



Attorney General; Minister for Commerce

Our Ref: 67-10453/3

Ms Jessica Shaw MLA
Chair, Economics and Industry Standing Committee
LAEISC@parliament.wa.gov.au

Dear Chair

Jessica,

ECONOMICS AND INDUSTRY STANDING COMMITTEE REPORT NO.4- WESTERN AUSTRALIA'S SMASH REPAIR INDUSTRY: STRUCTURAL CHALLENGES

I refer to the Economic and Industry Standing Committee - Report No. 4 "Western Australia's Smash Repair Industry: Structural Challenges", tabled in the Legislative Assembly on 29 November 2018.

In accordance with Standing Order 277(1) of the Legislative Assembly the attached Government response will be tabled.

The Government thanks the Economics and Industry Standing Committee for Report No 4.

Yours sincerely

John Quigley

Hon. John Quigley MLA
ATTORNEY GENERAL; MINISTER FOR COMMERCE
Attach: Government Response

2 APR 2019

ECONOMICS AND INDUSTRY STANDING COMMITTEE
REPORT NO.4- WESTERN AUSTRALIA'S SMASH REPAIR INDUSTRY:
STRUCTURAL CHALLENGES
GOVERNMENT RESPONSE

The Government of Western Australia notes Report No.4 "Western Australia's Smash Repair Industry: Structural Challenges" (the Report) by the Economics and Industry Standing Committee (the Committee) tabled in the Legislative Assembly on 29 November 2018.

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Committee has directed that the Treasurer and the Minister for Commerce report to the Legislative Assembly as to what action, if any, is proposed to be taken by the Government with respect to the recommendations of the Committee.

The Report identifies a number of changes that have taken place in the smash repair industry in recent years which have led to allegations of increasing inequality between insurers and repairers resulting in predatory behaviour and misuse of market power. It makes three recommendations which are directed to the Treasurer and the Minister for Commerce.

Recommendation 1

That the Treasurer write by 28 February 2019 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 anti-competitive conduct and misuse of power in Australia's smash repair industry.

Response:

The recommendation is supported.

The Government of Western Australia is aware that a range of allegations have been made in various inquiries and forums suggesting that increasing concentration in the market for motor vehicle insurance in recent years has led to a risk of anti-competitive behaviours which have been harmful to small operators in the smash repair industry. The Government's view is that an appropriately convened and empowered Commonwealth inquiry should be considered to assess the veracity of such allegations. Further, the Government notes that the Australian Competition and Consumer Commission (ACCC) is currently undertaking a number of studies with regard to misuse of market power in specific industries as a result of the expanded prohibitions which came into effect in November 2017 as part of the Harper Report reforms to the *Competition and Consumer Act 2010*.

The Treasurer has written to the Federal Treasurer asking that he consider a review by the ACCC of the issues identified in the Report.

Recommendation 2

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.

Response:

The recommendation is noted.

The Government acknowledges and accepts the finding of the Committee that the Motor Vehicle Insurance and Repair Industry Code of Conduct (the Code) is regarded by the industry as a positive initiative. Mandating the Code in Western Australia would, however, require significant legislative amendment and is likely to raise issues of inconsistency with the sovereignty of Parliament as it would incorporate into WA law an instrument whose contents are not subject to any Parliamentary control or oversight.

It would also be necessary to devise arrangements for enforcement. This has raised serious issues for regulators in New South Wales which were highlighted in a NSW Parliamentary Inquiry in 2014. As a result of that inquiry new enforcement mechanisms providing for binding determinations were added to the Code in 2017 which will operate independently of the NSW application legislation and may make mandating the Code through State legislation in Western Australia unnecessary.

In view of those issues, it is not possible for the Government to make a commitment to implement this recommendation immediately. The Government is, however, committed to undertaking further work to identify the most effective way of promoting adherence by insurance providers and repairers in Western Australia to the principles set out in the Code.

Recommendation 3

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.

Response:

The recommendation is supported in principle, but it is noted that as the Government does not support mandating the Code at present, consideration of the role of the Small Business Commissioner (SBC) will be in a broader context.

The Commissioner for Consumer Protection has initiated discussions with both the ACCC and the SBC to identify options for addressing the issues identified by the

Committee and will continue to work with those agencies to determine how the agencies can best contribute to promoting the effective operation of the Code in Western Australia.