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Our Ref: DKB:KF
Your Ref:

20 November 2015

Essential Services Commission
Level 37
2 Lonsdale Street
MELBOURNE VIC 3000

By fax: 03 9032 1303

Dear Sirs,

RE: ACCIDENT TOWING REGULATION DRAFT REPORT

We refer to the Draft Report of the Commission dated September 2015 and note invitations for submissions.

We wish to place a Submission before the Commission in relation to "not at fault" claims.

We are lawyers who have acted in this area for the better part of 30 years.

We note with alarm the Draft recommendation at page 115 of the report which would prohibit the signing of repair agreements without notification and approval from any relevant insurer.

The recommendation appears to have been borne out of concerns expressed by insurers that their costs are escalating in "not at fault" matters and suggesting that members of the public are being "duped" by unscrupulous repairers.

Whilst not disputing that there are some unscrupulous repairers in the market place, we would urge the Commission not to be persuaded by the alarmist sentiments of insurers who would suggest that all repairers fall into that category. There are rogue elements in every industry however we say that this is not a basis for a recommendation which would erode and/or eliminate basic common law rights.

There are already legislative mechanisms in place which can address the activities of rogue repairers and tow truck operators.

We find that our clients fall into one of the following two categories:

1. They are uninsured and therefore have no option other than to take action against the at fault party; or

2. They are comprehensively insured however do not wish to claim on their own policy of insurance.

Persons in both categories would be severely prejudiced and inconvenienced if prevented from exercising their common law right to immediately repair their vehicles. Potentially, they would be without their vehicles for a lengthy period of time and forced to seek alternative means of transport. This would inevitably lead to additional costs by way of either loss of income or hire car costs whilst the at fault party's insurer addressed the issues arising from their demands.

Those persons who contact us who fall into category 2, invariably do so as they do not wish to claim on their own policies of insurance and require choice of repairer. They know their rights under their policies, and are aware that the larger insurers (Suncorp and IAG) have their own preferred repair networks, and that the quality of repairs completed by those repairers is often sub-standard.

As a consequence, they are concerned to choose a repairer who will repair their vehicle to a standard, and not to a price.

By taking steps to recover their damages via a recovery process, they are able to choose their own repairer, engage an independent assessor to assess that repairer's quotation/estimate, and then recover those costs from the at fault party's insurer.

We can say that it is now standard practice in these types of matters to have vehicles independently assessed prior to repairs being commenced.

Invariably, those costs are higher than they would be if the vehicles in question were repaired via the preferred repairer network. Those networks are cost driven and the quality of their repairs is often so bad that once faulty repairs are detected, the costs associated with rectifying same often render the vehicles economical right offs.

We are currently acting for numerous clients who have had their vehicles repaired via preferred repairer networks and have found it necessary to take legal action against their insurer for the cost to rectify substandard work.

The statistics quoted by you which have been provided to you by insurers are, in our view, a damming indictment on the insurers in question as it is clear that policy holders are taking active steps to avoid claiming on their own policies when they are not at fault.

Insurers routinely challenge the independently assessed cost of repairs in matters of this type which often result in Court hearings. In our experience, it is extraordinarily rare for those costs to be reduced by any significant amount and often not at all. This is after the evidence of independent assessors and repairers together with insurance assessors are heard, analysed and decided upon by Magistrates. We believe that if you were to question the insurers who have provided submissions to you in relation to their success rate in these types of matters, they will be forced to concede that their resistance to these claims is overwhelming unsuccessful.

Your recommendation to prohibit the signing of repair agreements without notification and approval from any relevant insurer and consequently removing common law rights, has the following problems:

1. The at fault party may not make a claim on his/her policy of insurance.

2. The at fault party may be in breach of his/her policy conditions. For example:

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a) affected by alcohol or drugs;

b) fail to disclose material facts leading to a denial of the claim;

c) fail to pay an excess;

d) may be unlicensed or had licence cancelled/suspended and therefore in breach of policy conditions.

3. There may be delays by the at fault party making a claim on his/her policy of insurance. For example that party may be injured or killed as a result of the accident.

Should your recommendation be followed, all persons who are not at fault would be prevented from taking steps to repair their vehicles for an indefinite period which would inevitably lead to additional cost and inconvenience to them through no fault of their own.

In our respectful submission, the common law rights of motor accident victims (not at fault parties) should be preserved.

We would urge that the recommendation, the subject of this submission be removed from the report.

Should the Commission require further comment or input, we would be happy to assist.

Yours faithfully,
BATTLEY & CO.

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