

REVIEW OF THE MOTOR VEHICLE REPAIRS ACT 1980

REPORT



OFFICE OF FAIR TRADING

NSW Consumer Protection Agency

Department of Commerce

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REVIEW OF MOTOR VEHICLE REPAIRS ACT 1980

1. BACKGROUND TO THE REVIEW

Terms of reference

The *Motor Trade Legislation Amendment Act 2001*, which was assented to on 28 November 2001, contained numerous amendments to the *Motor Vehicle Repairs Act 1980*. Among the amendments was the insertion of section 91 which provided for the Minister to review the Repairs Act to determine if its policy objectives remain valid and whether the terms of the Act remain appropriate for securing those objectives.

Accordingly, the terms of reference for the review were as follows.

The *Motor Vehicle Repairs Act 1980* (the Act) shall be reviewed to:

- (a) determine whether the policy objectives of the Act remain valid; and
- (b) determine whether the terms of the Act remain appropriate for securing those objectives.

In examining these matters, the review should include a consideration of:

- (a) whether the benefits of the existing Act to the community as a whole outweigh the costs;
- (b) issues of concern in relation to the regulation of the motor vehicle repair industry;
- (c) feasible alternative means of achieving the objectives, including non-legislative approaches.

Process of review

The review was conducted by the Office of Fair Trading. As part of this process, face to face consultative meetings were held in May and June 2004 with the following stakeholders:

- Motor Traders Association NSW
- Institute of Automotive Mechanical Engineers
- Service Station Association
- Holden
- Toyota
- Ms Margaret Thompson
- Insurance Council of Australia
- AAMI
- Allianz Insurance
- IAG
- NRMA
- Automotive Training Board
- Australian Workers Union
- Australian Manufacturing Workers' Union (AMWU)
- NSW Police Service
- Roads and Traffic Authority
- Consumer, Trader and Tenancy Tribunal

2. BACKGROUND TO THE REGULATION OF THE MOTOR VEHICLE REPAIR INDUSTRY IN NSW

There are approximately 11,500 repair business currently licensed in NSW.

Licensing of repair businesses under the *Motor Vehicle Repairs Act 1980* was introduced following the findings made by two inquiries established in 1977 by the Minister for Industrial Relations - the Committee of Inquiry to examine the Mechanical and Electrical Repair Sectors of the Motor Vehicle Repair Industry and the Committee of Inquiry to Examine the Smash Repair Sector of the Motor Vehicle Repair Industry. The main findings by the Committees were that:

- approximately one third of people working as repairers did not have formal qualifications or training;
- there was a direct relationship between the quality of repair work and the skill of the worker and the equipment used;
- there was industry dissatisfaction with the available dispute resolution systems;
- consumers had a problem with repairers not complying with orders against them upon determination of disputes;
- there were repairers that did not comply with local government or health and safety standards and were not necessarily equipped to carry out repairs.

The joint recommendations in 1978 included:

- a scheme of licensing be introduced with the objective of improving industry standards by setting entry criteria for businesses, tradesperson and loss assessors;
- the scheme should control the behaviour of businesses, tradesperson and loss assessors in relation to their business and work practices;
- the scheme should be controlled and administered by the industry;
- a specialist tribunal should be set up to determine disputes between consumers and repairers outside of a formal legal process.

The *Motor Vehicle Repairs Act 1980* essentially embodied these principles. A licensing and certification regime administered by the Motor Vehicle Repair Industry Council, a statutory authority, was established.

However, as with any legislation, the nature of the industry being regulated changes over time, as does the needs of the market and the regulatory objectives of Government.

In 1995, the National Competition Principles Agreement required that the *Motor Vehicle Repairs Act* be reviewed as part of a comprehensive legislative review program.

The results of the National Competition Policy (NCP) review of the *Repairs Act* were embodied in the *Motor Trade Legislation Amendment Act 2001*. Amendments in this Act included measures to improve the effectiveness of the licensing regime and the creation of a restructured Motor Vehicle Repairs Industry Authority to administer the legislation. The provisions of that Act were progressively commenced during 2002 and 2003 and are discussed in greater detail in the body of this report.

3. THE OBJECTIVES OF REGULATION

The Motor Vehicle Repairs Industry

According to the Australian Bureau of Statistics (ABS), there were 13.2 million motor vehicles registered in Australia as at 31 March 2003. Approximately 10.4 million of these were passenger vehicles and 3.9 million of all motor vehicles were registered in NSW. The average age of all registered vehicles was 10.4 years.

In 1996, the Productivity Commission described the repair industry as one characterised by a large number of repair shops, each of which employs relatively few people. In addition the overwhelming majority of repair shops are individually owned.

There are 6 main types of businesses providing repair services:

- individual workshops;
- service station workshops which are either independently owned or franchised;
- franchised dealer workshops;
- other franchised workshops (eg Ultra Tune and Better Brakes); and
- company owned chains (eg. Kmart and Goodyear);
- mobile repair services (franchised operations, part of company owned chains or independent).

The ABS found in 1998-99 that businesses that employed less than 20 people constituted 76% of the motor vehicle services industry. These small businesses contributed 64% of the income earned by the motor vehicle services industry. Businesses that employ more than 200 people constituted 8% of the motor vehicle services industry and contributed 19% of the income earned by that industry. The percentage earned by large businesses has increased from 5% in 1991-92.

Factors which are changing the repair industry include:

- the increasing technical sophistication of vehicles;
- improved paint finishes;
- changes in materials used (eg. use of plastics, aluminium and specialty steels)
- competition from dealer franchises (extended warranties on new vehicles and involvement of dealership workshops in body repairs).

Purchasers of repair services include insurance companies, fleet owners and individuals.

Individual consumers purchasing repair services do not have the same technical competence and knowledge about the quality of repairs as professional repairers. There is the potential for consumers to be exposed to exploitation as a consequence of this asymmetry.

There is community concern in relation to the involvement of a minority of repairers in motor vehicle rebirthing. This is the process by which a stolen motor vehicle is altered to permit it to be registered and used or sold as a legitimate vehicle. The different stages of this process – vehicle theft, repair work, fraudulent paperwork, registration and sale – are often carried out by different people. These activities are often undertaken under the guise of legitimate business activity. Motor vehicle repairers may be involved in mechanical work for rebirthing.

The insurance industry has estimated that car theft costs close to \$1 billion a year with the cost to NSW estimated at \$388 million. The total cost of rebirthing in NSW is

estimated at \$156 million, which is 70% of the national cost.

Objectives of regulation

As a result of the review process, the Government's objectives in regulating the motor trade could be stated as follows:

- (i) to address market failure and an imbalance in the consumer/trader relationship which arises from information asymmetry; and
- (ii) to provide sanctions against misleading and dishonest business practices in motor vehicle repairs;
- (iii) to allow losses due to dishonest or incompetent trader conduct to be recovered;
- (iv) to assist with crime prevention in relation to motor vehicle rebirthing.

4. BUSINESS LICENSING REGIME

Business Licensing Requirements

The Act imposes a licensing requirement on the proprietor of a repair business. Under the Act, to “repair” includes to “examine, detect faults in, adjust, carry out maintenance on, overhaul, replace, alter and paint”.

Probity

Entry criteria to obtain a licence include:

- the applicant being over 18 years old;
- the applicant having sufficient financial resources;
- the applicant not being an undischarged bankrupt;
- the applicant being a fit and proper person (eg. not being convicted of an offence involving fraud or dishonesty in the last 10 years);
- the applicant not having been guilty in the last 10 years of motor vehicle theft or receiving a stolen motor vehicle or motor vehicle parts;
- the applicant having any qualifications, if prescribed.

The criteria which deal with the financial resources of the applicant provides some indication of the financial viability of the businesses which is important if the business is to be able to provide an appropriate service to consumers and also to fulfil general warranty requirements in relation to the service provided. Redress for consumers becomes more problematic if the business ceases operating, though measures such as the Contingency Fund established under this Act.

The Act requires a check of the applicant's fitness to hold a licence, as measured by matters such as convictions for offences for fraud and dishonesty. This check provides one indicator of the applicant's character and may be considered relevant to assessing the trader's likely ability to conduct an honest business. Honesty is also relevant to issues such as representations made to consumers about the repair service offered.

The Act was amended in 2001 to specifically prohibit people convicted of motor vehicle theft offences from holding a licence. This was in order to assist in detecting and deterring involvement in rebirthing. It has been suggested that people convicted of such offences have contacts with others engaged in motor vehicle theft and that this poses a risk that licensed businesses may be used for rebirthing activities.

The prohibition lasts 10 years from the date of conviction, which is consistent with the spent conviction provisions of the *Criminal Records Act 1991* and existing probity timeframes in the *Motor Dealers Act 1974*.

Persons convicted of the abovementioned offences whilst juveniles are not barred from applying for a licence.

The crime prevention objectives of the legislation are also apparent in the provisions of the Act which provide for the assessment of the character of people who seek to hide behind the façade of a legitimate business. Section 18(3)(j) of the Act provides

for that an application for a corporate licence may be rejected if “any person other than an officer of the body corporate who, in the opinion of the Authority, appears to have control, or substantial control, of the body corporate is not of good reputation and character or is not likely to exercise that control honestly and fairly. “

Another amendment from 2001 was the insertion of section 23A which requires licensees to submit an annual statement about matters relevant to the entry requirements. This obligation for licensees to report on matters that affect probity is one way in which there can be continual monitoring of licensees. The making of a false statement under this provision carries a maximum penalty of \$2,200.

Apart from the benefits to consumers from establishing probity-based entry requirements for licensees, the repair industry as a whole benefits from these requirements which improve the image of the industry.

It should be noted that while checking of probity issues at the point of entry is important, it cannot operate in isolation if the objectives of regulation are to be fulfilled. In other words, there must be constant monitoring of licensees through the enforcement of other aspects of the licensing regime.

Equipment requirements

The Act requires licence applicants to satisfy material requirements which are currently established in administrative guidelines determined by the regulating authority.

A full list of equipment is included in Appendix A.

Compliance is checked through an inspection of business premises.

In 2001, the Act was amended to allow the equipment lists to be specified in the *Motor Vehicle Repairs Regulation 1999*. The purpose of this requirement was to ensure greater accountability in relation to the imposition of equipment requirements.

Equipment can affect the ability to carry out certain repairs. However, the regulation of equipment requirements would only be justified on the grounds that repair business proprietors do not already have sufficient incentives to have appropriate equipment. The fact that repair work must be undertaken by or supervised by certificated tradespeople means that there is knowledge about how to carry out repairs and the necessary tools required for this. Also, the increasingly complex nature of newer motor vehicles requires the use of certain items of equipment. Furthermore, general legislation, such as the *Fair Trading Act* and the *Consumer Claims Act* prohibits traders from making false representations in relation to the goods and services they offer and a trader who was unable to carry out the repairs they are engaged to do would be leaving themselves open to action.

Equipment requirements can give consumers some assurance about whether repairers carry the appropriate tools. However, their role in the regulatory regime should not be over-emphasised. Other aspects of the regulatory regime, such as

qualifications, enforcement and disciplinary action arguably contribute more to competent repair work than prescriptive equipment requirements.

Equipment requirements have the potential to impose substantial costs on repair businesses if they are not necessary to the work being carried out either because of the scope of work or because there are alternative ways of carrying out the repair.

There appears to be substantial flexibility in the administration of the equipment requirements in that exemptions may be sought from the administering authority on the grounds that the equipment is not necessary to the scope of work being performed by the business and will not affect the quality of work.

However, this raises issues of transparency in the granting of exemptions, as well as the more fundamental issue of the purpose of equipment requirements if there are substantial exceptions to the rule.

If the scope of work being performed within a particular class of repair work varies considerably, this also calls into question the appropriateness of the repair categories established.

In 2001, the amendment of the Repairs Act to allow equipment requirements to be placed in the *Motor Vehicle Repairs Regulation* established a need for equipment requirements to be fully reviewed in relation to the costs imposed and in relation to their relevance as part of the regulatory regime. A comprehensive review should be undertaken as soon as possible.

An alternative to placing the equipment requirements in the regulation or in administrative guidelines would be for the Authority to publish equipment lists for information purposes for people wishing to set up a repair business. In this context, equipment would not be assessed as part of entry requirements and would accordingly be flexible. Any issues in relation to repair work could still be dealt with in the context of disciplinary action. Should the review of equipment requirements find that some equipment does not need to be prescribed in the regulations, this option should be considered.

Recommendation 1

That equipment requirements be reviewed and assessed as to their costs and benefits in the context of whether they should be prescribed under the Motor Vehicle Repairs Regulation.

Recommendation 2

Consideration should be given to publishing equipment lists as guidelines only, on which action could not be taken unless it was also found that work was being done below the usual trade standard, if equipment requirements are not prescribed in the Regulation.

5. CERTIFICATION FOR TRADESPEOPLE

Under the *Motor Vehicle Repairs Act*, repair work in a repair business can only be undertaken by the holder of a tradesperson's certificate for a particular class of work or by an apprentice or indentured trainee under the supervision of a certificated tradesperson

These repair work categories, which are specified in the *Motor Vehicle Repairs Regulation*, are:

- automotive electrician;
- body maker;
- brake mechanic;
- exhaust repairer;
- front-end specialist;
- liquefied petroleum gas mechanic;
- motorcycle mechanic;
- motor mechanic;
- natural gas mechanic;
- panel beater;
- radiator repairer;
- transmission specialist.

Entry criteria include:

- the applicant being a fit person;
- the applicant possessing qualifications prescribed or determined by the regulating authority.

The required qualifications are listed in appendix B.

The certification of tradespeople allows the probity of people who carry out repair work to be assessed on entry. In the context of the Government's crime prevention objectives, this is appropriate. However, certificates are currently issued in perpetuity and unless the certificate holder is also the holder of a repair business licence, there is currently no mechanism for ongoing probity monitoring such as the annual statement required from licensees. A renewal process would improve monitoring of certificate holders.

Furthermore, certification establishes certain educational standards for people who carry out repair work, which may be difficult for consumers to assess. (However, it must be acknowledged that educational requirements alone do not guarantee quality of service and enforcement and disciplinary action are also needed.)

Notwithstanding the existence of the certification categories, there are a significant number of repair businesses that only perform a subset of the range of work associated with a particular class of repair. A full list is provided in Appendix C. On the one hand, this promotes flexibility. On the other hand the existence of so many variations may call into question the certification categories which have been established.

Furthermore, section 25 of the Act provides that the Authority may issue a provisional certificate to an applicant who has not fulfilled the qualification requirements “if it is satisfied that the individual has acquired or is capable of acquiring the skills that will enable him or her to meet that requirement in respect of that class of repair work”.

Conditions may be imposed on provisional certificates. These include limiting the range of work that can be performed or requiring the person to work under supervision.

Both certificates and provisional certificates may be issued in perpetuity.

There were 1,001 provisional certificates issued in 2003/04 compared to 1,942 full certificates issued. Some of the full certificates would have previously been provisional certificates, for which the holder had gained the necessary qualifications. There are 856 current provisional certificates with an expiry date. The average duration of provisional certificates is 3 months. However, 3,063 provisional certificates have been granted 'until revoked'.

As full certificates are issued indefinitely, there is no way of knowing how many certificate holders are active in the industry.

However, the existence of so many provisional certificates issued in perpetuity may call into question their purpose in the context of the overall licensing scheme, given that the purpose of certification is to ensure that people who carry out repair work meet a certain standard of competency. While it may be appropriate to give applicants time to acquire the necessary qualifications, this should not be unlimited. A limit of 3 months should apply.

Apprenticeships and on-the-job training are a reality of the industry. The work of trainees requires supervision. Section 22(1)(b) of the Act creates an offence if a repairer allows an apprentice to work unsupervised. Some concerns have been expressed about the actual level of supervision which occurs. Accordingly, it would be appropriate for administrative guidelines on supervision to be developed in order to indicate to licensees what is expected in relation to this.

In 2001, repair certification categories in the *Repairs Act* were transferred to the *Motor Vehicle Repairs Regulation*. The purpose of this was allow a full review and revision of repair certification categories to more adequately reflect national training developments.

Until now, educational courses have focused on accredited courses, delivered by a range of training providers, leading to a qualification. As a result of the National Training Reform Agenda, units of competency now form the keystone of the Australian vocational education and training system. Competencies are specified knowledge and skills relevant to an industry which are applied to a workplace standard of performance. The competency system may mean that provisional certificates are issued less frequently in future as applicants may be assessed and receive a certificate for certain repair work categories on the basis of their competencies.

An Automotive Retail Services and Repair Training Package was endorsed in 1999

as part of the National Training Framework. This training package contains categories of trades and callings for the motor vehicle repair industry which are different to those under the current Act. The new scheme also includes provisions for multiple entry and exit points, choice of elective subjects and recognition of prior learning.

The existing licensing categories under the Act are not consistent with the national training package and the scope of repair work to be performed.

Following legislative amendments in 2001, existing certification categories have been transferred from the Repairs Act to the Repairs Regulation and mobile repair work classes be included. However, a comprehensive review of certification categories needs to be undertaken following the enacting of any amendments to the Repairs Act which may flow from this Review.

One alternative to certification would be to allow business proprietors to determine the competence of any employees conducting repair work under their supervision. While a certificate holder may lose their certificate for being incompetent, the proprietor of the repair business has the incentive to ensure that work of an appropriate quality is carried as the proprietor can also have disciplinary action taken against him/her under the *Repairs Act* if work is done "below the usual trade standard".

It has been suggested that while large repair businesses are unlikely to have difficulties in ensuring quality control, this would be more difficult for small businesses. Regardless of business size, the *Repairs Act* and case law already holds licensees responsible for the quality of work undertaken in their business.

However, given concerns about the probity of repairers and difficulties that proprietors may have in determining the skill of employees if they themselves are not qualified, certification should be retained at present.

Recommendation 3

That existing repair certification categories be reviewed in relation to the Automotive Retail Services and Repair Training Package.

Recommendation 4

That certificates be subject to a renewal process.

Recommendation 5

That provisional certificates be limited to a duration of 3 months.

Recommendation 6

That administrative guidelines be developed on what constitutes appropriate supervision of staff, including apprentices.

6. DISCIPLINARY PROCEEDINGS

A licensee may be reprimanded, required to comply, have conditions imposed and suspended by MVRIA or the licence may be revoked and the former holder disqualified permanently or for a set period. Any such decision may be reviewed by the Administrative Decisions Tribunal.

Grounds for disciplinary action include:

- the licence was improperly obtained;
- the licence holder or director of the company was convicted of offences involving fraud or dishonesty or the business was conducted in a dishonest or fraudulent way;
- repair work was carried out below usual trade standards;
- the licence holder has, as an adult in the last 10 years, been found guilty of stealing a motor vehicle or receiving or unlawfully possessing a motor vehicle or motor vehicle part;
- evidence that the holder is probably receiving or dealing in stolen goods;
- the licence holder becomes bankrupt or does not have sufficient material, manpower or financial resources to carry on business.

Certification for tradespersons may be suspended or cancelled on grounds including:

- the certificate was improperly obtained;
- the person was convicted of an offence against the *Motor Vehicle Repairs Act*;
- the person is not competent to do the class of repair work;
- the person has not complied with conditions or restrictions on a provisional certificate.

Disciplinary action is initiated through the issuing of a notice to a licensee/ certificate holder to show cause within 14 days why action should not be taken.

An alternative to disciplinary action contained in the Act is the ability of the General Manager, with the consent of the Minister, to request a motor vehicle repairer to execute a deed containing undertakings if it appears to the General Manager that the repairer has, in the course of business, repeatedly engaged in unjust conduct. Undertakings relate to the discontinuance of the unjust conduct, future conduct and rectification of the consequences of the unjust conduct.

Conduct by a repairer is considered to be unjust if it is dishonest or unfair, in breach of contract, in contravention of the *Motor Vehicle Repairs Act* or the regulations or any other Act administered by the Minister for Fair Trading or fails to comply with a condition or restriction of the repairer's licence.

The Consumer Trader and Tenancy Tribunal can, on application of the General Manager, order a repairer to refrain from engaging in the unjust conduct. It is an offence to contravene or fail to comply with an order of the Tribunal, with a maximum penalty of 20 penalty units.

Prior to the commencement of amendments from the *Motor Trade Legislation Amendment Act 2001* in July 2002, disciplinary action against repairers had required a formal hearing by the Motor Vehicle Repair Industry Council or a Committee of the Council.

The ability to take disciplinary action is crucial to the effectiveness of a licensing regime in that it gives licensees an incentive to ensure that their work complies with legal requirements. Disciplinary action provides a benefit to consumers in that businesses with work below the usual trade standard are reprimanded and can be prevented from trading.

The disciplinary provisions were amended in 2001 to promote crime prevention by allowing action to be taken if there are indications that a person has been involved in rebirthing. Apart from the ability to trigger disciplinary action if a licensee has been convicted of motor vehicle theft offences, action can be taken if there is evidence that the licensee is probably receiving or dealing in stolen goods. The provision is based on sections 34-36 of the *Pawnbrokers and Second-hand Dealers Act 1996* which allows licensees to be asked to show cause as to why their licence should not be revoked if the Commissioner for Fair Trading considers, in the light of evidence, that the licensee is probably receiving or dealing in stolen goods. The requirement on repairers encourages them to obtain motor vehicles, parts and accessories from legitimate sources.

The industry as a whole benefits from disciplinary action in that people who have breached the law can have action taken against them. This assists in promoting the reputation of the industry.

The cost of disciplinary action has been reduced through amendments made in 2001. Government costs have been reduced because of a speedier, paper-based administrative process for taking action, instead of the quasi-judicial process which previously existed. This in turn frees the regulating agency to deal with more matters.

Costs to industry have also been reduced in that a repairer's response to a show cause notice is written and a formal hearing is not required. The right to appeal the decision to the Administrative Decisions Tribunal remains.

There were four formal disciplinary matters determined during 2003/2004. The grounds of the first matter was that the business was being carried on in a dishonest or unfair manner. The licence holder was disqualified from holding a licence or being concerned in the direction, management or conduct of a repair business for 5 years.

The second related to a tradesperson who used falsified qualification documents to obtain a tradesperson certificate. The improperly obtained certificate was cancelled and the person was reprimanded.

In the third matter the grounds were the same as the first. The holder was reprimanded and was required to undertake certain remedial actions in regards to his business practices.

Disciplinary action statistics tend have traditionally been around this level, as shown by the following table.

Table 1. Disciplinary action by MVRIA and MVRIC 1994-2004

YEAR	NUMBER OF INVESTIGATIONS	ACTION	OUTCOME
2003/2004	N/a	3	As above
2002/03	N/a	5 show cause notices issued	Disciplinary action taken in 4 cases.
2001/02	N/a	3 matters considered	Disciplinary action taken in 2 instances. The third matter was held over to the following reporting period.
2000/01	N/a	3 matters	Disciplinary action taken in 3 instances.
1999/2000	24	7 matters recommended for action	Disciplinary action taken in 7 instances.
1998/99	24	3 formal proceedings	Disciplinary action taken in 3 instances.

Concerns were expressed during consultation by various stakeholders at what appears to be a fairly low rate of disciplinary action by the Motor Vehicle Repairs Industry Authority and also by the previous Motor Vehicle Repair Industry Council. There are approximately 11,500 licensed businesses and about 50,000 certificate holders and the amount of disciplinary action taken would appear to be significantly less than that for some licensing schemes administered by the Office of Fair Trading.

A view was expressed that the lack of disciplinary action allows licensees and certificate holders to be complacent because they assume that even if they breach the law, they either won't be detected or won't have action taken against them.

An examination of disciplinary action over the last 10 years indicates that a number of licensees have been able to avoid disciplinary action by surrendering their licence. This should not be allowed. It is understood that the purpose of section 35(2) of the Repairs Act is to prohibit the surrender of a licence or certificate prior to a determination by the Authority. However, the provision itself contains incorrect references to other sections of the Act and needs to be amended.

In addition, it is important that any disciplinary action that is taken needs to be sufficiently publicised so that the industry is aware that action may be taken.

Recommendation 7

That provisions aimed at prohibiting the surrender of a licence or certificate prior to a disciplinary determination being made be clarified.

Recommendation 8

That disciplinary action be more broadly publicised.

7. DISPUTE RESOLUTION

The Act contains a dispute resolution process. Complaints may be made to the MVRIA if there is a dispute about:

- the manner in which any repair work has been done;
- the fair cost of any repair work;
- any other matter.

Initial contact is with technical advisory officers who investigate the matter and, failing resolution at that point, an inspector is sent to meet the dealer and consumer in order to conciliate.

The dispute resolution process in the Repairs Act is designed to work in conjunction with the *Consumer Claims Act 1998* which allows for complaints about repairs to be made to the Consumer, Trader and Tenancy Tribunal (CTTT), an independent judicial body. Orders can include work being carried out and monetary payments. Prior to a matter being listed by the CTTT, as a matter of procedure, the CTTT will refer a matter to the MVRIA for a report if the matter has not previously been examined by the MVRIA. It is estimated that a report of this nature may cost around \$1,000 if prepared by a private consultant. Also, if expert evidence is required in a CTTT hearing, MVRIA inspectors are often called to provide technical reports.

Prior to the establishment of the Fair Trading Tribunal (now the Consumer Trader and Tenancy Tribunal) in 1998, disputes about repairs with a maximum value of \$3,000 which could not be resolved by inspectors were heard by the Motor Vehicle Repair Disputes Committee. This Committee consisted of the Chair of the Motor Vehicle Repair Industry Council, a member of the Council nominated by the Minister, a member nominated by the NRMA, a nominee of an industry association and a nominee of a trade union.

The Repair Disputes Committee was abolished in on 1 March 1999 with the creation of the Fair Trading Tribunal as part of an amalgamation of all judicial and quasi-judicial dispute resolution mechanisms in the Fair Trading portfolio.

There is a Motor Vehicle Division in the Tribunal which looks at disputes relating to motor vehicle sales and repairs. Many applications made to the Motor Vehicle Division are resolved through mediation and do not proceed to a formal hearing. For example of the 585 new applications received from 1 January 2003 to 30 June 2003, 212 were referred to MVRIA and 84 of these 212 or 39.6% were finalised without a hearing.

The technical knowledge of inspectors, as well as their knowledge of consumer remedies gives them the ability to investigate consumer claims and to assist settlement of disputes with repairers.

A more formal mechanism for the settlement of dispute, such as the one provided in the Consumer Trader and Tenancy Tribunal allows for enforceable orders to be made to ensure that remedies are carried out. Technical expertise is available to the Tribunal and as a judicial body which focuses solely on dispute resolution, provides benefits to consumers through being entirely independent, improves case management.

Statistics from the Motor Vehicle Repair Industry Authority indicate that it has significant success in resolving disputes through its inspectors. For example, in 2003-04, 304 disputes were carried over from the previous year. During the year:

- 1,709 notices of dispute were received, with 1,264 matters being finalised without them proceeding further;
- 362 were unable to be resolved (some may go to the CTTT);
- 102 were not related to motor vehicle repairs and 285 were still on hand at the end of the year.

In other words 63% of disputes received were settled by inspectors. The rate of resolution of disputes by inspectors under the MVRIC structure was consistently around the 60% mark.

A suggestion made during consultations was that a second formal dispute resolution mechanism resting within MVRIA should be created to deal with less expensive disputes. This would involve giving MVRIA inspectors the power to adjudicate, rather than simply mediate disputes.

The need for a second mechanism is unclear and would be contrary to the Government's objectives in establishing the Fair Trading Tribunal. Statistics indicate that that dispute resolution by the CTTT to be efficient in its operation, though it should be noted that these statistics cover both motor vehicle purchases and motor vehicle repair disputes.

Low application fees ensure that the CTTT remains accessible with fees from \$29 for a dispute or \$5 for pensioners.

The CTTT publishes an attendance index in its annual report which measures the number of times attendance at the Tribunal is required by parties. The percentage of matters where attendance by the parties was not required or required only once was 79% in the motor vehicles division.

In 2002/2003, 33% of applications were finalised within 28 days, 10% of applications were finalised between 29 and 35 days and 57% were finalised in over 36 days.

Unfortunately, comparable statistics are not available from the MVRIA/MVRIC Annual Reports. Anecdotal comments from some stakeholders suggested that the processes required for the Motor Vehicle Repair Disputes Committee was cumbersome.

The existing dispute resolution mechanisms in the *Motor Vehicle Repairs Act* and in the CTTT have the general support of most stakeholders consulted as part of this review. Accordingly, the establishment of a second formal dispute resolution mechanism based in MVRIA is not supported.

8. CONTINGENCY FUND

The Act establishes a Contingency Fund for consumers. Claims to the value of \$30,000 relating to a loss incurred because repair work was not done competently may be made where:

- MVRIA decides that a relevant loss has occurred; and
- all reasonable steps have been taken to enforce other legal remedies available.

The Fund consists of :

- money that the Treasurer directs to be allocated to the fund;
- grants received in grants from Treasury;
- investments made by the Authority out of money in the Fund;
- money recovered by the Authority.

The Act was amended in 2001 to increase the maximum amount payable from \$3,000 to \$30,000. This was the first time the limit had been increased since the Act was made in 1980.

In the 2003/04 financial year a total of \$105,471.29 was paid from the fund in relation to 14 claims. Of this, \$79,800 related to four claims associated with a licensee who was prosecuted for breaches of the Motor Vehicle Repairs Act, including doing work below the usual trade standard for motor vehicle modifiers.

The Contingency Fund directly relates to the regulatory objective of allowing losses due to dishonest trader conduct to be recovered by a consumer.

As an alternative, consumers may seek to recover losses in dealings with motor dealers through general legislation such as the *Trade Practices Act* or *Fair Trading Act*. However, the pursuit of remedies under this legislation is time consuming and costly and may not be worth pursuing given the value of the original loss.

Unlike other compensation funds within the Fair Trading portfolio, the Motor Vehicle Repair Contingency Fund is not directly funded by an identifiable component of annual licence fees. For example, section 39(2) of the *Motor Dealers Act 1974* provides:

“(2) There shall be paid into the Fund:

(a) such proportion of the fees paid under this Act or the regulations by holders of dealers’ licences and holders of car market operators’ licences and by applicants for those licences as is determined in accordance with subsection (3)...

(3) All fees paid under this Act or the regulations...shall be distributed between the Fund and the Consolidated Fund in the prescribed proportions.”

The benefits of having the funding of the Contingency Fund tied to licensing fees ensure that this is a clearly identifiable component of application and annual fees and allows funding to be adjusted as necessary.

One industry association suggested during consultations that the maximum payout from the Fund should be increased to \$45,000. The need to increase this amount is not currently apparent and the current maximum of \$30,000 is consistent with the Motor Dealers Compensation Fund. Nevertheless, the amount should be monitored.

Recommendation 9

That funding of the Contingency Fund be linked to licence fees.

9. MEASURES TO COMBAT REBIRTHING

Car rebirthing is a growing source of criminal activity. Police and insurance companies have indicated that car rebirthing activities are being committed by members of gangs, who are often employed or associated with the legitimate car industry, in a structured and organised manner.

The insurance industry has estimated that car theft costs close to \$1 billion a year with the cost to NSW estimated at \$388 million. The total cost of rebirthing in NSW is estimated at \$156 million, which is 70% of the national cost.

This affects the public through loss of vehicles, higher insurance premiums and innocent consumers having their vehicles seized by police.

Apart from the probity requirements imposed as a condition of entry which was discussed earlier in this report and the grounds on which disciplinary action can be taken, the *Repairs Act* assists in the combating of rebirthing through a power to prescribe regulations relating to record keeping (section 89(1)(c)).

The Act provides for repairers to keep records in relation to the acquisition of prescribed traceable parts.

Without legislative compulsion, repairers might be unwilling to record information about spare parts which come into their possession. The removal of a requirement to establish a paper trail would make the solving of theft investigations more difficult and increase the costs to the community of motor vehicle theft. These costs include insurance premiums, lost productivity.

The provisions:

- assist in ensuring that the business is carried out honestly and in compliance with the principles of the Act;
- establish a clear audit trail in relation to the acquisition and trade of motor vehicles, parts and accessories and thereby assist in reduction of theft and trade in stolen motor vehicles, parts and accessories;

Statistical analysis suggests that 25% of stolen vehicles are not recovered and have been stolen for the purposes of rebirthing and for trading in stolen parts (National Motor Vehicle Theft Taskforce, 1997:41).

The record keeping requirements should be retained.

In 2001, the *Repairs Act* was amended to require motor dealers and repairers and their employees to inform authorised officers when they suspect vehicles, parts or accessories in the custody of the licensee may have been stolen or otherwise unlawfully obtained (section 77B).

Section 19 of the *Pawnbrokers and Second-hand Dealers Act 1996* imposes a reporting obligation on licensees and their employees who suspect that goods in their custody or those that are offered to them for sale are stolen.

Some parts and vehicles that come into the possession of repairers may be stolen. The fact that there are record-keeping requirements under the *Repairs Act* recognises this situation. Repairers must report suspicious vehicles, parts or accessories to authorised officers in order to assist in crime prevention.

The costs of this duty are considered to be minimal.

The Act was also amended in 2001 to allow authorised officers to place holding orders to prohibit dealers and repairers from altering, disposing or parting with possession of motor vehicles or their parts or accessories or things (section 77C)

Authorised officers may place holding orders lasting 14 days on property held by repairers. This includes motor vehicles or their parts or accessories or other things. The period of 14 days takes into account the likely greater holding costs in relation to motor vehicles and should give investigators sufficient time to identify the property. If further time is required, authorised officers will be able to seek extensions of 28 days at a time from a magistrate. The penalty for contravening this provision is 500 penalty units.

Police indicate that the 14 day holding orders have been used. While there may be costs imposed on repairers in relation to the holding goods, this must be weighed against the need to hold goods for criminal investigation. The fact that extensions of time will need to be justified in front of a magistrate provides a mechanism to establish that there is a genuine need to hold the goods.

In 2001, the maximum penalty for unlicensed repair work was increased from 20 penalty units (\$2,200) to 100 penalty units (\$110,000). Given concerns that persons involved in unlicensed repair activity may be involved in car rebirthing, it was decided to increase the maximum penalty for unlicensed repairing to 1000 penalty units so that a substantial penalty may be imposed if appropriate. (section 15(1))

The statute of limitations for unlicensed repairing was increased in 2001 from 1 year to 3 years in line with limits in the Fair Trading Act (section 87(6)) and in line with the greater emphasis on unlicensed repairing as a possible indicator of involvement in car rebirthing.

To assist with the enforcement of the *Repairs Act* and to promote greater co-operation between agencies involved in fighting car rebirthing, the role of the Police Service, Roads and Traffic Authority and interstate agencies in the release of and getting access to information under the *Repairs Act* was clarified in 2001. Section 77A established a legislative head of power for the exchange of information and provided grounds for negotiating access agreements between the agencies.

The provision also establishes the right to seek the co-operation of relevant interstate consumer affairs and driver/ vehicle registration agencies in order to obtain information so as to enforce the *Repairs Acts*. Joint investigations with interstate agencies may also be necessary and any information sharing arrangements between agencies should facilitate this. The agreements can only relate to information exchange in relation to offences or regulating conduct relating to motor vehicles, motor dealing or repairing and law enforcement.

These provisions are fairly new in terms of their operation, having commenced in late 2001 and in 2002. No concerns indicated by industry groups in relation to the costs of complying with the requirements. This situation will require further monitoring.

Recommendation 10

That measures in the Repairs Act relating to car rebirthing continue to be monitored.

10. POSSIBLE BUSINESS CONDUCT REQUIREMENTS TO ADDRESS LACK OF CONSUMER EXPERTISE

The *Repairs Act* establishes a licensing scheme with entry requirements and provisions for disciplinary action. However, unlike many other types of business licensing legislation, it does not impose any requirements in relation to business conduct to deal with consumers lack of expertise. For example, the *Motor Dealers Act 1974* contains requirements for motor dealers to provide certain information about vehicles being sold in prescribed forms attached to the vehicle in question.

Anecdotal information gathered during the consultation for this review suggests that many disputes between consumers and repairers arise because of poor communication between parties.

These disputes may arise because:

- lack of written agreements lead to misunderstandings;
- lack of detailed quotes about work to be done and the cost of work may mean that consumers are unable to determine beforehand if they can afford the work;
- consumers not being aware that repairers charge for quoting which requires disassembly;
- consumers and repairers have a different understanding of what a repair term might mean (eg. reconditioned engine);
- further problems are discovered after a car has been dismantled;
- work is done without the approval of the car owner
- partial repairs are carried out with consumers not wishing to have repairs completed for various reasons (eg. cost);
- repairers are not aware of general legal obligations to consumers in relation the service they provide. These would include obligations under contract law and under general fair trading legislation such as the *Trade Practices Act*, *Fair Trading Act* and *Consumer Claims Act* which would cover issues of representations and work quality;
- poor invoicing.

It is understood that smash repairers who carry out work for insurers undertake extensive documentation in relation to work for insurers. However, it is unclear to what extent this level of documentation occurs in relation to non-insurance work.

There have been some newsletter articles from MVRIC and MVRIA in relation improving communication between consumers and repairers and quotation. The MVRIA also has a publication for consumers on “Trouble Free Car Repairs”.

It is understood that industry groups such as the Motor Traders Association of NSW sell a job card which requires the customer to sign everything noted down. The MTA also runs a course on quoting for repairers. It has also published some journal

articles on best practice quoting.

The ACT has a mandatory *Motor Vehicle Service and Repair Industry Code of Practice* which commenced in July 1999 under its *Fair Trading Act*. It requires repairers to provide consumers with a copy of a prescribed fact sheet which sets out the general obligations of repairers and consumers. This fact sheet must be signed by the person engaging the repairer. A copy of this fact sheet is in Appendix D.

In addition, repairers must:

- give consumers a written estimate of repairs;
- obtain the consumer's written authority to perform the repairs specified in the estimate;
- make arrangements with the consumer as to how the repairer and consumer can be in contact while repairs are being carried out.

Where it is not reasonably practicable for the repairer to provide an estimate of repairs until a diagnosis of the motor vehicle has been carried out, the repairer must:

- provide the consumer with a copy of the prescribed fact sheet;
- provide the consumer with a written estimate of the cost of the diagnosis, including the costs of returning the motor vehicle to the state in which it was brought to the repairer;
- notify the consumer in writing if the diagnosis is likely to result in any damage to the motor vehicle;
- obtain the consumer's written authorisation to perform the diagnosis;
- following the diagnosis and prior to undertaking any repairs, provide the consumer with an estimate of repair costs and obtain the consumer's authority to perform the repairs specified in the estimate.

If a repairer finds during the course of repairing a vehicle that additional work or parts are necessary, the repairer must contact the consumer to explain the additional work required and obtain authorisation to perform the additional work at an additional cost.

The Code includes a sample *Agreement for Repairs (Estimate)* and a sample *Agreement for Repairs (Diagnosis)* which repairers may use, in addition to any other form that satisfies the requirements of the Code [see Appendix E].

Informal evidence from the ACT suggests that the number of disputes which cannot be resolved through mediation has fallen significantly since the introduction of the code. It has been suggested that transactions are now more clearly documented and consumers better understand their rights.

There are basic steps that consumers can already follow in order to address their information imbalance when dealing with repairers. These include:

- Requesting a written quote;
- Demanding that no additional repairs be carried out without written authorisation;
- Asking for replaced components to be returned.

They can also use:

- Listings of accredited repairers;
- Technical advisory services provided by motoring organisations;
- Information in consumer and motoring journals;
- Efforts by repairers to promote their business/ brand names (eg. by offering warranties);
- Establishing a relationship with a repairer.

However, it would appear that in many instances this is not occurring. It is therefore suggested that provisions similar to those operating in the ACT should be adopted in NSW:

- repairers should be required to provide consumers with a copy of a prescribed fact sheet which sets out the general obligations of repairers and consumers.
- there should be written quotes and written agreements for repair work above a certain value.
- there should also be a written agreement for diagnosing faults in the vehicle prior to repair and written quotes and authorisation for any subsequent repairs.
-

Recommendation 11

That repairers should be required to provide consumers with a copy of a prescribed fact sheet which sets out the general obligations of repairers and consumers

Recommendation 12

That there be written quotes and written agreements for repair work above a certain value, written agreements for diagnosing faults in the vehicle prior to repair authorisation, and authorization for any subsequent repairs.

11. GENERAL ENFORCEMENT

The *Motor Trade Legislation Amendment Act 2001* amended the *Motor Vehicle Repairs Act* to promote a more effective enforcement regime. Penalty levels were largely increased for the first time since the Act was made in 1980. Maximum penalties for most offences, which had been set at 5 penalty units, were increased to a more substantial 20 penalty units, in line with penalties under the *Motor Dealers Act 1974*. The maximum penalty for unlicensed repair work was increased from 20 penalty units to 1000 penalty units in acknowledgement of the role that unlicensed repairers can play in rebirthing.

The statute of limitations for taking action in relation to offences under the Act was increased from 1 year to 3 years. This is in line with the statute of limitations under the *Fair Trading Act*.

Enforcement of legislation is crucial to ensuring that the objectives of regulation are achieved. The act of enforcement sends a signal that breaches of the legislation will be punished and assists in promoting compliance.

All groups consulted indicated that the available penalties under the Act appeared to be appropriate. Compliance can also be promoted through industry education. Inspector visits are the primary communication channel with repairers about compliance. Site visits at the premises of new licensees are carried out after the licence is granted. The MVRIA also encourages industry associations such as MTA, SSA and IAME to bring compliance matters to notice. Media releases are issued in relation to successful prosecutions.

In 2003-2004, 489 complaints about unlicensed repair work were received and were investigated. Five people were prosecuted for a total of 25 offences related to carrying on or advertising the carrying on of the business of a repairer or of employing uncertificated tradespeople. In 4 cases fines and costs of \$10,235 were awarded. In the other matter the defendant was sentenced to six months imprisonment, suspended subject to good behaviour as well as a 3 year good behaviour bond.

A table listing prosecutions under the Act from 1994/95 to 2003/04 is presented below.

Table 2 Prosecutions under Motor Vehicle Repairs Act 1980 – 1994 to 2004.

YEAR	COMPLAINTS INVESTIGATED	ACTION TAKEN	OUTCOME
2003/04	489 complaints about unlicensed repair work were received in 2003-04 and were investigated.	5 people were prosecuted for a total of 25 offences related to carrying on or advertising the carrying on of the business of a repairer or of employing	In 4 cases fines and costs of \$10,235 were awarded. In the other matter the defendant was sentenced to six months imprisonment, suspended subject to

YEAR	COMPLAINTS INVESTIGATED	ACTION TAKEN	OUTCOME
		uncertificated tradespeople.	good behaviour as well as a 3 year good behaviour bond.
2002/03	429 received	8 individuals prosecuted and two company defendents on 37 offences	All found guilty – fines and costs imposed totalled \$67,608
2001/02	358	6 people prosecuted for 15 offences in relation to being unlicensed/ uncertificated	14 convictions and 1 matter proven but dismissed. Penalties totalled \$6,150
2000/01	326	3 people convicted on 6 charges in relation to being unlicensed/ uncertificated	3 people convicted on 6 charges in relation to being unlicensed/ uncertificated
1999/2000	387 received	Prosecuted 7 people on 13 charges in relation to being unlicensed/ uncertificated	10 convictions and one dismissal with case proven
1998/99	428 received	Prosecuted 7 people on 13 charges in relation to being unlicensed/ uncertificated	7 people convicted on 13 charges in relation to being unlicensed/ uncertificated

In 2001 the *Repairs Act* was amended to allow certain prescribed offences under the Act to be dealt with by way of penalty notice. The use of penalty notices allows offenders to have a breach dealt with without the need to attend court if they so choose. It does not take away a person's right to have the matter determined by a court. If the alleged offender does not wish to have the matter dealt with by a court he or she may pay the penalty. Where the penalty is paid no further proceedings may be taken in respect of the alleged offence. Payment of the penalty does not constitute an admission of liability or prejudice any civil claim or proceedings relating to the same occurrence. The amount of the penalty is prescribed in the regulations and cannot exceed the maximum amount which can be imposed by the court.

Penalty notice offences have yet to be prescribed in the Motor Vehicle Repairs Regulation. This should be undertaken as soon as possible to ease the administrative burden on the resources of the Motor Vehicle Repair Industry Authority.

Police have requested that officers of the property crime squad be given the ability to prosecute offences under the Act. Police are not authorised officers under the Act for the purposes of prosecution and entering premises. Currently, police can only enter business premises for the sole purpose of searching for stolen property. Allowing Police to be authorised officers would supplement enforcement by MVRIA and also assist in the enforcement of aspects of the Repairs Act which relate to crime prevention. It should be noted that Police are authorised to prosecute offences under the *Motor Dealers Act 1974*.

Recommendation 13

That Police be defined as authorised officers for the purpose of the Motor Repairs Act and be given powers to enforce the Act.

14. ADMINISTRATION OF THE MOTOR VEHICLE REPAIRS ACT BY THE MOTOR VEHICLE REPAIR INDUSTRY AUTHORITY

Regulating Authority

The Act was previously administered by the Motor Vehicle Repair Industry Council, a statutory authority whose Chair ran the authority from day to day and was also the Chair of the Council. In other words, the statutory authority and Council were one and the same.

Apart from the Chair, the Council consisted of representatives of 7 industry bodies, which were specifically named in the Act:

- NRMA;
- Motor Traders Association;
- Service Station Association;
- Metal Trades Industry Association of Australia;
- Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union;
- Australian Workers' Union;
- Institute of Automotive Mechanical Engineers.

The *Motor Vehicle Repairs Amendment Act 1998* made provision for the Minister to nominate 3 members of MVRIC, bringing the Council to 11 members.

The functions of MVRIC were defined as being:

- to administer the licensing scheme;
- to promote standards and education in the repair industry and advise the Minister on these matters;
- to resolve disputes;
- to undertake disciplinary action against licensees.

In order to promote greater accountability and to clarify roles in the administration of the *Repairs Act*, it was decided by the Government in 2001, that the day to day administration of the legislation should be clearly separated from any Council.

Accordingly, the Motor Vehicle Repair Industry Authority (MVRIA), headed by a General Manager, is now responsible for administering the *Motor Vehicle Repairs Act*. The Authority commenced operation on 1 July 2002. The General Manager is in charge of the day to day operation of the Authority.

The functions of the Authority are:

(a) to regulate the motor vehicle repair industry in accordance with this Act and the regulations,

(b) to make reports and recommendations to the Minister with respect to the regulation of the motor vehicle repair industry, including the motor vehicle repair industry licensing scheme,

(c) to inform the public about the motor vehicle repair industry,

(d) to keep under review, and promote improvement in the standard of, motor vehicle repair work,

(e) to promote and undertake research into the motor vehicle repair industry,

(f) whenever it considers it necessary to do so or it is requested to do so by the Minister, to make reports or recommendations to the Minister with respect to the motor vehicle repair industry.

The Authority has a Council, headed by a part-time Chair, which provides advice to the Minister and may require documents from the General Manager.

The Council of the Authority consists of 13 part-time members appointed by the Minister:

(a) Chairperson of the Council,

(b) a representative of the National Roads and Motorists Association Ltd,

(c) a representative of the Motor Traders' Association of New South Wales,

(d) a representative of the Service Station Association Ltd,

(e) a representative of the Australian Industry Group,

(f) 2 representatives of the Labor Council of New South Wales,

(g) a representative of insurers,

(h) a representative of the Institute of Automotive Mechanical Engineers,

(i) a representative of the Minister for Police,

(j) 3 people who have, in the opinion of the Minister, expertise appropriate to the functions of the Council.

The membership of the Council, it may be noted, was expanded to include a representative of the insurance industry, which is a substantial consumer of repair services, and a representative of the Minister for Police, given the role of the Repairs Act in crime prevention.

The clearer definition of the role of the MVRIA and its answerability to the Minister has facilitated a closer working relationship between the Authority and the Roads and Traffic Authority, the Police Service and the Office of Fair Trading. This has been important in terms of ensuring that the Government's objectives in relation to crime prevention and consumer protection are met.

The restructure has, on the whole, assisted in the consideration of a broader range of stakeholder concerns which is appropriate for the administration of legislation which has an impact not only on repairers, but also consumers, insurers and a range of Government agencies.

However, in spite of the clarification of roles, some concerns remain in relation to the administration of the Act. The Motor Vehicle Repair Industry Authority, like its predecessor, is a small body with approximately 27 staff, including 10 inspectors/mediation officers and 1 legal officer. This has major implications in relation to its ability to perform its functions effectively.

The Authority is able to issue licences at present. However, moves towards an online Government Licensing System will require significant changes to licensing procedures and technical infrastructure. This will have resourcing implications for the Authority.

The size of the Authority also has implications for its ability to effectively enforce the Repairs Act. When complaints are received from the public, the same procedure is followed for every complaint and almost every complaint investigated.

Comments were made by numerous stakeholders about a lack of public awareness of the work done by the Authority and its predecessor in undertaking disciplinary action and prosecutions. Statistics in relation to disciplinary action and prosecutions listed earlier in this report demonstrate the resource limits of a small agency.

Resourcing has also had an impact on the ability of MVRIA and its predecessor, MVRIC, to provide policy advice on the regulation of repairers. For example, the 1999/2000 Annual Report of MVRIC pointed out the need to review repair certification categories in the light of the National Training Package for the automotive industry and units of competency. That project remains incomplete. In addition, work in relation to equipment lists and penalty notice offences remains undone. Prior to amendments in 2001, consumer protection measures such as the limit on contingency fund payments had not been amended since the inception of the Act in 1980.

Resourcing has impacted on the enforcement of the Act and the provision of policy advice, as well as the promotion and undertaking of research into the repair industry.

In March 2004, Mr David O'Connor was appointed as the General Manager of MVRIA. Given that Mr O'Connor is also the Commissioner for Fair Trading this arrangement has facilitated a close working relationship between MVRIA and the Office of Fair Trading.

This co-operation between the agencies has significantly boosted resources available to enforce the *Repairs Act* and has also allowed for the sharing of information and experience about best practice compliance methods. All the MVRIA inspectors are now appointed as investigators under the *Fair Trading Act* and 26 Office of Fair Trading staff have been appointed as MVRIA inspectors.

The Office of Fair Trading has also provided assistance with secretariat duties for

MVRIA Council meetings.

One of the options raised by industry groups during consultations was a return to previous MVRIC structure. However, there were clear reasons for the change being made in 2001, particularly a need to improve the accountability and performance of the organisation. The current structure was negotiated with industry and endorsed by Parliament 2 years ago. The change was the outcome of the NCP review and to revert to the previous structure would need to be justified to the National Competition Council. Furthermore, a reversion would not address some of the identified concerns with the MVRIA, chiefly its size and resourcing.

Given the fact that MVRIA and the Office of Fair Trading are now headed by the same officer and that the MVRIA and Fair Trading are currently working closely to the benefit of the public of NSW, it is considered appropriate to formally transfer MVRIA, as a complete unit, to the Office of Fair Trading. Precedents for the wholesale transfer of an agency into the Office of Fair Trading exist and have operated successfully. Examples include the Registry of Co-operatives and the Register of Encumbered Vehicles, both of which operate as self-contained units within the Fair Trading structure. The transfer will ensure that there remains an operational focus for the enforcement of the Motor Vehicle Repairs Act while ensuring access to Fair Trading's administrative facilities and expertise in areas such as marketing, policy, compliance and customer service.

Bringing the Authority under the control of the Commissioner will provide the following benefits:

- Economies of scale in the administration of the Repairs Act (for example, shared corporate services);
- Improved access to services through Fair Trading Centres throughout NSW, as opposed to the current single office of the Authority at Five Dock;
- Improved complaints handling and co-ordination, particularly where broader fair trading issues and systems are at stake;
- An approach to policy, licence administration and legislative enforcement which is consistent with that taken by the State's fair trading agency.

There is a trend towards greater co-ordination and a whole-of-government approach towards licensing administration. These are requirements that cannot be ignored and cannot be met by a small stand-alone agency.

As noted earlier, the appointment of Mr O'Connor as General Manager of the Motor Vehicle Repair Industry Authority has created greater synergies between Fair Trading and MVRIA. Given the closer relationships forged across the motor trades sector following these changes, and the greater level of consistency of membership and mirrored advice provided by both the Motor Trades Advisory Council and the Council of the Authority, it is difficult to justify the retention of two separate statutory advice bodies with almost identical roles.

Given the mirror membership of the MTAC and Council of MVRIA and the similarity of their roles, it is proposed that a single Motor Trade Industry Council be established under the *Fair Trading Act 1987* to provide advice to the Minister on motor trade issues.

Recommendation 14

That the Motor Vehicle Repairs Industry Authority be made an administrative unit of the Office of Fair Trading.

Recommendation 15

That a Motor Vehicle Industry Council be created under the Fair Trading Act 1987.

APPENDIX A – EQUIPMENT REQUIREMENTS

APPENDIX B – QUALIFICATION REQUIREMENTS

APPENDIX C – TRADE CERTIFICATION SUBSETS

APPENDIX D – ACT MOTOR VEHICLE SERVICE AND REPAIR INDUSTRY CODE
OF PRACTICE – SCHEDULE A: OBLIGATIONS AND RESPONSIBILITIES

APPENDIX E – ACT CODE FORMS