

## Second Reading

**The Hon. PENNY SHARPE** (Parliamentary Secretary) [6.11 p.m.], on behalf of the Hon. Eric Roozendaal: I move:

That this bill be now read a second time.

This bill introduces major reform to protect New South Wales consumers from profiteers and criminals who trade in written-off vehicles that are dangerously repaired, often with stolen parts. The bill will improve consumer protection, improve vehicle safety, strike at the heart of vehicle rebirthers and organised crime, reduce the cost to the New South Wales community of vehicle theft, reduce the risk of distress and injury to members of the public who often unknowingly purchase a vehicle that has previously been written off, and get shoddily repaired vehicles off our streets. The bill will build on legislation considered by the Parliament in 2007 that highlighted significant additional issues to be addressed to further improve consumer protection and road safety, and to reduce criminal activities linked to written-off vehicles in New South Wales.

The bill introduces measures to address the issues raised by members during that debate. It also gives effect to some of the key principles contained in the New South Wales parliamentary Staysafe committee report entitled "Repairing to a price, Not a standard", report No. 9/53 of December 2005, which inquired into the crash damaged vehicle assessment and repair industry. I foreshadow an amendment to the bill to be considered in Committee to enable the smooth and effective implementation of this legislation. In the course of discussions with key industry stakeholders it was proposed, in the interest of clarity, to amend the definition of what constitutes a "total loss" when undertaking an assessment of a damaged vehicle.

The current definition provides that a vehicle is a total loss when the cost of repairs to the vehicle plus its salvage value are higher than the market value of the vehicle before it was damaged. However, the insurance industry has highlighted that many of its policies are not policies based on "market value" but may be for the sum insured or agreed value of the vehicle. The sum insured may be greater than the market value of the vehicle. The amendment I foreshadow will provide greater clarity of what is a "total loss" to allow some flexibility to accommodate different types of insurance policies. The amendment will enable insurers to use a specified sum-insured value when determining if the vehicle is a total loss.

As such, a damaged vehicle would be a total loss when the cost of repairs plus its value as a damaged vehicle are greater than the sum insured. The Government believes that the definition, as amended by the inclusion of "sum insured", is appropriate. I am advised that this amendment is supported by key industry stakeholders. Notwithstanding this, industry has recently raised some suggestions in relation to the definition of "total loss" that may further improve the workings of the legislation. The Government is committed to introducing an effective new system for managing written-off vehicles in New South Wales, and we are therefore open to discussing any issues raised by stakeholders.

The proposed new wording of section 16 (H) (2) provides flexibility for the regulations to address and refine the definition of "total loss" and through the regulations to accommodate, if appropriate, any further refinements proposed by stakeholders and agreed by the Government. This amendment demonstrates the Government's constructive approach to working with stakeholders to ensure that the objectives of this legislation to protect consumers, enhance road safety and tackle rebirthing are met. The community deserves and expects this. I seek leave to incorporate the remainder of the second reading speech in *Hansard*.

### Leave granted.

Under current arrangements there are two categories of written-off vehicles. The first category is the "statutory" written-off vehicle (or "wrecked" vehicle). A statutory write-off cannot be re-registered in New South Wales or, by national agreement, in any other jurisdiction, and can only be sold for spare parts or scrap metal. The second category is the "repairable" written-off vehicle, that is, a vehicle that has been assessed as a total loss but which, as the name suggests, is currently permitted to be repaired and re-registered.

Under the new legislation, all New South Wales written-off vehicles will be recorded as statutory write-offs, and will therefore not be permitted to be re-registered. Statutory written-off vehicles will still be able to be purchased and sold, but only for parts or scrap metal.

The ban on registering all written-off vehicles builds on and strengthens existing written-off vehicle law. This reform will ensure that all New South Wales written-off vehicles will be recorded on the national Written-off Vehicle Register as statutory write-offs.

### THE CHALLENGE WE FACE

Vehicle rebirthing is the criminal activity of rebuilding a repairable written-off vehicle with parts from a stolen vehicle. The vehicle is then "reborn" by being re-registered and on-sold to an unsuspecting member of the community.

Repairable write-offs are targeted by vehicle rebirthers who typically purchase these vehicles cheaply at auction. They then steal a similar vehicle and use the stolen vehicle's parts to illegitimately and shoddily repair the repairable write-off before presenting it for re-registration and sale to the unsuspecting consumer.

There can be no more important reason for this legislation than the lives it will save from getting dangerously repaired vehicles off our streets. "Dodgy" cosmetic repairs to a repairable write-off too often disguise the true condition of the vehicle and can create road safety risks for the vehicle driver and occupants. In the event of a collision, a poorly repaired written-off vehicle is very likely to increase the chance and severity of a crash while also failing to provide the expected level of safety and protection to a vehicle's occupants.

Despite the current New South Wales vehicle inspection regime, some unscrupulous persons employ sophisticated techniques to conceal poor quality repairs which are often impossible to detect without more comprehensive or intrusive inspection techniques.

I have recently witnessed a graphic example of this risk to the safety of New South Wales motorists. On 18 May 2010, the Roads and Traffic Authority's Centre for Road Safety partnered with the New South Wales Motor Traders Association to assess the potential risks involved in driving poorly repaired write-offs. An Roads and Traffic Authority crash lab test was conducted under scientifically controlled settings on a 2004 model Toyota Corolla repairable write-off which had been poorly repaired following extensive structural damage.

I myself viewed the crash test footage and found the results to be extremely disturbing. I had hoped to show this footage today to demonstrate the tragic consequences of poorly repaired write-offs for members of the community. Unfortunately, I am unable to do so. I will therefore try to convey the graphic nature of the crash lab video in words.

As is too often the case with poorly repaired written off vehicles, this vehicle had faults with its seatbelts, airbags and other safety systems. The driver's airbag had been removed from the vehicle and simply replaced with a rolled-up rag. The airbag light was manipulated to flash on and off, giving the unsuspecting driver the impression that the vehicle's airbag and safety controls were functioning properly. Not only was the air bag missing, but the seatbelt pre-tensioners were never replaced either.

Travelling at a speed of only 56 kilometres per hour, the video shows the vehicle crashing head-on into a wall. As the seatbelts and airbag failed, the occupants were shown suffering catastrophic injuries that would have threatened their lives. In fact, when the results of the test were fully analysed, it was found that the driver of the repairable written-off vehicle had 42 times the risk of receiving critical head injuries over the driver of an identical standard Toyota Corolla. The passenger was 36 times more likely to suffer critical head injuries. The types of injuries identified in this class would include major skull fractures and irreversible brain damage. Such serious consequences for the community emphasise the urgent need for these reforms.

As well as the risks to the safety and indeed the lives of vehicle occupants from repairable write-offs, there is also a severe financial risk for vehicle owners. Victims of criminal rebirthing activities report an inability to recoup the money they have paid for a vehicle which is later identified as rebirthed. Costs include the purchase of another vehicle while the rebirthed vehicle is impounded for police investigations, while still being burdened with the debt of the rebirthed vehicle. Coupled with this is the great distress suffered by these vehicle owners throughout this process.

On a broader scale, stolen vehicle activity and rebirthing is a major problem across New South Wales and Australia. The National Motor Vehicle Theft Reduction Council estimates the cost of vehicle theft in Australia to be approximately \$1 billion, excluding the very large community costs associated with police investigations and prosecutions and the impact on the court system.

In New South Wales approximately 19,000 vehicles were stolen in 2008-09. Approximately 5,700 of these vehicles have not been recovered. The National Motor Vehicle Theft Reduction Council estimates that the total cost to the New South Wales community of these thefts is approximately \$270 million.

The changing trends in vehicle theft show the growth of the problem in rebirthing repairable written-off vehicles in recent years. The NSW Police Force advise that the number of unrecovered stolen vehicles is a key indicator of vehicle thefts for use in rebirthing activities. Analysis by the NSW Police Force has shown that the percentage of professional vehicle theft and rebirthing is increasing even though the overall vehicle theft rate is decreasing. Vehicle theft and rebirthing activity has increased as a percentage of the overall theft rate from 20 per cent in 2002 to approximately 30 per cent in 2008-09.

The NSW Police Force has concluded that this increase has been created by criminals constantly evolving their rebirthing techniques.

It is estimated that up to 6 in 10 repairable write-offs presented for re-registration in New South Wales pose serious questions about the origin of the parts used to repair them. This amounts to more than 12,000 suspect repairable write-offs in New South Wales per year.

I will quote from formal NSW Police Force advice to the Roads and Traffic Authority which states, "There is no doubt that the area that has been targeted by criminal groups is the written-off vehicle process and this is one area that can only be impacted upon by legislative and policy changes".

The National Motor Vehicle Theft Reduction Council conducted a national review of written-off vehicles during 2008 in response to the increase in rebirthing of repairable write-offs. The review concluded that banning the registration of repairable write-offs would provide the greatest national financial benefit. The review calculated that the annual financial benefit to vehicle owners and insurers nationally would be more than \$60 million. This is the highest benefit of

all of the options that the council costed in its review.

I am advised that following opposition from the insurance industry, the National Motor Vehicle Theft Reduction Council unfortunately has not pursued or advocated the option of a complete ban which its own review found would provide the greatest national benefit.

Prior to its fundamental change of policy, the National Motor Vehicle Theft Reduction Council had also concluded that the rebirthing of repairable write-offs is a major vulnerability in the fight against vehicle theft.

#### LISTENING TO STAKEHOLDERS

In the development of this bill the Government has listened to the community and industry stakeholders.

A range of options to improve the management of written-off vehicles were detailed in the Roads and Traffic Authority Discussion Paper "Improving the Regulation of Written-off Vehicles in New South Wales", released by the former Minister for Roads for public comment in August 2009.

In total, 56 submissions were received from a diverse range of industry and regulatory stakeholders, including major insurers, auction houses, metal recyclers, motor vehicle dealers and repairers, the Motor Traders Association, the National Motor Vehicle Theft Reduction Council, the New South Wales Office of Fair Trading, the NSW Police Force, other Australian jurisdictions, and the general public. All submissions to the discussion paper were considered in detail.

Comments on the discussion paper indicated strong support for a complete ban on the re-registration of repairable write-offs.

In framing this bill, the Government has also been mindful of the issues raised by the Parliament when this issue was previously considered, and has also reviewed recommendations arising from the important work of the Staysafe committee.

#### HOW THE NEW LEGISLATION WILL WORK

The bill will:

- require all New South Wales registered vehicles assessed as a total loss under the new legislation to be classified as statutory write-offs;
- require all New South Wales registered vehicles that are written-off to be notified to the Written-off Vehicle Register in New South Wales;
- prohibit registration in New South Wales of a vehicle classified as a repairable write-off in any other Australian jurisdiction, unless that vehicle has been first registered in another jurisdiction;
- allow for operators of certain vehicles to make application for the repair of a statutory write-off subject to satisfying prescribed conditions. These classes of vehicles are:
  - enthusiast vehicles;
  - collectible vehicles;
  - vehicles of high personal or economic value; and
  - some hail-damaged vehicles
- require that a person who makes an assessment of a crash damaged vehicle is a competent person, takes into account the National Crash Damage Assessment Criteria, and uses either the manufacturers repair guidelines or acceptable industry standards to calculate repair costs; and
- require all notifiers to the Written-off Vehicle Register to attach warning labels to statutory written-off vehicles to warn prospective buyers that these vehicles cannot be registered and can be used only for spare parts.

The new legislation is also intended to ensure that all vehicles that should be written-off under the law are in fact written-off and ineligible for re-registration. Under the current legislation, insurers, and others who are required to notify vehicles to the Written-off Vehicle Register, have a degree of discretion regarding the vehicles they write-off.

The current legislation allows for a determination to be made that a vehicle will be written-off, without stipulating specific economic criteria for this determination. Under the new legislation, all vehicles assessed as an economic "total loss" must be written-off, and classified as statutory write-offs. A damaged vehicle is classified as a "total loss" when the cost of its repairs plus its value as a damaged vehicle are higher than its undamaged market value.

The new legislation will therefore prevent any unscrupulous attempts to reduce the number of vehicles that are written-off. The new legislation will require that all "total loss" vehicles are written-off and taken off the road.

A non-regulatory enhancement of consumer protection has already been developed by the RTA through its online Vehicle History Check service. This service provides purchasers of New South Wales registered second-hand vehicles

with comprehensive vehicle information, including written-off and stolen vehicle information.

While this service allows consumers to check the status and history of currently registered New South Wales vehicles and has been welcomed by consumers and industry, such a service cannot prevent ongoing or future vehicle theft and rebirthing activities—or "dodgy" repairs to damaged vehicles.

The bill is predicated on the public policy objective that a crash damaged vehicle should be assessed and repaired, if eligible, to a standard and not a price. In this regard, the bill gives effect to the policy intent of the New South Wales parliamentary Staysafe committee report entitled "Repairing to a price, Not a standard", Report No. 9/53 of December 2005.

The bill introduces an additional measure of consumer protection by requiring that a competent person be used to assess crash damaged vehicles. This approach has been taken due to the absence of a formalised accreditation scheme or endorsed national competency standards for vehicle damage assessors.

The training and qualifications required for a person to be defined as a competent person will be determined in consultation with the New South Wales Office of Fair Trading and industry.

The provision requiring the use of a competent person will take effect six months after the legislation commences to allow sufficient time for any additional training to be conducted, so that assessors can meet the required standards without disruption to industry or to the livelihood of assessors.

This bill provides that a crash damaged vehicle must be assessed against a standard. The standard is that the cost of repairs must be determined based on recognised industry repair methods and not price alone. The bill further provides that any vehicle eligible and capable of being repaired must be repaired to that same standard. Accordingly, the bill provides that consumer protection, through the application of industry recognised repair standards, is centre stage at the front end of the process, when the vehicle is assessed, and the back end, when the vehicle is repaired.

Vehicles recorded on the Written-off Vehicle Register as repairable write-offs before the reforms commence as law will be eligible to be re-registered, providing registration requirements are met and they are presented for registration within two years. The reforms will not be applied retrospectively to vehicles that have been repaired and re-registered previously.

#### SCOPE OF THE BILL

The legislation will cover all light vehicles including trailers, caravans and motorcycles.

The regulation of written-off heavy vehicles will be addressed by the proposed National Heavy Vehicle Regulator in due course.

#### PROVISION FOR EXEMPTIONS FROM THE BAN

I wish to make some comment on the flexibility provided in the bill to address special circumstances.

The bill provides a number of important, though low volume exemptions from the ban to allow the re-registration of specified repairable write-offs. Vehicles retained by the same operator and which are aged six years or older with a market value of more than \$50,000, or vehicles less than six years of age with a value of more than \$100,000 will be considered for exemption as these are likely to be rarer vehicles and very difficult to rebirth via the theft of an identical vehicle or parts.

Enthusiasts' vehicles, classic collectors' vehicles and specified personally imported vehicles which may or may not have a high market value will also be considered for exemption on similar grounds of being extremely difficult to rebirth via the theft of an identical vehicle or parts.

Vehicles which have a demonstrated high personal or sentimental value to the owner—for example, the vehicle may have been a gift, or may have been in the family for many years—will also be considered for exemption on a case-by-case basis.

Exemptions will also be considered for write-offs following hail damage if the vehicle is retained by the same operator and if the vehicle does not fail the National Crash Damage Assessment Criteria.

Prior to an exemption being considered, the damage assessment of the vehicle must be conducted by a competent person using the crash damage criteria and manufacturers' repair guidelines or accepted industry standards. This framework is used by the insurer, or any other required notifier to the Written-off Vehicles Register, to declare whether or not the vehicle is able to be safely repaired. No exemption application from the vehicle owner will be considered if the vehicle fails the National Crash Damage Assessment Criteria.

#### CONCLUSION

New South Wales is taking a national lead with this initiative, as it has done in the past. New South Wales initiated the Written-off Vehicle Register in 1996. The register was used as the model for all other States and Territories to adopt, and is now a nationally integrated system for recording and tracking written-off vehicles.

By prohibiting the re-registration of repairable written-off vehicles, this bill will protect consumers, result in safer vehicles, remove the risk of poorly repaired "death-traps" returning to New South Wales roads, and reduce the cost to

the community of vehicle theft, vehicle rebirthing and organised crime.

I commend the bill to the House.