final%20Report-new.pdf,

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- (e) update the Code website, URL and contents;
 - (f) introduce sanctions for breaches of the Code;
 - (g) appoint an independent CAC Chair and Deputy Chair;
 - (h) clarify CAC governance, membership voting and training;
 - (i) incorporate the CAC as a formal legal entity;
 - (j) better resource the CAC;
 - (k) codify practices relating to the use of artificial intelligence;
 - (l) review educational requirements;
 - (m) greater consumer focus;
 - (n) clarify the role of third-party representatives; and
 - (o) change the frequency and focus of future Code reviews.
16. The CAC evaluated each of Dr Schaper’s recommendations by analysis of the monetary impacts and how each would apply within the insurance and body repair industries and any existing regulatory and legislative regimes covering those industries.
17. As a result of that process, the CAC, with the assistance of MST Lawyers and McCabe Lawyers, has undertaken a “rewrite” of the Code of Conduct [**Annexure B** hereto] and drafted a new Constitution and Charter for the CAC [**Annexure C** hereto].
18. According to the explanatory memorandum published with the draft Code [**Annexure D** hereto], the key issues addressed as against the existing Code are, in summary:
- (a) language - the draft Code aims to address vague and unclear language in the current Code;
 - (b) estimation and assessment processes and timeframes - the current Code does not set timelines for the estimation and assessment process. The New Code retains the need for estimators and assessors to be appropriately skilled. However, in line with the skill requirements of a rapidly evolving

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- motor repair industry, specific requirements have been updated;
- (c) dispute resolution process - the current Code process for the handling of disputes between an insurance company and a body repair business is both lengthy and ill-defined in how it functions, offering no certainty or final resolution. The draft new Code introduces two types of disputes: “Repair Disputes” and “General Disputes” and different processes for each. The process for repair disputes emphasises the need for a cost-effective, efficient, and binding resolution, with clear timelines to streamline the process and introduces an independent adjudicator to make final, enforceable decisions. General disputes will be dealt with by mediation with specific timeframes for the initial stages to ensure prompt progress; and
 - (d) governance – whereas the current Code is jointly governed by the ICA and MTAA through an informal structure, the new draft Code provides for incorporation of a new CAC comprising a Board with an independent chairperson and a separate operation committee which will have jurisdiction across Australia. The new body will provide annual reports and business plans and engage with Government on behalf of the insurance and body repair industries. The Committee will also be empowered to impose sanctions, fines and other modes of enforcement upon parties in breach of the Code.
19. The CAC is currently conducting a process of industry consultation and feedback with submissions invited from all industry stakeholders.⁹
20. On 13 March 2025, the MTAA hosted a webinar “Review of the updated Code, Industry Consultation session”.¹⁰ It commenced with a slide entitled “Competition statement” in which participants were reminded that the meeting was intended to facilitate discussions that support industry collaboration while ensuring that they did not engage in anti-competitive behaviour. After providing a brief history of MVIRI Code reviews between 2006 and the Schaper report, and an explanation

⁹ From 5 March 2025 to 29 April 2025.

¹⁰ "Understanding the Updated Motor Vehicle Insurance and Repair Industry Code of Conduct": <https://www.mtaa.com.au/press-releases/recording-understanding-the-updated-motor-vehicle-insurance-and-repair-industry-code-of-conduct>.

of the CAC's current review assessment and implementation, the presentation described the updated Code as aiming to "improve clarity, fairness and effectiveness in several critical areas", namely, governance structure, sanctions and penalties, assessment times, methods of repair (with a positive obligation to use OEM methodology) and dispute resolution processes. Each of those areas and their features was then explained through comparisons against (including perceived shortcomings of) the current Code.

21. The presentation culminated in a timeline for the "next steps" in the review process this year. As noted, the industry is being consulted during March and April. Between May and June, the MTAA and ICA will review industry feedback and any CAC recommendations, and the new Code will be re-drafted as needed by MST lawyers. Between July and August, the MTAA and ICA will review the updated Code and finalise it. Between July and September, the Independent Chair and Adjudicator will be recruited and appointed. Between July and December, staffing selection and portal development will take place. Finally, the updated Code is tentatively expected to commence operation on 1 January 2026.
22. On 14 March 2025, the MTAA issued the following media release:¹¹

*“The automotive sector, including dealers and repairers, welcomes the Albanese Government’s expansion of its crackdown on unfair trading practices. This is a positive step forward, providing additional protections for small businesses that often face power imbalances when dealing with larger corporations, particularly in the highly competitive and rapidly evolving automotive industry. The government’s commitment to levelling the playing field offers additional safeguards for small businesses that frequently struggle against unilateral changes to supply terms, restrictive contracts, and unfair market pressures. These new protections will help to create a fairer, more equitable business environment for all stakeholders in the industry. ... Businesses in the automotive industry frequently face similar challenges to consumers when dealing with unfair trading practices, such as imbalances in supply chain relationships and sudden, unilateral changes to contract terms. Many of these fall outside the scope of the recent Unfair Contract Terms regime, highlighting the need for stronger and broader protections. **A key example of this imbalance is the relationship between insurers and collision repair businesses, where insurers often exert unfair pressure on repairers regarding pricing, turnaround times, repair methods, and part selection. To address this, the Motor Vehicle Insurance and Repair Industry Code of Conduct is currently being updated to rebalance these relationships. The***

¹¹ “Automotive Small Businesses Welcome Government's Crackdown on Unfair Trading Practices.”

MTAA is also calling for the Code to be made mandatory. ...”

[emphasis added]

23. On 15 April 2025, in response to industry and stakeholder feedback, the CAC announced that public consultation on the Code of Conduct will be extended to 23 June 2025.¹²
24. Against that background, I now turn to the questions or ‘key issues’ I have been asked to consider in respect of the draft new Code.

Issue 1: Is there an imbalance of power in the new draft Code?

25. In considering this question, I have interpreted the phrase "imbalance of power", from the perspective of Repairers, as meaning any provision that expressly or impliedly has or may have the effect of conferring significantly more influence, control, or resources on Insurers potentially leading to unfair or exploitative outcomes in their commercial relationships with Repairers or which may have the effect of treating Repairers less favourably than other Participants¹³ under the Code.
26. I have also borne in mind the realities of the commercial market relationship between the motor vehicle Insurance sector and motor vehicle repair industry. For those insurers that have agreed to indemnify their insureds by undertaking repairs, as opposed to cash-settling claims, the relationship is one in which Insurers are effectively consumers of repair services supplied by Repairers. Conventional competition principles are required (or at least intended) to regulate that relationship. Those market levers tend to produce an innate tension between Insurers’ seeking to maximise profits by expending the least they reasonably can for repairs, on the one hand, and Repairers seeking to maximise their returns for the repair work they supply, on the other. The interests of vehicle owners must also be considered. The draft new Code of Conduct, like its previous iterations, aims to balance (or at least go some way to balancing) those competing interests.

¹²<https://www.mtaa.com.au/news/motor-vehicle-insurance-and-repair-industry-code-of-conduct-consultation-period-extended>

¹³ Defined in clause 12.3(nn) as all members of the ICA, MTAA, Motor Trader State Associations, any other Repairers who are not members of those associations who agree in writing to be bound by the Code, Claims Handling and Settling Services retained by any members of the ICA, MTAA or Motor Trader State Associations, and all Repairers and Insurers in States or Territories where it is mandated by law that they are bound by the Code.

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27. By those measures, in my view, the following provisions create, or have the potential to create, an imbalance of power adverse to Repairers.
28. Part 2 is entitled General Obligations. Clause 3 prescribes Participant Obligations:
- (a) Subclause 3.1(c)(iii) prohibits Participants from engaging in misleading and/or deceptive conduct, which is said to include, relevantly, "*withholding information that it is in the interest of another Participant to have knowledge of*". That conceivably could require Repairers to provide Insurers with information which may be in the Insurers' interests, but not necessarily the Repairers.
 - (b) Subclause 3.6 requires Insurers and Repairers to "*report to the appropriate government regulator any Participant that displays a deliberate breach of their duty of care to Customers in respect of the Repairs to a motor vehicle and notify the Participant who has engaged in the conduct*". Such an obligation is patently skewed against Repairers because they are, in the main, the only Participants that might owe a duty of care to Customers. Insurers have a contractual relationship with their customers/insureds. Therefore, the practical effect of the clause is a sort of whistleblower environment in which Repairers would be required to report on other Repairers who performed substandard work. That, in turn, is also likely to be productive of General Disputes between Repairers where the one being reported disagrees with the complaint, to be resolved under clause 10.4; and/or sanctions being imposed by the CAC for contraventions of the Code under clause 9.4, in addition to any similar action taken by "the appropriate regulator".
29. Part 3 governs the Relationship between Insurers and Repairers. Clause 5 is entitled Insurer and Repairer Relations:
- (a) Clauses 5.1 and 5.2 require Code Approved Assessor (used by Insurers) and Estimators (used by Repairers) to "*receive ongoing training/development through their employer or via membership of a relevant professional body*". Without more explicit detail as to the nature of

that training or identification of the trainer/s, it is foreseeable that different standards of, or approaches to, assessment/estimation might result between the two disciplines.

(b) Clause 5.3(b):

(i) subclause (iii) requires Insurers to “*pay the agreed amount that has been authorised or requested by the Insurer for all work completed*”. If the amount has been agreed, then the words “that has been authorised or requested by the Insurer” are otiose. More relevantly, the reference to an amount being ‘requested’ by an Insurer is reflective of a market imbalance;

(ii) subclause (iv) requires Insurers to “*not remove a motor vehicle from a Repairer’s premises without notifying the Repairer in advance and in writing and compensating the Repairer for any legitimate or reasonable towing or storage costs associated with the motor vehicle and compliance with relevant law*”. The limitation of compensation to only towing or storage costs is likely to be financially detrimental to Repairers who have also expended considerable time and effort in inspection of the motor vehicle and preparing an estimate of repair costs, only to have the Insurer remove the vehicle for the purpose of obtaining an alternative estimate if the Insurer is dissatisfied with the first Repairer’s estimate. In that regard, note clause 5.4(b)(ii) which prohibit Repairers from dismantling a motor vehicle for the purpose of preparing a repair estimate or report unless requested or authorised to do so by the Insurer. Consideration ought to be given to extending the compensation to include the time and effort applied by the first Repairer. There is also no provision for the timeframe within which any such compensation is to be paid by the Insurer. In that regard, note clause 5.4(b)(iii) which requires repairs to release a motor vehicle, for the purpose of the Insurer or Claimant obtaining an alternative estimate, within two business days of a written request.

(c) Clause 5.4(d) requires “*Repairers, when providing a repair estimate, to*

provide sufficient evidence to an Insurer to substantiate their claims for costs". The term "sufficient evidence" begs the question: to whose satisfaction? If it is intended to remain to the insurer satisfaction, then I suggest that the term be better and more specifically defined to provide Repairers with a reasonable degree of certainty (including in terms of time and resources required) about quantity and quality of information required for their repair estimates and to avoid the possibility of arbitrariness between different Insurers and different jobs.

- (d) Clause 5.5(a) requires a repair to provide a repair estimate to the insurer within five business days of receipt of the motor vehicle. However, subclause (b) then only requires the Insurer "to review" and "initiate communication with the repairer within five business days of receiving the estimate". Initiating communication could be as little as an auto reply email acknowledging receipt of the estimate. The absence of any definite timeframe within which an Insurer is to notify the Repairer as to whether the estimate is accepted (or not, or to be further negotiated) has the potential to adversely impact Repairers both in terms of cash flow and storage costs in having a motor vehicle on their premises until a decision is made by the Insurer.

30. Clause 6 is entitled Estimate, Repair and Authorisation Process:

- (a) Clause 6.1 commences with "*If an Assessment is required*". There is no indication as to when, in what circumstances, why, or even by whom, any determination is to be made that an Assessment is required.
- (b) Clause 6.2 is of particular concern. The chapeau – "*Participants acknowledge ongoing changes in the Industry in relation to the development of realistic times and rates...*" - posits a curious (and arguably, irrational) rationale for what follows. Subclause (a) effectively empowers Insurers to dictate "*the preferred estimation methodology to be used by Repairers*". Subclause (b) provides that even though a Repairer submits an estimate "*in realistic times and rates*", the Insurer still retains the right to obtain an alternative estimate. Subclause (c) permits Repairers in their estimation

methodology to separately cost out paint, parts and other elements and charges. However, it is not clear whether, in so doing, the Repairer's estimation methodology will then be consistent with the Insurer's right to dictate its preferred estimation methodology.

- (c) Clause 6.3 permits both Code Approved Assessors and Estimators to use artificial intelligence or "*other technology*" in carrying out their "services". However, the purported safeguards then set out such as acting with care, skill and diligence; ensuring proper policies for the use of AI are in place; and being responsible to other Participants for the contents of documents produced by AI, are vague, lacking in detail and thus provide little comfort for Repairers in knowing whether the use of such technology will create or foster a 'level playing field' in the preparation of assessments and estimates. Insurers generally have greater financial resources with which to continue to more rapidly develop and adopt measures such as AI as part of their business models.¹⁴ For example, in 2020, IAG, Australia's largest general insurer, announced that:¹⁵
- (i) it commenced using artificial intelligence to predict whether a motor vehicle is a total loss after a car accident, "improving customer experience by reducing insurance claims processing times from over three weeks to just a few days";
 - (ii) prior to deployment, 'Predictive Total Loss' was evaluated using IAG's established AI ethics framework and the Australian Government's voluntary AI ethics principles to identify potential issues or risks prior to going live, including human, social and environmental wellbeing; reliability and safety; and fairness; and
 - (iii) the IAG AI Centre of Excellence planned to refine the model using customer photos of vehicle damage and extending the methodology

¹⁴ For example, see FST Media, Financial Services News, "IAG deploys AI to slash total vehicle loss assessment times; launches 'first of its kind' cybersecurity rating tool for SMEs", 30 November 2020; and Taylor Fry, "How AI is transforming insurance" by Jonathan Cohen, 27 October 2023.

¹⁵ "IAG embeds artificial intelligence to reduce claims times and improve customer experience after a car accident": <https://www.iag.com.au/announcement/iag-embeds-artificial-intelligence-reduce-claims-times-and-improve-customer-experience-after-car>

to predict motor claim liability to help automatically validate claims at the time of customer lodgement.

More recently, in November 2024, IAG launched its first generative AI tool – the Claims Assistant Supporting Intermediated tool (or CASI) - to help front-line consultants assess claims faster thereby reducing the average time taken from 20 minutes to just a few seconds. Other digital tools include CGU's claims portal which is said to allow brokers to allocate repairs for personal motor and property claims without needing to call anyone.¹⁶

However, without full transparency,¹⁷ Repairers may be at a disadvantage in not knowing which large language models or other AI-driven products have been developed or adopted by Insurers, how that AI is trained, with what data, whether the data is relevant to the individual markets across Australian states and territories, how the training of the AI is conducted in terms of corrections and alterations to the data, and how it is applied and operates in the production of a repair cost assessment.

Some of those features/issues were identified in the Schaper Report, such as whether Insurers should be required to advise Repairers that an assessment/estimation has been done by AI rather than by a person (and if so, whether Repairers should have the right to request that their matter be handled by a person instead); what rights will Repairers have to dispute assessments/estimations made using AI; and what are the operating rules (algorithms) and assumptions employed in an AI assessment.¹⁸ None of those have been addressed in the current draft, adequately or at all.

In my view, it may be preferable for the CAC to develop and implement AI policies or protocols which are to be observed by Participants to the Code in their dealings with each other.

- (d) Clause 6.4, like 6.2 (above), is another example of an overt commercial power imbalance. Relevantly, it provides that an "*Insurer may not*

¹⁶ "IAG introduces AI claims assistant" by insurancenews.com.au, 4 November 2024.

¹⁷ Such as that mandated by clause 3.1(b)(i) of the draft Code.

¹⁸ Recommendation 11.

unreasonably or arbitrarily alter a Repair Estimate unless the Insurer insists on changing the repair process, parts or materials to be used...". It presents a number of concerns:

- (i) firstly, unlike the methodology for preparing a repair estimate, the subject of clause 6.2, here, the insurer appears to be given the right to dictate how repairs are to be carried out;
 - (ii) secondly, it is clumsily drafted. Read literally, it would mean that if an Insurer insisted on changing the repair process, etc, then it could 'unreasonably and arbitrarily' alter a repair estimate. That is unlikely to have been intended, particularly given that clause 3.1 prohibits Participants from "acting arbitrarily or capriciously"; and
 - (iii) thirdly, the concept that an Insurer can unilaterally alter a repair estimate is at odds with the preamble referring to a "*fair and transparent negotiation*". I suggest a more balanced approach (and one more consistent with the requirements on Repairers prescribed by clause 5.4(b) when preparing estimates) would be achieved if the relevant portion of the clause read "*... the Insurer will not request an alteration to a repair estimate unless ...*".
- (e) Clause 6.5 has a similar tone to clauses 6.2 and 6.4. It provides that "*[w]hile Insurers may enter into commercial arrangements with Repairers that specify performance targets, Insurers will not unduly influence any Repairer to submit estimates on the basis of inducements of further work*". The first imbalance to be observed is that certain Repairers may enjoy certain commercial arrangements with Insurers if they fulfil certain performance targets, whereas other Repairers may not. That necessarily pits Repairers against each other. There is no evident symmetry in that condition as between Insurers. The next is that those Repairers who are subject to performance targets must necessarily be at risk of losing work, or having it reduced, or having the price for their work altered, if those targets are not met. Further, the second limb of the clause, namely, that "*Insurers will not unduly influence any Repairer to submit estimates on the basis of*

inducements of further work" is opaque because while it is clearly not a ban on that practice, it does not specify the extent to which, or in what circumstances, an Insurer might (duly) influence a Repairer to submit lower estimates in return for further work.

31. Clause 7 deals with Repair Warranties:

- (a) Clause 7.2(c)(ii) relevantly requires an Insurer, where it insists and instructs a Repairer to carry out repairs using a different method or part than that recommended by the Repairer, and where a claim is made against the Repairer, to indemnify and pay to the Repairer the "*direct loss or liability incurred by the Repairer*", save that an Insurer will not be liable if the loss arises from faulty workmanship. It is not clear why the indemnity is limited to direct losses rather than including all reasonably and necessarily incurred direct and indirect (which would include, for example, profit and overheads) losses occasioned by having to carry out any rectification works (including any legal costs in defending a claim). The provision is also likely to be productive of disputes about whether required rectification works were caused by the Insurer's insistence on a different repair method or part/s, or whether they were caused by faulty workmanship in the original works.

32. Clause 8 is entitled Payment for Repairs:

- (a) Clause 8.1 requires an insurer to pay the agreed repair cost within 30 days from the earlier of the settlement of the insurance claim or receipt of the final invoice for the repair. In circumstances where repairs may be carried out in stages or where there are delays in delivery of parts, etc, it is suggested that the second lib of this clause be reworded to "*receiving any invoice for the Repair*".
- (b) Clause 8.3 requires Insurers to inform Repairers of "*all available payment arrangements*". It is unclear whether that means payment arrangements which are convenient to or are used by the Insurer or whether it is intended to also include the Repairer's preferred payment arrangements.

33. Part 4, clause 9, concerns the Establishment of the CAC:

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- (a) Clause 9.4, which is entitled “Sanctions for contravention of the Code”, provides, in summary, that the CAC may impose a sanction on a Participant *“if the CAC reasonably determines that the Participant has contravened this Code”*. However, the provision does not include, nor is they to be found elsewhere in the Code, any details as to:
- (i) how, by what process, or to what standard the CAC might reasonably determine that a Participant has contravened the Code. In light of the quasi-judicial nature of the sanctions power, and the significant nature of some of the available sanctions, it is at least desirable, if not necessary, in my view, for the provision to specify whether, for example, the rules of natural justice and procedural fairness are to apply and how the process of any investigation or inquiry, hearing and determination are to be undertaken by the CAC; and
 - (ii) any right of, or avenue for, appeal or review of any determination by the CAC in relation to contraventions or sanctions.

34. Part 5, clause 10, deals with Resolving Disputes:

- (a) The Schaper report noted that *“the issue of mandatory dispute resolution was raised by a number of parties, with several respondents suggesting that a binding mechanism would be the only way to make the code effective, redress imbalance of power and some commercial relationships and ensure effective resolution of complaints: mandatory would ensure that everyone is playing under the same rules”*.¹⁹ Clause 10 does not achieve that. More specifically, clause 10.2(a) provides, relevantly, that to bring into operation the dispute resolution process under this Part, the Initiator must register the dispute through the Code website and serve on the Respondent a written Notice of Dispute. In other words, unless that initiation process is undertaken, the dispute resolution process under the Code will not be invoked. That lack of compulsion leaves open the prospect of disputes being dealt with outside the Code regime and without any visibility by the CAC (or

¹⁹ Page 10, section 3.1.

other Participants) on any such alternative or external process or outcomes.

- (b) Clause 10.3(b) provides, in terms, that the costs of any adjudication of a Repair Dispute are to be shared equally between the Initiator and the Respondent. In circumstances where, for example, a Repairer who is a party to such a dispute adopted from the outset a reasonable position which was ultimately vindicated by the Adjudication, that outcome on costs is likely to be unfair. It would be preferable therefore to reserve to the Adjudicator the discretion and power to determine who is to pay the costs of the adjudication or in what shares they are to be paid.
- (c) Clause 10.4(d) to (f) provides for mediation as one of the multi-tiered steps for the resolution of General Disputes. However, unlike clause 10.3, this clause is silent as to the costs of any mediation or who is to bear them. The balance of clause 10.4 does not indicate any arrangement or process by which party-selected or CAC-appointed Mediators might be acting on a voluntary or pro bono basis. The difference in financial capacity between almost all Insurers and most Repairers would suggest that any regime by which the parties to a mediation were to share the costs of the Mediator equally is likely to be unfair on (certainly some) Repairers. While a Mediator is entitled to the security of arrangements for his/her payment of fees in advance of any mediation, the ability of Repairers to factor their share of any such costs into any agreed resolution may be limited. The clause is also silent on matters such as whether:
 - (i) the discussions in any mediation are to be protected by without prejudice privilege so that they cannot be disclosed outside of the mediation if the matter is not resolved;
 - (ii) the results of any mediation are to, or may, be communicated to the CAC;
 - (iii) any mediated resolution of General Disputes can be enforced within the Code regime, presumably by the CAC; and/or
 - (iv) non-compliance with a mediated resolution might constitute a contravention of the Code attracting possible sanctions by the CAC.

Issue 2: Does the draft Code compromise the Repairer's obligations under the ACL?

35. Repairer obligations under the Australian Consumer Law ("ACL")²⁰ include:
- (a) prohibitions on misleading and deceptive conduct (s. 18), unconscionable conduct (ss 20 to 22), unfair contract terms (ss 23-28) and false or misleading representations about goods or services (ss 29, 33, 34); and
 - (b) providing consumer guarantees in respect of the supply of goods and services including that they are of acceptable quality (s. 54), fit for purpose (ss 55), correspond with any description (s. 56), to comply with any express warranty given in relation to the goods (s. 59), that the services will be rendered with due care and skill (s. 60), that the services and any product resulting from the services will be reasonably fit for purpose (s. 61), and that the services will be supplied within a reasonable time unless fixed by contract or otherwise agreed (s. 62).
36. The precise nature and extent of those obligations will depend on whether repairs are performed under a repair authority or preferred repairer agreement with an insurer (i.e. the contractual relationship is with the insurer); or for a motor vehicle owner who is not insured or who is but has received a cash settlement from their Insurer and has themselves chosen the Repairer to carry out the repairs.
37. The ACL applies to motor vehicle repairs authorised by an Insurer, even if the Insurer is not directly performing the work. The Insurer is considered the "supplier" of the service, and therefore, they are responsible for ensuring that the repairs provided are of acceptable quality and fit for their intended purpose. Under the General Insurance Code of Practice,²¹ the Insurer must accept responsibility for the quality of work and materials and handle any complaint about the quality or timeliness of the work or conduct of the repairer as part of their complaints handling process.
38. Generally, the draft Code appears to support and reinforce Repairers' obligations under the ACL rather than compromise them. The draft contains several

²⁰ Schedule 2 of the *Competition and Consumer Act* (Cth) 2010.

²¹ Introduced in 1994 by the Insurance Council of Australia.

overarching provisions that are evidently intended to avoid any potential for conflict with, or compromise of, Participants' legal obligations, including under the ACL (or any other law). And, if any such conflict does arise, the law prevails (as it must) over the Code. For instance:

(a) clause 2.3 provides, relevantly:

(c) Where there is any conflict or inconsistency between this Code and any Australian law, that law prevails. The provisions of this Code are subject to relevant Australian law, including common law rights and obligations.

(d) Nothing in the Code shall override existing legal rights and requirements between Insurers and Customers.

(b) clause 3.1 provides, relevantly, that all Participants must:

(a) comply with all relevant Australian laws ...

(c) not engage in conduct that is misleading and/or deceptive or likely to mislead or deceive ...

(c) clause 5.3 provides:

(a) Insurers must, having regard to the age and condition of the Motor Vehicle, require Repairers to provide Repair Estimates, or carry out repairs that are in accordance with:

(i) the Motor Vehicle's OEM repair methods; or

(ii) Industry recognised authorities; or

(iii) in the absence of either/or, refer to best Industry practice.

(d) Clause 5.4 requires Repairers to provide Repair Estimates and carry out repairs in accordance with the same standards or methods.

39. However, clause 6.2, which permits Insurers to stipulate the preferred estimation methodology to be used by Repairers, and clauses 6.4 and 7.2(c), which provide for an Insurer to insist on a different repair process, parts or materials to be used, may have the potential to undermine (or at least complicate) Repairers' abilities to fulfil their obligations under the ACL.

40. Of course, that will depend on whether a Repairer agrees to the Insurer's demands. As an "insurance fulfilment provider," a Repairer is not obligated to follow the Insurer's directives if the Repairer believes that following the directive will cause them to breach a legal duty they owe to their customer. The Repairer

must be satisfied with the Insurer's request before proceeding with any repairs.

41. In that regard, clause 6.5, which effectively recognises that Insurers may seek to apply downward pressure on Repairers' prices (which presumably might include acceptance of an Insurer's required alternative repair methodology) on the basis of inducements of further work, does not assist.
42. Similarly, and for the reasons given in the preceding section, the indemnity provided by clause 7.2(c)(ii) in the event of a claim against a Repairer resulting from complying with an Insurer's required alternative repair methodology may not be a perfect or complete panacea. If a claim by a vehicle owner against the Repairer is established, the Repairer may be left to debate the issue and to pursue the benefit of any indemnity from the Insurer if the Insurer disputes that the claimed defect is due to the Insurer's alternative methodology.

Issue 3: Does the draft Code compromise the Repairer's duty of care to the property owner?

43. A Repairer's duty of care to a vehicle owner will arise when the owner is uninsured or, if insured, has been 'paid out' by their insurer, such that a direct contractual relationship is formed by the owner engaging the Repairer to perform the works. In all other cases, involving repairs authorised by an Insurer, the relevant legal relationship will be between the Insurer and the Repairer.
44. There is no material difference in the content of the Repairer's duty to exercise reasonable skill and care, in the tortious sense, to either the Insurer or the motor vehicle owner, as the case may be, and the corresponding duty in s. 60 of the ACL.
45. As the draft Code is principally concerned with the relationship between Insurers and Repairers, I did not consider that it compromises a Repairer's duty of care to a motor vehicle owner.
46. Otherwise, this issue has been addressed in the response to issue 2 above.

Issue 4: Does the draft Code breach the Privacy Act?

47. Insurers and Repairers have obligations under the Australian *Privacy Act* 1988, broadly speaking, to handle personal information responsibly, including obtaining

consent, limiting collection to what is necessary, ensuring accuracy, and protecting against unauthorised access or disclosure. The Act's 13 Australian Privacy Principles dictate how organisations must collect, use, disclose, store, and dispose of personal information, such as:

- (a) collecting personal information fairly and lawfully;
- (b) using and disclosing personal information only for the purpose for which it was collected, or for a related purpose, unless the individual consents to its use or disclosure for another purpose;
- (c) taking reasonable steps to ensure that personal information is stored securely and protected from unauthorised access, modification, or disclosure; and
- (d) ensuring that personal information is disposed of securely and in accordance with the *Privacy Act*.

48. One example of how the industry has responded to privacy laws has been in the area of vehicle-generated data and personal information. On 1 July 2021, the Federal Chamber of Automotive Industries implemented a voluntary code of conduct for automotive data and privacy protection. On 1 July 2022, Part IVE of the *Competition and Consumer Act 2010* (Cth) was inserted²² to require motor vehicle service and repair information to be made available for Australian repairers and relevant Registered Training Organisations to purchase at a fair market price. Under the Motor Vehicle Service and Repair Information Sharing Scheme, all repairers have fair access to the information needed to service and repair vehicles. The scheme imposes requirements on data providers as to how they handle sensitive information about individuals obtained for the purposes of conducting the fit and proper person assessment to access safety information or security information. The scheme also extends the application of the *Privacy Act* to small business operators in relation to sensitive information obtained by a data provider.²³

²² By the passing of the *Competition and Consumer Amendment (Motor Vehicle Service and Repair Information Sharing Scheme) Act 2021*.

²³ ACCC, "Motor Vehicle Service and Repair Information Sharing Scheme Guidance for data providers", December 2022.

49. As noted above, clause 3.1 of the draft Code, which requires Participants to comply with all Australian laws, goes on to specify that those laws include:

“... the Privacy Act and any other laws, codes or principles that deal with privacy or the collection, use or disclosure of Personal Information.”

50. That provision suggests, at least at a high level of generality, that the draft Code will not (or should not) breach the *Privacy Act*.

51. However, there are a number of other provisions, the implementation of which, may involve sharing or disclosure of relevant personal information. As such, I recommend that further and more specific consideration be given to ensuring that the Code enables and assists Participants to comply with their obligations under the privacy laws. For instance:

- (a) the prohibition in subclause 3.1(c) against engaging in misleading deceptive conduct extends, at (iii), to "*withholding information that it is in the interests of another Participant to have knowledge of*", if that is intended to require the sharing or disclosure of personal information, perhaps derived from interactions with other Participants or vehicle owners;
- (b) the requirement in clause 3.6 for Insurers and Repairers to report to the appropriate government regulator any Participant that displays a deliberate breach of their duty of care owed to Customers in respect of the repairs to a motor vehicle;
- (c) The requirement in clause 5.3 (b)(i) for insurers to provide repairers with relevant details relating to the insurance claim including payments by Customers of any excess or contribution charges, unless that is something disclosed in an insurers PDS or policy terms to which insured customer has agreed.
- (d) Repairers photographing motor vehicles for the purposes of providing a Repair Estimate as provided by clause 5.4(c);
- (e) publication by the CAC in its annual report of the nature of contraventions by Participants, pursuant to clause 9.4(e), if the identity of the relevant Participants is disclosed; and

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- (f) registration of disputes through the Code website to initiate the dispute resolution process in clause 10.

Issue 5: Does the draft Code breach an Insurer's obligation to a consumer including disclosure?

52. Another overarching provision of the draft Code is clause 2.3 which provides that:

(d) Nothing in the Code shall override existing legal rights and requirements between Insurers and Customers.

53. The rights and obligations of an insurer and insured will be defined by the terms of the relevant policy insurance (and any Schedules thereto) and informed by the insurer's Product Disclosure Statement ("**PDS**"). Those terms and that information must accord with the requirements of the *Insurance Contracts Act* 1984 ("**Act**").²⁴

54. The Act provides, relevantly, that:

- (a) an insured has a duty:
- (i) (under a consumer insurance contract) to take reasonable care not to make misrepresentations to an insurer (s. 20B); and
 - (ii) to disclose to an insurer matters that, among other things, are relevant to an insurer's risk (s. 21);
- (b) an insurer, before a contract of insurance is entered into, is to clearly inform the insured in writing of the general nature and effect of the insured's duty of disclosure (s. 22).
- (c) each party to a contract of insurance is under a duty to act, in respect of any matter arising under or in relation to the contract, with the utmost good faith (s. 13).

55. The draft Code does not appear to offend any of those obligations.

56. An insurer's PDS must comply with the relevant requirements of the *Corporations Act*.²⁵ They include content requirements such as information about the product's

²⁴ Section 52 prohibits contracting out of the Act.

²⁵ Part 7.9 - Financial Product Disclosure and other provisions relating to Issue, Sale and Purchase of Financial Products.

benefits, risks, amounts payable by the insured and any other significant characteristics or features that might affect an insured's decision to purchase the cover.²⁶

57. Clause 3.2 of the draft Code specifies that:

Insurers' PDS documents must comply with ASIC Regulatory Guide 168, or any subsequent applicable Regulatory Guide, in relation to PDS documents and other disclosure obligations.

58. Guide 168 is self-described as giving “policy guidance on preparing a PDS that complies with the PDS requirements in the *Corporations Act*. It sets out good disclosure principles and explains how ASIC will monitor the use of PDSs and enforce the PDS requirements”.

59. Analysis of the multitude of individual motor vehicle insurance PDSs throughout the Australian market, viz a vis the draft Code, is obviously beyond the scope of this review. As a general observation, however, if the draft Code is to be adopted in its current form, I consider it arguable that Insurers ought be obliged to disclose to Insureds the relevant provisions of clauses 5, 6 and 7, namely, and in summary, the use of Code Approved Assessors, the cascading series of standards to which repairs are to be carried out, the Insurer's right to insist on and direct alternative repair methodologies, the use of AI in repair assessments, that Repairers' estimates may be influenced by Insurers' inducement of further work, and the warranty arrangements as between Insurers and Repairers.

Issue 6: Is the draft Code clear, transparent and without ambiguities?

60. In short, and in part: no.

61. Issues with the drafting are as to both form (e.g. structure, grammatical errors and infelicities) and substance (e.g. incomplete, unclear and/or conceptual inconsistency or ambiguity). It is convenient to identify them sequentially. While the following list may not necessarily be exhaustive, it is, I trust, indicative of the further work required:

(a) Clause 2.2, “*How the Code Works*”, is no more than a repeat of the table of

²⁶ Section 1013D and E.

contents on the second page of the document and has no work to do.

- (b) Clause 2.3(e)(iv) – the reference to allocation of work to "Insurers" as not being covered by the Code is presumed to be intended to mean the allocation of work to Repairers.
- (c) Clause 2.4(b):
 - (i) "*Participants must instruct its employees ...*" should be "their employees";
 - (ii) the term "*instructee*" is linguistically clunky and rarely used. A more conventional expression is that instructors train trainees.
- (d) Clause 3.1(c):
 - (i) (i)(C) - the second reference to "*the quality of*" appears to be a typographical error;
 - (ii) (iii) - the nature of any "*information that it is in the interest of another Participant to have knowledge of*" is entirely unclear and ambiguous.
- (e) Clause 3.6 - Some of the problems with this provision have already been noted above. Further:
 - (i) the phrase "*appropriate government regulator*" requires a definition, failing which the purported reporting obligation may be emasculated due to uncertainty. Each state and territory has its own consumer protection agency, which enforces the ACL within its boundaries and manages local issues;
 - (ii) the phrase "*a deliberate breach of their duty of care*" is incongruous. The tortious principles (pursuant to common law and/or statute) giving rise to the imposition of a duty to take reasonable care recognise that a failure to do so (usually, accidentally or without intention) may constitute negligence. A deliberate act or omission, on the other hand, can rarely be regarded as negligent and is more appropriately characterised as wilful damage to property;
 - (iii) it is unclear whether any "report" is to also be communicated to the

CAC if the alleged breach might constitute a contravention of the Code;

- (iv) it is also unclear as to whether this provision attracts, or should attract, whistleblower protections such as those provided for by Part 9.4AAA of the *Corporations Act*.
- (f) Clause 5.1(a) is poorly worded. I suggest it to be reworded to: “*In carrying out Assessments, Insurers will only utilise the services of a Code Approved Assessor where there is no agreement with the Repairer under an ongoing contract*”. The nature of what constitutes any such “*agreement*” is unclear.
- (g) Clauses 5.1 and 5.2 require Code Approved Assessors and Estimators to receive “*ongoing training and/or development through their employer or via membership of a relevant professional body*”. The nature, content and frequency or duration of any such training or development is unclear. Similarly, it is unclear as to whether any such training is to be identical for Assessors and Estimators. The term “*relevant professional body*” is unhelpful. If any such body or bodies exist, it or they should be specified.
- (h) Clause 5.3(a) requires clarification. Firstly, are the first three choices by which insurers must require repairers to provide estimates and carry out repairs - OEM repair methods, Industry recognised authorities, best Industry practice - in order of precedence? If so, that part of the clause should be amended to make the position clear, such as:
 - (i) the Motor Vehicle’s OEM repair methods; or
 - (ii) if the Motor Vehicle’s OEM repair methods are not available or inapplicable, then in accordance with Industry recognised authorities; or
 - (iii) if Industry recognised authorities are not available or inapplicable, then in accordance with industry best practice.

Secondly, (unless it is clear to Participants) the term “*Industry recognised authorities*” appears vague and uncertain.

- (i) Clause 5.3(b)(iv) - in the context of compensation payable to Repairers for

towing or storage costs (or others as noted above) when an Insurer requires a motor vehicle to be removed from a Repairer's premises, the reference to "and in compliance with relevant law" is vague and should be specified.

(j) Clause 5.4:

- (i) (a) – as per clause 5.3(a) above;
- (ii) (b) - between '*interacting*' and '*Insurers*', the word "with" is missing;
- (iii) (b)(i) – the term "*appropriate scope*" is vague and subjective;
- (iv) (b)(v) - the term "*relevant insurers agreement and authorisation to proceed*" should be clarified to specify whether authorisations are to be in writing and/or how they are to be communicated.
- (v) (c) - permits Repairers to take photographs of a motor vehicle "in accordance with any guidelines prescribed by the CAC" and yet, to the best of my knowledge, no such guidelines presently exist.
- (vi) (d) - as noted above, the requirement on Repairers when providing a repair estimate to provide "*sufficient evidence*" to Insurers to substantiate their claims for costs is vague and subjective and should be better defined.

(k) Clause 5.5:

- (i) has a footnote number at the end of the title which does not appear to be connected to any actual footnote;
- (ii) as noted above, subclause (b) is unclear in respect of the requirement on an insurer to "*review*" a repair estimate, "*initiate communication*" with the repairer and/or what is meant by the "*Insurers preferred communication channel*".

(l) Clause 6.1 – as noted above, the circumstances in which an Assessment might be "*required*" are not specified.

(m) Clause 6.2 - as noted above, the reference to "*ongoing changes in the industry in relation to the development of realistic times and rates*" is somewhat enigmatic and does not provide any clear or logical rationale for

providing Insurers essentially with a right to dictate the preferred estimation methodology.

- (n) Clause 6.3:
 - (i) (a) - "other technology" is vague;
 - (ii) (c) - "proper policies" is vague;
 - (iii) (d) - the reference to being "*responsible to other Participants for the contents of documents*" produced using AI, is presumably intended to mean being responsible for the accuracy of the contents of any such documents.
- (o) Clause 6.4 permits an Insurer to insist on changing the repair process, parts or materials to be used. It is unclear how that is to be reconciled with the repair methods that are required in clause 5.3(a).
- (p) Clause 6.5 - further to that noted above, the references to "*commercial arrangements with Repairers that specify performance targets*" and "*will not unduly influence*" are unclear.
- (q) Clause 7.2:
 - (i) in the chapeau, the word "a" is missing from between "Repairer" and "complete";
 - (ii) (a) – the reference to Repairers having to provide Insurers with a "like warranty" is unclear and may require incorporation of the terms of any lifetime warranty provided by Insurers in their PDS or policy documents.
- (r) Clause 8.1 – the manner in which any Repair costs are to be "*agreed*" should be specified including how that agreement is to be evidenced and communicated.
- (s) Clause 8.3 - the reason for the requirement on Insurers to inform Repairers of "*all payment arrangements*" is unclear. But, in any event, those payment arrangements should be specified and notified to any Repairer before any Repair costs are agreed so that the Repairer knows the full terms of the

transaction (to payment) before agreeing to enter into it.

(t) Clause 9.3:

- (i) (b)(ii) – as noted above, the CAC’s powers of investigation and determination of any alleged contravention of the Code require far more detail and specificity before Participants can sensibly agree to subject themselves to those powers;
- (ii) (b)(v) - the nature or ambit of any "data, information and document" should be specified. The word "disputed" should be "disputes". The clause is silent on the CAC’s obligations in respect of the storage, dissemination and/or disposal of any data, information and documents collected;
- (iii) (c) - provides the CAC with the power to develop industry guidelines including but not limited to the subject matter described in the sum paragraphs they are under. While it is not specified in this clause (and in my opinion, it should be), clause 8.1(b) of the draft CAC Charter provides that the CAC will consult with Code Participants in developing policies, guidelines, reporting forms and operating procedures.

(u) Clause 9.4:

- (i) As noted above, the process by which the CAC is to "*reasonably determine*" whether a Participant has contravened the Code is entirely unclear. In that regard, clause 4.2 of the draft Charter provides that "*the CAC may develop a policy on how it will exercise its discretion to consider and investigate allegations of Code breaches.*" In my respectful view, the contingent and speculative nature of that assurance (if adopted) is highly unsatisfactory and unfair to Participants.
- (ii) (c) - the reference to suspending the "*rights of the Participant under this Code*" is not entirely clear given that (apart from the right to lodge a dispute under the Code as specified), the Code consists mostly of obligations.

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- (iii) (d) - the reference to (effectively fining a Participant) "*a sum of money ... of a reasonable amount*" is entirely unclear and carries with it a real risk of arbitrariness. The broad and general nature of the considerations set out thereunder does little to ameliorate that uncertainty. To put it simply, what is the range? Is it to be hundreds of dollars, thousands or millions? Further, without having some concrete idea as to the possible range of fines, how is any Participant to be deterred in advance from contravening the Code?
- (v) Clause 10.2:
- (i) (a) – first line, delete the word “*of*”. The term “*Initiator*” is unusual compared to conventional dispute resolution terminology such as ‘complainant’ or ‘claimant’;
- (ii) (a)(ii) - the mode and timeframe for valid service of a written Notice of Dispute on a respondent should be specified.
- (w) Clause 10.3:
- (i) (a) - as presently drafted, the parties to a Repair Dispute are required to confer within two business days of the dispute being "*notified under subclause 10.2(a)(i)*". However, that provision only extends to the registration of the dispute through the Code website, not from the date of service on the Respondent as required by subclause (ii). That, therefore, could lead to an absurd situation in which the compulsory conference is required to take place before the Respondent has notice of the dispute. Accordingly, the timing for any compulsory conference must necessarily be calculated from the date on which the Respondent is or is to be served with the Notice of Dispute.
- (ii) (b) - the same problem applies here where a Repair Dispute may be referred to Adjudication if the dispute has not been resolved within “*XX Business Days*” of it being “*notified under subclause 10.2(a)(i)*”, but without any regard to when notice of the dispute may have been served on the Respondent. Further, it is difficult to understand the inclusion of the words “*(even if the initial conference required under*

subclause 10.3(a) has not occurred)” when that conference is prescribed in mandatory terms (i.e. “*must confer*”).

- (iii) (c)(iii) - the quantum of any Adjudicator’s “*costs and charges*” is entirely unclear. I suggest that they be regulated by, for instance, the CAC publishing a scale of costs (e.g. hourly rates) that Adjudicators, who wish to nominate themselves for appointment, agree to charge.
 - (iv) (f) - the requirement for adjudications to be “final and binding” may be problematic, depending on what is at stake. One alternative, often found in ADR expert determination clauses, is to specify that the determination will be final and binding unless it involves payment of money in excess of a certain sum or in the case of manifest error.
- (x) Clause 10.4:
- (i) (a) - here we see, in respect of a General Dispute, a temporary bar to any legal proceedings being commenced unless and until “Initial Conference” and “Mediation” processes in subclauses (c) to (f) have been completed. Yet, the same is not to be found in clause 10.3 in respect of Repair Disputes. It is unclear whether that omission is deliberate or merely oversight. Given the final and binding nature of an Adjudication for Repair Disputes, it is anticipated that a similar (and arguably, a complete) bar was intended.²⁷ Otherwise, an undesirable situation could result in which one party commences the resolution process under the Code while the other commences legal proceedings in respect of the same dispute, which would likely lead to applications for injunctive relief or a stay of proceedings.
 - (ii) (c) – as per clause 10.3(a) above. Further, it is unclear why five business days are provided here, whereas clause 10.3(a) provides that the initial conference is to take place within only two business days “notified”. The words “*(even if the initial conference required under sub-clause (a) has not occurred)*” are clearly misplaced and are

²⁷ Subject to the possibility of any limitations to an Adjudication being final and binding, as suggested.

probably intended to appear in subclause (d). The clause is silent as to what is to occur if the parties cannot agree on the appointment of a Mediator.

- (iii) (d) – as per clause 10.3(b). Further, in the last line, the word "Repair" should be "General".
- (iv) (e) - as noted in paragraph 34(c) above, the draft is also silent on a number of other matters including the costs of Mediation.
- (y) Clause 12.1 - provides for the Code to be amended, for compliance with any law, upon the "*reasonable opinion of the CAC*". It would be preferable, in my view, if such amendments were based on the CAC obtaining a qualified legal opinion on the point.
- (z) Part 7 is the Definition section. It is highly unusual (and inconvenient) to have that section at the end of such a document. By contrast, the definition section of the current Code is, as one would normally expect, toward the beginning (clause 3). The practical effect is that if Part 7 is retained in its present position, a reader will likely be required to keep turning to the end of the document (or having a copy of the definitions beside them) to understand the various acronyms, initialisms and defined terms found within the operative parts of the body of the document.

Issue 7: Is there case law on the use of artificial intelligence in determining the reasonableness of any amount and/or assessment of a consumer's property loss?

- 62. To the best of my research, there have, as yet, been no curial decisions published or reported in Australia concerning the use of AI in assessments of motor vehicle repairs.
- 63. While there are currently no specific statutes or regulations in Australia that directly regulate AI, the Australian legal system is adapting to the increasing use of AI, with ongoing discussions about the implications of AI on legal processes,

including its use in decision-making and litigation.²⁸

64. To date, Australia's response to AI has been voluntary and includes the AI Ethics Principles published in 2019 (which comprise eight voluntary principles for the responsible design, development and implementation of AI, which are consistent with the OECD's Principles on AI) and the Voluntary AI Safety Standard published in August 2024 (which comprises ten voluntary guardrails that cover aspects such as transparency with other organisations, accountability processes and risk management of AI).²⁹
65. While they do not (yet) seek to regulate AI, there are various laws that may affect the development or use of AI in Australia, including, relevantly, the Australian Consumer Law, the Privacy Act and the Corporations Act.³⁰
66. Notwithstanding the inevitable 'catch up' in government-led regulatory controls seeking to meet (and get ahead of) the exponential growth and advances in AI, applications such as insurance and claims assessments are rapidly incorporating AI technologies and products.³¹ Those delays and the complexities in coordination and implementation of regulations across multiple jurisdictions, industries, social structures and applications place greater emphasis and dependence on voluntary codes of conduct, such as the subject draft MVIRI Code, being able to reliably and safely balance the risks of AI while leveraging its benefits.

Issue 8: Is there anti-competitive behaviour in the draft Code?

67. Clause 2.1 of the draft Code lists its objectives as including to:

²⁸ White & Case, "AI Watch: Global regulatory tracker – Australia: Voluntary AI Ethics Principles guide responsible AI development in Australia, with potential reforms under consideration", 16 December 2024.

²⁹ Australian Government Department of Industry, Science and Resources, "The legal landscape for AI in Australia, Voluntary AI Safety Standard": <https://www.industry.gov.au/publications/voluntary-ai-safety-standard/legal-landscape-ai-australia>

³⁰ Price Waterhouse Coopers, "'Real' Laws for Artificial Intelligence An introductory guide to AI regulation", February 2024.

³¹ For example, Arnie AI Estimator, insurance estimating software: <https://www.arniesoftware.com/solutions/artificial-intelligence/>; Melbourne Collision Repair Centre's webpage on "The future automotive repairs: embracing AI and automation in the workshop": <https://www.melbournecollisionrepaircentre.com.au/the-future-of-automotive-repairs-embracing-ai-and-automation-in-the-workshop/>.

(a) promote the efficient operation of, and Customer confidence in, professional and competitive Motor Vehicle insurance and repair industries in Australia;

68. There are no other express provisions in the draft Code that clearly address or endeavour to safeguard against anti-competitive behaviour in the relationships between Insurers, Repairers and Consumers. Therefore, beyond the aspirational nature of clause 2.1(a), and the overarching obligation to comply with all applicable Australian laws in clause 2.3(c), this question enquires into whether any of the agreed or imposed practices and interactions in the draft Code give or may give rise to anti-competitive behaviour in contravention of relevant Australian laws.
69. Australia's core competition law provisions are contained in Part IV of the *Competition and Consumer Act 2010*. In short, they prohibit anti-competitive behaviours such as:
- (a) cartel conduct (e.g. price fixing, market division, restricting outputs and bid rigging);
 - (b) making or giving effect to contracts, arrangements or understandings containing a provision that has the purpose, effect or likely effect of substantially lessening competition;³²
 - (c) misuse of market power;
 - (d) exclusive dealing (broadly capturing two types of anti-competitive vertical transactions, namely, conditional supply (or acquisition) of goods or services and refusing to supply for specified reasons such as a purchaser who refuses to agree to a conditional supply);
 - (e) resale price maintenance; and
 - (f) mergers (if it can be demonstrated that they will have the effect or likely

³² E.g. see the recent fine imposed by the ACCC on Honda Australia for breaching the Motor Vehicle Service and Repair Information Sharing Scheme by offering to supply the software only by yearly subscription, without giving independent repairers the option to purchase less expensive subscriptions on a daily or monthly basis.

effect of substantially lessening competition in a market).³³

70. However, business practices that benefit consumers and the economy such as investing in research to improve products or services (or invent new ones); advertising to win customers (without making false or misleading claims³⁴); and improving processes to lower costs, will generally not be considered illegal.³⁵
71. Some of the available literature,³⁶ contains descriptions, from the perspective of Repairers, of practices by Insurers within the industry that are said to constitute anti-competitive behaviour such as:
- (a) Insurers having agreements with specific repairers, incentivising them to use those "preferred" repairers, sometimes to the detriment of other, potentially more affordable or specialised, options. The pressure to use preferred repairers can limit consumers' ability to choose the repairer they trust, even if that repairer is not part of the insurer's network. Consumers may be unaware of their right to choose or feel pressured to accept the insurer's preferred option. This can be seen as a form of "third line forcing," where an insurer's influence over a claimant's repair choice impacts a third party (the repairer). By favouring specific repairers, insurers can control the flow of repair work, create a barrier to entry for new repairers and potentially reduce competition in the market;
 - (b) inappropriate 'steering' behaviours, whereby Insurers direct (often by offering inducements such as a free car wash or quicker repair times) customers away from businesses outside of their 'preferred' networks.
 - (c) introduction of fixed prices for various forms of repair, unfairly driving

³³ Similar to the presently proposed (and debated) acquisitions by Allianz of RAA Insurance and IAG of RACQ as discussed in <https://www.insurancebusinessmag.com/au/news/auto-motor/australias-automotive-groups-fight-insurance-acquisitions-526404.aspx>

³⁴ E.g. see *Australian Competition and Consumer Commission v Mazda Australia Pty Ltd (No 3)* [2024] FCA 83, where the Federal Court ordered Mazda to pay \$11.5 million in penalties for engaging in misleading and deceptive conduct and making false or misleading representations about their consumer guarantee rights.

³⁵ ACCC, "Competition and anti-competitive behaviour": <https://www.accc.gov.au/business/competition-and-exemptions/competition-and-anti-competitive-behaviour>

³⁶ E.g. Legislative Assembly of New South Wales Select Committee's Report on the Motor Vehicle Repair Industry, 1/55, July 2014; submission on ACL review by the Australian Automotive Aftermarket Association Ltd, 27 May 2016; submission by the Motor Trade Association of South Australia on "Options for Strengthening Misuse of Market Power Laws", 12 February 2016; report by the Economics and Industry Standing Committee on Western Australia's Smash Repair Industry: Structural Challenges, November 2018; submission by the MTA of South Australia to the Parliamentary Economic and Finance Committee Inquiry into the Motor Vehicle Insurance and Repair Industry in South Australia, 6 September 2019.

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- average costs unsustainably low;
- (d) unequal bargaining power when agreeing the scope of repairs to vehicles;
 - (e) disputing and arbitrarily changing repair costs estimates;
 - (f) unfairly cash-settling claims;
 - (g) delays in vehicle assessments;
 - (h) conflicts of interest in determining the best outcomes for consumers in delivering service obligations to policyholders;
 - (i) the utilisation of ‘funny time, funny money’ to artificially price repairs; and
 - (j) the emergence of greater levels of vertical integration with Insurers either owning or seeking to control repair businesses and the supply of parts to Repairers (partnered or not), making it increasingly difficult for independent repairers to compete, with nothing to stop Insurers from setting repair costs at a higher level which will be passed on to consumers by way of higher insurance premiums.
72. What then, if anything, does the draft Code contain that might eliminate or ameliorate those practices? In my assessment, and for the reasons that follow, very little:
- (a) firstly, few of the above practices are acknowledged in the draft Code, let alone engaged with or addressed;
 - (b) secondly, preferred repairer arrangements are preserved by provisions such as clauses 5.1(a), 5.3(b)(iii) and 6.5; and
 - (c) thirdly, control over the scope and method of repair work, parts and materials - and therefore, price - is perpetuated (notwithstanding clause 7.2(c)) by clauses 6.2(a) and 6.4.

Conclusion

73. A number of features of the draft Code provide greater detail and present some improvements to aspects of the current Code, such as the dispute resolution processes.

74. However, despite the evident object of the CAC's work to date of endeavouring to balance and harmonise the often-competing interests of Insurers, Repairers and Consumers, the above review, and the issues identified, provide some bases for legitimate concern on the part of Repairers. As a result, there is a need for further consideration, negotiation and drafting before any new Code is finalised.



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Michael Whitten KC

Owen Dixon Chambers West

29 April 2025

ANNEXURE A

Current 2017 MVIRI Code of Conduct

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

PREAMBLE

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

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

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

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

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

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

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

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

1 PRINCIPLES OF THE CODE

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

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

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

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

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

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

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

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

1.2 Repairers will carry out repairs with the objective of:

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

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

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

2 SCOPE

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

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

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

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

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

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

2.1 Signatories

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

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

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

3. DEFINITIONS

In this Code:

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

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

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

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

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

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

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

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

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

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

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

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

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

“Code Website” means www.abrcode.com.au.

“Customer” means a Policyholder and or Claimant.

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

“Event” means an ICA classified event.

“ICA” means the Insurance Council of Australia Limited.

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

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

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

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

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

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

“MTAA” means the Motor Trades Association of Australia.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. INSURER AND REPAIRER RELATIONS

4.1 Repairers:

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

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

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

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

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

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

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

4.2 Insurers will:

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

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

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

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

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

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

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

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

4.3 CODE APPROVED ASSESSORS

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

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

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

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

or their equivalent in the AUR Training Package.

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

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

4.4 CODE APPROVED ESTIMATORS

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

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

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

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

5. NETWORK SMASH REPAIRER SCHEMES

5.1 Notification of Opportunities to Apply for NSR Status

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

5.2 Disclosure of information on NSR schemes

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

5.3 Term of Agreement

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

5.4 Extension of Network Repairer Status

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

5.5 Termination of NSR Agreement – breach by Repairer

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

5.6 Termination of NSR Agreement – based on performance criteria

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

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

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

5.7 Termination of NSR Agreement – no breach by Repairer

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

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

5.8 Termination of NSR Agreement – special circumstances

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

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

6. ESTIMATE, REPAIR AND AUTHORISATION PROCESS

6.1 Where competitive estimates are sought:

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

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

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

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

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

7. REPAIR WARRANTIES

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

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

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

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

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

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

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

8. PAYMENT FOR REPAIRS

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

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

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

9. SIGNATORY OBLIGATIONS

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

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

9.3 Signatories will not:

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

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

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

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

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

10. REPAIR DISPUTE RESOLUTION

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

10.1 Matters for dispute resolution

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

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

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

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

10.2 Notification of Dispute

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

(b) The dispute notification must contain:

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

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

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

10.3 Dispute Resolution Procedure

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

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

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

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

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

11. DISPUTE RESOLUTION PROCESS

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

11.1 Application and Principles

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

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

11.2 Internal Dispute Resolution

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

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

(c) The dispute notification must contain:

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

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

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

11.3 Mediation

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

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

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

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

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

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

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

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

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

11.4 Conditions

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

12. Approved Determination Scheme under the Code

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

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

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

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

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

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

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

13. ADMINISTRATION

13.1 Code Administration Committee

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

13.2 Role of the CAC

The CAC:

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

13.3 Confidential Information

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

ANNEXURE B

Draft 2025 MVIRI Code of Conduct

**MOTOR VEHICLE INSURANCE AND REPAIR
INDUSTRY CODE OF CONDUCT**

MOTOR VEHICLE INSURANCE AND REPAIR INDUSTRY CODE OF CONDUCT

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PART 1 - INTRODUCTION

1. NAME OF CODE AND COMMENCEMENT DATE

- (a) This Code shall be known as the MVIRI Code of Conduct.
- (b) This Code comes into operation on the Effective Date and, from the Effective Date, it replaces the Motor Vehicle Insurance and Repair Industry Code of Conduct commencing 1 May 2017.

2. OBJECTIVES & SCOPE

2.1 Objectives

This Code exists to:

- (a) promote the efficient operation of, and Customer confidence in, professional and competitive Motor Vehicle insurance and repair industries in Australia;
- (b) promote a co-operative relationship between Repairers and Insurers;
- (c) outline minimum, industry-wide standards in relation to:
 - (i) the Repair Estimate and Assessment;
 - (ii) quality of services, safety and warranties;
 - (iii) payments by Insurers to Repairers; and
 - (iv) a dispute resolution mechanism; and
- (d) consider the interests of Customers.

2.2 How the Code works

This Code is divided up into various Parts:

- (a) Part 1 – Introduction including Objectives & Scope
- (b) Part 2 – General Obligations including:
 - (i) Participant Obligations; and
 - (ii) Claims Handling and Settlement Service Providers;
- (c) Part 3 – Relationship between Insurers and Repairers including:
 - (i) Insurer Repairers Relations;
 - (ii) Estimate, Repair and Authorisation Process; and
 - (iii) Repair Warranties;
- (d) Part 4 – Code Administration Committee;
- (e) Part 5 – Resolving Disputes;
- (f) Part 6 – Review and Amendment of Code; and

- (g) Part 7 – Definitions.

2.3 Scope

- (a) This Code is binding upon all Participants.
- (b) This Code will be administered and enforced by the CAC, save for the obligations and authority of the Adjudicator under the Dispute Resolution Process. Participants agree to comply with directions, rulings and determinations of the CAC in respect of the Code..
- (c) Where there is any conflict or inconsistency between this Code and any Australian law, that law prevails. The provisions of this Code are subject to relevant Australian law, including common law rights and obligations.
- (d) Nothing in the Code shall override existing legal rights and requirements between Insurers and Customers.
- (e) Except as provided in this Code, it does not cover:
 - (i) the setting of hourly rates;
 - (ii) types of parts to be used;
 - (iii) compulsory choice of Repairer;
 - (iv) allocation of work to Insurers;
 - (v) contractual arrangements between Insurers and Repairers; and
 - (vi) warranty terms.

2.4 Additional Participants

- (a) A person who is not a member of the MTAA or a Motor Trader State Association may apply to become a Participant by lodging an application form on the Code Website.
- (b) Participants must instruct its employees, agents and contractors as to the principles and procedures contained in this Code even if the instructee is not a Participant.

PART 2 – GENERAL OBLIGATIONS

3. PARTICIPANT OBLIGATIONS

3.1 All Participants must:

- (a) comply with all relevant Australian laws including but not limited to the Privacy Act and any other laws, codes or principles that deal with privacy or the collection, use or disclosure of Personal Information.
- (b) act in good faith towards each other, including but not limited to:
 - (i) being honest, fair and transparent to each other in their business dealings and negotiations;
 - (ii) not undermining the rights of each other under this Code; and/or

- (iii) not acting arbitrarily or capriciously;
 - (c) not engage in conduct that is misleading and/or deceptive or likely to mislead or deceive, including but not limited to:
 - (i) making misleading or deceptive statements about:
 - (A) the quality, capability or timeliness of a Repairer or group of Repairers;
 - (B) the quality, safety or timeliness of Repairs based on who the Insurer is or the approach the Insurer uses to allocate repairs or manage claims; and/or
 - (C) the quality, capability or timeliness of the quality of materials used as part of a Repair process;
 - (ii) making statements or engaging in conduct designed or intended to prevent or discourage a Customer from having any necessary rectification work following a Repair undertaken at the Repairer who completed the original Repairs; and/or
 - (iii) withholding information that it is in the interests of another Participant to have knowledge of.
- 3.2 Insurers' PDS documents must comply with ASIC Regulatory Guide 168, or any subsequent applicable Regulatory Guide, in relation to PDS documents and other disclosure obligations.
- 3.3 Insurers must:
- (a) provide to employees who may be dealing with Repairers, Assessors and any Claims Handling and Settling Service providers, a copy of this Code;
 - (b) educate employees who may be dealing with Repairers, Assessors and any Claims Handling and Settling Service providers as to their obligations under this Code; and
 - (c) seek undertakings from employees who may be dealing with Repairers, Assessors and any Claims Handling and Settling Service providers that they have read and understood this Code and agree to comply with its terms.
- 3.4 Repairers must:
- (a) provide to employees who may be dealing with Insurers and any Claims Handling and Settling Service providers, a copy of this Code;
 - (b) educate employees who may be dealing with Repairers, Assessors and any Claims Handling and Settling Service providers as to their obligations under this Code; and
 - (c) seek undertakings from employees who may be dealing with Repairers, Assessors and any Claims Handling and Settling Service providers that they have read and understood this Code and agree to comply with its terms.
- 3.5 Insurers must ensure that:

- (a) their PDS documents includes all relevant details of the Insurer's Choice of Repairer Policy; and
- (b) the table of contents of their PDS documents refer to which page of the PDS contains information about the Insurer's Choice of Repairer Policy and Parts Policy.

3.6 Insurers and Repairers must report to the appropriate government regulator any Participant that displays a deliberate breach of their duty of care owed to Customers in respect of the Repairs to a Motor Vehicle and notify the Participant who has engaged in the alleged conduct.

4. CLAIMS HANDLING AND SETTLING SERVICE PROVIDERS

4.1 Claims Handling and Settling Service providers must:

- (a) comply with this Code;
- (b) comply with all relevant legislation and standards;
- (c) hold all relevant qualifications, permits and licenses, which includes holding an Australian Financial Services Licence;
- (d) act with courtesy and professionally;
- (e) act in the best interests of the Claimant; and
- (f) not lodge a Dispute under this Code or make a claim without merit.

PART 3 – RELATIONSHIP BETWEEN INSURERS AND REPAIRERS

5. INSURER AND REPAIRER RELATIONS

5.1 Code Approved Assessors

- (a) In carrying out Assessments, Insurers will only utilise the services of a Code Approved Assessor except where there is an agreement with the Repairer under an ongoing contract.
- (b) Code Approved Assessors must receive ongoing training and/or development through their employer or via membership of a relevant professional body.

5.2 Code Approved Estimators

- (a) In preparing Repair Estimates, Repairers will only utilise the services of a Code Approved Estimator, except when providing paintless dent repair estimates.
- (b) Code Approved Estimators must receive ongoing training and/or development through their employer or via membership of a relevant professional body.

5.3 Insurers

- (a) Insurers must, having regard to the age and condition of the Motor Vehicle, require Repairers to provide Repair Estimates, or carry out repairs that are in accordance with:
 - (i) the Motor Vehicle's OEM repair methods; or

- (ii) Industry recognised authorities; or
 - (iii) in the absence of either/or, refer to best Industry practice.
- (b) When interacting with Repairers in relation to Repairs, Insurers will:
- (i) provide Repairers with relevant details relating to the insurance claim that the Repairer reasonably requires in order to prepare a Repair Estimate or undertake the Repair, including their Parts Policy, details of Sub-let Repairs and payments by Customer including any excess or contribution charges;
 - (ii) act reasonably and professionally when considering Repair Estimates;
 - (iii) pay the agreed amount that has been authorised or requested by the Insurer for all work completed; and
 - (iv) not remove a Motor Vehicle from a Repairer's premises without notifying the Repairer in advance and in writing, and compensating the Repairer for any legitimate or reasonable towing or storage costs associated with the Motor Vehicle and in compliance with relevant law.

5.4 Repairers

- (a) Repairers will, having regard to the age and condition of the Motor Vehicle, provide Repair Estimates and carry out repairs that are in accordance with:
- (i) the Motor Vehicle's OEM repair methods; or
 - (ii) Industry recognised authorities; or
 - (iii) in the absence of either/or, refer to best Industry practice.
- (b) When interacting Insurers in relation to Repairs, Repairers will:
- (i) prepare Repair Estimates that provide for an appropriate scope of Repairs;
 - (ii) not dismantle a Motor Vehicle for the purpose of preparing a Repair Estimate or report unless requested or authorised to do so by the Insurer;
 - (iii) not hinder or prevent the Insurer or Claimant from seeking to obtain an alternative estimate and must release the Motor Vehicle within 2 Business Days after a written request is received by the Repairer;
 - (iv) act reasonably and professionally when preparing repair estimates; and
 - (v) not commence any insurance repair without having the relevant insurers agreement and authorisation to proceed, excluding emergency repairs in accordance with the PDS in relation to the Motor Vehicle.
- (c) For the purposes of providing a Repair Estimate, Repairers can take photographs of the Motor Vehicle in accordance with any guidelines prescribed by the CAC.

- (d) Repairers when providing a Repair Estimate must provide sufficient evidence to an Insurer to substantiate their claims for costs in relation to parts and work undertaken in a Repair for that Insurer.

5.5 Repair Estimate or Assessment¹

- (a) Upon receipt of the Motor Vehicle requiring repairs, the Repairer must provide a Repair Estimate to the insurer within 5 Business Days.
- (b) The Insurer must review the Repair Estimate and initiate communication with the repairer within 5 Business Days of receiving the estimate through the insurers preferred communication channel.
- (c) Despite this sub-clauses (a) and (b), Repairers can commence emergency repairs in accordance with the PDS in relation to the Motor Vehicle.

6. ESTIMATE, REPAIR AND AUTHORISATION PROCESS

6.1 If an Assessment is required:

- (a) Insurers must ensure that the Assessment process is fair and transparent;
- (b) Insurers must ensure that Assessments are comprehensive, complete and inclusive of all obvious damage; and
- (c) Repairers will provide Repair Estimates in accordance with sub-clause 5.4(a).

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

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

6.3 Code Approved Assessors and Code Approved Estimators:

- (a) may use AI and other technology in carrying out their services; and
- (b) must act with care, skill and diligence when utilising AI and other technology;
- (c) must ensure that there are proper policies to provide oversight of any documents produced by generative AI technology and platforms. and
- (d) are responsible to other Participants for the contents of any documents, the production of which may have included AI.

6.4 Without limiting Insurers' and Repairers' rights to fair and transparent negotiation, the Insurer may not unreasonably or arbitrarily alter a Repair Estimate unless the Insurer

insists on changing the repair process, parts or materials to be used (subject to sub-clause 7.2(c).

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

7. REPAIR WARRANTIES

- 7.1 Repairers acknowledge that Insurers provide Repair Warranties to Customers in relation to Repairs.

- 7.2 Subject to an Insurer providing to a Repairer complete copy of its Repair Warranty including the Insurer's responsibilities under any lifetime warranty:

- (a) Repairers must provide Insurers with a like warranty for a period of three (3) years from the date of Repair;
- (b) Repairers shall only be required to provide a guarantee for parts and/or paint to the extent that the Manufacturer, distributor, supplier or importer of the parts and/or paint is so liable under an express warranty or under the Australian Consumer Law, other than to the extent that the quality of the repair arising from the use of the parts and/or or paint arises from faulty workmanship;
- (c) if an Insurer insists and instructs that Repairs are carried out requiring a Repairer to use a repair method or part that differs from that recommended by the Repairer and the Repairer agrees to carry out such Repairs and a claim is made against the Repairer:
 - (i) the Repairer must immediately notify the Insurer of such claim;
 - (ii) the Insurer agrees to indemnify and pay to the Repairer the direct loss or liability incurred by the Repairer by reason of a quality, structural, Presentation or safety defect caused by complying with the requirement provided always that the Insurer is not liable to pay any loss or liability incurred by the Repairer to the extent that the loss or liability arises from faulty workmanship.

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

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

8. PAYMENT FOR REPAIRS

- 8.1 Insurers must pay the agreed Repair costs within 30 days from the earlier of:

- (a) settlement of the insurance claim of the Customer; or
- (b) receiving the final invoice for the Repair.

- 8.2 If there is a dispute about the Repairs undertaken, price, work or documentation then payment of the undisputed component will be paid in accordance with clause 8.1.
- 8.3 Insurers must inform Repairers of all available payment arrangements.

PART 4 - CODE ADMINISTRATION COMMITTEE

9. ESTABLISHMENT OF THE CODE ADMINISTRATION COMMITTEE (CAC)

9.1 General

The CAC:

- (a) is established under the constitution of the CAC Association;
- (b) consists of:
 - (i) an equal number of Participants each nominated by the ICA and MTAA; and
 - (ii) the CAC Chair (who will have a casting vote);
- (c) is responsible for the independent administration of the Code in accordance with the principles of the Charter; and
- (d) will meet regularly and conduct meetings in accordance with the Charter.

9.2 Role of the CAC

- (a) Subject to the constitution of the CACA and the Charter, the CAC is responsible for those matters contained in the Charter including but not limited to:
 - (i) providing stewardship of the Code by promoting the Code and helping Participants to understand and comply with the Code;
 - (ii) monitoring compliance with the Code and identifying areas for improvement in the practices of Participants;
 - (iii) determining when contraventions of the Code have occurred, applying appropriate sanctions and referring contraventions to the relevant government regulator;
 - (iv) providing a point of contact for Code enquiries and providing guidance on interpretation;
 - (v) preparing an annual plan and operating budget and, subject to Board approval, carrying out its activities and responsibilities in compliance with those documents;
 - (vi) developing a protocol for the appointment, establishment and operation of a national panel of mediators;
 - (vii) producing a publicly available annual report on the Code which includes:
 - (A) its activities during the Financial Year;
 - (B) an assessment of Participant compliance with the Code;

- (C) the number and type of Adjudications and Mediations;
- (D) the number and types of complaints and contraventions of the Code; and
- (E) any other matters the CAC considers relevant to the Code;
- (viii) meeting with Stakeholders to promote the Code and engaging on issues of concern;
- (ix) considering the interests of Customers;
- (x) monitoring the effectiveness of the Code and leading periodic reviews of the Code within the timeframes set in the Code;
- (xi) liaising with the ICA and MTAA on relevant matters; and
- (xii) in all respects, acting in good faith and in the best interests of the motor vehicle insurance and repair industries.

9.3 Powers of the CAC

- (a) Subject to the constitution of the CACA, the Charter and all relevant laws, the CAC acting reasonably has power to do all things incidental or conducive to achieve its purposes.
- (b) Without limiting sub-clause 9.3(a) and in addition to its rights under the Charter, the CAC may:
 - (i) approve or deny an application to become a Participant;
 - (ii) investigate alleged contraventions of the Code;
 - (iii) issue a Show Cause Notice to a Participant;
 - (iv) impose sanctions against a Participant in accordance with this Code; and
 - (v) request and collect data, information and documents in relation to complaints received and disputed lodged by Participants for the purposes of identifying issues in the Industry.
- (c) The CAC may develop Industry guidelines, including but not limited to:
 - (i) the taking, submission, storage, data security and supply of digital images;
 - (ii) the role and use of AI and technology in the Industry; and
 - (iii) decarbonisation and environmental sustainability issues.

9.4 Sanctions for contraventions of the Code

In order to protect the reputation of Industry and to deter contraventions of this Code, the CAC may impose one or more of the following sanctions on a Participant, if the CAC reasonably determines that the Participant has contravened this Code:

- (a) issue a Show Cause Notice;

- (b) issue a written warning;
- (c) suspend rights of the Participant under this Code for such period as the CAC determines including the right to lodge a dispute under this Code;
- (d) require the Participant to pay a sum of money to the CAC of a reasonable amount that will deter the Participant from contravening the Code in the future having regard to:
 - (i) the nature of the breach;
 - (ii) the seriousness of the breach;
 - (iii) the frequency of the breach (whether systemic or once-off);
 - (iv) the harm caused by the contravention;
 - (v) the size and resources available to the Participant to comply with the Code; and
 - (vi) proportionality with the contravention that has occurred;
- (e) publishing the nature of the contravention of the Participant in its annual report; and/or
- (f) refer a contravention of the Code to a relevant government or regulatory body.

PART 5 – RESOLVING DISPUTES

10. RESOLUTION OF DISPUTES

10.1 General Principles

Insurers and Repairers acknowledge that:

- (a) when disputes arise, often third parties are affected, which in turn, can adversely affect their standing and reputation and that of the Industry;
- (b) it is not productive to the existing and ongoing relationship between the Insurer and the Repairer if disputes remain unresolved;
- (c) the prompt resolution of disputes and the willingness to compromise to achieve resolution of disputes is paramount.
- (d) Participants should not lodge a dispute with the CAC which involves any issue which is prohibited under Clause 2.3 (e).
- (e) The Adjudicator who is in receipt of a complaint is entitled to exercise authority to determine if the complaint is a valid Code complaint in addition to determination of the outcome of the complaint.

10.2 Notification of a Dispute

- (a) To bring into operation of the dispute resolution process under this Part the Initiator must:
 - (i) register the dispute through the Code Website; and
 - (ii) serve on the Respondent a written Notice of Dispute that:

- (A) clearly identifies the nature of the Dispute;
 - (B) attaches all documentation relevant to the Dispute;
 - (C) sets out the outcome sought by Initiator; and
- (b) Participants must not lodge a dispute under the Code or make a claim which is without merit.

10.3 Resolution and Determination of Repair Disputes

Initial Conference

- (a) Within two Business Days of a Repair Dispute being notified under sub-clause 10.2(a)(i), representatives of the Initiator and the Respondent with authority to settle the Repair Dispute must confer (in person, by telephone or by virtual attendance technology) and, in good faith and with due courtesy, use their best endeavours to resolve the Repair Dispute.

Adjudication of Dispute

- (b) If the Repair Dispute is not resolved within XX Business Days of the Repair Dispute being notified under sub-clause 10.2(a)(i) (even if the initial conference required under sub-clause 10.3(a) has not occurred) either the Initiator or the Respondent may refer the Repair Dispute to binding Adjudication by an Adjudicator, the cost of which is to be shared equally between the Initiator and the Respondent and, for this purpose, either of the parties must immediately:
- (i) inform the CAC that the Repair Dispute has not been resolved; and
 - (ii) provide to the CAC the Dispute Documentation.
- (c) As soon as practicable after receiving the Dispute Documentation, the CAC will:
- (i) appoint an Adjudicator to conduct the Adjudication;
 - (ii) provide to the Adjudicator:
 - (A) the Dispute Documentation; and
 - (B) the contact details of the relevant representatives of the Initiator and the Respondent;
 - (iii) obtain details of the costs and charges of the Adjudicator and inform the Initiator and the Respondent of those costs and charges, their respective share of those costs.
- (d) The Initiator and Respondent must:
- (i) promptly comply with all directions of the Adjudicator; and
 - (ii) pay their share of the Adjudicator's costs and charges upon request.
- (e) The Adjudicator:
- (i) may allow the Complainant and the Respondent to make further submissions; and

- (ii) shall determine the Repair Dispute on the papers as soon as practical after the Adjudicator has been appointed (ideally within twenty Business Days); and
 - (iii) must forward to the Initiator and the Respondent a written Adjudication with brief reasons for such determination.
- (f) The Adjudication of the Repair Dispute by the Adjudicator shall be final and binding on the Initiator and the Respondent and:
 - (i) the Repairer shall thereafter carry out the repairs to the subject Motor Vehicle in accordance with the Adjudication; and
 - (ii) the Insurer shall pay the Repairer for the cost of repairs to the subject Motor Vehicle in accordance with the Adjudication.

10.4 Resolution of General Disputes

Restriction on legal proceedings

- (a) Subject to sub-clause (b) of this clause, a party may not commence any legal proceedings in relation to a General Dispute unless:
 - (i) it has complied with sub-clauses (c) to (f) of this clause; and
 - (ii) the General Dispute was not resolved at Mediation.
- (b) A party may commence any legal proceedings in relation to a General Dispute if it is necessary to obtain urgent interlocutory orders (such as an injunction).

Initial Conference

- (c) Within five Business Days of a General Dispute being notified under sub-clause 10.2(a)(i) (even if the initial conference required under sub-clause (a) has not occurred), representatives of the Initiator and the Respondent with authority to settle the General Dispute must confer (in person, by telephone or by virtual attendance technology) and, in good faith and with due courtesy, use their best endeavours to resolve the General Dispute.

Mediation

- (d) If the General Dispute is not resolved within XX Business Days of the Repair Dispute being notified under sub-clause 10.2(a)(i) either the Initiator or the Respondent may refer the Repair Dispute to mediation before a Mediator.
- (e) Any Mediation may, subject to any direction to the contrary by the Mediator:
 - (i) be conducted in person at a venue to be agreed by the Initiator and Respondent or chosen by the Mediator; or
 - (ii) be conducted by virtual attendance technology.
- (f) The Initiator and the Respondent must:
 - (i) do everything necessary to co-operate with the Mediator including, but not limited to, promptly responding to any correspondence or requests from the Mediator; and

- (ii) attend Mediation by a person who has authority to settle the General Dispute on behalf of that party; and
 - (iii) in good faith, use their best endeavours to resolve the General Dispute.
- (g) If the General Dispute is not resolved at Mediation:
 - (i) the parties may accept that the General Dispute has not been resolved; or
 - (ii) the parties may make further attempts to resolve the General Dispute; or
 - (iii) either party may commence legal proceedings in relation to the General Dispute.

PART 6 – REVIEW AND AMENDMENT OF CODE

11. REVIEW

- 11.1 The CAC must conduct an initial internal review of the Code 12 months after the commencement of the Code.
- 11.2 The CAC must conduct external reviews of the Code every five years thereafter (with the first external review to take place six (6) years from the commencement of the Code).
- 11.3 The CAC is responsible for setting the terms of reference for external reviews.
- 11.4 Any review must include an opportunity for Stakeholders and Persons to make written submissions as to the operation and effectiveness of the Code.

12. AMENDMENT OF THE CODE

- 12.1 If in the reasonable opinion of the CAC any clause of the Code does not comply with or is unlawful under any law, then the CAC may amend the Code to comply with the law on giving to Participants twenty Business Days' notice of the change.
- 12.2 Subject to clause 12.1, the Code can otherwise be amended by the CAC by only with the approval of at least two-thirds of the members of the CAC.

PART 7 - DEFINITIONS

- 12.3 In this Code:
 - (a) **ACCC** means the Australian Competition and Consumer Commission.
 - (b) **Adjudication** means adjudication in accordance with sub-clauses 10.3(b) to 10.3(f).
 - (c) **Adjudicator** means a person or panel of persons, free of conflict of interest, appointed by the CAC to adjudicate Repair Disputes in accordance with this Code.
 - (d) **AI** means artificial intelligence, specifically technology that learns, develops and makes decisions and performs tasks based on input data.
 - (e) **APRA** means the Australian Prudential Regulation Authority.

- (f) **Assessment** means an assessment of the scope and cost of repairs to a Motor Vehicle conducted by an Assessor in response to a Repair Estimate.
- (g) **Assessor** means a person who is engaged to assess Motor Vehicle accident damage and/or negotiate Repair Estimates between Insurers and Repairers.
- (h) **CAC Association** means Code Administration Committee Association Inc [INSERT NUMBER ONCE REGISTERED].
- (i) **Board** means the board of directors of the CAC Association.
- (j) **Business Day** means a day that is not a Saturday, Sunday or gazetted public holiday in the State of New South Wales.
- (k) **CAC** means the Code Administration Committee established under the constitution of the CAC Association
- (l) **CAC Chair** means the chair of the CAC who has relevant and broad experience in industry, commerce, law, public administration or government service.
- (m) **Chairperson** means the person chairing a CAC, or Board meeting.
- (n) **Charter** means the charter of the CAC as amended from time to time, which is accessible on the Code Website.
- (o) **Choice of Repairer Policy** means an Insurer's Policy terms in relation to whether it allows the Policyholder any choice, or otherwise, as to selection of Repairer.
- (p) **Claimant** means a Person covered by a Policy or a Person who has made a claim under an Insurance Policy.
- (q) **Claims Handling and Settling Service** has the same meaning as under section 766G of the *Corporations Act 2001* (Cth).
- (r) **Code** means this Code or any modification to it from time to time.
- (s) **Code Approved Assessor** means an Assessor who, by no later than 12 months after commencing their employment has:
- (i) a trade qualification and a minimum of three consecutive years of post-apprenticeship experience in their profession as a panel beater, spray painter or motor mechanic; or
 - (ii) more than five years of experience as a motor insurance Assessor or motor vehicle Estimator.
- (t) **Code Approved Estimator** means an estimator who, by no later than 12 months after commencing their employment has:
- (i) a trade qualification as a panel beater, spray painter or motor mechanic; or
 - (ii) more than five years of experience in a motor trade or as an estimator; or

- (u) **Code Website** means www.abrcode.com.au or any superseding website.
- (v) **Customer** includes:
- (i) a Policyholder;
 - (ii) a Claimant.
- (w) **Dispute** means a disagreement between two or more parties that arises when an Initiator makes a complaint or claim or puts a position to the Respondent, and the Respondent informs the Initiator that they do not accept the complaint, claim or position put.
- (x) **Dispute Documentation** means:
- (i) the Notice of Dispute;
 - (ii) the Repair Estimate;
 - (iii) the Assessment; and
 - (iv) any other document upon which the Initiator or Respondent wishes to rely upon.
- (y) **Effective Date** means #####.
- (z) **Adjudication** means Adjudication in accordance with sub-clauses 10.3(b) to 10.3(f).
- (aa) **General Dispute** means any dispute between an Initiator and a Respondent that is not a Repair Dispute.
- (bb) **ICA** means the Insurance Council of Australia Limited.
- (cc) **Industry** means the Motor Vehicle insurance and repair industries in Australia.
- (dd) **Initiator** means the person who makes a claim against or puts a position to a Respondent.
- (ee) **Insurer** means a member of the ICA or any other Person who is in the business of insuring Motor Vehicles in respect of property damage and which, in the course of its business, engages or authorises Repairers to perform Repairs to Motor Vehicles.
- (ff) **Manufacturer** means an organisation or company that produces or manufactures Motor Vehicles.
- (gg) **Mediation** means a mediation process conducted under sub-clauses 10.4(d) to 10.4(f).
- (hh) **Mediator** means:
- (i) a mediator agreed to by the Initiator and Respondent; or
 - (ii) a mediator selected by the CAC (which may include a mediator appointed by a Small Business Commissioner in the State or Territory where the Repairer is located).

- (ii) **Motor Trader State Associations** means the Motor Trades Association of Queensland, the Motor Traders' Association of New South Wales, the Motor Trade Association of South Australia and Northern Territory, the Victorian Automotive Chamber of Commerce, the Motor Trade Association of Western Australia and the Tasmanian Automotive Chamber of Commerce or such other bodies of associations that have Repairers as members.
- (jj) **Motor Vehicle** means a motor vehicle covered for damage under a Policy or which the Insurer otherwise requests the Repairer to Repair.
- (kk) **MTAA** means the Motor Trades Association of Australia.
- (ll) **Notice of Dispute** means a notice of the type referred to in sub-clause 10.2(a)(ii).
- (mm) **OEM** means Original Equipment Manufacturer.
- (nn) **Participant** means:
- (i) All members of the ICA;
 - (ii) All members of the MTAA;
 - (iii) All members of the Motor Trader State Associations;
 - (iv) Any Repairers who are not members of the MTAA or a Motor Trader State Association who agree in writing to be bound by this Code.
 - (v) Any Claims Handling and Settling Service retained by:
 - (A) any members of the ICA;
 - (B) any members of the MTAA or a Motor Trader State Association;
and
 - (vi) All Repairers and Insurers in States or Territories of Australia where it is mandated by law that they are bound by this Code.
- (oo) **Parts Policy** means the policy established by an Insurer under an Insurance Policy, which explains the use of repair components in the Repair of the Motor Vehicle, which may include, but is not limited to, new, recycled (used or second hand) or non-genuine (aftermarket) or parallel parts.
- (pp) **PDS** means a product disclosure statement required to be issued by an Insurer under Chapter 7 of the *Corporations Act 2001* (Cth).
- (qq) **Person** means an individual or entity within the Industry.
- (rr) **Personal Information** has the same meaning as in the Privacy Act.
- (ss) **Policy** means a policy or contract of insurance between an Insurer and Policyholder under which the Insurer agrees to indemnify the Policyholder in respect of damage to a Motor Vehicle.
- (tt) **Policyholder** means an insured person individual or entity under a Policy for a Motor Vehicle with an Insurer.
- (uu) **Privacy Act** means the *Privacy Act 1988* (Cth).

- (vv) **Presentation** means the visual appearance of the repair work performed on the Motor Vehicle.
- (ww) **Repair** or **Repairs** means any work done by a Repairer to repair a Motor Vehicle or any of its components, systems or parts, where the work is covered by a Policy and where a claim is or will be made by a Claimant including but not limited to:
- (i) dismantling or assembling;
 - (ii) part or component replacement, adjustment, modification, installation or fitting; or
 - (iii) painting.
- (xx) **Repair Estimate** means a written quotation for or estimate of the scope and cost of repairs to a Motor Vehicle prepared by a Repairer.
- (yy) **Repair Dispute** means a dispute between an Insurer and a Repairer that arises after an Insurer has provided to the Repairer an Assessment as to:
- (i) the scope and method of repairs to a Motor Vehicle; and/or
 - (ii) parts and materials proposed to be used to repair a Motor Vehicle; and/or
 - (iii) any other matter relating to the repair of a Motor Vehicle.
- (zz) **Repair Warranty** means any warranty an Insurer and Repairer may give to a Customer in relation to Repairs.
- (aaa) **Repairer** means any Person lawfully engaged in the business of effecting Repairs to Motor Vehicles in Australia.
- (bbb) **Repairer Representative Organisation** means the MTAA, any of its member or affiliated associations, or any other trade group or association representing Repairers.
- (ccc) **Respondent** means the person who receives the complaint or position put by the Initiator.
- (ddd) **Show Cause Notice** means a written notice given by the CAC to a Participant requesting the Participant to show cause within 20 Business Days of such notice as to why it should not be sanctioned under this Code.
- (eee) **Stakeholders** means those entities, organisations and associations that have a vested interest in the Industry and the Code, and includes:
- (i) the ACCC;
 - (ii) the Australian Small Business and Family Enterprise Ombudsman;
 - (iii) State and Territory Small Business Commissioners; and
 - (iv) the Australian Chamber of Commerce and Industry.

- (fff) **Sub-let Repairer** means a Person and/or entity, other than the Repairer, who carries out Repairs on a vehicle at the request of, or under contract with, the Insurer.
- (ggg) **Sub-let Repairs** means Repairs to be carried out by a Sub-let Repairer.

DRAFT FOR CONSULTATION

ANNEXURE C

Draft 2025 CAC Constitution & Charter

Constitution

Code Administration Committee Association Inc.

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CONSTITUTION
CODE ADMINISTRATION COMMITTEE ASSOCIATION INC.

1 Name

1.1 Code Administration Committee Association Inc.

The name of the Association is the Code Administration Committee Association Inc.

2 Definitions and Interpretation

2.1 Dictionary

In this Constitution, unless inconsistent with the context or subject matter or otherwise stated:

Act means the *Association Incorporation Act 2009* (NSW).

Association means the Code Administration Committee Association Inc.

Association Member means a member of the Association.

Association Membership means membership of the Association.

Board means the committee constituted under clause 7 of this Constitution, and in accordance with section 28 of the Act, for the purposes of managing the affairs of the Association.

Board Chair means the chair of the Board of the Association, who is also the CAC Chair.

Board Member means a member of the Board.

CAC or Code Administration Committee means the committee established pursuant to clause 5 to be responsible for administration, oversight and enforcement of the Code.

CAC Chair means the chair of the Code Administration Committee, who is also the Board Chair.

CAC Member means a member of the Code Administration Committee.

Charter means the charter of the CAC as set out in Schedule 1 or as amended pursuant to clause 5.4(b) from time to time.

Code means the Motor Vehicle Insurance and Repair Industry Code of Conduct dated [insert date] as amended in accordance with its terms from time to time.

Code Participant means each member of the ICA, the MTAA or a State or Territory member association of the MTAA.

Constitution means this document, being the Constitution of the Association.

Criteria means the prerequisites for Association Membership listed in clause 4.1(c)(i) and (ii).

Financial Year means the twelve months ending 30 June in any calendar year.

ICA means the Insurance Council of Australia Limited ABN 50 005 617 318.

ICA Board means the board of directors of the ICA.

Independent means a person who is not an Association Member or a director, officer, employee or agent of the ICA, MTAA, any Code Participant, any member of the ICA, any member of the MTAA or any Service Provider and is free from business or other relationships that could materially interfere with or could reasonably be perceived to materially interfere with the independent exercise of judgement.

MTAA means the Motor Trades Association of Australia ABN 66 008 643 561

MTAA Board means the board of directors of the MTAA.

Public Officer means the position of public officer of the Association filled by a person who is appointed pursuant to clause 10.1.

Register means the register of members of the Association.

Regulation means the *Association Incorporation Regulation 2016* (NSW).

Secretary means the person appointed by the CAC as its secretary pursuant to the Charter, who will also be the Board Secretary.

Service Provider means one or more service providers appointed by the Association or the CAC, in accordance with this Constitution and the Charter, to assist the Association or the CAC meet their obligations or carry out their activities.

2.2 References to an Act

A reference to any legislation or to any provision of any legislation includes any consolidation, amendment or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it.

2.3 Interpretation

In this Constitution:

- (a) a reference to a function includes a reference to a power, authority and duty;
- (b) a reference to the exercise of a function includes, if the function is a duty, a reference to the performance of the duty;
- (c) words importing the singular include the plural and vice versa, and words importing one gender include each gender; and
- (d) a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure to this Constitution and for the avoidance of doubt any schedule or annexure to the Constitution, forms part of this Constitution.

3 The Association

3.1 Objectives

The objectives of the Association are to:

- (a) promote the efficient operation of professional and competitive motor vehicle insurance and repair industries in Australia;
- (b) promote a cooperative relationship between repairers and insurers;
- (c) consider the interests of consumers;
- (d) promote the Code to insurers and repairers;
- (e) oversee, manage and monitor compliance with the Code;
- (f) oversee and manage the effective operation of dispute resolution processes and a national panel of mediators under the Code;
- (g) liaise with government and regulators regarding the subject matter of the Code;
- (h) oversee the continuing effectiveness of the Code and arrange for reviews of the Code within the timeframes set in the Code; and
- (i) amend and determine further objectives for the Association from time to time and update the Constitution and Charter as necessary.

4 Association Membership

4.1 Association Members

- (a) The Association will have a minimum of six Association Members at any one time, of which at least:
 - (i) three members must satisfy the Criteria listed in clause 4.1(c)(i); and
 - (ii) three members must satisfy the Criteria listed in clause 4.1(c)(ii),so that at all relevant times the Association Membership is equally represented by the interests of the repairers and insurers in the motor insurance industry.
- (b) A person is only eligible to be an Association Member if:
 - (i) the person is a natural person;
 - (ii) the person meets one of the Criteria; and
 - (A) the person has been nominated and approved to be an Association Member in accordance with clause 4.2; or
 - (B) the person was one of the individuals on whose behalf an application was made for the registration of the Association

under section 6(1)(a) of the Act.

- (c) A person satisfies the Criteria for Association Membership where they meet one of the following prerequisites:
 - (i) they have the support of the MTAA (as evidenced by written endorsement) to be nominated as an Association Member to represent the interests of motor repairers; or
 - (ii) they have the support of the ICA Board (as evidenced by written endorsement) to be nominated as an Association Member to represent the interests of the insurers in the motor insurance industry.
- (d) For the avoidance of doubt, a person may only satisfy one of the Criteria in clauses 4.1(c)(i) and 4.1(c)(ii) at the same time.

4.2 Nomination of new Association Membership

- (a) A person may only be nominated as an Association Member if they are eligible to be a member in accordance with clause 4.1(b).
- (b) The Board will approve a nomination for membership that complies with the requirements of clauses 4.1(a) and 4.2(a).

4.3 Association Membership

On approval of a nomination for membership, the Public Officer will enter the nominee's name in the Register and membership commences from the date the name is added to the Register.

4.4 Resignations

An Association Member may resign from the Association by giving the Board Chair not less than one month's prior notice effective from the first day of a calendar month.

4.5 Cessation of Membership

A person ceases to be a member of the Association immediately if the person:

- (a) dies;
- (b) resigns membership, upon that resignation becoming effective;
- (c) becomes bankrupt or makes any arrangement or composition with their creditors generally;
- (d) becomes mentally incapacitated;
- (e) is convicted of an offence involving fraud or dishonesty; or
- (f) no longer satisfies a relevant Criteria under either clause 4.1(c)(i) or clause 4.1(c)(ii) as a consequence of the support of the MTAA Board or ICA Board (as relevant) being withdrawn.

4.6 Membership entitlements not transferable

A right, privilege or obligation which a person has by reason of being an Association Member is not capable of being transferred or transmitted to another person, and terminates on cessation of the person's membership.

4.7 Register of Association Members

- (a) The Public Officer must maintain a register of Association Members, which must be open to inspection.
- (b) The Public Officer must record the date on which an Association Member ceases to be a member in the Register.

4.8 Liabilities of Association Members

An Association Member shall have no liability to contribute towards the payment of any debts and liabilities of the Association or the costs, charges and expenses of the winding up of the Association.

4.9 Policies and views of and disputes between Association Members

- (a) An Association Member is not prevented from adopting or expressing policies or views that differ from the policies or views of the Association by reason of their membership, provided that an Association Member does not attribute their policies or views to the Association, or act in a manner which is inconsistent with upholding the objectives of the Association, and the independence of the CAC and its members.
- (b) The Association Members will use their best endeavours to promptly resolve any dispute that may arise between them.

5 The Code Administration Committee

5.1 Establishment of a Code Administration Committee

A Code Administration Committee shall be constituted as a committee of the Association with the powers and obligations set out in the Charter.

5.2 Commencement

The CAC shall commence its operations on a date to be determined by resolution of the CAC.

5.3 Independence of CAC

The Association and each Association Member:

- (a) must not, except as expressly provided in this Constitution, intervene in the CAC's activities; and
- (b) will recognise, respect and support the independence of the CAC and its

members.

5.4 CAC Charter

- (a) The CAC will be responsible for the independent administration of the Code in accordance with the principles of its Charter.
- (b) The Association, after consultation with the CAC, the ICA and the MTAA, may amend the Charter including but not limited to the requirement to take into account changes affecting or made to the Code and any other matters relevant to the operation of the CAC.

5.5 CAC Annual Plan and Operating Budget

- (a) The annual plan and operating budget for the CAC, for each Financial Year, will be set by unanimous resolution of the Board.

6 Membership of the Code Administration Committee

6.1 Number of CAC Members

The Code Administration Committee shall have seven member, made up of:

- (a) six persons selected in accordance with clauses 6.2 to 6.5; and
- (b) an Independent CAC Chair.

6.2 CAC Members with motor insurance experience

Three of the CAC Members must:

- (a) have collectively broad, relevant experience and knowledge of the motor insurance sector in Australia and embody good governance practices of diversity and inclusion to strengthen their ability to discharge the duties and responsibilities of the CAC;
- (b) nominated in writing by the ICA Board; and
- (c) appointed by resolution of the Board.

6.3 CAC Members with motor repairer industry experience

Three of the CAC Members must:

- (a) have collectively broad, relevant experience and knowledge of the motor repair industry in Australia and embody good governance practices of diversity and inclusion to strengthen their ability to discharge the duties and responsibilities of the CAC;
- (b) nominated in writing by the MTAA Board; and
- (c) appointed by resolution of the Board.

6.4 Independent CAC Chair

The CAC Chair must be a person:

- (a) with relevant and broad experience in industry, commerce, law, public administration or government service;
- (b) who is Independent;
- (c) nominated in writing jointly by the MTAA Board and ICA Board; and
- (d) appointed by the Association.

6.5 CAC Member selection criteria

A CAC Member must not hold any of the following positions at the time of selection or while they are a member of the CAC:

- (a) an Association Member;
- (b) an employee of the ICA or the MTAA; or
- (c) a member of the MTAA Board or the ICA Board.

6.6 Appointment

CAC Members may only be appointed by a general meeting of Association Members.

6.7 Appointment of alternate CAC Members

An alternate to a CAC Member (other than the CAC Chair) may be appointed:

- (a) by a general meeting of Association Members provided the alternate satisfies the eligibility and selection criteria set out in clauses 6.2 to 6.5; or
- (b) in any other manner set out in the Charter.

A person appointed as an alternate may exercise the same powers as the CAC Member they are an alternate for, other than the power to nominate another alternate, and are subject to all the requirements applying to the office of that CAC Member.

6.8 Term

- (a) Each CAC Member will hold office for an initial period of three years.
- (b) Each CAC Member will be eligible for re-appointment to the CAC for up to one further term not exceeding three years.
- (c) A person may not be appointed as a CAC Member for more than two terms in aggregate, unless agreed by the Board.

6.9 Resignation from the CAC

- (a) A CAC Member may resign at any time by giving reasonable notice according to the circumstances, but in any case, not less than one month's notice, to the

Board Chair.

- (b) A person will immediately cease to be a CAC Member if:
 - (i) they die;
 - (ii) they resign from the CAC, upon that resignation becoming effective;
 - (iii) they become bankrupt or make any arrangement or composition with their creditors generally;
 - (iv) they become mentally incapacitated;
 - (v) they are convicted of an offence involving fraud or dishonesty;
 - (vi) they hold any of the positions in clause 6.5; or
 - (vii) their appointment is terminated by resolution of the Association, notice of which must be given to the CAC Chair (or, if the appointment of the CAC Chair is to be terminated, to the other CAC Members) not less than seven days before the termination is to take effect.

7 Association Board

7.1 Powers of the Board

Subject to the Act, Regulation and this Constitution, the Board:

- (a) will be responsible for controlling and managing the affairs of the Association;
- (b) may exercise all such functions as may be exercised by the Association, other than those functions that are required by this Constitution to be exercised by a general meeting of Association Members; and
- (c) has power to perform all such acts and do all such things as appear to the Board to be necessary or desirable for the proper management of the affairs of the Association,

however for the avoidance of doubt, the Board shall have no power to perform any of the functions reserved to the Code Administration Committee in the Charter.

7.2 Composition and membership of Board

- (a) The Board shall have three members as follows:
 - (i) Board Chair; and
 - (ii) the ICA Chief Executive Officer; and
 - (iii) the MTAA Chief Executive Officer.
- (b) Each member of the Board shall:
 - (i) be appointed by the Association Members; and

- (ii) immediately cease to be a Board Member as follows:
 - (A) for the Board Chair, when he or she ceases to hold the position of CAC Chair;
 - (B) for the ICA Chief Executive Officer, when he or she ceases to hold that role with the ICA; and
 - (C) for the MTAA Chief Executive Officer, when he or she ceases to hold that role with the MTAA.

7.3 Alternate Board Members

An alternate to a Board Member other than the Board Chair may be appointed by a resolution of the Board.

7.4 Board meetings and quorum

- (a) The Board must meet at least once in each period of twelve months at such place and time as the Board may determine.
- (b) Additional meetings of the Board may be convened by the Board Chair or by any member of the Board.
- (c) Oral or written notice of a meeting of the Board must be given by the Board Chair to each member of the Board at least forty-eight hours (or such other period as may be unanimously agreed on by the members of the Board) before the time appointed for the holding of the meeting.
- (d) Notice of a meeting given under subclause (c) must specify the general nature of the business to be transacted at the meeting and no business other than that business is to be transacted at the meeting, except business which the Board Members unanimously agree to treat as urgent business.
- (e) Three members of the Board constitute a quorum for the transaction of the business of a meeting of the Board.
- (f) No business is to be transacted by the Board unless a quorum is present and if, within half an hour of the time appointed for the meeting, a quorum is not present, the meeting is to be dissolved.
- (g) The Secretary will minute the proceedings and resolutions of all Board meetings, including the names of those present and in attendance.
- (h) Minutes of the Board will be circulated to each member of the Board and will be approved by the CAC Chair.

7.5 Voting and decisions

- (a) Questions arising at a meeting of the Board are to be determined by a simple majority of the votes of members of the Board present at the meeting.
- (b) Each member present at a meeting of the Board is entitled to one vote but, in

the event of an equality of votes on any question, the Board Chair or other person presiding may exercise a second or casting vote.

- (c) Subject to clause 7.7(e), the Board may act despite any vacancy on the Board.
- (d) Any act or thing done or suffered, or purporting to have been done or suffered, by the Board is valid and effectual despite any defect that may afterwards be discovered in the appointment or qualification of any member of the Board.

8 General Meetings of the Association

8.1 Annual general meetings

- (a) The Association must hold its first annual general meeting within eighteen months after its registration under the Act.
- (b) Thereafter, the Association must hold its annual general meetings within six months after the close of the Association's financial year.
- (c) The annual general meeting is, subject to the Act and clause 8.1(a) and 8.1(b), to be convened on such date and at such place and time as the Board thinks fit.
- (d) In addition to any other business which may be transacted at an annual general meeting, the business of an annual general meeting is to include the following:
 - (i) to confirm the minutes of the last preceding annual general meeting and of any special general meeting held since that meeting;
 - (ii) to receive from the Board reports on the activities of the Association during the last preceding financial year;
 - (iii) to elect office-bearers of the Association and Board Members, as required;
 - (iv) to receive and consider any financial statement or report required to be submitted to Association Members under the Act;
 - (v) to amend this Constitution including the Charter, as required, following a process of consultation with the CAC, the ICA and the MTAA in respect of the proposed amendments; and
 - (vi) for any other purpose arising from this Constitution.

8.2 Special general meetings

- (a) The Board may, whenever it thinks fit, convene a special general meeting of the Association.
- (b) The Board must, on the requisition in writing of at least fifty per cent of the total number of Association Members, convene a special general meeting of the Association.
- (c) A requisition of Association Members for a special general meeting:

- (i) must state the purpose or purposes of the meeting;
 - (ii) must be signed by the Association Members making the requisition;
 - (iii) must be lodged with the Public Officer; and
 - (iv) may consist of several documents in a similar form, each signed by one or more of the Association Members making the requisition.
- (d) If the Board fails to convene a special general meeting to be held within one month after that date on which a requisition of Association Members for the meeting is lodged with the Public Officer, any one or more of the Association Members who made the requisition may convene a special general meeting to be held not later than three months after that date.
- (e) A special general meeting convened by an Association Member or Members as referred to in subclause (c) must be convened as nearly as is practicable in the same manner as general meetings are convened by the Board.

8.3 Notice of meeting

The Board Chair shall send to each Association Member, not less than twenty one days (or such other period the Board Chair deems appropriate, which decision shall be conclusive) before the date fixed for the meeting of the Association, a notice stating:

- (a) the date and time of the meeting;
- (b) the location of the meeting;
- (c) if the meeting is to be held in two or more places pursuant to clause 8.12, the places at which the meeting will be held and the means by which the holding of the meeting in that manner will occur;
- (d) the nature of the business to be transacted at the meeting; and
- (e) specify whether the meeting is an annual general or special meeting in the notice convening it.

8.4 Notice of business at meeting

An Association Member who wishes to bring any business before a meeting of the Association of which they have received notice may, not less than fourteen days (or any other period the Board Chair deems appropriate, which decision shall be conclusive) prior to the date of the meeting, give notice of that business to the Board Chair. The Board Chair must include that business in the agenda for the relevant meeting.

8.5 Quorum

- (a) A quorum for a meeting of the Association shall be five Association Members.
- (b) No item of business is to be transacted at a general meeting unless a quorum is present during the time the meeting is considering that item.
- (c) If within half an hour of the appointed time for the commencement of a meeting

of the Association a quorum is not present, the meeting:

- (i) if convened at the requisition of Association Members, is to be dissolved; and
- (ii) in any other case, is to stand adjourned to the same day, the following week at the same time (unless another place is specified at the time of the adjournment by the person presiding at the meeting or communicated by written notice to the Association Members given before the day to which the meeting is adjourned) and at the same place.

8.6 Board Chair

- (a) The Board Chair shall preside over each meeting of the Association. If the Board Chair is not present, the Association Members shall choose a member of the Association present at the meeting to act as chair.
- (b) A notice that must be provided under this Constitution by an Association Member to the Board Chair must be provided to the Association Members if a Board Chair is not in office at the time that the notice must be provided.

8.7 Adjournment

- (a) The chairperson of a general meeting at which a quorum is present may, with the consent of the majority of Association Members present at the meeting, adjourn the meeting from time to time and place to place, but no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- (b) If a general meeting is adjourned for fourteen days or more, the Public Officer must give written or oral notice of the adjourned meeting to each Association Member stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.
- (c) Except as provided in subclauses (a) and (b), notice of an adjournment of a general meeting or of the business to be transacted at an adjourned meeting is not required to be given.

8.8 Voting generally on questions

- (a) Every question, other than a special resolution, arising at a meeting of the Association shall be determined, on a show of hands or as determined by the Board Chair, by a simple majority vote of attendees.
- (b) Each Association Member shall have one vote only on all questions arising at a meeting of the Association.
- (c) Proxy voting or postal ballot voting must not be undertaken at or in respect of a general meeting.

8.9 Voting on special resolutions

- (a) A special resolution may only be passed by the Association in accordance with section 39 of the Act where:
 - (i) Association Members are given at least twenty one days' notice before the date on which the meeting is to be held; and
 - (ii) is supported by at least seventy five percent of Association Members who, under the Constitution, are entitled to vote on the proposed resolution.

8.10 Minutes

- (a) The Secretary will minute the proceedings and resolutions of all Association meetings, including the names of those present and in attendance.
- (b) A declaration by the Board Chair that a resolution has been carried or lost, and an entry in the minute book of the Association to that effect, is evidence of the fact without proof of the number, proportion or composition of votes recorded in favour of or against that resolution.

8.11 Multiple meetings

A meeting of the Association may be constituted by separate meetings of Association Members held at the same time at different places (whether involving less than two Association Members at any one place and whether in person or by simultaneous linking together by telephone or other method of audio or audio visual or electronic communication) which will for the purposes of this Constitution be taken to constitute one meeting.

8.12 Written resolution

A resolution in writing signed by each Association Member entitled to vote on the resolution has the same effect and validity as a resolution passed at a duly convened meeting of the Association, and any such resolution may consist of several documents in like form each signed by one or more Association Members that together constitute the resolution.

9 Financial matters

9.1 Source of Funds

The funds of the Association:

- (a) shall be derived from the ICA and MTAA, and from such other sources as the Board may determine from time to time, which may include (without limitation) contributions from:
 - (i) members of the ICA and/or MTAA; or
 - (ii) activities undertaken by the CAC;
- (b) will, if contributed to by the ICA and MTAA, be contributed by the ICA and MTAA in equal proportions, unless the Board resolves unanimously to a

different basis; and

- (c) must be used for the benefit and operation of the Association and Code Administration Committee.

9.2 Fees and subscriptions

Association Members shall not be required to pay an annual or other fees in connection with their Association Membership.

9.3 Income and property of the Association

The income and property of the Association shall be applied solely towards promotion of the objectives of the Association.

9.4 Funds management

- (a) The Board Chair may take action in accordance with a resolution of the Board to operate accounts.
- (b) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments relating to the funds of the Association must be signed by the Board Chair and either a Board Member or the Public Officer.

9.5 Distribution of assets

In the event of a winding-up of the Association, any remainder of its net assets after discharge of all its just debts and other legal and moral obligations, shall not be distributed to Association Members but shall be distributed to some other organisation that has similar restrictions upon distribution of assets to its members as may be approved by the Association Members.

10 Miscellaneous Matters

10.1 Public Officer

The Board shall appoint and be entitled to dismiss the Public Officer of the Association for the purposes of the Act from time to time.

10.2 Custody of books

The Public Officer must keep in his or her custody, or under his or her control, all records, books and other documents relating to the Association.

10.3 Inspection of books

The records, books and other documents of the Association must be open to inspection, free of charge, by an Association Member at any reasonable hour.

11 Notices

11.1 Noticerequirements

All notices given for the purposes of this Constitution must be:

- (a) in writing; and
- (b) delivered by electronic mail or prepaid ordinary post.

12 Financial Year

12.1 Financial year

The financial year of the Association is:

- (a) the period of time commencing on the date of incorporation of the Association and ending on the following 30 June; and
- (b) each period of twelve months after the expiration of the previous financial year of the Association, commencing on 1 July and ending on the following 30 June.

13 Amendments to Code

13.1 Amendment of Code

- (a) If in the reasonable opinion of the CAC any clause of the Code does not comply with or is unlawful under any law, then the CAC may amend the Code to comply with the law on giving 30 days' notice of the change to the Board and Association Members.
- (b) Subject to clause 13.1(a), the Code may only be amended by a special resolution passed by Association Members and following consultation with the CAC, Board, MTAA and ICA with respect to the proposed amendments.

14 Alteration to Constitution

14.1 Alteration to Constitution

This Constitution may only be altered by a special resolution passed by Association Members and following consultation with the CAC, Board, MTAA and ICA with respect to the proposed amendments.

Schedule 1 - The Code Administration Committee Charter

The Code Administration Committee (**CAC**) is a committee of the Code Administration Committee Association Inc. (**Association**).

The Code is administered by the CAC which is an independent body. The CAC is made up of three insurer representatives, three repairer representatives and an independent chair. These seven CAC Members are appointed by the Association in accordance with its Constitution.

1 Functions and responsibilities of the Code Administration Committee

1.1 CAC function

Consistent with the Code and the Constitution, the CAC will be responsible for the independent administration of the Code and will have the functions, powers and responsibilities set out in the Code.

1.2 CAC responsibilities

The CAC is responsible for:

- (a) providing stewardship of the Code by promoting the Code and helping motor insurers and vehicle repairers to understand and comply with the Code;
- (b) monitoring compliance with the Code and identifying areas for improvement in insurer and motor repair practices;
- (c) determining when contraventions of the Code have occurred, applying appropriate sanctions and referring contraventions to the relevant government regulator;
- (d) providing a point of contact for Code enquiries and providing guidance on interpretation;
- (e) preparing an annual plan and operating budget and, subject to Board approval, carrying out its activities and responsibilities in compliance with those documents;
- (f) developing a protocol for the appointment, establishment and operation of a national panel of mediators;
- (g) producing a publicly available annual report on the Code which includes:
 - (i) its activities during the Financial Year;
 - (ii) an assessment of insurer and repairer compliance with the Code;
 - (iii) the number and type of applications for mediation under the Code;
 - (iv) the number and types of complaints and contraventions of the Code; and
 - (v) any other matters the CAC considers relevant to the Code.
- (h) meeting with Code stakeholders to promote the Code and engaging on issues of concern;

- (i) considering the interests of consumers;
- (j) monitoring the effectiveness of the Code and leading periodic reviews of the Code within the timeframes set in the Code;
- (k) liaising with the ICA and MTAA on relevant matters; and
- (l) in all respects, acting in good faith and in the best interests of the motor vehicle insurance and repair industries.

1.3 CAC to monitor compliance

The CAC is also responsible for monitoring and enforcing compliance with the Code through:

- (a) investigations, analysis of data, analysis of evidence and stakeholder engagement;
- (b) receiving, investigating and making decisions about alleged breaches, giving Code Participants an opportunity to respond to any allegations that they have breached the Code through a show cause notice and providing a written notice of determination;
- (c) agreeing with Code Participants on any corrective measures to implement within an agreed timeframe; and
- (d) applying appropriate sanctions for contraventions, where appropriate and in accordance with the Code, which may include (without limitation):
 - (i) a written warning;
 - (ii) a suspension of rights as a Code Participant, including with respect to their right to lodge a dispute pursuant to the Code;
 - (iii) expelling the Code Participant;
 - (iv) requiring the Code Participant to pay a sum of money to the Association or otherwise; and/or
 - (v) referring the contravention to a relevant government or regulatory body.

1.4 Annual plan and operating budget

The CAC will:

- (a) no later than three months before the end of each Financial Year, provide the Board with a plan which sets out the CAC's proposed activities for the following Financial Year and an operating budget which sets out its expected costs of those activities, the CAC's administration, oversight and enforcement of the Code and the CAC Chair;
- (b) will liaise with the Board regarding its proposed plan and operating budget, including revising aspects of the documents, as requested by the Board; and
- (c) operate in compliance with the plan and operating budget approved by the Board for each Financial Year.

1.5 Advice to Association

The CAC is also required to provide advice to the Association on:

- (a) financial matters associated with its operating budget and the activities, or proposed activities, of the CAC;
- (b) amendments that in the CAC's view, should be made to the Constitution or this Charter to facilitate the objectives of the Code; and
- (c) other matters as determined by the Association or the CAC from time to time.

1.6 Responsibilities of CAC Members

- (a) Each CAC Member will do all things reasonably necessary to ensure that the duties and responsibilities of the CAC as specified in this Charter are effectively discharged.
- (b) Each CAC Member has a duty to comply with this Charter and the Constitution.

1.7 Secretariat

The CAC shall appoint the Public Officer, a Service Provider or such other person as it considers appropriate as its Secretary from time to time.

1.8 Outsourcing of CAC functions

- (a) Consistent with the Constitution and Charter, the CAC may engage one or more Service Providers to assist it with meeting its responsibilities under this Charter.
- (b) The CAC will not outsource its power to impose a sanction in relation to Code non-compliance.
- (c) On the request of the CAC, the Board will grant approval for the Association to enter into an outsourcing agreement with a Service Provider.
- (d) For the avoidance of doubt, the CAC may outsource its secretariat function to a Service Provider.
- (e) Any reports of the CAC will be approved by the CAC before being released including where the preparation of a report has been outsourced.
- (f) Any publication of the CAC will be approved by the CAC before being made public.

2 Meeting of CAC Members

2.1 Meetings and proceedings of CAC

- (a) Subject to the Code, the CAC will meet, discharge its responsibilities and convene, adjourn and otherwise regulate its meetings and proceedings in such manner as it may from time to time determine.
- (b) The CAC will meet at least four times in each period of twelve months.

- (c) No person is entitled to attend a CAC meeting unless that person is:
 - (i) a member of the CAC, or the CAC Member's alternate;
 - (ii) the Public Officer, the administration manager or the secretariat of the Association; or
 - (iii) a person invited to attend the meeting by the CAC Chair, including but not limited to a Service Provider or a person providing advice to the CAC in accordance with clause 4.1(b) or 9.2.

2.2 Quorum

A quorum for a meeting of the CAC will be four CAC Members (or alternates), of which two are members appointed under clause 6.2 of the Constitution (or their alternates) and two are members appointed under clause 6.3 of the Constitution (or their alternates), and the CAC Chair who comprise the CAC at the time of the meeting. A duly convened CAC meeting at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the CAC.

2.3 CAC Chair to preside

The CAC Chair will preside over each meeting of the CAC.

2.4 Notice of meetings

- (a) Subject to this clause 2.4, a CAC meeting may be called by a CAC Member giving to every other CAC Member:
 - (i) notice confirming the venue, time and date of the meeting no fewer than ten business days prior to the meeting; and
 - (ii) an agenda of items to be discussed no fewer than five business days prior to the meeting.
- (b) A CAC Member may call a CAC meeting in relation to an urgent matter by giving to every other CAC Member prior notice of no fewer than two business days confirming the venue, time and date together with an agenda of items to be discussed.
- (c) A notice or agenda may be given by mail (electronic or otherwise), personal delivery or facsimile transmission to the usual place of business or residence of the member or at any other address given to the Secretary of the CAC by the member or by any technology agreed by all the members.
- (d) A failure to meet this clause 2.4 does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing if, at a meeting at which all members are present, the CAC resolves unanimously to excuse the failure to meet this clause 2.4.

2.5 Minutes

- (a) The Secretary will minute the proceedings and resolutions of all CAC meetings,

including the names of those present and in attendance.

- (b) Minutes of CAC meetings will be circulated to each member of the CAC and will be approved by the CAC Chair.

2.6 Meetings by Technology

- (a) Each member of the CAC consents to the use of each of the following technologies for holding a meeting of the CAC:
 - (i) video;
 - (ii) telephone;
 - (iii) electronic mail;
 - (iv) any other technology which permits each member of the CAC to communicate with every other member; or
 - (v) any combination of these technologies.
- (b) Where the members of the CAC are not all in attendance at one place and are holding a CAC meeting using technology and each member can communicate with the other members:
 - (i) the participating members are, for the purpose of the Code and this Charter concerning CAC meetings, taken to be assembled together at a CAC meeting and to be present at that CAC meeting; and
 - (ii) all proceedings of those members conducted in that manner are as valid and effective as if conducted at a CAC meeting at which all of them were physically present in the one location.

2.7 Voting

- (a) Each Member has one vote.
- (b) Every question arising at a meeting will be determined, on a show of hands or as determined by the CAC Chair, by a simple majority.
- (c) In the event of an equality of votes, the CAC Chair may exercise a second or casting vote.

2.8 Delegation of authority by the CAC

The CAC may from time to time, by written resolution, assign to or vest in the CAC Chair powers and responsibilities of the CAC. A copy of the resolution of the CAC as to the authority of the CAC Chair in respect of any matter shall be accepted as conclusive.

3 Material Personal Interests and Conflicts

3.1 Personal interest in a matter being considered at a CAC meeting

If a CAC Member has a material personal interest in relation to a matter that is being

considered at a meeting of the CAC they will not:

- (a) be present while the matter is being considered at the meeting; or
- (b) vote on the matter, unless:
 - (i) the CAC Member has notified the other CAC Members and the CAC Chair of their material personal interest;
 - (ii) the other CAC Members and the CAC Chair are satisfied that the material personal interest should not disqualify the CAC Member from voting on the matter;
 - (iii) the nature of the personal material interest and the circumstances in which it was disclosed have been recorded in a minute; and
 - (iv) the minute, relevant determination or other reports on the matter are made available for the inspection on request by any Code Participant affected.

For the avoidance of doubt, a material personal interest for the purposes of this clause 3.1 does not arise solely by reason of a CAC Member's previous employment with a Code Participant, or by reason of the insurance company of which a CAC Member is a customer.

3.2 General Law obligations

The requirements in clause 3.1 have effect in addition to and not in derogation of any general law about conflicts of interest or conflicts of duties.

3.3 Appointment of alternate CAC Members

- (a) From time to time, it may be necessary for an alternate to a CAC Member to attend and vote at CAC meetings when a CAC Member is unable to do so because of illness, absence from Australia, conflicts of interest or conflicts of duties, a material personal interest or because of other significant circumstances.
- (b) In addition to the process in the Constitution for appointing alternates to a CAC Member, an alternate may be appointed for a specified meeting in accordance with clause 3.3(c).
- (c) The process for appointing an alternate for a specified meeting requires that:
 - (i) any CAC Member, other than the CAC Chair, may nominate an alternate to take part in a specified meeting provided that the nominee has the relevant broad experience and knowledge as would be required if they were appointed a CAC Member and cannot be:
 1. an Association Member;
 2. an employee of the ICA or the MTAA; or
 3. a member of the MTAA Board or the ICA Board; and

- (ii) the nominee's appointment is confirmed in writing before the meeting which the alternate is to attend, by:
 - 1. each of the other CAC Members; and
 - 2. the Board Chair.
- (d) A person appointed as an alternate may exercise the same powers as their nominator, other than the power to nominate another alternate, and are subject to all the requirements applying to their nominator at the meeting they attend and where their nominator is not present.

4 Code Compliance

4.1 Monitoring and information gathering

The CAC is responsible for monitoring compliance with the Code in the manner set out in the Code. Without limiting the CAC's Code functions and powers, the CAC may for the purposes of monitoring compliance with the Code:

- (a) make reasonable requests for a Code Participant and/or a Service Provider to provide access to information, documents and systems, which the CAC considers necessary to discharge its functions;
- (b) seek independent professional legal, accounting or other advice;
- (c) request Code Participants to lodge an annual report or data return regarding their compliance with the Code and/or repair disputes; and
- (d) enter into appropriate arrangements with a Service Provider, the ICA or the MTAA for the purpose of facilitating:
 - (i) information exchange relevant to the CAC's functions; and
 - (ii) referrals or reports to the CAC of an allegation that a Code Participant has breached the Code.

4.2 Investigations undertaken by the CAC

- (a) The CAC may commence an investigation of Code compliance in the following ways:
 - (i) in response to an allegation that a Code Participant may have breached the Code; or
 - (ii) in response to a referral or report from a Service Provider, the ICA or the MTAA that a Code Participant may have breached the Code; or
 - (iii) as an outcome of the CAC's monitoring and information gathering, if the CAC has a reason to suspect that a Code Participant may have breached the Code.
- (b) The CAC may develop a policy on how it will exercise its discretion to consider and investigate allegations of Code breaches pursuant to clause 4.2(a). Any such

policy must be approved by the Board.

4.3 Process for considering alleged Code breaches

- (a) Subject to clause 4.2, the CAC may, within a reasonable time of receiving a report of an alleged breach, consider that allegation in accordance with this Charter (including with respect to confidentiality under clause 9.1) and any operating procedures determined by the CAC and approved by the Board in accordance with clause 8.1.
- (b) Where the CAC investigates an alleged Code breach, the CAC will:
 - (i) ensure a Code Participant, or Code Participants, to whom an alleged breach or investigation relates is, or are, accorded procedural fairness throughout the course of the CAC's consideration of the alleged breach or conduct of the investigation;
 - (ii) ensure, as far as practicable, that:
 - (A) a Code Participant's business is not disrupted unduly; and
 - (B) a Code Participant's customers are not inconvenienced unduly; and
 - (iii) act reasonably in all the circumstances.

4.4 Notice of decision and sanctions

- (a) Following an investigation in accordance with clauses 4.2 and 4.3, the CAC may make a decision in respect of the alleged breach and apply any sanction available under and in accordance with the terms of the Code.
- (b) A decision made by the CAC will:
 - (i) be in writing;
 - (ii) include a brief description of the allegation;
 - (iii) include a statement that in the CAC's view the reported allegation was proven in whole or in part or was unfounded;
 - (iv) if applicable, state any finding by the CAC that the Code Participant is responsible for serious or systemic non-compliance with the Code;
 - (v) include reasons for the conclusions and findings of the CAC;
 - (vi) specify any sanction applied to the Code Participant; and
 - (vii) be provided to the Code Participant and the Board.

5 Dispute Resolution

5.1 Repair disputes

The CAC will:

- (a) administer and monitor the operation of the Code's repair dispute resolution process and register;
- (b) receive and register notices of repair disputes lodged by Code Participants through the Code website;
- (c) receive and consider notices from Code Participants calling for [expert determination] of repair disputes, in which case the CAC will:
 - (i) appoint an [independent expert];
 - (ii) provide relevant documents to the [independent expert]; and
 - (iii) notify Code Participants of their respective share of costs for the [expert determination];
- (d) maintain a list of [independent experts]; and
- (e) oversee compliance by Code Participants with the repair dispute resolution process.

5.2 General disputes

The CAC will:

- (a) administer and monitor the operation of the Code's general dispute resolution process;
- (b) receive and consider requests from Code Participants to select a mediator to mediate a general dispute, in which case the CAC will appoint a mediator;
- (c) maintain a list of mediation providers; and
- (d) oversee compliance by Code Participants with the general dispute resolution process.

6 Complaints concerning CAC

6.1 Complaints

- (a) The CAC Chair will consider and investigate any complaint that the CAC has not acted in accordance with the Code or this Charter received by the CAC or referred to it by the ICA or the MTAA.
- (b) The CAC Chair will make recommendations to the CAC in respect of what, if any, steps should be taken in respect of the complaint.
- (c) If the CAC Chair believes that a complaint raises issues which involve the Chair

or a CAC Member in a conflict of interest, then the CAC Chair may appoint an Independent person to consider and investigate and make recommendations to the CAC in respect of the subject matter of the complaint.

- (d) The CAC will advise a complainant of its determination in relation to any complaint.

7 Reporting by CAC

7.1 Annual Report

- (a) The CAC will prepare an Annual Report each Financial Year, for the year to 30 June, on the following matters:
 - (i) its activities during the Financial Year;
 - (ii) an assessment of insurer and repairer compliance with the Code;
 - (iii) the number and type of applications for mediation under the Code;
 - (iv) the number and types of complaints and contraventions of the Code; and
 - (v) any other matters the CAC considers relevant to the Code,in a form and content considered appropriate by the CAC.
- (b) With respect to the content referred to in clause 7.1(a), the CAC may identify Code Participants or provide information on a de-identified basis as it considers appropriate.
- (c) The CAC shall give its Annual Report to the ICA Board and the MTAA Board, and publish it, by 31 December each year.

7.2 Collection of information for Annual Report

The CAC will, for each period for which it will prepare an Annual Report, collect and record data required for the purposes of preparing the report.

8 Policies, guidelines, reporting forms and operating procedures

8.1 Development of reporting forms and operating procedures

- (a) The CAC may develop:
 - (i) policies and guidelines on the administration of the Code;
 - (ii) compliance reporting and other forms; and
 - (iii) operating procedures related to the activities of the CAC and/or a Service Provider (if relevant);that are consistent with this Charter and the Code.

- (b) In conjunction with the ICA and MTAA, the CAC will consult with Code Participants in developing these policies, guidelines, reporting forms and operating procedures. The CAC may also consult with other organisations and individuals with an interest in the Code, as the CAC sees fit.
- (c) All material referred to in clause 8.1 (a) must be approved by the Board.

9 General principles and procedures

9.1 Confidentiality

- (a) In this Charter, "*confidential information*" means all technical, commercial and other confidential information and materials of a Code Participant, consumer or small business and includes any information or material that discloses or relates to:
 - (i) a Code Participant's compliance or non-compliance with the Code;
 - (ii) an actual or alleged breach of the Code;
 - (iii) commercial, financial or legal affairs including but not limited to pricing policies, costing information, supplier lists and customer lists;
 - (iv) a matter to which an obligation of confidence applies under contract or a privacy law; and
 - (v) any other information or material which is of a confidential or sensitive nature, is marked or denoted as being confidential or which a reasonable person to whom that information or material is disclosed, or to whose knowledge that information or material otherwise comes, would consider confidential.
- (b) Subject to clause 9.1(c), a person referred to in clause 2.1(c) will not disclose or use for a purpose other than contemplated by this Charter or the Code, any confidential information supplied to it in connection with the conduct of the business of the CAC.
- (c) The CAC may disclose any confidential information:
 - (i) within the CAC where that is reasonably required for the purpose of the CAC exercising its functions, powers and responsibilities, under the Code and this Charter;
 - (ii) to any person to whom disclosure of confidential information is required by law;
 - (iii) in response to a request for that confidential information from ASIC or another enforcement agency;
 - (iv) under corresponding obligations of confidence as imposed by this clause 9.1 to:
 - (A) a person retained to provide advice in accordance with clause

4.1(b) or clause 9.2, where the CAC determines that such disclosure is reasonably required for the purpose of the CAC exercising its functions, powers and responsibilities, under the Code or this Charter; and

(B) to ASIC or another enforcement agency, the ICA, the MTAA, a Service Provider, or another person, where the CAC determines that such disclosure is reasonably necessary for the purpose of investigating a Code Participant's compliance with the Code; or

(v) with the prior written consent of the Code Participant.

9.2 External expertise

In discharging its functions, the CAC may consult such external parties as the CAC thinks appropriate, provided that the CAC takes reasonable steps to ensure that any such external parties also comply with the requirements of this Charter where applicable.

9.3 Authority to give oral or written public statements

The CAC, and each CAC Member, will not make public statements on behalf of the Association, except:

- (a) as contained in the Annual Report; or
- (b) as required in the performance of its functions and responsibilities as set out in clause 1 of this Charter.

10 Definitions

In this Charter, unless inconsistent with the context or subject matter or otherwise stated:

Annual Report means the report published by the Code Administration Committee.

ASIC means the Australian Securities and Investments Commission or any replacement or successor government agency.

Association means the Code Administration Committee Association Inc.

Association Member means a member of the Association.

CAC or Code Administration Committee means the committee established pursuant to clause 5 of the Association's Constitution to be responsible for the administration, oversight and enforcement of the Code.

CAC Chair means the chair of the Code Administration Committee.

CAC Member means a member of the Code Administration Committee.

Code means the Motor Vehicle Insurance and Repair Industry Code of Conduct dated [insert date] as amended in accordance with its terms from time to time.

Code Participant means each member of the ICA, the MTAA or a State or Territory member association of the MTAA.

Confidential information has the meaning set out in clause 9.1(a) of this Charter.

Constitution means the Constitution of the Association.

ICA means the Insurance Council of Australia Limited ABN 50 005 617 318.

ICA Board means the board of directors of the ICA.

Independent means a person who is not an Association Member or a director, officer, employee or agent of the ICA, MTAA, any Code Participant, any member of the ICA, any member of the MTAA or any Service Provider and is free from business or other relationships that could materially interfere with or could reasonably be perceived to materially interfere with the independent exercise of judgement.

MTAA means the Motor Trades Association of Australia ABN 66 008 643 561.

MTAA Board means the board of directors of the MTAA.

Service Provider means one or more service providers appointed by the Association or the CAC, in accordance with the Constitution and this Charter, to assist the Association or the CAC meet their obligations or carry out their activities.

Secretary means the person appointed by the CAC as its secretary pursuant to clause 1.6 of this Charter.

DRAFT FOR CONSULTATION

ANNEXURE D

Explanatory Memorandum to the draft 2025 MVIRI Code of Conduct

Explanatory Memorandum: Draft Motor Vehicle Insurance and Repair Industry (MVIRI) Code of Conduct

History

The MVIRI Code of Conduct (the Code) was first introduced in 2006 to manage the relationship between the insurance and body repair industries. Over the past 20 years, the Code has been reviewed and updated multiple times. The most recent changes occurred in 2017, introducing the current dispute resolution process and a website to help the Code Administration Committee (CAC) oversee the Code.

Since its introduction, both the insurance and body repair industries have experienced significant changes. These include advancements in vehicle technology, shifts in the types of repairs needed, and changes in how businesses operate. Additionally, some Australian states, such as New South Wales and South Australia, have passed laws making the Code mandatory for insurers and repair businesses operating in those regions.

To keep the Code relevant in this evolving environment—especially given new legislative requirements and the CAC’s responsibilities under the Code—the CAC launched an external review of the Code in 2022.

a) Terms of Reference

The initial part of this process was the establishment of the Terms of Reference for the external review. The Terms of Reference identified five (5) key areas for the review to consider these were:

1. Effectiveness of the Dispute Resolution process under the Code
2. Awareness and Accessibility of the Code
3. Compliance with the Code
4. Governance of the Code and the CAC
5. Other issues pertinent to the effective governance and operation of the Code. These were identified as:
 - a. The Changing regulatory environment
 - b. Impact of new technology
 - c. Fee-based dispute and claims representation.

The CAC undertook an expression of interest process to select the independent reviewer. Following this process Dr Michael Schaper was selected to undertake the review.

b) Dr Schaper review and report

Dr Schaper was engaged and commenced the work on the review and report in late 2022. This work involved engagement with stakeholders to obtain information and feedback on the operation of the Code with particular reference to the items identified in the Terms of Reference.

The industry feedback was obtained from the stakeholders under the Code being the Insurance Council of Australia (ICA) and the Motor Trades Association of Australia (MTAA) and their constituent members.

At the conclusion of this feedback Dr Schaper provided the CAC with a finalised report in April 2023. The report identified fifteen (15) recommendations in relation to the language, operation and implementation of an updated Code of Conduct. The recommendations were:

1. Clarify and strengthen provisions relating to dispute resolution
2. Update the Code's language, format and presentation
3. Undertake greater public promotion of the Code
4. Work more closely with regulators
5. Update the Code website, URL and contents
6. Introduce sanctions for breaches of the Code
7. Appoint an independent CAC Chair and Deputy Chair
8. Clarify CAC governance, membership voting and training
9. Incorporate the CAC as a formal legal entity
10. Better resource the CAC
11. Codify practices relating to the use of artificial intelligence
12. Review educational requirements
13. A greater consumer focus
14. Clarify the role of third-party representatives
15. Change the frequency and focus of future Code Reviews.

c) Assessment and Implementation of Recommendations by CAC

Following receipt of the report from Dr Schaper the CAC undertook a process of evaluating each of the recommendations as provided by Dr Schaper. This process involved an analysis of the monetary impacts of the recommendation, as well as an analysis of how each recommendation would apply within the Insurance and Body Repair industries and any existing regulatory and legislative regimes covering these industries.

As a result of this process, the CAC has undertaken a rewrite of the Code of Conduct and drafting of a new constitution and charter of the CAC, with assistance of legal firms MST Lawyers and McCabes Lawyers.

The CAC has now received these documents to which industry consultation will provide further feedback and insights for the CAC to consider prior to the finalisation of the New Code and Governance Body to oversee the New Code.

Key Issues addressed within the New Code

This explanatory memorandum, whilst not covering all aspects of the New Code, seeks to outline the key issues addressed in the New Code as against the existing Code of Conduct.

1. Language

The New Code aims to address the vague and unclear language in the current Code of Conduct. Different participants in the Insurance and Body Repair Industries have interpreted the language in various ways, which is understandable given their different perspectives. However, this has caused unnecessary disputes, delays, and inefficiencies for both insurers and repair businesses. The New Code aims to reduce disputes caused by confusion and differing interpretations to ensure that cars are repaired efficiently for motor insurance customers.

The New Code now includes definitions to make things clearer and help participants understand when a dispute arises and when the Code doesn't apply to certain practices or operations. The format has been simplified, and confusion caused by multiple cross-references has been greatly reduced.

2. Estimation and Assessment Processes and Timeframes

The current Code does not set timelines for the Estimation and Assessment process. The New Code provides clear timelines for this process. Whilst the Code cannot cover off on all scenarios involved in a repair under an insurance claim, the clarity built into the New Code will provide certainty for industry participants on how Estimations and Assessments are to be undertaken. This will also assist industry participants to understand when a dispute can be validly raised under the New Code.

The New Code retains the need for Estimators and Assessors to be appropriately skilled. However, in line with skill requirements of a rapidly evolving motor repair industry, specific requirements have been updated.

3. Dispute Resolution Process

The current Code provides a process for the handling of disputes between an Insurance Company and a Body Repair Business. The CAC recognises concerns that the process is both lengthy and ill-defined in how it functions, offering no certainty or final resolution to the industry participants as to the outcome of any dispute.

Consultation question – dispute timeframes:

How long should be allowed for the insurer-repairer to resolve a dispute before it is allowed to proceed to expert adjudication or mediation?

To address these shortcomings, the New Code introduces two (2) distinct types of Disputes: “Repair Disputes” and “General Disputes”. The process for each type of dispute is different.

For Repair Disputes, the New Code emphasises the need for a cost-effective, efficient, and binding resolution. It establishes clear timelines to streamline the process and introduces an independent adjudicator to make final, enforceable decisions. This approach provides the certainty and closure that the current system lacks.

Consultation question – adjudicators:

What should the appropriate skill sets, experience and attributes of an adjudicator be?

For General Disputes, the New Code offers a mediation process to help parties resolve their issues. Specific timeframes are included in the initial stages to ensure prompt progress.

These changes aim to create a more effective and reliable dispute resolution system for all industry participants.

4. Governance

The Code is currently jointly governed by the Insurance Council of Australia and Motor Trades Association of Australia through an informal structure. Key features of this structure are:

- a) The Committee has equal representation on behalf of the stakeholders, being the ICA and MTAA. Three (3) representatives from each stakeholder are appointed to the Committee.
- b) The decision making by the Committee is on a consensus model. In other words, unless all members of the Committee agree on an issue or resolution then no decision is made.
- c) The Committee is to produce an Annual Report which is limited in the scope of the matters which are to be covered.
- d) The Committee is required to monitor compliance of the Code and does have authority to refer alleged breaches of the Code to appropriate government regulators. However, The Committee has no authority to impose any form of fine, penalty, sanction or other pecuniary imposition upon parties who are in breach of the Code.
- e) The Committee is not a separate legal entity on which the normal rules of governance would apply.

The New Code seeks to address a number of perceived shortcomings in the structure and operation of the Committee. In particular, the New Code sets out that:

1. The New Governing Body will be an incorporated entity which will have jurisdiction across Australia.
2. The New Governing Body will have a Board and separate operation Committee which is proposed to retain the name of Code Administration Committee.
3. The structure of the Board and Committee are changed to incorporate the appointment of an Independent Chairperson to both the Committee and the Board.
4. The New body will provide annual reports to cover all aspects of the governance of the New Code as well as the business plans and Government engagement by the Committee on behalf of the Insurance and Body Repair Industries.
5. The Committee is empowered to impose sanctions, fines and other manners of enforcement upon parties who are in breach of the Code. These will be determined based on the nature and extent of the breaches, as well as the size and resources of the participant in breach of the New Code.

Consultation question – sanctions:

What should Code sanctions be and/or how much should they be for insurers and repairers?

Industry Consultation

The CAC will now undertake a process of industry consultation and feedback commencing **5 March 2025 and concluding on 29 April 2025**.

The CAC welcomes submissions from all industry stakeholders. Any submission or other communication received by the CAC will be treated as Commercial in Confidence and not disclosed to any person or entity outside of the CAC. Industry Participants are invited to submit submissions on the consultation website www.mviricode.com.au or by email to codereview@mviricode.com.au. Confidential submissions can also be made to the MTAA info@mtaa.com.au or the ICA administration@insurancecouncil.com.au.

Mr George Manos

Chairperson

Code Administration Committee



VACC
You're in good hands

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