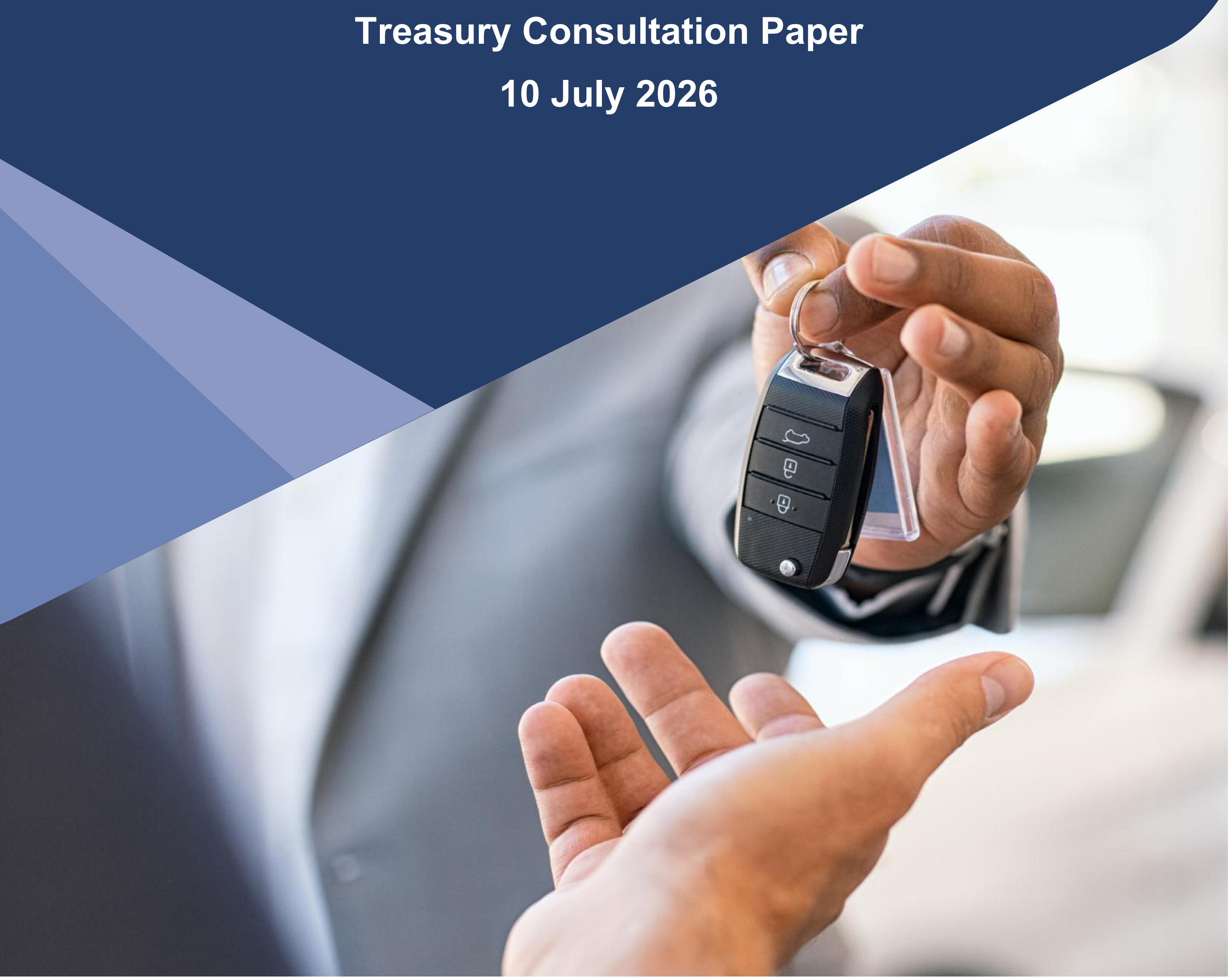
MOTOR TRADERS' ASSOCIATION OF NSW

Unfair Trading Practices Protections for Small Businesses

Treasury Consultation Paper

10 July 2026



214 Parramatta Rd, Burwood NSW 2134 | **P:** 02 9016 9000

ABN: 63 000 008 088 | **MTA NSW:** RTO ID 90402 | **MY TRADE START:** RTO ID 40733

mtansw.com.au

Motor Trades Association ACT

Motor Trades Care

MyTRADE start

About the MTA NSW Group

The MTA Group encompasses the Motor Traders' Association of New South Wales **(MTA NSW)**, the Motor Trades Association of the ACT **(MTA ACT)**, My Trades Care **(MTC)**, and My Trades Start **(MTS)**.

For over 115 years, the Motor Traders' Association of New South Wales (MTA NSW) has stood as the premier employers' body advocating for the motoring industry. We proudly represent over 3,200 businesses, collectively employing more than 35,000 workers. Our core mission, our raison d'être, is to elevate the industry's standing in the eyes of decisionmakers and the public, thereby advancing our sector for the betterment of the economy and the motoring public.

We are highly active participants in forming legislation that sets nation-leading standards. Our expert industry advice is highly sought after by both state and federal governments. We achieve this through involvement in working groups, industry and government bodies, and skills development initiatives, including holding the Chair of the Automotive Jobs and Skills council's strategic working advisory panel and chairing the NSW Industry Training Advisory Board.

In addition to our skills and policy work, MTA NSW operates a highly specialised Employment Relations service which is free for members. As the principal employer organisation and primary voice on industrial relations for the state's automotive sector, we regularly engage with state and federal oversight bodies, including the Fair Work Commission. We work closely with members to help them understand and navigate their obligations under the Australian Consumer Law, ensuring that day-to-day workshop practices and consumer relations always align with current regulatory requirements.

For over 60 years, MTA NSW has been providing industry-specific training. In 1996, we formalised our commitment by becoming a nationally recognised Registered Training Organisation (RTO). Since then, we have strategically grown our training model to become the largest independent, non-profit automotive training provider in NSW, and the second largest training provider in the state overall, after TAFE.

Our unique one-on-one training structure offers unparalleled flexibility for both employers and apprentices, ensuring highly responsive and tailored training. This dedicated approach means our apprentice completion rates consistently remain above the national average. MTA NSW achieves significantly higher than the national automotive apprentice completion rate of 57.6%, demonstrating the effectiveness of our one-on-one mentoring approach in addressing retention challenges.

Our training methodology earned significant recognition in 2024 when we received Second Place in the NSW Training Awards for Large Training Provider of the Year. Testament to the expert training received, MTA NSW apprentices have gone on to represent Australia at World Skills for the last two years.

Since 1975, the Motor Trades Association of the ACT has been the indispensable industry body for the motoring industry in Canberra. We represent over 250 businesses, spanning new car dealerships, mechanical and body repair services, and even vehicle dismantling— truly representing the entirety of the automotive lifecycle in the ACT.

Introduction.

The MTA NSW Group welcomes the opportunity to respond to the Treasury’s consultation paper on *Unfair Trading Practices Protections for Small Businesses*.

The automotive industry in Australia is not comprised solely of large networks or multi-national, ASX-listed corporations. Instead, our sector is dominated by small businesses—ranging from regional independent heavy vehicle repairers and suburban mechanical workshops to independent tow truck operators and collision repair businesses.

The vast majority of these enterprises align with the Australian Bureau of Statistics (ABS) definition of a small business, employing fewer than 20 staff. This structural reality leaves small automotive operators acutely exposed to the severe power imbalances identified in the consultation paper. For independent workshops operating on tight commercial margins, this exposure is magnified by a broader business environment characterised by continuous market consolidation, mergers and acquisitions, and aggressive vertical integration models. Consequently, market power is increasingly concentrated in the hands of fewer, significantly larger corporate entities.

This concentration of power manifests not only when these large entities act as suppliers, but also when they act as commercial purchasers of services and products. In the automotive ecosystem, a dominant corporate actor frequently operates as a supplier of contracts and a purchaser of services simultaneously. This dual positioning routinely creates "take-it-or-leave-it" scenarios, effectively forcing small businesses into contracts or commercial arrangements that—while falling just short of the high statutory threshold for unconscionable conduct—are fundamentally unfair.

The Australian Consumer Law (ACL) currently leaves a regulatory "grey area" directly below the threshold of unconscionable conduct. While that high statutory threshold exists for valid legal reasons, the resulting regulatory gap allows large corporations to impose unfair agreements on small businesses while maintaining robust avenues of legal defence. Although Unfair Contract Terms (UCT) provisions do exist within the ACL to address some of these imbalances, enforcement ultimately relies on initiating formal proceedings within the court system. This adversarial process demands significant financial costs and a high burden of evidence, structurally favoring well-resourced large entities over small businesses that lack the capital to litigate.

Introducing a formal prohibition on unfair trading practices would eliminate this regulatory gap, creating a more equitable commercial environment and leveling the playing field for small businesses.

Australia’s automotive industry is diverse and encompasses multiple distinct sectors. Therefore, to provide the Treasury with the most direct evidence of how small automotive businesses are being impacted by these gaps, this submission provides a targeted case study of the automotive body repair sector. This practical analysis underpins our specific responses to the focus questions outlined in the consultation paper.

Executive Summary and Industry Footprint

The Australian automotive landscape is both broad and complex. It encompasses a highly interconnected range of sectors, including franchised automotive dealers, automotive dismantlers, recyclers, farm and industrial machinery service providers, mechanical repair and service workshops, aftermarket accessories retailers, tyre dealers, body and collision repairers, and tow truck operators.

Combined, the automotive industry represents 72,521[1] registered trading businesses across Australia. Critically, 97% of these businesses are small and family-owned operations, collectively contributing approximately $40 billion annually to the Australian economy.

Because of this overwhelming concentration of small and family enterprises, a pressing structural need exists to ensure these operators can trade in a commercial environment that protects their viability. Small businesses must be able to contract with large corporate entities on a level playing field. This is especially vital in a domestic market characterised by deep power imbalances and rapid corporate consolidation that concentrates economic power in fewer hands.

Consequently, the MTA NSW Group strongly supports the primary objective of the consultation paper: to implement legislative frameworks that establish a fairer, more balanced marketplace.

Recommendations.

1. **Extend the General Prohibition to small businesses via a simplified test**. Amend Section 28B of the Australian Consumer Law (ACL) to include small businesses as consumers. To ensure this protection is accessible and workable for independent operators, the statutory test must remain short, simple, and objectively measurable, centred primarily on whether a small business has suffered, or is likely to suffer, financial detriment due to the actions of a dominant market entity.
2. **Exclude exemptions for "Legitimate Business Interests"** Exclude exceptions—such as conduct deemed "reasonably necessary to protect a supplier's legitimate business interests"—from the new unfair trading practices framework. Multi-layered legal tests create regulatory loopholes that well-resourced corporations can exploit to shield systemic, predatory commercial tactics sitting in the "grey area" just below the threshold of unconscionable conduct.
3. **Ensure that the new provisions can work with state laws and industry codes.** Any changes to the current legislative framework must work alongside current state-based laws such as the NSW Motor Dealers and Repairers Act and any current gazetted industry codes, such as the Motor Vehicle Insurance and Repair Industry Code. The mechanism should be equipped with strong regulatory enforcement powers—including complaints pathways, enforceable undertakings—to penalise systemic commercial abuses (e.g., policy steering, suppressed labour rates, and forced parts pipelines) that current voluntary or state-bound frameworks lack the statutory teeth to address.

[1] VACC Treasury submission Unfair Contract Terms 2021

The Legislative "Grey Area"

Currently, the *Competition and Consumer Act 2010* (CCA) and the *Australian Consumer Law* (ACL) leave a problematic regulatory "grey area." Many commercial practices deployed by large corporations against small businesses fail to meet the extraordinarily high legal threshold required to prove statutory unconscionable conduct, yet these exact practices severely curtail the ability of small businesses to negotiate fair and reasonable commercial terms.

The MTA NSW Group does not advocate for a lowering of the legal bar for unconscionable conduct within current legislation. We believe this high legal benchmark should remain intact. It functions effectively when large, ASX-listed entities with multi-billion-dollar balance sheets engage in bulk commercial negotiations with other well-resourced corporations. These large entities possess the capital, legal teams, and operational scale to robustly prosecute or defend such actions. An allegation of unconscionable conduct should remain reserved for the most egregious, severe breaches of ethical dealings, determined under a heavy weight of evidence.

Where we strongly support legislative intervention is the introduction of a specific framework defining and prohibiting unfair trading practices. This statutory mechanism introduces a distinct, measurable, and highly accountable standard that catches systemic commercial misconduct sitting just below the threshold of unconscionability.

However, any amendment to the legislation must remain simple. It must avoid protracted, multi-layered legal "tests" to determine a breach. Overcomplicating the framework inevitably creates regulatory loopholes and unjustifiable legal defences, rendering the legislative evolution moot and unworkable for small business operators. To ensure small businesses have a practical avenue for recourse, the statutory tests must be short, simple, and objectively measurable.

The MTA NSW Group will not comment on whether this prohibition should be implemented as an economy-wide measure. We speak exclusively on behalf of the automotive sectors we represent, providing clear operational evidence of where our industry is being systematically hampered by gaps in the current CCA and ACL frameworks.

MTA NSW Group, however, believes that in instances where additional contractual mechanisms such as franchising contracts exist, that this proposed mechanism may not be appropriate, as it would add an additional layer of complexity on top of the current Franchising Code of Conduct.

Case Study: The Motor Vehicle Insurance and Smash Repair Interface

While power imbalances exist across multiple touchpoints in the automotive supply chain, the interface between the Australian general insurance industry and the independent smash repair sector provides the most telling example of market distortion.

Motor vehicle insurance (excluding Compulsory Third Party/CTP insurance) represents the largest and most consistently profitable sector of general insurance in Australia. According to the Insurance Council of Australia (ICA), the insurance industry wrote 18 million motor vehicle policies in 2025—eclipsing home and contents policies combined (12 million) by six million policies. Motor vehicle claims reached $14 billion in 2025, far exceeding combined home claims of $8 billion.[2]

Despite the vast scale of this market, motor vehicle insurance underwriting is dominated by a tight oligopoly: Insurance Australia Group (IAG), Suncorp Group, Auto & General, and QBE Insurance. Through their collective retail brands—including AAMI, Apia, Budget Direct, and NRMA—these conglomerates control the vast majority of consumer policies written in Australia.

This extreme concentration of market share means that nearly 95% of all motor vehicle repair claims are funnelled through a handful of corporate entities. This creates a highly distorted market dynamic where the insurer acts simultaneously as the ultimate supplier of repair work to independent workshops and the sole consumer of the services those workshops provide.

Furthermore, these insurers increasingly integrate vertically by directly owning competing repair facilities or entering into exclusive, large-scale service agreements with listed corporate smash repair networks—who frequently double as parts suppliers to the wider marketplace.

While vertical integration and corporate partnerships are entirely legal mechanisms to maximise shareholder dividends, the unfairness emerges in how these conglomerates abuse their market dominance when interacting with independent repairers operating outside their preferred networks.

Product Disclosure Statements (PDS) and Policy Steering

To artificially ensure consumers direct their vehicles exclusively to captive or preferred network repairers, insurers utilise lengthy, highly complex Product Disclosure Statements (PDS) to impose rigid repair restrictions. These typically present across three tiers:

- **No Choice of Repairer:** The insurer explicitly states that the consumer has no right to select an independent repairer; all repair processes are managed via the insurer's captive network.
- **Choice of Repairer at Premium Cost:** The insurer allows the policyholder to nominate an independent repairer only if they pay an additional premium upfront,

[2] ICA 2025 insurance snapshot

and subject to the insurer retaining ultimate approval over the chosen repairer and their final quote.
- **Choice of Repairer via Restrictive Approval:** The insurer permits the consumer to nominate a repairer but bottlenecks the process by demanding absolute authority to approve the quote, the specific repair methodology, and the hourly rate. The insurer routinely enforces secondary quotes and mandatory internal assessments. If a dispute arises, the insurer forces a cash-settlement payout based on internal network rates, shifting the financial gap and administrative burden onto the policyholder.

The operational applications of these clauses constitute policy steering. By deploying dense administrative barriers, scripting customer service operators to discourage independent options, and threatening out-of-pocket expenses, insurers ensure the consumer finds the process too complicated to pursue. This effectively neutralises genuine consumer choice and starves independent operators of work volume.

Contractual Imbalances

Because over 90% of all collision and body repair work in Australia is funded by the insurance industry, small independent workshops rely entirely on this volume to remain commercially viable. This creates a severe structural vulnerability when negotiating commercial terms.

When insurers interact with independent workshops—whether due to explicit consumer choice, an absence of corporate network facilities in regional areas, or metropolitan overflow—the negotiation imbalance manifests through deeply oppressive contractual conditions, including:

- **Unilaterally Mandated Labour Rates:** Insurers set fixed hourly labour rates that bear no relationship to the actual shifting overheads of operating a modern, compliant, and legally insured automotive repair business.
- **Obsolete Estimating and Time Guides:** Insurers force adherence to outdated estimating templates that completely ignore the technical complexity of modern vehicle architectures, advanced high-strength steels, ADAS scanning requirements, and mandated manufacturer repair procedures.
- **Systematic Rejection of Necessary Operations:** Insurers routinely classify essential modern repair steps—such as pre- and post-repair diagnostic scanning, digital calibrations, specialised vehicle cleaning, environmental compliance steps, and administrative safety reporting—as "not allowed" or "not payable."

Insurers frequently issue annual pricing schedules calibrated via proprietary internal metrics that exclude real-world operational inflation. For instance, insurers routinely use macro-level mass valuation models for commercial rentals and general Wage Price Indexes to calculate hourly repair allowances. This calculation deliberately excludes localised Consumer Price Index (CPI) increases, actual commercial lease realities, municipal rates, rising workers' compensation premiums, mandatory equipment tooling upgrades, and a sustainable small business profit margin.

Because independent shops are entirely dependent on insurer work pipelines, these contracts are presented as strict "take-it-or-leave-it" propositions. Insurers systematically suppress hourly rates, couple volume guarantees with the right to refuse quotations, demand the substitution of original parts for parallel imports, and deny baseline work procedures for undefined timelines.

This behaviour forces independent repairers to artificially re-engineer their quotes within highly constrained parameters simply to achieve an aggregate return that covers basic operating costs.

This imbalance is rarely expressed via overt, exclusionary contractual text. Instead, it relies on passive-aggressive commercial pressure, such as claims teams stating: *"As an independent repairer, you are entirely free to charge rates as you see fit; however..."*

The implicit commercial threat is immediate: if the small business does not accept the insurer's suppressed rate, all future claims and local repair volume will be permanently diverted to an alternate network facility. This dynamic exemplifies the exact type of unfair trading practice targeted by the consultation paper.

Ad Hoc Quotations and Parts Monopolies

The power asymmetry inherent in long-term agreements extends directly into individual, ad hoc claim quotations. By acting as an intermediary between the vehicle owner and the workshop, the insurer exerts total control over parts selection, parts pricing, and repair methodology—powers completely unavailable to the retail policyholder.

When an independent repairer submits a quote explicitly based on Original Equipment Manufacturer (OEM) data sheets to guarantee structural safety, the insurer routinely rejects it. By using their own heavily discounted internal "network pricing" as the absolute benchmark for a "reasonable cost," they force a manufactured choice: the independent repairer must either perform complex structural work at a distinct financial loss or force the consumer to pay the financial gap out of pocket. Utilising proprietary internal corporate discounts to legally define the broader "open market rate" is a severe distortion of fair trade.

Furthermore, when an insurer disagrees with a workshop's technical assessment, they routinely pause the claim indefinitely to determine if a secondary quotation is required. This leaves the consumer's vehicle stranded inside the independent workshop. The vehicle occupies vital physical floor space, disrupts workshop flow, and incurs storage liabilities completely at the financial expense of the small business. Insurers routinely refuse to commit to specific assessment timelines, effectively using administrative delays to force the small business to capitulate to their pricing demands.

Finally, insurers frequently mandate that repairers deviate from vehicle manufacturers' authorised parts components in favour of parallel parts to minimise claim outlays. While a parallel part is technically factory-made, it is imported completely outside the vehicle manufacturer's authorised local distribution network.

By utilising their immense procurement scale, insurance companies leverage the financial vulnerability of small workshops to force the acceptance of alternative parts pipelines. This shifts the downstream legal and consumer warranty liabilities entirely onto the independent repairer under the Australian Consumer Law, while the insurer captures 100% of the upfront financial savings.

Data and Digital Monopolies

The modern smash repair interface is further restricted by digital monopolies. Insurers heavily mandate that independent repairers utilise proprietary, subscription-based quoting software platforms and controlled digital parts procurement pipelines to submit claims.

These platforms are hardcoded with automated valuation rules that systematically reject independent market pricing. Independent repairers who refuse to slash their baseline labour rates or adopt the alternative, non-genuine, or parallel parts specified by the insurer's software algorithms are systematically locked out of the digital ecosystem and starved of claims volume.

Ultimately, the clear issues within the smash repair and insurance relationships such as policy steering, suppressed labour rates, and forced parts pipelines—show how unfair trading practices are being used against small independent repairers. These "take-it-or-leave-it" conditions and commercial pressures go beyond normal business negotiations, creating a marketplace where small businesses are left exposed by gaps in current laws. At the same time, this situation highlights just how complex and interconnected the broader Australian small automotive sector really is. Because the industry is made up mostly of family-owned businesses that rely entirely on work from a small handful of dominant corporate businesses, any regulatory change must account for a unique market where these large companies hold total control over both the supply of work and the pricing of services.

The Motor Vehicle Insurance and Repair Industry Code

History and Context of the Code

The Motor Vehicle Insurance and Repair Industry (MVIRI) Code of Conduct was established in 2006 to promote transparent, cooperative, and fair relationships between smash repairers and insurance companies. Conceived as a self-regulatory mechanism, the Code was intended to bridge the operational gap between large insurers and independent repairers, providing a voluntary framework for dispute resolution and fair-trading principles. While it has been made mandatory under state regulations in New South Wales and South Australia, it remains a voluntary, co-regulatory model managed by the Code Administration Committee (CAC).

Despite periodic updates, the code structure has failed to keep pace with increasing technological change structural consolidation of the insurance market and the profound technological shifts in modern vehicle manufacturing.

Today, the Code is effectively no longer fit for purpose. It operates as a passive framework in a highly aggressive commercial environment. While vehicle complexities have accelerated—requiring advanced high-strength steel treatments, complex digital calibrations, and original equipment manufacturer (OEM) safe-repair procedures—the operational mechanics of the Code remain frozen.

The primary structural flaw is that the Code offers no practical protection against the modern, systemic unfair trading practices used by major insurers. Independent repairers face a daily reality of:

- Artificially suppressed labour rates that completely ignore localised
- operational inflation.
- Protracted administrative delays where insurers withhold repair approvals to force pricing concessions.
- Compelled usage of non-genuine or parallel parts via proprietary digital platforms, which shifts downstream consumer legal liabilities entirely onto the small workshop.

Because the Code lacks teeth, it has been reduced to a set of optional guidelines that dominant corporate players can easily work around under the guise of ordinary commercial negotiations. Furthermore, the Code lacks accountability for breaches. Insurance companies unilaterally determine whether they have committed a breach under the current dispute resolution process under the Code, unfairly disadvantaging the small business. Breaches are notified by insurers using opaque language with no rationale and are followed by a written apology, neglecting any cost incurred by the repair shop or compensation for that loss.

Focus questions – protecting small businesses as consumers.

Should the proposed general prohibition (section 28B) be extended to also protect small businesses where they acquire goods or services as a consumer? Please include examples or case studies of conduct that this extension could address including where possible evidence of its impact (including financial impact) on small businesses.

MTA NSW Group agrees that section 28B should be amended to include small businesses.

Should any adjustments be made to the proposed general prohibition when extending it to apply in respect of supply to small businesses? For example, should it:

- **Only apply where there is a bargaining power imbalance between the supplier and the small business?**
- **Only capture conduct that causes, or is likely to cause, financial detriment to the small business?**
- **Not capture a supplier's conduct if the conduct is reasonably necessary to protect the supplier's legitimate interests?**

To be effective, any legislative change to include unfair trading practices for small businesses must be simple, straightforward, and involve a minimal number of legal tests.

The primary, objective test should simply be whether the small business has suffered, or is likely to suffer, financial detriment due to the actions of the other party. Adding complexity to this framework will only lead to protracted, costly legal disputes and create regulatory loopholes that large corporations can exploit to avoid accountability. For example, allowing a statutory exception where conduct is deemed "reasonably necessary to protect legitimate business interests" would effectively hand large businesses a ready-made defence to shield unfair behaviour.

As outlined in our submission, this type of conduct is already a major issue in the automotive sector. Large corporate entities routinely hide behind the guise of "legitimate business negotiations" to undermine the commercial viability of small operators. The existing benchmarks in the Competition and Consumer Act 2010 (CCA) and the Australian Consumer Law (ACL) have created a problematic regulatory grey area. Under current laws, these predatory tactics are shielded from prosecution because they do not meet the high bar of unconscionability, despite being demonstrably unfair. Introducing complex multi-layered tests into a new prohibition would simply perpetuate this imbalance.

Would it be appropriate to use the same small business threshold as is currently used in the unfair contract terms provisions of the ACL (i.e., characterising a small business as one with fewer than 100 employees and/or less that $10 million annual turnover), or is another threshold appropriate?

While there may be a rationale from Treasury to measure the threshold against the existing UCT provisions in the ACL, the threshold would need to be extremely tight to avoid large corporate entities from using subsidiaries as a cloak to enforce unfair trading practice provisions against other larger entities.

The definition of a small business in Australia is quite complex with differing definitions such as the Fair Work Commission, the Australian Bureau of Statistic and the ACL.

Ensuring that the small business is a genuine small business and not simply a part of the larger entity that provides backend support would be critical.

Are there interactions with other regulatory frameworks (including industry codes or other sector-specific laws) that should be considered in relation to this option? If so, how should these be managed?

Yes, there are frameworks in the automotive industry in State legislation as well as an industry code that will need to be carefully looked at. Any new national law against unfair trading practices needs to work alongside these existing frameworks so it doesn't create extra-legal confusion or red tape for small businesses.

The main regulatory frameworks that would need to be considered are:

- The *Motor Dealers and Repairers Act 2013* (NSW): This Act directly governs the licensing, conduct, and disputes for both car dealers and repairers in New South Wales. It already includes specific rules against unfair conduct and one-sided contracts between dealers and manufacturers.

- Western Australia has very similar licensing rules and protections under its own *Motor Vehicle Dealers Act 1973* and *Motor Vehicle Repairers Act 2003*.

- While the Motor Vehicle Insurance and Repair Industry (MVIRI) Code is a voluntary national framework on paper, states like NSW and South Australia have formally gazetted it under state law, making it mandatory for insurers and repairers in those borders.

To make sure a change for unfair trading practices that would assist small automotive businesses without making things overcomplicated, then the government should consider:

- Ensuring the new regime is set as a baseline so that state-based laws and gazetted codes can operate alongside it. The above-mentioned laws and codes deal with specific day-to-day industry issues. The federal law should simply step in to cover the gaps where state laws don't reach.

- The current MVIRI Code works for setting technical standards, but it completely lacks the legal power to stop big corporate insurers from using commercial pressure, like policy steering or pricing algorithms. The new national framework needs to be simple enough to catch these broader commercial abuses that state codes currently can't penalise.

- To avoid long and costly court battles, what counts as an "unfair practice" nationally must align with the basic ideas of fairness already expected under current state provisions. This gives everyone clear rules. If a corporate practice—like an insurer forcing a take-it-or-leave-it contract—is unfair under national law, it makes things much clearer for state regulators too.

- The system should be managed so that federal and state regulators work together. If a small repairer suffers financial loss due to unfair tactics, they should be able to use the simple national law to get quick recourse, while state bodies keep handling local licensing and technical compliance.

Are there examples of conduct on the ‘grey list’ for the proposed general prohibition that are not relevant where the consumer is a small business? Are there any additional examples that should be included where the consumer is a small business? If possible, please include evidence of the conduct’s impacts (including prevalence and financial impact) on small businesses.

Please refer to our case study as an example.

Would there be any *additional* compliance costs for businesses if the proposed general prohibition was extended to protect small businesses, noting the Bill if passed would already require businesses to comply in respect of supply to consumers? Please provide quantitative information or examples where possible.

MTA NSW Group does not see additional compliance issues for the small automotive business sector under this structure.

What types of unfair trading practices are occurring in business-to-business dealings, and what harm does this cause small businesses? For each example:

- **Please provide details of the types of industries in which the conduct is occurring, and the types of business relationships (e.g. whether there is an ongoing relationship, whether there is an imbalance of bargaining power and whether the small business is a supplier or purchaser in such relationships).**
- **How are small businesses harmed, and how significant is this harm? Please provide quantitative evidence where possible (including prevalence, and size of harm).**
- **Are there particular stage(s) of the business dealing in which unfair trade practices occur most often (e.g. pre-contractual, during an agreement)?**
- **Is this conduct already subject to existing protections, for example, industry codes? To what extent could this conduct be addressed by extending the general prohibition proposed in the Bill to protect small business?**
- **What types of protections could be introduced to address these issues and what would be the benefits and costs of these?**

For a comprehensive answer to this question please refer to our case study above.

With reference to industry codes as mentioned above, a current voluntary industry code exists for motor vehicle body repair, being the Motor Vehicle Insurance and Repair Industry (MVIRI), however there are fundamental flaws within the current voluntary code such as the lack of enforceable penalties.

Extending the provisions would assist the industry through mechanisms of complaints and enforceable undertakings including discussions of civil penalties that would act as a deterrent to current practices that disadvantage small businesses.

What factors affect whether a small business is likely to be harmed by unfair trading practices in business-to-business dealings (e.g. bargaining power imbalances, whether it is a medium or long-term relationship, whether the small business is a purchaser or supplier, whether an industry code applies)?

Within the automotive industry power imbalances due to consolidation of businesses through mergers and acquisitions and vertical integration have created an environment where bargaining power is skewed to favour larger entities.

This environment is not new, rather the imbalances in the industry are both systemic and ongoing.

For the aftermarket repair sector of the industry small businesses are the supplier of services, being repairs, but they are being dictated to by large entities that are both the supplier to their business and the purchaser of their service.

While the MVIRI Code applies to the body repair sector it is a voluntary code that is now two decades old and has not been significantly overhauled. The structure of the code is one where there is an incentive not to restructure the code and not to mandate the code nationally.

For small business the quagmire that the code currently sits in severely disadvantages the sector in moving forward.

If the Government were to introduce an economy-wide unfair trading practices prohibition that applies to business-to-business conduct:

- **What types of conduct should be captured and are there any specific forms of conduct that should be protected against (for example in a 'grey list')? Please provide reasons and evidence.**
- **Should it apply to all business-to-business dealings involving a small business, or just a subset of these (for example, where there is a significant power imbalance between the parties, where there is a medium or long-term relationship between the parties, and/or where the small business is a supplier or purchaser)? Please provide reasons and evidence.**
- **Should there be an exception for conduct that is reasonably necessary to protect the legitimate business interests of the party engaging in it? Please provide reasons and evidence.**
- **Should there be a harm element and, if so, should that harm element include financial and non-financial harm? Please provide reasons and evidence.**
- **What would be the potential costs and benefits? Please provide reasons and evidence.**
- **What costs (including time, money, or forgone opportunities) are currently incurred by small businesses in guarding against or attempting to avoid being harmed by unfair trading practices? Please provide examples and evidence.**

As we have outlined in our case study there are additional areas where unfair trading practices exist within the automotive industry, including policy steering and 'take it or leave it' arrangements. (MTA NSW Group can supply evidence to the Treasury to enhance to demonstrate conduct that is, in the view of the industry, unfair in practice should the Treasury so desire it, at a later time.)

MTA NSW Group has noted earlier in this submission that we cannot confer an opinion on whether the government should enforce an economy wide set of provisions, we can only speak on the sector specific issues in our industry as a highlight of where the 'grey zone' exists in the current legislative and regulatory space.

However, we do recommend that exceptions for the legitimate business interests would risk any amendment mute. Big businesses would be able to use this tactic as a shield against any action from small businesses.

ASX listed companies could use this provision by simply stating the negotiations for lower costs are in the interests of the businesses to provide shareholders with greater dividend returns. Insurers would use this to defend themselves against any action brought by Body Repairers on the basis that lowering costs is in the interest of the business to reduce premium costs.

The ultimate test for any changes to the provisions is the test on whether the small business has, or is likely to have, suffered a financial detriment through the actions of the other party. While large corporate entities may be able to absorb losses in the thousands of dollars, for a small business, a loss of as little as one thousand dollars can inflict significant harm on their bottom line and to their profit margin.

Would a new economy-wide unfair trading practices prohibition that applies to business-to-business conduct interact with other existing laws and regulations (such as industry codes)? How should any overlap or duplication be managed?

Please refer to our previous response.

Conclusion

Our submission underscores the need for legislative intervention to protect small automotive businesses from unfair trading practices. The Australian automotive sector is not a landscape driven by multi-national corporations; it is an industry built on small, family-owned operations stretching across the country. Under current settings, these operators are being left completely exposed to deep structural power imbalances, rapid corporate consolidation, and aggressive vertical integration.

As demonstrated in our case study of the smash repair and insurance relationship, large corporate entities are routinely using their market dominance to enforce "take-it-or-leave-it" terms. Practices like policy steering, artificial labour rate suppression, forced digital procurement platforms, and the shifting of warranty liabilities onto independent repairers have become standard operating procedure. These tactics clearly go beyond normal, tough business negotiations. They represent a systemic distortion of fair trade that sits directly within the regulatory "grey area" of the current Competition and Consumer Act 2010 (CCA) and Australian Consumer Law (ACL)—falling just short of the high legal threshold for unconscionable conduct, yet causing severe financial detriment to small businesses.

Furthermore, existing industry frameworks are no longer equipped to handle these commercial pressures. The Motor Vehicle Insurance and Repair Industry (MVIRI) Code of Conduct has become stagnant and completely lacks the teeth or enforceable penalties required to deter predatory corporate behaviour.

For these reasons, the MTA NSW Group supports the primary proposal to introduce a formal, national prohibition on unfair trading practices under the ACL. To ensure this new framework genuinely protects small businesses as consumers and suppliers, it must remain simple and straightforward. Introducing complex legal tests or multi-layered definitions will only create loopholes for large corporations to exploit.

Specifically, any exception that allows a defence based on "legitimate business interests" must be rejected. As highlighted in our responses, large corporate insurers and ASX-listed companies will simply use this clause as a shield, claiming that suppressing small business margins is necessary to maximise shareholder dividends. The only true measure of unfair practice should be whether a small business has suffered, or is likely to suffer, financial loss due to the actions of a dominant party.

Finally, this national prohibition should not replace existing State-based rules, but rather serve as a powerful national baseline. It must work cleanly alongside frameworks like the *Motor Dealers and Repairers Act 2013* (NSW) catching the broader commercial abuses that State licensing laws and technical codes cannot currently penalise. By eliminating the current legislative ‘grey area’ with a simple, objectively measurable standard, the government will provide a practical path to recourse for small operators, securing the long-term viability of Australia's independent automotive industry and establishing a truly level playing field.

Should Treasury require further information or further evidence, MTA NSW Group is happy to provide this information.

Yours sincerely

Stavros Yallouridis
Chief Executive Officer

Contact:
Collin Jennings
Head of Government Relations
MTA NSW Group
Collin.jennings@mtansw.com.au