



ABN 16 151 703 490

JP AUTO GROUP PTY LTD  
**ACCIDENT REPAIR CENTRE**



16-18 Windsor Road  
Croydon VIC 3136

PHONE: 9723 9499

FAX: 9723 0104

COUNTRY/INTERSTATE: 1800 359 001

EMAIL: info@jpauto.com.au

WEB: www.jpauto.com.au

**COMPLETE CAR CARE &  
AUTO RECOVERY SERVICES**

- Accident Repairs
- Classic Restoration
- Mechanical Repairs
- Roadworthy Testing
- Towing Service

29 October 2013

Mr Greg Medcraft  
Chairman  
Australian Securities & Investments Commission  
GPO Box 9827  
Sydney NSW 2001

cc: The Honourable Joe Hockey, Treasurer  
cc: The Victorian Automobile Chamber of Commerce (VACC)  
cc: The Financial Ombudsman Service

Dear Sir

I would like to bring to your attention systemic practices in the car insurance industry which I believe to be unethical and contrary to good industry practice. I seek action from the Australian Securities & Investments Commission (ASIC) to address these issues, including taking appropriate compliance action and / or instituting responsible regulatory change eg to the *Australian Securities and Investments Commission Act 2001* or the General Insurance Code of Conduct.

I own and operate multiple businesses associated with car accident repairs, and accordingly I am constantly interacting with insurers over vehicle repair claims and their associated problems. In such matters it has been my experience, that while the Financial Ombudsman Scheme (FOS) works well to resolve most claim disputes between insurers and consumers, there is a gap when it comes to unethical or incompetent actions by the 'other person's insurer'. In this respect the behaviour of insurers affects more than just their individual clients and can have quite wide ramifications across whole industries, particularly the car repair industry. My position is that there is a need to close this regulatory gap and prevent exploitation of it, as it can cause widespread disadvantage and harm to both businesses and the general public. Put another way, I request that ASIC takes action to improve insurance companies' accountability when it comes to their broader behaviour in respect to non-client third parties and others.

Problems with the 'other person's insurer' currently lie mostly outside the scope of the FOS, and on many occasions seem to be inadequately addressed by the current conduct provisions of the *ASIC Act*. Some insurers take advantage of this gap:

- making hidden deals
- misinforming clients of true repair costs and not disclosing hidden commissions or other benefits given in kind

- acting unconscionably to get agreement to lesser standard repairs than those to which a person is entitled, and
- crossing the line of process fairness by deliberately manipulating the insurance claims process to cause delays, and / or by playing games of brinkmanship with third parties or their repairers.

When there are negative repercussions to such actions for their clients or others affected, such insurers then commonly disavow all responsibility, saying they are only an agent for their client & washing their hands of a matter, before then going on to repeat their actions. Being allowed to routinely include clauses in their standard contracts which require consumers to almost unconditionally allow the insurer to represent them in any proceedings associated with a vehicle accident, encourages such behaviour.

While I acknowledge that some insurers do act responsibly and ethically, the prevalence of those who do not is too high in my experience. The general ignorance of what is needed for effective vehicle repairs and the legalistic nature of vehicle accidents, also makes the car repair industry particularly vulnerable to hidden manipulations and undisclosed deals behind the scenes. It fosters an environment where insurers can hide what they do, and makes it too easy for insurers to place their own financial interests above their obligations to their clients and others.

This last is particularly evident where all parties to the accident could be considered to be short changed by the contracted insurer, such as when an insurer plays off one party against the other, to get a result where the insurance client may not receive everything they could get if they were properly represented, yet at the same time a not at fault third party only gets substandard repairs.

For example, in my car repair business:

*I allow consumers to take possession of their vehicles as soon as repairs are completed, on the basis that payment will be made later once the 'other person's insurer settles their accident insurance claim. This is a benefit to consumers' as it means they get their cars' sooner and usually streamlines claims & reduces stress associated with the insurance process. In such cases, I take reasonable precautions to try to ensure payment by getting customers to agree & sign a statutory declaration that such settlement claims belong to me to and should be sent to me directly, to the extent that payment remains owing. I deal with insurers throughout the repair process and ensure they are aware of the assignment of the repair costs. However, some insurers, despite knowing better, and contrary to the industry norm, still send settlement cheques to my client direct. Mostly these are passed on, but it is like giving candy to babies, and particularly for people who are struggling financially some give way to temptation and do not pass the payment on. You might think this is just a little thing on the part of the insurer or perhaps an oversight. However, where it occurs many thousands of dollars are often at stake, and if payment to my business remains outstanding, such matters are reported to the police with our customers ultimately charged with theft & obtaining property by deception. One way of looking at this is to solely blame my customer, but what I draw to your attention is that some insurers actively encourage and facilitate such behaviour, sometimes as a strategic ploy to damage businesses that do not 'play ball with them'. Due to insurers conduct 2 people have been charged by the police on this basis, and further charges with*

*others are pending. This will also mean the insurance company's client will likely be required to give evidence in subsequent civil proceedings we institute to recover our costs, further wasting their time as well as ours, dragging out the whole matter, and unnecessarily putting pressure on the already overloaded courts.*

The lack of regulatory oversight in relation to car insurance claims as they relate to insurer dealings with third parties or their repairers, also allows insurers to more broadly manipulate the vehicle repair industry to its detriment, and in doing so, be a barrier to free trade. While I appreciate that the government is trying to reduce regulatory burdens, a failure to act in this instance facilitates anti-competitive behaviour when looking at the motor vehicle repair industry as a whole.

To illustrate this better I have provided the below examples of insurer manipulations that fall in this category:

*In my business, car accident repairs are often measured in thousands of dollars per job and delays in payment can significantly affect short term cash flow and hence business viability. Vehicle insurers are aware that this is generally the case and through lack of oversight they can use it to their advantage. Over time, in car accident settlement situations, they can often manipulate many repairers into quoting low by either paying quickly or by delaying payment. This is despite knowing that with such 'under quoted' jobs there is a likelihood that many such jobs would only be completed to a substandard quality. It has been my experience that in such instances insurers often deliberately turn a blind eye to such concerns and then wash their hands of it, if there is a complaint. As my business quotes honestly with our clients and does not engage in such practices, firstly we can lose work to those who underquote, but secondly it can also be many months before we are paid out by some insurers thus requiring us to factor such debts ie. on sell the debt at a percentage loss to get cash flow. By comparison, in the same situation, a 'puppet' repairer would normally get paid quickly, usually within a month to 6 weeks. In addition to the detriment to consumers that this causes, it makes our competitors jobs more profitable and gives them a financial advantage over us which is anti-competitive and not in the best interest of the public.*

*The above situation can be further exacerbated when the insurer pays out lower than their contracted obligation but still just enough to make it not worthwhile for a third party to pursue court action over an accident settlement given the court costs involved. While this might be a somewhat acceptable situation in the overall bargaining between parties in a vehicle accident, it is further manipulated by insurers at the car repair level. At the repair level it is not reasonable in my view, if insurers are simply doing it to minimise their payouts irrespective of the interests of their client. In such matters the interests of the insurer and the client do not always match up contrary to popular misconception. The clients of the insurer often feel guilty or responsible over the consequences of a car accident and often wish to do the right thing by the other party with a fair recompense rightly covered by the insurance they have paid for. It is only when the insurer says it is 'my way or the highway' that such clients commonly back away from their responsibilities to accident victims ie. under threat of the insurer refusing the claim. In such situations, at the insurer / repairer level this can again encourage underquoting with its associated ramifications including often depriving the third party consumer of a quality repair, or from a competition point of view, depriving a vehicle repair business of additional work.*

*It can also be further exacerbated where the insurer, deliberately or carelessly, unnecessarily delays the claims process itself. Such situations are very common,*

*especially in situations where a repairer has finished a job but is waiting 3 weeks or more for an insurance assessor to do a final inspection. Again, insurers can use this technique to punish repairers who do not 'play ball with them'.*

The impacts of insurers not being regulated in relation to third party interactions go on and on, particularly as they relate to manipulation of delays in claims processing and payment. Such behaviour can needlessly increase the administrative burden for repairers, create additional car storage costs, and reduce turnover as car repair yards run out of room to store vehicles or run out of cash to pay for staff or vehicle parts upfront. Sometimes, putting a repairer 'over a barrel' in this way also forces them to waive legitimate charges so they can get paid at least some of what they have earned, so they can move on to other jobs and keep generating an income. All these things make the repair industry less economically viable and reduce both consumers' and the industry's faith in the system.

Of particular concern, it could be said that if a repairer gets shafted in such a way and they are not protected by the government, then they might be less likely to care if others are similarly shafted, thus perpetuating the cycle, and worsening the public perception of the repair industry.

Delays also often have a domino effect when it comes to perpetual unnecessary debt collecting. An unnecessary delay up the chain with an insurance settlement means delays all down the subsequent repair supply chain, with added debt collecting activities increasing as cash flow becomes more and more critical for businesses as time goes on. Such characteristics of insurer practices do not inspire business confidence and do not make for an efficient vehicle repair market.

In summary, while I acknowledge that in some cases there may be a legitimate use of market power to strike a good bargain, I maintain that too often insurers cross the line and act unethically to benefit themselves at the expense of their client and others. In this respect, while there is some protection for insurance clients, I maintain that there is currently very little protection in practice for third parties affected by insurance misconduct and that this currently causes substantial public detriment.

I maintain that this broad lack of scrutiny or oversight in such matters needs to improve and I ask ASIC to address these concerns. In particular, I ask ASIC:

1. to set standards as to what is acceptable insurer behaviour in dealings with third parties, preferably stating acceptable timeframes and thresholds for action
2. to require process transparency in insurance dealings with third parties
3. to require a disclosure of identified risks to clients in relation to insurer actions taken on their behalf
4. to set up clear and accessible channels to action misconduct complaints made by third parties affected in a vehicle accident insurance claim
5. to be substantially more proactive in preventing unconscionable behaviour by insurers in motor vehicle insurance claims

6. to give a higher priority to taking enforcement action in matters involving unethical or unconscionable actions by insurers in relation third parties

I consider that I voice what is common knowledge in the car repair industry and seek further action from ASIC to protect the public interest in these matters.

I respectfully await your actions & response.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J N R', followed by a long horizontal line that ends in a small flourish.

**John Pennant**  
**Director**  
**JP Auto Group Pty Ltd**

Member Victorian Automobile Chamber of Commerce  
Member Institute Automotive Mechanical Engineers  
VicRoads Licensed Vehicle Tester