

ECONOMICS AND INDUSTRY STANDING COMMITTEE

INQUIRY INTO WA'S AUTOMOTIVE SMASH REPAIR INDUSTRY



**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 27 JUNE 2018**

SESSION THREE

Members

**Ms J.J. Shaw (Chair)
Mr S.K. L'Estrange (Deputy Chairman)
Mr Y. Mubarakai
Mr S.J. Price
Mr D.T. Redman**

Hearing commenced at 10.51 am**Mr DAVID SMITH****Director General, Department of Mines, Industry Regulation and Safety, examined:****Mr PETER GOW****Acting Deputy Director General, Industry Regulation and Consumer Protection, Department of Mines, Industry Regulation and Safety, examined:****Mr DAVID MARTIN HILLYARD****Commissioner for Consumer Protection, Department of Mines, Industry Regulation and Safety, examined:**

The CHAIR: On behalf of the committee, I would like to thank you for agreeing to appear today for a hearing for the committee's inquiry into WA's automotive smash repair industry. My name is Jessica Shaw and I am Chair of the Economics and Industry Standing Committee. I would like to introduce the other members of the committee: to my right, Stephen Price, member for Forrestfield; to my left, Deputy Chair Sean L'Estrange, member for Churchlands, and Terry Redman, member for Warren–Blackwood. Yaz Mubarakai is an apology for this hearing. It is important that you understand that any deliberate misleading of this committee may be regarded as a contempt of Parliament. Your evidence is protected by parliamentary privilege; however, this privilege does not apply to anything you might say outside of today's proceedings.

Before we begin with our questions, do you have any questions about your attendance here today?

The WITNESSES: No.

The CHAIR: Would you like to make opening statements?

Mr SMITH: If it is helpful to the committee, I am happy to do that. I might make some very brief remarks and then hand over to Peter and David to also talk very quickly to give some context.

Thank you for the opportunity to appear and to make our submission, which I think we provided last week. Hopefully, the committee will be able to deliberate on that as well, after our hearing this morning. As I said, I will make some very brief general comments and hand to Peter and David. Firstly, I want to acknowledge, as the department does, the serious issues that have been consistently raised by smash industry participants and are now being examined by this committee and the absolute importance for all of us in ensuring that any damaged vehicles are safely repaired before being returned onto WA roads. Over the years, as our submission details, we have been aware of many issues that have been raised by participants in the industry, those that we regulate and beyond. Despite many reviews over two decades at least, these concerns continue to get raised. We are also aware—our submission refers to this—that industry and businesses are undergoing constant and continuous change, both in technology and in the commercial underpinnings, if you like. Both those things we are conscious of because they impact on the way in which we regulate. Our submission and remarks this morning will highlight that this department as a regulator of smash repairers and of consumer rights under consumer law, we have an important role to play, but we only see part of the picture and we are only part of the regulatory framework, if you like, that sits around that picture. It is good from our perspective to have an inquiry like this that can look more holistically at the relationships and the issues affecting the industry. I might leave my comments there and just ask Peter to add.

Mr GOW: I would just like to outline the regulatory framework that we work in, so there is a bit of a mud map we have produced here.

The CHAIR: Fantastic.

Mr GOW: By way of general introduction, the industry regulation consumer protection part of DMIRS is essentially trying to stop people getting killed, or stopping them getting ripped off is our focus. The regulation that we do are for repairers, so the registration is primarily focused on stopping people being ripped off in their commercial interactions rather than safety per se. There is a vehicle safety regime run out of the Department of Transport, based on Australian Design Rules, taking vehicles over the pits when they are licensed et cetera. That is more focused on safety than we are, but, obviously, registering them and restricting work to registered people does have an impact on safety because there is less likelihood of unskilled and unqualified people doing work. But the primary focus is on the commercial interaction.

If you have a look at our mud map, at the top you have got vehicle owners. There is a variety of those. Some are consumers—mums and dads—and some are businesses. If a consumer, or a business for that matter, wants to deal directly with a smash repairer, they can. That happens if you have, say, only got third party insurance or it is below your excess or you just do not want to blow your no-claim bonus, so there is a degree of direct interaction between owners and the repairers. If those owners are consumers, then that interaction is covered by Australian Consumer Law and the Commissioner for Consumer Protection has a role to play in making sure that those laws are maintained there. Equally, the consumer protection commissioner is the licensing authority for the repairers, so we license in this area, car sales people, car repairers, both smash repairers and mechanical repairers. On the other hand, if you decide to claim on your insurance, you go down the pathway to the left. Insurers themselves are regulated by the commonwealth. APRA looks after them and deals with their behaviour. Interactions between insurers and the insured are covered by the Insurance Contracts Act. Again, it is a commonwealth act and ASIC is the regulator that looks after those relationships. So, to some extent, the insurance bit is a commonwealth patch and the consumer part is dealt with through the state consumer protection commissioner. But the insurers have to get to the repairers and that is a straight commercial contract and that is the linkage across the bottom. There is no formal regulation of that; it is a straight business-to-business contract. But there are informal things, so there is a code of practice between insurers and smash repairers, which is an informal matter, and there are also people such as the Financial Ombudsman Service, which is not a government-run ombudsman service, but it is an industry supported one for people who are unhappy with their interaction with a financial institution, which includes insurers. So, there is some non-regulatory stuff that happens there. But, essentially, as a state government and as a state government regulator, our focus is around registering the people in the industry doing the work and moderating the consumer connections directly with that. We do not have a role, which the commonwealth has, in dealing with the insurers.

The CHAIR: The common law contracts, though, are presumably adjudicated in front of the Western Australian courts, so there is kind of an additional level of blurring of state and federal jurisdiction in that case. This is a question that has just popped into my head. By all means, if you cannot answer it—or it may be a very simple answer. When the Western Australian courts are exercising their jurisdiction in the common law context, do they ever consider the code of conduct as informing their approach to a particular contractual dispute between a smash repairer and insurer through the courts?

Mr GOW: I honestly cannot answer that in an accurate and informed way, but I would imagine from what I have seen of the way the courts operate, they focus very much on what is the contract and the legal obligation. If the contract calls up a code of practice, then it would come in.

The CHAIR: That is an interesting issue, is it not, because if the contract directly references the code of conduct, then that kind of, again, blurs the lines between the state and federal jurisdictions over these things. That is helpful.

Mr GOW: I was going to suggest that David, as the commissioner, give you some detailed introduction about his role and experience in managing this area.

Mr HILLYARD: Can I just ask: the material that we presented to the preliminary inquiry, does that still form part of your background?

The CHAIR: Yes; we will consider it as part of our—you did you provide us some information on a confidential basis, so if we do want to rely on that at some point, we will come back to you and ask if you are comfortable for us to disclose it publicly.

[11.00 am]

Mr HILLYARD: Yes, from what I can recall of it, it will be.

The CHAIR: Okay, great.

Mr HILLYARD: I do not see a big problem with that, but we will go over that at the time.

I guess from our perspective of consumer protection, it is largely about our regulatory role in looking after the licensing of this industry. As I said in our previous appearance, that is really around the qualifications of the tradespeople and that there are sufficient tradespeople with the right qualifications engaged by businesses to work on vehicles. Our licensing regime and our inspection regime is around that, so it is about having the right people at the right place doing the right work. But we do not get engaged in any of the quality assurance of those businesses; that is their responsibility. It is their responsibility to their clients, either as individual consumers—if they are not compliant with that, then the Australian Consumer Law comes into play—or if they are working on behalf of an insurer and conducting the repairs for the insurer. Those contractual arrangements then come into play and, as you have mentioned, the code of conduct, if they are two parties who have signed up to it. At this stage that is a voluntary code for the majority, although I think as we indicated in our previous submission, it is pretty comprehensive in terms of both the insurers and the number of repair workshops that are signed up for that.

If we took the helicopter view of what is going on with this particular industry, we have always had those tensions—those price points of, “I’ve given a quote to do this as a repairer and now I’m being driven down by the insurer who’s looking to get best quality but cheapest price.” It is no different to any other consumer transaction. At some point, some repairers will say, “I can’t repair it for that,” and they will walk away from that deal. They were giving quotes that were not successful. It is up to the insurer to work out where they can get those repairs conducted, both for price and quality of workmanship. That has a benefit to consumers in terms of, we would presume, reduced premiums. They would get their work guaranteed; the insurer takes on that responsibility of making sure that those repairs are conducted properly. From a consumer perspective, if we were seeing big numbers of complaints both about quality of workmanship or about inconveniences because things have got to be taken back, we would be hearing about that, and we do not. Even for those people who are going to the panelbeating–smash repair industry where they are not insured, and where we would be the sole arbiter of complaints and disputes about that, we still do not see complaints coming to us about workmanship issues. Invariably, the complaints we deal with—I think we raised this in our previous submission—are about businesses that have closed. Generally they are about long-term

repairs to people's pride and joy that are being repaired. From our complaints statistics, we are not seeing anything which is raising alarm bells for us.

Mr D.T. REDMAN: Can I just ask you a question on that point? If I get a painter to paint my house, I have probably got a pretty good judgement about whether it is going to be a good job or not. This is a pretty technical industry where some of the stuff is anecdotal evidence put to us about the quality of the job being somewhat hidden. Do you think that is a factor that plays through in the level of dispute that might come through?

Mr HILLYARD: Yes, I think it is. If it was well hidden, then you are never going to know until something drastically goes wrong. But what we do tend to find is that we are all getting our vehicles serviced by other professionals. When they whack it up on a hoist and they see something untoward about those things, they are going to bring that to the customer's attention: "What's happened here? There seem to be some repairs here which are not right. There are second-hand parts added to your vehicle." It is at those points where we have come across some instances. I have got to say they are quite rare. When poor repairs have been brought up, it has been because other professionals have seen that work and then it has been brought to our attention by the customer.

The CHAIR: You talked about the fact that your jurisdiction, David, is very much at the interface between the consumer and the smash repairer. Does the state government have any touch points or complaint mechanisms in place specifically for smash repairers to complain about their treatment by the insurers?

Mr HILLYARD: No.

The CHAIR: So that is 100 per cent the federal government's jurisdiction?

Mr HILLYARD: Yes. The only point that the state government gets involved in this is through the code and then the appointment of the Small Business Commissioner as the arbiter of those disputes.

The CHAIR: We will come to that. You have flagged in your submission that there have been these ongoing concerns and they seem to be coming up over and over and over again. That is why we are initiating this inquiry. Even to the banking royal commission, these issues have come up again, but just do not ever seem to go away. There is a code of conduct there that seems to notionally be governing these relationships between the parties but, nonetheless, these issues persist. Your submission says that they fall squarely outside the scope of the legislation administered by Consumer Protection and also outside the scope of any other state agency. Is there no other state agency that you are aware of that comes into contact with this issue?

Mr HILLYARD: No.

Mr D.T. REDMAN: Whilst the jurisdiction is not there, are you seeing evidence of unconscionable conduct that you think merits attention outside of your jurisdiction?

Mr HILLYARD: No. That is a bit of a circular argument, really—because we do not have jurisdiction we do not get those complaints coming to us, and if they did come to us, we would send them elsewhere. We would send them to the ACCC at this stage. The small business protections—unfair contract terms—might come into play in this space. That legislation is going to be picked up by the state government and will apply to small businesses, but it is not in place just yet. It applies to corporations, but then they have a right to go to the ACCC about those matters.

Mr S.K. L'ESTRANGE: One of the issues with the big insurers is where they are heading towards vertical integration. That will eventually start to squeeze out smaller operators in the repair sector. While they are on the way out—being squeezed out by these bigger players—they will start to cut costs to survive. Do you see that as a risk from a safety perspective in the industry?

Mr HILLYARD: Yes, of course. If it is in those sorts of terms, you would assume that there has to be ways in which they are going to cut corners to reduce costs to survive. But if the checking mechanisms in place by the insurers who are paying for this work are in place, they are not going to accept substandard repairs because of the risks that they are then faced with if that vehicle, which they have guaranteed to have good repairs, is put back on the road and it is not safe in some way.

Mr S.J. PRICE: But you would not become aware of that unless someone identified to the owner that there was an issue with the repair, and they can come and talk to you about that.

Mr HILLYARD: Other than when the insurers are getting these repairs done, they are checking on those repairs as they are being done. I have not spoken to assessors of late, and I am sure you will make those sorts of inquiries, but what those processes are around repairs, anecdotally, I can tell you about some issues going on with vehicle repairs where it is marginal as to whether something should be written off because of a financial consideration. I am aware of one instance where a vehicle is being repaired and basically they are stripping it down to a point to make a decision about whether it is economical to repair because the owner of the vehicle wants to keep it. It has some damage on a B-pillar and if that damage is such that they have to cut that B-pillar out, then the vehicle will be a write-off. That will necessitate at least one, maybe two, inspections throughout the repair process by the assessor to say, “Yes, keep going”, or “No, that is a write-off.” They are engaging.

Mr D.T. REDMAN: Would it be fair to say that insurers take very seriously the notion of a vehicle going out that is substandard? The worst example I can think of is an airbag that does not go off when it should go off. Is it your experience that they are taking that feedback loop very seriously and will not want to have that against their name?

[11.10 am]

Mr HILLYARD: Yes, absolutely. They would be well aware of the legal liability that they would pick up for any damages as a result. What we are not experiencing, and we have not seen evidence brought forward by the industry association so far, is evidence that there are people cutting these corners. We have all heard the horror stories that they have patched up the dashboard and there is no airbag in there, and no-one knows. But no-one has brought forward any evidence to say that that is systemically happening and there has been no evidence of vehicles that have been involved in accidents where the police have been involved in reports and where an airbag was, it is not there anymore. Major accidents that occur where there is loss of life or serious injury are inspected by the major accident group at the police. They do full-on reports because they end up going to the Coroner’s Court, or the prosecution of drivers, and they eliminate mechanical issues that may have brought about an accident. They look at the topography of where the accident occurred, the damage that has occurred, what the cause was—is it driver, is it mechanical, is it landscape? That is another mechanism in the bigger scheme that might identify that there has been some dodgy repairs done that have resulted in someone’s injury or death.

The CHAIR: That is a good point. That is probably something that we should follow up and ask of the WA police what evidence they have had.

Mr S.J. PRICE: When you do your audits, you are regulatory, so it is certification from the mechanics or the people undertaking the work, and licensing for the business. That is pretty much the extent of it.

Mr SMITH: Yes, exactly.

Mr HILLYARD: Then in the lesser regulatory role, it is about resolving consumer disputes, which might arise dealing with our conciliation process and the application of the Australian Consumer

Law. But that does not involve people who are getting vehicles repaired through insurers. That has its own dispute mechanism through the commonwealth, as in Peter's mud map.

Mr D.T. REDMAN: David, at the start you talked about there being a couple of decades of these issues coming through and teasing these things through. In fact, the last presentation was pretty similar. These issues, whilst they are issues to people who are in a constrained commercial market where they are trying to get market share and keep their business going, are largely commercial matters in a dynamic environment that is largely shifting, where technology is changing the game and big players are trying to get efficiency. Is that your assessment as to what is driving that as distinct from an unconscionable angle or poor behaviour?

Mr HILLYARD: Yes, and if I can jump in there: the repair business is not a great deal different from the sales industry with the drawing together of bigger and bigger dealerships selling multiple brands of vehicles now as opposed to what we used to experience 20 years ago when every brand of dealer that was available had their own flagship. You can go "just over the Causeway" in Victoria Park and you will see a dealer and every brand of car for sale within his lots. That is not uncommon. The same thing happens in a lot of country centres—the Holden dealership, the Nissan dealership and the Toyota dealership are all owned by the same organisation.

The CHAIR: You said that if you did get complaints on particular issues, you would refer them to the federal agencies such as the ACCC or there would be some involvement with APRA or ASIC. Do you liaise with them? Is there any dialogue with those agencies about what they are doing in this space and any improvements they are making? Do they ever say to you, "We are working on this issue and you should refer certain parties"? Is there no direct interface?

Mr HILLYARD: Typically, what would happen is if a consumer was ringing in with a problem about their insured vehicle being repaired, we would make a referral to FOS, and our catchcry with all of the industry dispute process we send people to is, if that does not sort it out, come back to us. They always have that right of return because we recognise that some people get absolutely lost in the different dispute processes. The same applies to the telecommunications industry and the insurance industry generally.

The CHAIR: You note in your submission about FOS that 33 per cent of its general insurance disputes involve motor vehicle comprehensive insurance but they do not report the reasons. Would that be useful? Presumably, they can produce that data.

Mr HILLYARD: Yes, and it would be. My gut feeling would be that a few of those disputes would be about rejection of claims, so circumstances that have refused to deal with the claim, perhaps because someone has not declared their driving history—those sorts of issues.

Mr SMITH: Rather than the quality of repairs.

Mr HILLYARD: Rather than something around a dispute about getting a repair done.

The CHAIR: You mentioned the role of the Small Business Commissioner. If we could explore that in a little more detail. We have had two parties provide evidence to us this morning when we have explored these issues. A suggestion has been put forward to us that the role of the Small Business Commissioner should be expanded and the powers strengthened to enable the SBC to compel parties to turn up and mediate and to do certain things. Do you have any views on that?

Mr HILLYARD: Not really. Our speaking with the Small Business Commissioner is that there have been so few issues brought to them that they have not experienced the need to engage in any further details. When we have spoken to them, they have not raised any issues. I think the track record is that very few businesses have gone to the SBC looking for some form of assistance. I think we mentioned in our previous submission that there is always a reticence on the part of a small

business owner to take on the big insurer. They will often complain to their industry association or their friends, but they are not likely to go to an authority because it might be that they are punished.

The CHAIR: They find their work pipeline drying up? Yes, I understand.

Mr GOW: Clearly, our focus is the consumer. The Small Business Commissioner is a business relationship area. We deal with him on a number of matters. It would probably be well worth your while talking to him. But I am aware that he feels that a lot of the good he does is when he can take an anonymous complaint, if you like, rather than mediate two people openly because of that fear of retribution or whatever. He is also looking at what are the relevant powers and things that he needs to do his job properly. I think it would be well worth having a chat to him about how he sees a role in this area.

The CHAIR: What ministerial portfolio does he fall under? Is it also Minister Johnston?

Mr GOW: Minister Papalia, the Minister for Small Business.

Mr D.T. REDMAN: The department ran a secret shopper exercise for a couple of years. Can you make some comments about that and your preparedness to do it again? Did it expose anything?

Mr S.K. L'ESTRANGE: When was that conducted?

Mr HILLYARD: I do not think we have run it for at least three years now. Previously, we were in a workshop out in Osborne Park and we had our own hoist and all our equipment there and it was a fairly simple process to inspect vehicles. We ran the program by inviting people across the broader Department of Commerce to come to us if they were getting their vehicles serviced. We were interested in things from a shopper docket service right through to a new car dealership service. What we offered to do was to inspect the person's vehicle prior to the service. They then went in, got it serviced, got the work completed, got the page of bad news that comes back when you get your vehicle back, and then we re-inspected it to make sure that all the things they said they had done and were paid for were done and we then assessed what the diagnoses was of what further work might be required on the vehicle to see if there was a claim of over-servicing or poor workmanship. We ran that for at least two years. Pleasingly, from an industry perspective, we did not have any concerns with any of those repairs. That is going from the shopper docket oil change through to the new car dealership servicing. I expected to get bad results coming out of it. We expected to be able to find some misrepresentations and some poor workmanship and to take some disciplinary action. In all that time, across that broad range of repairers, we did not get a run on the board, which is a very good thing for industry and a very good thing for the community to have that trust in the professionals that are doing these repairs. From time to time we will get a complaint from people saying that they have been quoted to have new brakes put on the vehicle and, when you look at it and inspect it, you find that it is gilding the lily to say that you need to have brakes done immediately and that it is urgent. We have taken prosecution action against one workshop for that sort of behaviour.

[11.20 am]

The CHAIR: To change the topic slightly, in your earlier hearing you told the committee that there was an advisory committee under the fair trading legislation that meets on a regular basis and provides advice to the commissioner and minister. How often has that committee met, and have any smash repair issues come up as part of its discussions?

Mr HILLYARD: The Motor Vehicle Industry Advisory Committee has not met since August last year. That has been as a result of a change of government and getting new members appointed, so we have not had a quorum. We have just secured the membership now and our next meeting is planned for August this year. There will have been a 12-month period where we have not had a meeting.

What I can say is that of the industry representatives who were on that advisory committee, two were directly from the smash repair industry. They were certainly some of the sources of the anecdotal advice that they were being price pressured on a range of things. Equally, they brought along examples and showed us the changing ways in which vehicles are being repaired and the technology that is required. I was explaining to my colleagues yesterday about a utility that had a simple panel dent behind the door on the driver's side that necessitated taking the entire side off the vehicle to repair that. That even included unwelding the roof, because that one panel welds to the roof. The whole thing had to be taken off. The entire side of the vehicle came off to repair that one dent in the side. There were differing metals and different methods of construction. It was a very complicated, very expensive repair. That, too, was a pretty new vehicle and it was a touch-and-go financial decision. You can imagine the customer's surprise when he has a dent that was caused in a carpark and he is suddenly told that his vehicle is about to be written off financially.

The CHAIR: That is crazy.

Mr HILLYARD: It is scary.

Mr SMITH: That is the way vehicles are built these days and, I guess, to a cost advantage ultimately for the customer.

The CHAIR: I guess if the insurance company is then saying, "No, it is a \$200 or \$300 job. That is the industry standard so we're going to pay you X," presumably there is a bit of tension there.

Mr SMITH: Possibly. I do not have the experience that Dave has, but even in those circumstances, I suspect that insurers might not be saying that it is \$200 or \$300. They accept that probably exactly what Dave said is required, but their commercial judgement is —

The CHAIR: We are going to write this car off.

Mr SMITH: Yes.

The CHAIR: That is just a perverse incentive.

Mr SMITH: While that committee has not met since August last year, I know from the way Dave operates that there is pretty constant, frequent, if not regular, contact. From where I sit, I know that if there were issues that industry representatives had, Dave's door is open. It just has not been accessed that often.

Mr HILLYARD: The business of our agency is as a regulator. What we would normally take to those committees to talk to them about is still front of mind. I suggest that I would have weekly contact with the Motor Trade Association. That occurs both at our branch level and our inspector level, as well as calls to me as commissioner. We are in very close contact.

Mr GOW: You raised earlier the changing nature of the industry and the squeezing out of the little guys. The sort of technological change that Dave is talking about and the way cars are built and the way they are retailed and financed et cetera, all of that is changing. It is getting more and more sophisticated and harder and harder for small people—backyard operators—to deal in this industry. It is probably too difficult to predict exactly where we are going to go, with driverless cars and all of that sort of thing coming on in the future, but it is certainly an industry that is in change. Some of the problems that are traditionally in the industry are probably going to get worse as a result, but others may well go away, looking at the shape of the industry and the future of the industry as well.

The CHAIR: It is a very interesting point. In the mining sector we are seeing an industry in transition as well. Are you aware of any work that is going on in any state government agencies about workforce transition or assisting small businesses to accommodate the change? What, if anything, is being done to help these businesses?

Mr GOW: There is broad work being done through the government's jobs policy that we bump into. I have not seen anything specific to this industry. I do not know whether David has. There are lots of industries and areas that are facing the same sort of thing. That is probably a question more for the jobs policy people rather than ourselves.

Mr HILLYARD: There are people working within transport and associated agencies that are looking at what we have all seen over the horizon with autonomous vehicles and how they might work within an environment where you have both autonomous vehicles and people driving vehicles around. There is certainly a lot of policy work going on in that space looking at issues of liability and the like. As we mentioned in our submission, if you take yourself back 25 years to what was on the road—basic cars with no air conditioning—to what we have on the road now, it has been a quantum leap. If you go another 25 years, who knows what will be there? We have some information from one of the inquiries that was talking about the computerised code that goes into vehicles. This just blew us away. They are talking about the lines of computer code in a vehicle. A US Air Force F-22 raptor has 1.7 million lines of code. The F-35 joint strike fighter has 5.7 million. A Boeing 787 Dreamliner has 6.5 million. A 2010 Ford has 10 million lines of code. A 2009 S-class Mercedes-Benz had 20 million lines of code.

The CHAIR: Unbelievable.

Mr HILLYARD: So you just go, "I hope those jets stay up in the air!" It is the changing nature of things. They were back in 2009, 2010. We are in 2018 now. What is in those Mercedes-Benz cars now that stop you from driving out of your lanes? I do not know where that industry is going in terms of repairing. How you would expect to drive up to a local service station and get that done is just mind-boggling.

Mr S.J. PRICE: My Mazda has got a memory card that goes in it. If you take the memory card out, the car is gone; you cannot do anything with it. It is bizarre. You could lose that. I think it is about 600 or 700 bucks to get a new one.

The CHAIR: It is unreal.

Mr SMITH: Coming back to your question, Madam Chair: we are not in that space. As Dave said, we try to keep an eye on things. In a way, the industry will need to find its own adjustments to those. Us as a regulator, we kind of make sure that our rules do not—at least from my perspective—imbed a particular solution because it is the industry that has to come up with how to adjust to these changes, in my view.

The CHAIR: Can I just ask, and it is a slight change in question: have you had any specific issues around the tow truck industry; any complaints from consumers about tow truck drivers?

[11.30 am]

Mr HILLYARD: Yes, over the journey. We are aware that the Department of Transport legislation looks after that space, has got a capacity to deal with consumer issues and disputes in terms of setting practice standards, but we have suggested to our minister that we should look at whether that form of activity should perhaps be more consumer focused and come across to Consumer Protection as an activity. We are working on a scoping paper on that issue at the moment. The complaints as they were coming to us were both industry driven from the insurers as well as from the occasional consumer complaint about fees and charges being charged. The complaints that were coming to us from the insurance industry were about capture of the consumer at that point and people assuming that they were an authorised insurance tower and then taking the vehicle off to their storage yard and not releasing et cetera. My anecdotal understanding is that a lot of that

has been shaken out of the industry now and things have settled back down to better behaviours. The other —

The CHAIR: Why is that, do you think?

Mr HILLYARD: I think there has been some pressure brought to bear by the insurers saying, “We’ll pay properly for these services but you’ve got to start dealing with these things in a proper manner.” I think a few people have disappeared. There is not a fit-and-proper-person test for a tow truck operator; it is equipment based from a transport perspective, whereas most of the licensing regimes that we look after at consumer protection usually have an element of fit-and-proper person and whether complaints were around if their criminal background was involved. The other aspect that is synonymous with the tow truck industry is wheel clamping; so people on private land authorising people to clamp wheels to secure a return for people parking on their private land. That is an issue that has been looked at in a few of the other states and certainly our minister has asked us to again scope that issue. They are closely aligned to the towing industry but not necessarily absolutely tied to the two industries.

The CHAIR: One final question: you spoke about the reform under consideration. A review has been underway on the repairers act and the Motor Vehicle Dealers Act that considered whether disclosure of information ahead of purchasing a vehicle should be improved, particularly about repairs or write-offs that have been undertaken. What feedback has been received on that proposal? How well has that been received?

Mr HILLYARD: Certainly from when the discussion paper was out, there were a number of submissions that were suggesting that information that is held already, like on the written-off vehicle register, should be disclosed by selling dealers to customers so that it is brought to their attention. At the moment if a dealer was to not look at the register, he therefore does not know about it and therefore does not need to disclose.

The CHAIR: There is a bit of wilful blindness there, right?

Mr HILLYARD: Correct. I can tell you that that is a practice around some of the dealerships, “What I don’t know, I can’t tell you.” What we obviously do know, though, is that anyone can conduct a search on the register if you know what the vehicle is. But it is not —

The CHAIR: And politicians are less trusted than car dealers!

Mr HILLYARD: So what do you get up to!

The CHAIR: We could tell you but we would have to kill you!

Mr HILLYARD: The likelihood of a consumer doing a PPSR check on a vehicle they are buying from a dealer is non-existent; it is just not going to happen. There is no real need for them to other than this accident damage stuff. Whilst I would point to that as an issue of interest to consumers, it is only a written-off vehicle from an economic sense that ends up on that register. For a written-off vehicle to be on that register to then be back on the road and sold, it has to have gone through a pretty rigorous reinspection program to get over licensing. As the panel repairs are being done, it is inspected by Transport or an authorised inspector prior to any putty and paint being put on it. If it has major structural faults, they have to be inspected and checked before it gets the undercoating and the paint et cetera.

Mr S.J. PRICE: What about private sale time?

Mr HILLYARD: If you were not insured and you had major accident damage and you repaired your vehicle, it would never turn up on the vehicle register because it is only insurance companies which put them on.

Mr S.J. PRICE: But what if someone buys that? There was that example recently where a couple of brothers sold a few hundred cars sort of thing and there was some speculation that some of them may have been repairable write-offs.

Mr HILLYARD: They too would still have had to have gone through the inspection program to get relicensed. It is delicensed when it is written off and the VIN in the licensing system has accident damage listed against it, so when it goes to get relicensed, if it has not been inspected by Transport or their authorities, it will not get relicensed.

The CHAIR: Thank you very much for coming in today. I will proceed to close today's hearing. Thank you for your evidence before the committee. A transcript of this hearing will be emailed to you for the correction of minor errors. Any such corrections must be made and the transcript returned within seven days from the date of the letter attached to the transcript. If the transcript is not returned within this period, it will be deemed to be correct. New material cannot be added via these corrections and the sense of your evidence cannot be altered. Should you wish to provide additional information or elaborate on particular points, please include a supplementary submission for the committee's consideration when you return your corrected transcript of evidence.

Hearing concluded at 11.35 am
