

VACC Submission

Enforceability of financial services industry codes

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About VACC

The Victorian Automobile Chamber of Commerce (VACC) is Victoria's peak automotive industry association, representing the interests of more than 5,300 members in over 20 retail automotive sectors that employ over 50,000 Victorians.

VACC 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), and automotive dismantlers and recyclers.

The VACC is also an active member of the Motor Trades Association of Australia (MTAA) and contributes significantly to the national policy debate through Australia's peak national automotive association.

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The Victorian Automobile Chamber of Commerce (VACC) welcomes the opportunity to comment on Treasury's Consultation Paper into the *Enforceability of Financial Services Industry Codes*.

VACC believes industry codes are essential in promoting best practice and raising industry standards, and there is a place for both mandated and voluntary industry codes as acknowledged by Commissioner Hayne's report.

Motor Vehicle Insurance and Repair Industry Code of Conduct

An industry code of key importance to the insurance industry, smash repair industry and consumers is the **Motor Vehicle Insurance and Repair Industry Code of Conduct** (the Code).

The Code was established in June 2006 as a national voluntary code. The Code's purpose is to "promote transparent, informed, effective and cooperative relationships between smash repairers and insurance companies on mutual respect and open communication." Currently, there are 32 insurance companies representing most major motor vehicle insurance participants, along with over 2,000 smash repair businesses that are signatories to the Code.

In 2006, the New South Wales Government legislated to mandate compliance with the Code for insurers and the smash repair industry. New South Wales remains the only state to have mandated the Code. All car insurers and smash repairers in NSW are bound by the Code and its subsequent determination orders. In other states and territories, the Code is voluntary, so only signed parties are bound by the Code and its determination orders.

Currently, confusion among car insurers and smash repairers as to the rights, responsibilities and obligations of parties under the Code has led to serious, systemic conflict at a national level.

Furthermore, in recent years, the smash repair industry has suffered considerable dislocation and financial loss from insurance companies incorporating vehicle smash repair activities within their business operations. This has substantially reduced competition within the smash repair market.

Mandating the Code

In accordance with Recommendation 1.15 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, VACC believes there is considerable merit in legally empowering the Australian Securities and Investments Commission (ASIC) to approve a nationally mandated Motor Vehicle Insurance and Repair Industry Code of Conduct, with enforceable provisions.

A nationally mandated Motor Vehicle Insurance and Repair Industry Code of Conduct that is binding for all car insurers and smash repairers, would improve its efficacy and reduce the incidence and threat of disputes, thus helping to stabilise a fragile, smash repair industry.

There is also a significant benefit to consumers in having ASIC approve and enforce a national mandated Motor Vehicle Insurance and Repair Industry Code of Conduct. These consumer benefits include the right of consumers to:

- receive transparent, fair and reasonable smash repair estimates, insurance assessment calculations and cash settlements
- select a smash repairer of their choice

Choice of Repairer for Consumers

In the event of an accident claim, motor vehicle insurance policies have always provided a choice of repairer for the consumer; this has been a consumer right for decades. Traditionally, this right has been disclosed in the insurer's Product Disclosure Statement (PDS), at the point of sale or during a claim. Choice of repairer allows the consumer to nominate their own vehicle repairer, who meets their expectations concerning the quality of repairs, price and other requirements.

Recently, insurers have removed this consumer benefit from the PDS. This means that in the event of an accident claim, damaged vehicles are sent directly to the insurer's own preferred network of repairers, bypassing consumer approval. The insurer network of repairers undertakes repair work to a standard average cost and quality of repairs, often utilising non-genuine branded parts, regardless of the type of vehicle involved. Essentially, removing consumer choice of repairer is an insurer cost cutting strategy, using a repair network which is vertically integrated within the business operations of insurance companies.

Many consumers are unaware that the right to select a repairer of their choice has been removed from their insurance policy. Further, this fundamental policy change is not made explicit in the PDS, nor verbally communicated to consumers at the point of sale or during an existing policy renewal. In VACC's experience, most consumers who have never made a claim, remain loyal to their insurer, and will continue to renew their policy year after year without checking changes in policy conditions. This means upfront disclosure in new policies and renewals becomes even more critical.

Another anomaly surrounds current insurer practice of charging consumers around \$100 extra in their premium for the 'privilege' of choosing their designated repairer. Chapter 7 of The Corporations Act 2001 states insurers must provide a PDS, and the PDS must include information about the features and benefits of the policy being sold, including its terms and conditions, limits and exclusions. Therefore, to charge for the right to choose a repairer, insurers must outline the benefits to the consumer. In effect, this can amount to predatory behavior, as there are no consumer benefits since the vehicle must be repaired under insurer guidance, with the insurer being the main beneficiary.

VACC regards these developments as unacceptable, serving to misguide consumers regarding their rights and limiting their choice and ability to make informed decisions about motor vehicle insurance policies. Consequently, empowering ASIC to approve a nationally mandated Motor Vehicle Insurance and Repair Industry Code of Conduct, which contains enforceable provisions, becomes an essential imperative.

VACC recommendation:

In accordance with Recommendation 1.15 of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, the next Australian Government should legally empower ASIC to approve a nationally mandated Motor Vehicle Insurance and Repair Industry Code of Conduct, containing enforceable provisions.