

February 2014

Insurance
Law
Service



Submission to the
Inquiry into the Motor Vehicle Repair Industry
Insurance Law Service
(a project of the Consumer Credit Legal Centre
(NSW) Inc)

The Chair,
Select Committee on the Motor Vehicle Repair Industry
Parliament House
Macquarie Street Sydney NSW 2000

Consumer Credit Legal Centre (NSW) Inc (“CCLC”) is a community-based consumer advice, advocacy and education service specialising in personal credit, debt, banking and insurance law and practice. CCLC operates the Credit & Debt Hotline, which is the first port of call for NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies. We provide legal advice and representation, financial counselling, information and strategies, referral to face-to-face financial counselling services, and limited direct financial counselling. CCLC took over 20,000 calls for advice or assistance during the 2012/2013 financial year.

Thank you for the opportunity to prepare a submission to the Select Committee regarding the review of the Motor Vehicle Repair Industry. We would be happy to attend to provide evidence if required.

The Insurance Law Service (ILS) is service of the Consumer Credit Legal Centre (CCLC). The ILS operates a national legal advice telephone hotline and a national email inquiry facility.

Consumers' experiences with insurers and repairs can be seen in three circumstances:

1. claims by the consumer on their own contract of insurance;
2. claims against the consumer by an insurer for a 3rd parties damage, being claimed under their right of subrogation under an insurance policy; and
3. claims against a 3rd party, indemnified by an insurer, by a consumer.

To answer the questions posed in the inquiry we have provided the following case studies of consumers writing to the ILS email inquiry facility or called the ILS who reside in NSW and have had issues with the repair of their motor vehicle being arranged or done by their insurer (we note some dates, amount and the insurer's names have been removed to protect the clients confidentiality).

Client inquiry 1

My Car was in a hail storm, dints all over the car. Insurance company want to write it off for \$20,000 or repair the damage. Two quotes for repairs are around \$15,000. Redbook gives the value at around \$23,000 - \$25,000 with higher kms.

I would like to be paid out for the value of the repair bill. I do not think it is fair that I should have the car pulled apart and fixed as I will be without a car for months and also the repair will result in welds across panels etc. I had a car repaired previously and there was notable noises from putting it back together and also some minor panel evidence of cutting and welding.

I would like to know if I am within my rights to have the amount for repaired paid out. I will then sell the car for the difference between what redbook says it is worth and the repair cost.

Client inquiry 2

I was in a motor vehicle accident and was the not at fault driver, the driver of other vehicle insured with INSURER. My Vehicle was towed to Assessment Centre of the INSURER

An assessment was made by the INSURER which claimed the car could be repaired for \$16,000 car is currently insured for market value \$31,000, the vehicle was purchased new 6 months prior to the accident and has travelled approximately 16,000 kms since new.

The vehicle took 3 1/2 months to repair at an increased cost to \$22,500. When the car was returned there was numerous concerns, problems from vibration at high speeds, air conditioning not working, car veering off the road, car shudder at braking, clunking noises from suspension etc. INSURER advised me that as far as they are concerned it is all repaired and I have to prove to them the issues at my cost. I took it upon self to engage an automotive engineer at a cost of \$2200 who wrote quite a damning report.

It is now 7 1/2 months since I have had my vehicle on the road safely.

Client inquiry 3

Hi. In early June I hit a Kangaroo in my vehicle which put me off the road. The vehicle was towed to a Smash Repairer who provided a quote which was accepted by the insurer. After months of enquiries I was finally told that the parts for the repair would not be available until November. I made a complaint to their internal disputes resolution service to see if they could provide me with a hire vehicle, or write the vehicle off based on various hardships I would experience for not having the vehicle for so long. The insurer wrote back on 1 October and declined to provide anything based on the terms of my policy.

Just recently, the insurer rang me to inform me that the Smash Repairer was going out of business. The insurer arranged for my vehicle to be picked up and taken away. They told me they intended to restart the process of assessing and quoting the repairs. My question is - Is there a reasonable length of time the repairs should take, and is this worth taking further?

Client inquiry 4

Our car has been water damaged twice. The first time the car was repaired and our car was with them about 3 months. Shortly after we got the car our car was water damaged again. We asked to be paid out but they said that the car is repairable. We have placed a dispute with the Financial Ombudsman Service. The rego expired on the 29th August. I got in contact with the Ombudsmen and he recommended that I contact insurance company and you [ILS] in regards to having the cars rego done. When I first contacted the insurance company they said that the car was taken apart could not be driven. Today they contacted me to say the car will be fixed for pick up and rego.

I don't know what to do. If we pick up the car will they hold it against our case. with the ombudsmen, should I wait until this case is resolved. I know that we have three months to register the car again. In the second water damage they said that they found the problem with the car now. We are not even sure if they are going to insure the car again.

Client inquiry 5

I had a car accident 15 June 2013 and the repairer isn't repairing the car to the Honda repair procedure specifications and I have basically caught them taking shortcuts.

My car should've been written off as it is all front end structural damage (suspension, engine mount, structural framework for drivers door, drive shaft and more). The repairs continue to mount and the insurance company accepts it.

I am in huge concern over the safety of this car that I have owned since new (2006) and the issues around the repairs and costs involved.

There appears too many shortcuts are being taken to get the car repaired without considering the safety of my family.

I have had the RMS inspect the car and they informed me and the repairer that the procedures are not correct therefore they had to order new parts to undertake the correct repairs. I have no confidence on the safety.

Client inquiry 6

Want to cash settle but insurer will only cover Costs of parts not repairer fees.

I want to know if I should be compensated the full amount

the insurance company says they are within their rights to only cash settle for the price of the parts as they don't know when the car will be fixed.

Client inquiry 7

Our Client was involved in a MVA. He was not at fault. The other driver, who was at fault, was insured comprehensively. Our Client had only third party property insurance.

Our Client contacted the at fault driver's insurer. The insurer advised him to take his car to their assessment centre. The insurer told our caller that his car was uneconomical to repair. The insurer said they would classify it a repairable write off, and offered our caller less than the market value of his car. Our Client obtained evidence about the proper market value of his car, and disputed the insurer's valuation. The insurer then decided that it was not uneconomical to repair. The insurer authorised their repairer to do the repairs.

During the repair process, the repairer discovered more damage, which increased the price of the repairs. The insurer then decided to again classify the car a repairable write off. The insurer has offered our caller \$8500. Our caller has obtained a quote from a repairer to show that the car can be repaired for \$6900. The difficulty in accepting the insurer's offer of \$8500 and repairing the car himself for \$6900 is that there are many additional costs in getting the car off the repairable write off register, which will leave him out of pocket.

Our Client believes that his car should never have been listed by the insurer on the repairable write off register as it was NOT uneconomic to repair. Our Client is now faced with additional expenses, which the insurer is not offering to cover and also has to face the inconvenience of the time consuming re-registration process.

MAIN PROBLEMS:

- a) Insurer treating our Client's car as they would their insured customer's car. Our Client was not advised that he could simply be providing some quotes to the insurance company.
- b) There seems to be no review mechanism of the insurer's decision to place the car on the repairable write off list. Our Client has independent expert reports to show that the car is economical to repair.

Client inquiry 8

Client has a disability and in urgent need of her car for repairs. The car was damaged in a hit and run in August 2013. She lodged a claim with her insurer under the policy and she's been told she can choose her own repairer, and she's not covered for a substitute vehicle. The catch is that once her repairer gives a quote the insurer's assessor can make their own adjustments to it and offer a lesser amount than what is quoted by her own repairer. She's had it quoted by 2 of her own choice of repairers but the INSURER's assessor has adjusted the quote significantly reducing it by about \$15,000 from about \$70,000. She disputes their assessment based on the 2 quotes she has. She lodged in internal dispute resolution one month later and is waiting for a response. She wants to

know how long does insurer have to finalise the claim as she is concerned how long it is taking. She hasn't read the PDS. She is borrowing husband's car sometimes. She has been without her car for 6 months

Below are our specific submissions to the Inquiry's Terms of Reference:

(a) Smash repair work and whether it is being carried out to adequate safety and quality standards

The ILS receives regular complaints about the quality of repairs arranged by insurers. ILS has received complaints about (which are reflected in the cases above) :

1. the repairs being poor and requiring a complaint to the insurer to insist the repairs are fixed
2. the consumer having to hire an independent assessor to prove the repairs are poor
3. the repairer being very slow in obtaining parts even when the parts were readily available by order on the internet
4. the repairs taking an unreasonable amount of time
5. repairers leaving the car unroadworthy
6. motor vehicles being determined a total loss or written off and consumers not being informed

ILS also receives complaints from uninsured consumers being asked to pay damage from an insurance company. The consumer complains about the repair quotes being:

1. unclear;
2. repairing damage not caused by the accident;
3. being excessive because the insurance company is paying

Overall, complaints to the ILS about quality of car repairs is an ongoing issue. The process for getting poor repairs fixed is difficult and may involve the cost to the consumer of getting independent assessors. Consumers often indicate they have little trust or confidence in the repair industry.

In NSW damaged vehicles are subject to the Roads Transport Act 2013 (the Act) and vehicles may be written off in the event an "assessor" as defined by s87 of the Act determines a vehicle is a total loss (s89 of the Act), being an "insurer, self insurer, auto-dismantler, dealer or other person prescribed by the statutory rules".

The ILS (as can be seen from the case studies above) routinely advises consumers with issues regarding an assessor determining that a motor vehicle is "written off" either as uneconomical to repair or unsafe to repair.

In our experience, the two biggest problems for consumers in this area are increased cost and hardship while awaiting repairs, and limited right of appeal of an assessor's decision to write off or not write off a vehicle.

Hardship

In our experience disputes arise in relation to:

- i) whether a motor vehicle should be written off and not repaired; or
- ii) whether a motor vehicle should be repaired and not written off.

Consumers face extended delays, questionable repair jobs and in some instances vehicles which are not safe to drive (see case study 2).

In NSW under the Act there is no appeals mechanism. Once their motor vehicle is deemed a write off it is placed on the register. As seen by Case Study 7, above, the cost to a consumer where the car was repairable can be significant and registration as a write off is difficult to undo.

Consumers redress is limited.

Many consumers are not aware of their right to request the result of the assessment under the Act. The assessor's decisions, whether it be their insurer or the insurer of the other party is not transparent. When a dispute does arise, consumers have a very limited right of appeal.

In the case of the insurer being their own, they may take their dispute to the Financial Ombudsman Service. The Ombudsman process can take many months to resolve.

Where a consumer is an uninsured third party who has had their car assessed by an insurer who is not their own, the Ombudsman has no jurisdiction under the terms or reference unless the damage in dispute is under the \$3,000 limit. Consequently, their recourse is to commence proceedings in the Local Court for damages arising out of negligence and they may or may not be able to recover the costs to meet the registration requirements of the Act where the insurer has assessed the vehicle and then listed it as a total loss which they wish to dispute.

In our view, where a third party is claiming against an insurer for damages it needs to be clearly disclosed to the consumer that the insurer can list the car as a total loss (write off) on the register.

A consumer should be clearly notified that it may be in their interests to have the car assessed by their own mechanic or smash repairer to determine whether the car should be a total loss. There is an inherent conflict of interest for a third party insurer to make the determination.

(b) The current Motor Vehicle Insurance and Repair Industry Code of Conduct, its governance structure and dispute resolution mechanisms and whether it is effective at regulating the relationship between repairers and insurers, and in serving consumer interests;

The ILS submits that consumers are not cognisant of the Repair Industry Code in their day to day dealings with insurance companies.

The Repair Industry Code is not mechanism for consumer redress where the consumer is not satisfied with the decision of the assessor to write off the vehicle. A repairer and insurer may agree to a course of conduct not agreed to or in the customers interests as outlined by the examples above.

(c) **Consumer choice, consumer protection and consumer knowledge in respect of contracts and repairs under insurance policies;**

Consumers have little knowledge or awareness of their rights in relation to dealing with insurers and consequently their rights in relation to repairs carried out under a contract of insurance.

In our experience when consumers are shopping around for insurance products they rarely base their decision on product features such as whether they can choose their own repairer or need to use the insurer's authorised repairer. Instead they base their decision on premium price. Often, they will only become aware of the limitation of the policy after a repair is required.

As acknowledged in the Motor Vehicle Repair Industry Code of Practice an insurer and their repairer are to have regard to the industry standards in respect of consumers rights under the General Insurance Code of Practice (see I.I(c)) .

The GICOP provides, amongst other things:

- i) lifetime guarantee of repair for work undertaken by the insurer;
- ii) timeliness; and
- iii) transparency of claims handling

As demonstrated in the case studies, issues commonly arise in relation to timeliness of repair, quality of repair and the transparency of the decisions in relation to the assessment of the claim. Insurance contracts will often limit an insurers liability in circumstances of delay.

(d) **The business practices of insurers and repairers, including vertical integration in the market, the transparency of those business practices and implications for consumers; and**

As stated above, is the ILS is concerned about the transparency of insurance assessors in relation to the motor vehicle repairs.

An insurer whether under a contract of insurance or not, is responsible for determining under the Act whether a motor vehicle is a total loss.

The vertical integration model where insurers are effectively expanding into the repair industry leads to the insurer having a monopoly in decision making in respect of decisions to repair or deem property a total loss. In our view a consumer has the potential to suffer detriment where there are no robust checks and balances available for a consumer to appeal the decision to deem a car a total loss and the

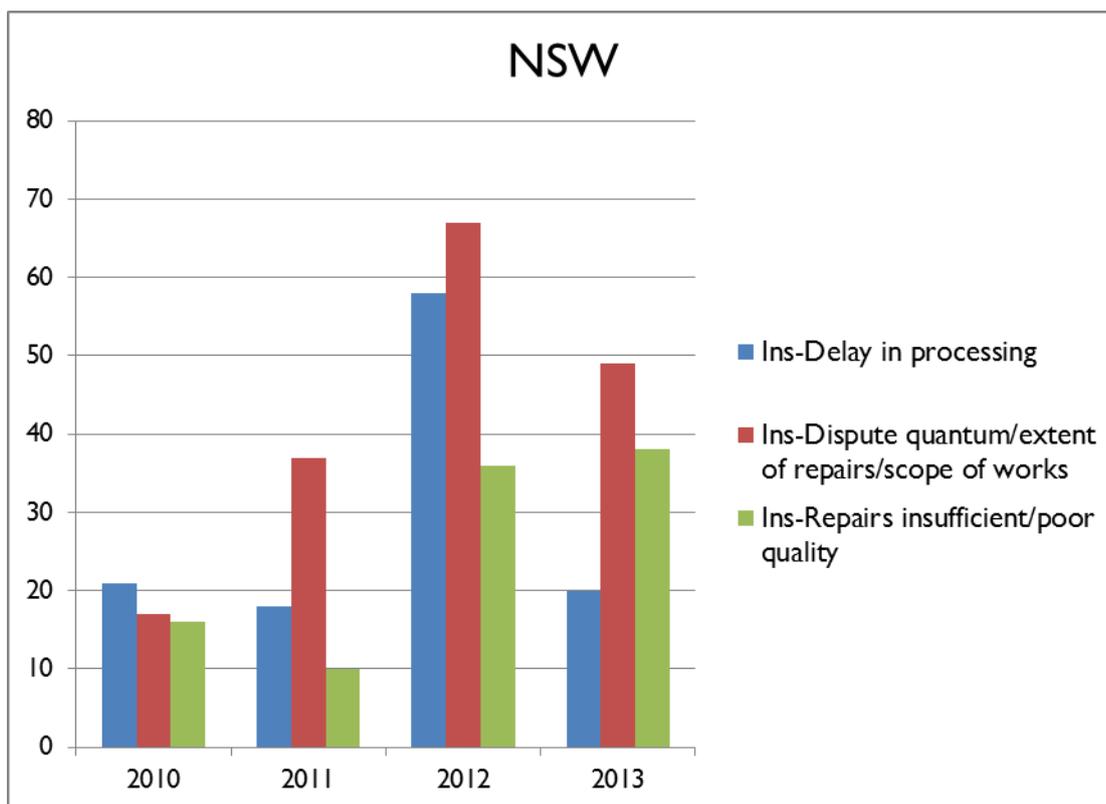
register of motor vehicles be amended. An appeal mechanism must be available and the cost should be borne by the insurer if it can be demonstrated that the original assessment was inadequate. The appeals mechanism should be available to a consumer with a contractual relationship with the insurer and third parties.

Alternative models of repairs undertaken by the insurer of your choice leads to instances such as in case study 8, where the insurer includes terms allowing their assessor to reduce a quoted price.

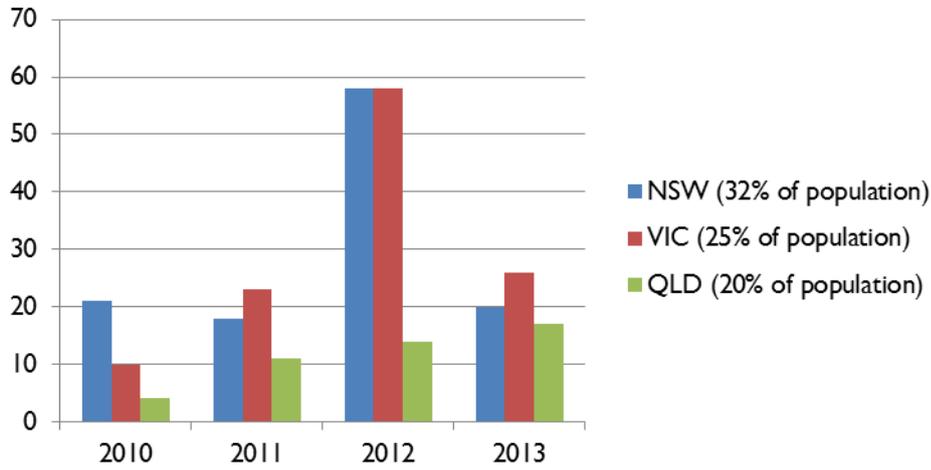
Regulation and transparency of assessment in our view is key to ensure fair outcomes for consumers, whether products are vertically integrated or not.

(e) Alternative models of regulation, including in other jurisdictions.

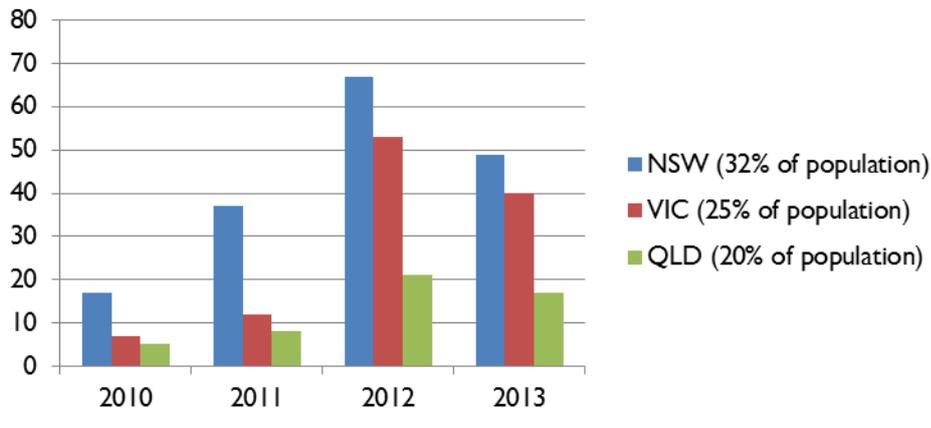
We have prepared statistics reflecting advices given on the ILS advice line compared with the other larger states, being Queensland and Victoria.

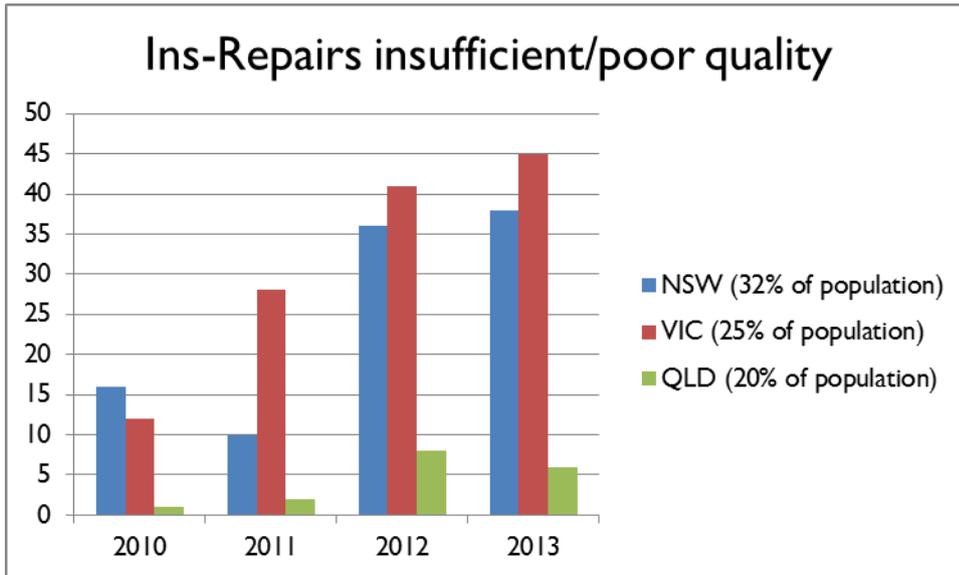


Ins-Delay in processing



Ins-Dispute quantum/extent of repairs/scope of works





Thank you for the opportunity to make this submission.

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