

ECONOMICS AND INDUSTRY STANDING COMMITTEE

Fourth Report — “Western Australia’s Smash Repair Industry: Structural Challenges” — Tabling

MS J.J. SHAW (Swan Hills) [11.13 am]: I present for tabling the fourth report of the Economics and Industry Standing Committee titled “Western Australia’s Smash Repair Industry: Structural Challenges” and the submissions.

[See papers 2101 and 2102.]

Ms J.J. SHAW: Parliamentary committees can make findings and recommendations based only on the evidence available to them. Moreover, jurisdictional limitations constrain the actions that the different tiers of government can take in response to issues within markets or industries. This is particularly true with the smash repair industry. A number of inquiries have been conducted over the years into the smash repair industry, considering the quality of repairs and particularly the relationships between repairers and insurance companies. A number of pressures affect the smash repair industry. Smarter, more technologically advanced vehicles require more expensive and complex repairs and also reduce the incidence of accidents, simultaneously driving down demand for smash repair services and increasing repair costs. The committee found that technological changes in the automotive industry are fundamentally changing repair cost profiles, with parts now constituting up to 50 per cent of repair costs.

The industry is also experiencing vertical consolidation. Small business repairers face competition from insurance company-owned repairers and are often forced to integrate into insurers’ business models and practices, either through preferred repairer status or the forced utilisation of the insurers’ systems, processes and prices. There is also an inherent tension between controlling repair costs, maintaining the viability and sustainability of repair businesses, and maintaining affordable insurance premium prices for customers.

Despite these pressures, the committee found that there has not been a drop in the standard or safety of repairs being completed in Western Australia. Across the board, the evidence to the committee indicated that repairs are generally conducted to a high standard. However, allegations about structural inequalities between insurers and smash repairers, predatory behaviours and abuse of market power are rife, both in Western Australia and across the nation. There is undoubtedly a high degree of concentration in the Australian motor vehicle insurance market, with two insurance groups, IAG and Suncorp, overwhelmingly dominating nationally. The dynamic is a little different in WA, with RAC Western Australia capturing approximately one-third of the state’s market. By contrast, 90 per cent of the state’s smash repair businesses are small family-owned businesses and are heavily reliant on insurance companies to feed them work.

A range of allegations have been made in multiple inquiries and forums regarding the anti-competitive conduct of insurance companies. This is not a new issue either. Over 13 years ago, the Productivity Commission outlined the effects of the large power imbalance. The Productivity Commission report states that the major insurers particularly wield strong negotiating power in their dealings with the generally much smaller repairers and that, indeed, some aspects of business, for example the terms and conditions of preferred smash repairer contracts, are virtually offered on a take-it-or-leave-it basis.

In this inquiry, the types of alleged misconduct included inappropriate steering behaviours, whereby insurance companies direct customers away from businesses outside of their preferred networks, despite consumers often having the right to choose in their policy. Evidence was given to us that insurance company call centre operators would make statements such as, “We can’t guarantee the quality of workmanship if you choose that other repairer,” or “You’ll have to manage the claim yourself if you choose that repairer.” There are all sorts of practices that tell customers that if they do what they are contractually entitled to and go with a repairer that is not preferred by the insurance companies, there will be consequences.

Other conduct included the introduction of fixed prices for various forms of repair, which would unfairly drive average costs unsustainably low; unequal bargaining power when agreeing to the scope of repairs to vehicles; and the utilisation of “funny time, funny money” to artificially price repairs.

The committee sought direct evidence of inappropriate behaviours, but heard that repairers were reluctant to publicly provide details for fear of losing work. In closed sessions, anecdotes suggest there are instances of market abuse. Similarly, the Department of Mines, Industry Regulation and Safety noted —

... a lot of anecdotal evidence comes to us from our interaction with people at the MTAWA ... But no formal hard evidence has been brought to us ... I have no doubt that they occur from time to time, but they are just not coming to us.

The committee looked at an academic review as part of its inquiry, which also confirmed that the pressures are being applied across Australia by insurance companies on repair businesses. I quote from that report —

Insurer's market power and control continues and has changed the traditional workflow patterns that once filtered through the smash repair industry to now being directly under the control of insurers who dictate who, how, where and when, repairs to their claimants' vehicles take place. Smash repair dependents, the majority, have shifted from being a service industry in their own right to becoming a subservient supplier under contract.

The committee did put market abuse allegations to the insurers, which were strenuously denied. The committee, unfortunately, has a very limited ability to investigate the veracity of these claims and counterclaims. Only an appropriately convened and empowered commonwealth-level inquiry can properly investigate this issue. Direct evidence of steering behaviours in particular would indicate an abuse of market power and provide justification for a full commonwealth investigation into structural issues in the smash repair industry.

The committee also pursued issues relating to the use of funny time, funny money pricing methodologies. The Productivity Commission described this practice as repairers quoting fictitious times for repair, which, as quoted in our report —

... generally involves repairers (with the full knowledge of insurers) inflating the estimated hours taken within the 'repair' segment of a given job to try to compensate for both the relatively fixed times within other segments ([remove and replace], paint, parts supply), and for what they may perceive as uneconomically low hourly rates of payment in the 'repair' or other stages ...

Again, we put this allegation to the insurers and it was denied. However, direct evidence was provided to the committee suggesting that this unhelpful practice is utilised by at least one major company. A repairer sent the committee a screenshot of the body shop quotation system approved by Suncorp, which clearly showed on a dropdown menu an option to provide the quote based on a funny or a realistic basis. Whilst there was evidence in hearings suggesting one thing, direct evidence in this instance was produced that there does seem to be some disingenuous business practices in play. The committee found that the funny time, funny money methodology has been used for several decades by insurers and smash repairers to ease the pressures between these two stakeholder groups and to assist in settling agreed prices. However, we consider that it is unhelpful. Methodologies that reflect a more accurate assessment of cost should be utilised.

The commonwealth government can intervene in the business relationships between insurers and repairers and is responsible for the proper functioning of markets. Financial services like insurance are also federally regulated. A number of inquiries at both the state and federal level have repeatedly urged the commonwealth government to take action to investigate and meaningfully address anticompetitive conduct in the smash repair industry. However, the commonwealth government is yet to take action. In fact, the best it could say in response to a Senate report was that it would continue to monitor the situation to try to understand the issues. For well over a decade now, the commonwealth government has completely ignored this issue, despite being the only tier of government that can genuinely act to address the structural inequalities in the smash repair industry. The apparent nationwide scope of the problem and increased market concentration in other states lends weight to the need for federal action. Similar to the calls of industry and previous state and federal inquiries, this committee considers that the commonwealth should act. We have accordingly recommended that the Treasurer write to the commonwealth Treasurer seeking his agreement to direct the Australian Competition and Consumer Commission to undertake an in-depth inquiry into possible anticompetitive conduct and misuse of power.

The state government's capacity to intervene in the contractual and business arrangements between insurers and smash repair businesses is limited. The state government's legislative responsibilities are restricted to regulating the local smash repair businesses and licensing them, and providing a limited customer protection role. However, evidence provided to the committee indicated that both insurers and repairers consider the national Motor Vehicle Insurance and Repair Industry Code of Conduct to be effective. It is managed by representatives from both insurers and the smash repair industry and is now accepted as being a fairer and more transparent process for resolving and reducing conflict between the two key stakeholder industries and as operating better than previous versions of the code. Currently, code compliance in Western Australia is voluntary. However, the New South Wales state government has made code compliance mandatory. The committee has recommended that this be similarly instituted in Western Australia by the end of 2019.

Two other matters pertaining to vehicle write-offs and conduct in the tow truck industry arose in this inquiry but fell outside the terms of reference. On vehicle write-offs, it is currently very difficult for consumers to identify whether a second-hand vehicle they are purchasing has previously been classified by insurance companies as a repairable write-off. The Motor Trade Association of WA claimed in its evidence to the committee that a commercial advantage is gained by people who illegally repair these vehicles and put them back on the road. We also had evidence presented to us on the tow truck industry. This evidence suggested that unscrupulous and predatory behaviours are undertaken in that industry. The committee found that reviews on both matters have been previously initiated by the state government, but have not been concluded. Notably, Western Australia is one of

just two states that does not regulate the tow truck industry, but the evidence suggests that there is a compelling place for regulation. The committee would welcome completion of the two government reviews on these matters.

On behalf of the committee, I would like to express my sincere thanks to the many organisations and individuals who provided submissions and appeared before the committee, particularly the smash repair businesses. I understand how genuinely nervous many of them were about appearing before the committee, and the heavy weight they had to consider when they thought about whether their pipeline of work from the insurance companies would dry up. It was a brave step and was very commendable. I also thank my fellow committee members—the members for Churchlands, Jandakot, Forrestfield and Warren–Blackwood—for their contributions and engagement. We are also grateful to the committee secretariat, Dr David Worth and Mr Lachlan Gregory, for all their hard work and assistance.

MR Y. MUBARAKAI (Jandakot) [11.26 am]: I stand today as a member of the Economics and Industry Standing Committee to make my contribution on our report on the smash repair industry in Western Australia. We heard pertinent facts and identified challenges that the industry has historically faced and will continue to endure. The committee heard from multiple parties, ranging from small family owned businesses to larger commercial operators. Similarly, the committee received submissions from a diverse cross-section of the industry, which included the peak body for motoring in Western Australia—the Motor Trade Association of Western Australia—and prominent motor vehicle insurance organisations. The committee subsequently made 23 findings and three recommendations for consideration by the government.

Historically, the smash repair industry consisted largely of family owned businesses—mums and dads operating in the local suburbs. This was not dissimilar to other family-run small businesses, such as the corner deli store and market garden operators. Such businesses required little capital to begin with and quite rapidly increased in number in both regional and urban locations. However, with the passing of time, the industry experienced profound change. Vehicles became more technologically advanced—smart cars—which required repairers to have more elaborate and expensive infrastructure in place, such as computer systems for appraisals, and more comprehensive training for employees to undertake complex repairs. The number of individual small repairers has halved nationally since 1975. Advanced vehicle technologies have in turn produced an overall decrease in the frequency of accident rates and driven up the costs of repair to damaged vehicles. An environment now exists in which there are fewer smash repair businesses in competition for less work. The traditional family owned and operated small smash repairers have been under pressure on many fronts, with many having been driven out of the industry entirely. Despite such pressures, the committee did not receive evidence to indicate that the quality of work being carried out or the safety of repairs has declined or is of concern in Western Australia.

The motor vehicle insurance industry has also undergone changes, which has had a direct and not entirely positive flow-on effect for smash repairers. Following a period of intense amalgamation in the 1990s, the motor vehicle insurance market is now largely dominated by two eastern states-based insurance companies—Suncorp and IAG—which feature in nine different brands, each of which offers motor vehicle insurance. In Western Australia, RAC Insurance—a wholly owned subsidiary of RAC WA—has a large market share of approximately one-third of the motor vehicle insurance market. This is unique to Western Australia. Most notably, the committee found that the apparent problems within the motor vehicle industry include inappropriate steering behaviours, when insurance companies direct customers away from businesses that are not included in their preferred network of approved repairers; the introduction of fixed-price repairs, which drives average costs unsustainably low; unequal bargaining powers when agreeing to the scope of works of repairs to vehicles; and, the utilisation of funny time, funny money to artificially calculate the cost of repairs and the lifetime guarantee. Those are some of the concerns.

During the inquiry it became evident that some repairers were reluctant to speak candidly about their relationship with the large motor vehicle insurance companies out of fear of the repercussions of being ostracised and missing out on future repair work. The committee received submissions that expressed concerns and the need for urgent review of the state's tow truck industry. Although not included in the committee's specific terms of reference for the inquiry, the committee felt it appropriate, in its final report to Parliament, to address the sentiment of the many submissions received. Western Australia is currently one of two states that does not have a regulated tow truck industry. Finding 23 of the committee states that there appears to be sufficient concern for the government to consider regulating the Western Australian tow truck industry.

The committee ultimately made three recommendations that it hopes the government will support and seriously consider. Recommendation 1 states —

The Treasurer write ... to the Commonwealth Treasurer seeking their agreement to direct the Australian Competition and Consumer Commission under the Competition and Consumer Act 2010 to undertake in-depth inquiry into possible anticompetitive conduct and misuse of power in Australia's smash repair industry.

The state government has very limited abilities to intervene in contractual and business arrangements between insurers and smash repair businesses. In Western Australia the Motor Vehicle Repairers Act works as the regulator. Smash repair industry licences impose serious obligations on operators and their workforces. The Department of Mines, Industry Regulation and Safety made very clear in its evidence to the committee that no enforcement actions have been taken against smash repairers.

Recommendation 2 states —

The Minister for Commerce and Industrial Relations bring legislation to the Parliament by the end of 2019 to mandate the Motor Vehicle Insurance and Repair Industry Code of Conduct in Western Australia.

Recommendation 3 states —

The Minister for Commerce and Industrial Relations consider the role of the Small Business Commissioner as part of the process for the introduction of legislation mandating the Motor Vehicle Insurance and Repair Industry Code of Conduct in Western Australia.

I acknowledge all parties who contributed to this inquiry, and those who made submissions and appeared before the committee during public hearings to give evidence and reveal their personal circumstances and experiences. Additionally, I express my appreciation for my fellow committee members, particularly Madam Chair, the member for Swan Hills, Jessica Shaw; the member for Churchlands, Sean L'Estrange, who I would like to also offer my condolences to on the passing of his dad; the member for Forrestfield, Stephen Price; and the member for Warren-Blackwood, Terry Redman. I thank the secretariat staff—David Worth and Lachlan Gregory—for their efforts during this important inquiry. I hope that this inquiry has highlighted the challenges the industry is experiencing, and that through the findings and recommendations presented in the report greater awareness, transparency and fairness will result.