



Motor Dealers and Repairers Regulation 2014
NSW Fair Trading
PO Box 972
Parramatta NSW 2124

Email: policy@services.nsw.gov.au

6 June 2014

Dear Sir/Madam

REGULATORY IMPACT STATEMENT: MOTOR DEALERS AND REPAIRERS REGULATION 2014

The Insurance Council of Australia (ICA) is pleased to make this submission to NSW Fair Trading following the release of the Regulatory Impact Statement (RIS) in May 2014. The RIS supports the implementation of the Motor Dealers and Repairers Regulation (Regulation) under the *Motor Dealers and Repairers Act 2013 (Act)*.

The ICA supports initiatives which will increase the clarity and efficiency of the regulation of motor vehicles smash repair processes in NSW. In preparing this submission, the ICA has worked with the members of the ICA's National Motor Insurance Committee comprising insurers that underwrite motor vehicle insurance.

Our submission will provide you with our members' detailed feedback on a number of issues raised in the RIS. We would also like to take this opportunity to provide you with feedback on particular sections of the Act which are not canvassed in the RIS.

Finally we would like to raise an issue with you which we submit should be considered as part of the regulatory process.

1. REQUESTS FOR FEEDBACK IN RIS

Rectification orders

The ICA supports the provisions concerning the consumer's ability to obtain "rectification orders" from NSW Fair Trading.

However we submit that the Regulation should clarify whether it covers the process where the rectification is part of an insurance claim. Under the terms of many of the insurers' policies, the policy holder may give the insurer certain rights to manage the repair on their behalf from selection of repairer to the end of the repair process. Under the current process the insurer is usually notified and assists the customer in ensuring any required rectification is completed satisfactorily.

There are already existing protections for consumers in regards to handling rectifications where insurers are managing the claim for consumers. We believe that the Regulation should be clarified to ensure that this provision does not apply to repairs conducted within the insurance framework.

Loss Assessor Licensing

Should the Regulation provide for licensing of loss assessors?

The ICA supports the discussion in the RIS which canvasses the level of regulation which currently exists that address the competency of insurer loss assessors under the Motor Vehicle Insurance and Repair Industry Code of Conduct, and the Road Transport (Vehicle Registration) Regulation.

In these circumstances the ICA submits that further regulation of insurer loss assessors is not required.

Tradesmen Licensing

Are the proposed arrangements for tradesperson certificates appropriate?

Are the proposed requirements for displaying licence numbers adequate?

The ICA supports the proposed "licence check" facility on the NSW Fair Trading website to enable consumers and other stakeholders to check the currency and validity of the smash repairer's licence.

NSW Parliamentary Inquiry into the Motor Vehicle Repair Industry

Should the implementation of the Regulation be delayed so that it can be amended, if required, to address the findings or recommendations of the Inquiry?

The ICA understands that Parliamentary Inquiry is continuing to deliberate and is now not expected to report to the government until 31 July 2014¹. In these circumstances we submit that the benefits of this Regulation should be realised as soon as practicable, independent of any recommendations made by the Parliamentary Inquiry.

2. OTHER MATTERS ARISING FROM THE ACT NOT INCLUDED IN THE REGULATON

Section 15 Repair work must be done by licensed motor vehicle repairers

The ICA approves of the intent of this section to ensure that repairs are only performed by licensed motor vehicle repairers. However the ICA submits that the Regulation could clarify the extent of the jurisdiction which this provision covers. As our members operate nationally there may be some cross-border issues which may need to be clarified.

We submit that the scope of this provision be clarified to confirm whether this section covers all policies taken out in NSW, all repairs done in NSW, or all vehicles registered in NSW. Further, we submit that the Regulation should deal with how the Act applies to NSW registered vehicles which are damaged and repaired in another state. Insurers may be required to deal with different licensing/regulatory provisions depending on the particular circumstances and seek clarity on this issue.

While insurers commission much of the repair work in the industry, the ICA also submits that consideration be given to broadening this requirement to all work providers, such as fleet managers or third party claims managers. A clarification of the definition in this regard may be needed as part of the Regulation.

¹ Indicated on the Committee website:

http://www.parliament.nsw.gov.au/Prod/Parlment/committee.nsf/0/04DCBAE7E7416ACDCA257C2900169DE8?open&refnavid=CO3_1

Section 71 Limitation Periods of Motor Dealers Warranties

We note that this division makes no specific reference to insurers and arguably has no direct relevance to our members. However some of our members' policies make reference to the "new car warranty period". In these circumstances the provisions may potentially impact on the operation of particular policy terms.

The ICA submits that the currently understood industry use of time periods be included in the Regulation to reduce any inconsistency in this regard.

Part 5, Division 2 (sections 112 – 116) Disputes

This part of the Act deals with disputes between complainants, motor dealers and motor vehicle repairers and does not make any specific reference to the involvement of insurers in the repair process. Under the terms of many of the insurers' policies, the policy holder may give the insurer certain rights to manage the repair on their behalf from selection of repairer to the end of the repair process. In circumstances where the consumer has not made their own choice of repairer it may be argued that the insurers fall within the scope of the defined parties.

Other third party managers of the process such as fleet managers and external claims managers may also be caught by the definition. If these provisions are intended to only cover instances where an insurer or other third party manager is not involved in the repair, we submit that this should be made clear in the Regulation.

In relation to any disputes which a customer may have with the insurer in relation to the insurance claim, we note that there is already in place a clear IDR/EDR dispute resolution system which is overseen by the Financial Ombudsman Service.

Disputes between the insurer and the repairer are covered by the Motor Vehicle Insurance and Repair Industry Code of Conduct, which is mandated under the *Fair Trading Act 1987*. In these circumstances, we submit that a further dispute resolution mechanism is not required and the Regulation be clarified to confirm that the division does not extend to claims where insurers are involved.

3. ADDITIONAL ISSUE NOT CONTAINED IN ACT

Our members report that they have recently encountered problems in moving towed cars from some NSW repairer premises where the customer chooses to have their car repaired elsewhere (or the insurer wishes to obtain an alternate quotation).

Our members advise that some repairers are charging additional fees to the usual towing and storage charges. We understand, at this stage, that insurers have refused to pay this additional repairer fee as they do not believe it is a legitimate cost.

The *Tow Truck Industry Act 1998* and Tow Truck Industry Regulation 2008 set what tow truck operators can charge for towing and storage. We note that these fees are currently the subject of an IPART Review. The ICA will be making a submission to this Review.

We submit that these provisions are not mirrored in the Act and as such seem to be allowing some operators to circumvent the operation of the *Tow Truck Industry Act 1998*. We believe that similar provisions should be contained in either the Act and/or Regulation to ensure consistency of repair costs in this regard.

Conclusion

We look forward to working with NSW Fair Trading on the issues raised. If you have any questions or comments in relation to the above please do not hesitate to contact Vicki Mullen, General Manager Consumer Relations & Market Development on (02) 9253 51220 or on vmullen@insurancecouncil.com.au .

Yours sincerely



Robert Whelan
Executive Director & CEO