

MOTOR DEALERS AND REPAIRERS AMENDMENT BILL 2014

Bill introduced on motion by Ms Tania Mihailuk, read a first time and printed.

Ms TANIA MIHAILUK (Bankstown) [10.36 a.m.]: I seek leave to move that standing orders be suspended to allow the passing of the bill through all its remaining stages during the present or any one sitting of the House.

Leave not granted.

Second Reading

Ms TANIA MIHAILUK (Bankstown) [10.37 a.m.]: I move:

That this bill be now read a second time.

On behalf of this State's six million motorists and 12,000 smash repairers, it gives me great pleasure to introduce the Motor Dealers and Repairers Amendment Bill 2014. It is a shame that the Government has decided not to allow this bill to pass through all stages today despite allowing its Petroleum Onshore Amendment (New South Wales Gas Plan) Bill 2014 to do so. This bill will impact six million motorists and 12,000 motor vehicle repairers, but it will not pass through all stages today. The bill will amend the Motor Dealers and Repairers Act 2013 to provide for the licensing of motor vehicle assessors and the keeping of a register of offences under that Act and to allow motor vehicle repairers to seek assistance from the NSW Small Business Commissioner.

The motor vehicle repair industry is an important part of the New South Wales economy. It is valued at approximately \$5.5 billion and employs approximately 14,000 people across this State. This bill will introduce much-needed reforms affecting the motor vehicle repair industry that will greatly assist in improving road safety outcomes for motorists throughout New South Wales. This Liberal-Nationals Government has been stuck in neutral when it has come to implementing these vital initiatives to improve road safety for our motorists, but members opposite now have the opportunity to show to their electorates that they care about road safety by supporting this bill. This bill is the culmination of months of inaction by the Minister for Fair Trading, who is simply out of his depth when it comes to improving consumer protections for motorists and increasing fairness and transparency in the smash repair industry.

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In November 2013 the Motor Dealers and Repairers Act 2013 was enacted. It combined the former Motor Dealers Act and Motor Repairers Act into the one Act. This legislation will come into force on 1 December 2014. During the second reading debate on the legislation the New South Wales Opposition highlighted unfair practices within the insurance industry, where some providers were giving preferential treatment to repairers based on the cost of repairs, rather than quality. The New South Wales Opposition highlighted that the Act did not adequately protect the interests of smash

repairers in respect of their relationship with insurance companies, and that, on balance, there was potential for unjust conduct and unfair contractual terms in the dealings between insurers and repairers. Approximately 90 per cent of the smash repair industry's work is supplied by insurance companies, with 62 per cent of the market being controlled by the two biggest companies. The New South Wales Opposition proposed a series of 39 amendments to address industry concerns. These amendments were rejected by the Government in both the Legislative Assembly and the Legislative Council.

It was in this context, and with the support of the New South Wales Opposition, the crossbench and the Body Repairers Division of the Motor Traders' Association of New South Wales, that the bipartisan Select Committee on the Motor Vehicle Repair Industry was established. The select committee inquired into the relationship between smash repairers and insurance companies, with a focus on poor quality and unsafe repair work, and the impact on consumers of existing business practices between insurers and repairers. In total, the select committee received 77 submissions from individuals and stakeholders from within the industry, including major insurance companies in the marketplace. The committee also held two public hearings, taking evidence from 24 witnesses, and examined vehicle rectification figures supplied by major insurance companies and the Motor Traders' Association of New South Wales. In total, 21 recommendations and 12 findings were made to reform the industry.

Overall, the inquiry identified that motorists were at risk from poor-quality vehicle repair practices, and that a major imbalance existed in favour of insurance companies over smash repairers. I note for the record that the committee was bipartisan in nature and was unanimous in supporting the recommendations and findings made in the report. In fact, it is worth highlighting the contribution of Coalition committee members during the take note-debate on the committee report. The chairperson, the member for Monaro and Minister for Small Business, said:

I believe the recommendations contained in the committee's report are an essential step towards improving the operation of the motor vehicle repair industry in New South Wales, and the safety of the State's roads. I am confident that the recommendations will help to increase the accountability of motor vehicle loss assessors, repairers and insurers and establish a better balance in the relationship between insurers and repairers. These recommendations will provide the Government with a clear framework to implement thorough and effective change.

Another member of the select committee, the member for Hawkesbury, stated:

I understand the importance of ensuring that damaged motor vehicles are repaired to pre-accident condition prior to being returned to our roads. This is and must always be the fundamental objective of all industry stakeholders involved in the repair of motor vehicles. Only an appropriately repaired motor vehicle can ensure the safety of its occupants if the same vehicle is unfortunately involved in another accident. If the structural composition of a motor vehicle is not appropriately repaired it poses a significant threat to the occupants of that vehicle and to other vehicles.

The member for Campbelltown, the deputy chair of the committee, stated on record:

The greatest focus of the committee was to ensure that damaged vehicles are repaired properly and returned to the road in a roadworthy condition. That is something that concerns every member of this House. The recommendations of the committee are designed to achieve that focus by increasing the accountability of insurance motor vehicle loss assessors, improving the quality of repair work.

It is a great shame that these overwhelming calls for reform have fallen on the deaf ears of the Minister for Fair Trading, who has yet to implement any of the recommendations made by the select committee. I hope that Coalition members of the committee have raised their concerns directly with the Minister and asked why there has been a delay in the Government implementing these recommendations.

The Select Committee on the Motor Vehicle Repair Industry tabled its bipartisan, unanimous report on how to further reform the industry on 2 July 2014. It was the intent of the committee for further industry reforms to be acted upon before the end of this parliamentary session, and every member of the committee understood that to be the case. I invite those members to come forward and advise the House otherwise, should that not be so. The Minister for Fair Trading knows all too well that, after this session, Parliament will not sit again until May—at the earliest. His delay in formally responding to the report of the select committee is nothing more than a deliberate attempt to stop any reforms occurring before the State election. It is a great disservice to smash repairers and motorists throughout New South Wales that the Minister for Fair Trading has been unable to draft a simple bill to enact vital road safety reforms. That is why the New South Wales Opposition decided that we needed to prepare a bill and introduce it into this House.

The New South Wales Opposition recognises that smash repairers need greater protections to guarantee a fair and transparent motor vehicle repair industry. The New South Wales Opposition wants to ensure that when a vehicle is repaired and the keys are returned to a family, the vehicle has been repaired to a safe and roadworthy standard. The particulars of this bill will address these concerns by implementing recommendations made by the select committee that have so far been ignored by the Minister for Fair Trading. New sections 1 to 8 will introduce and expand the categories of licences under the Motor Dealers and Repairers Act 2013 to include a motor vehicle assessor's licence. The bill defines a "motor vehicle assessor" as a person, other than a motor vehicle repairer, who carries on the business of assessing the value or cost of the repair of motor vehicles, or inspects repair work carried out by a motor vehicle repairer.

A person will be punished by a maximum of 20 penalty units if they carry on, or advertise that they are willing to carry on, the business of a motor vehicle assessor without a licence. The grounds for refusal of a licence and criteria for determining who is a fit and proper person to hold a licence within sections 25 and 27 of the Act will also apply to applicants for a motor vehicle assessor's licence. Upon commencement of this bill, motor vehicle assessors will have a transitional period of three months to make an application for a licence. There is no doubt that during the inquiry this was the single most important issue impacting the smash repair industry. Many smash repairers are sure

to have raised these concerns directly with local members of Parliament. Motor vehicle assessors play a vital role within the motor vehicle repair industry.

Assessors are the party responsible for approving quotes regarding the cost of repair and the method of repair. Motor vehicle assessors are often tasked with ensuring that a vehicle has been repaired to its pre-accident condition to a safe standard. The assessor also acts as a crucial link between motorist, repairer and insurer. The licensing of motor vehicle assessors will act as a necessary safeguard for motorists to improve road safety. During the inquiry process, the licensing of assessors was supported by both smash repairers and leading insurance companies. This measure will greatly enhance accountability in the assessment process to ensure that motor vehicles are repaired to a standard, rather than a price.

I turn to clause 9 of the bill, which will introduce a public "name and shame register" of offences under the Motor Dealers and Repairers Act 2013. This register would apply to motor dealers, motor vehicle repairers, motor vehicle recyclers and motor vehicle assessors if an offence is committed under the Act or regulation. The register will include the name of the person, the name and address of the business at which the offence was committed, the name and address of the usual place of business of the person, the name under which the person trades, and the name of the chief executive of the company and any company director. Crucially, the register will include a description of the nature and circumstances of the offence, the decision of the court and the penalty imposed or order made against the person, and any other information of a general nature thought of as necessary. This name and shame register will operate in a similar manner to the NSW Food Authority's register by giving consumers—the motorists—the information they need to choose the best professional for the job.

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During the inquiry process the fair trading commissioner, Rod Stowe, expressed his support for the establishment of a name and shame register that would help circulate information to better inform the public of repairer quality and improve compliance by repairers. I note that the Minister has not legislated for the introduction of a name and shame register of motor vehicle industry professionals, despite his recent backtracked announcement of a name and shame register, and that, to date, a register has not been implemented. To make an informed decision about which business or professional is in their best interests, consumers require detailed information about the nature and circumstances of an offence. The register announced by the Minister would not include those kinds of details—unlike the register within this bill, which extends even further and includes motor vehicle assessors, dealers and recyclers.

I will now consider clauses 10 to 27 of the bill, which will amend the Motor Dealers and Repairers Act 2013 to enable motor vehicle repairer groups and motor vehicle repairers to seek assistance from the NSW Small Business Commissioner in dealing with a dispute about an unfair term of a repairer contract or a class of repairer contracts or unjust conduct by an insurer who is a party to a repairer contract or class of repairer contracts. A repairer contract is defined by the bill as a contract between an insurer and motor vehicle repairer for repair work by the motor vehicle repairer. This definition includes all documents that form part of or are referred to in the contract.

Motor vehicle repairer groups and individual repairers will be able to apply to the tribunal for a

declaration that a term of a repairer contract is unfair or that the conduct of an insurer is unjust. These provisions will be similar to the existing provisions under the Act that provide recourse for motor vehicle dealers who are in dispute over unfair contract provisions or unjust conduct with a vehicle manufacturer. It is a great irony that the party that claims to be champions of small business has refused to give hardworking local smash repairers and local smash repairer business operators access to the Small Business Commissioner to resolve unfair insurance contractual disputes. I am sure that the current Minister for Small Business and the former chairperson of the select committee, the member for Monaro, will want to swiftly rectify this great injustice.

The select committee noted its concern that insurers have been using their market dominance to exert pressure on repairers through contracts that may involve fixed-price repairs. Fixed-price repairs not only have a direct flow-on effect on the quality of repairs completed, but also can significantly affect the bottom line of hardworking local smash repairers, who may have had no choice but to accept the terms of a contract or go bust. These small businesses need the assistance that would be provided by the provisions of this bill. Rather than keeping the status quo, which only serves to favour insurance companies at the big end of town, I urge members opposite to support their local smash repairers, who contribute a great deal to our local communities and to the New South Wales economy.

In my role as a member of the Select Committee on the Motor Vehicle Repair Industry, and in my capacity as the shadow Minister for Fair Trading, I have had the pleasure of meeting many smash repairers throughout New South Wales, who will undoubtedly be welcoming the provisions in this bill. In Gosford, Joanna and Brett Dicker of Dicker Motors Smash Repairs expressed to David Harris, the Labor candidate for Wyong, to the Hon. Greg Donnelly and to me that their livelihood is being pushed to the brink due to current practices in the industry. The couple, who are third generation smash repairers, have refused to cut corners on the quality of repairs they have provided to their customers. But this is sadly resulting in a financial loss on some repair jobs due to the unfair terms of the repair contract. Ms Dicker stated to the *Central Coast Express Advocate*:

We desperately need change to save our business, this is unsustainable and it's devastating.

In Campbelltown I joined the Labor candidate for Campbelltown, Greg Warren, in meeting Mr Daniel Fenech, manager of AAA Malibu Paint and Panel, who also joined the call for change to prevent quotes being based on the cost of repairs rather than on the quality of the repair. He said to the *Campbelltown Macarthur Advertiser*:

There are also certain repair shops that have done certain contract deals with insurance companies.

They get so much volume because they are quoting the cheapest repairs.

That should concern each and every member of this House, including the member for Campbelltown. In Oatley the Labor candidate, O'Bray Smith, and I met respected long-term repairer

Terry Flanagan of T R Flanagan's, who described the current state of the industry as "a mess". He stated to the *St George and Sutherland Shire Leader*:

The insurance companies want the cheapest deal, so they run their own shops which don't always do top quality work.

Small business is getting bashed big time here by insurance companies and the owners are denied their choice of repairers.

I am always getting cars whose owners are saying they have not been fixed properly.

The good news for all these repairers is that this bill will address all those concerns. This bill will support our local small businesses, enhance accountability, transparency and compliance within the motor vehicle repair industry, and greatly improve road safety outcomes for motorists. In formulating this bill there are many people that I would like to thank and acknowledge. I particularly acknowledge Mr Graham Judge from the Body Repairers Division of the Motor Traders' Association of New South Wales, who has worked tirelessly to advance road safety reforms to improve the motor vehicle repair industry for the better, and I thank him for his wise counsel. I note that he is here today in the gallery. I also acknowledge Mr Greg Patten, the chief executive officer of the Motor Traders' Association. In particular, I would like to thank and acknowledge all the brave smash repairers who have liaised with my office to express their honest and forthright views on how to improve their industry and for coming forward with their submissions and personal experiences during the parliamentary inquiry.

I have had the honour of visiting a number of smash repairers and many aggrieved motorists. I commit to each and every one of them that the New South Wales Opposition will advocate their cause for a fairer and more transparent smash repair industry in order to prevent the Baird-Grant Government from succumbing, effectively, to the big end of town. I say to the Premier, the Minister for Fair Trading and members in this House that the New South Wales Opposition has made it clear that it supports these changes. The Government cannot absolve itself from the responsibility it has to ensure that every motor vehicle repaired in this State is repaired in a safe manner. The Government should stop the rhetoric and support the bill. The Government should support our hardworking local smash repairers, it should address the motorists' and the broader industry's need for fairness and transparency, and it should support the recommendations made by the bipartisan parliamentary inquiry chaired by the Minister for Small Business.

I remind the House that at the outset today I sought leave to suspend standing and sessional orders to permit the passage of this bill through all stages at this sitting. That was rejected by the Government. Clearly, the Government did not think it was important to look after the interests of 12,000 smash repairers and six million motorists across this State.

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Mr Bryan Doyle: You had 16 years.

Ms TANIA MIHAILUK: There will be more on the member for Campbelltown later. I commend the bill to the House. I am delighted that the member for Campbelltown is in the Chamber. I hope that he and the other Coalition members of the select committee will support this bill.

Debate adjourned on motion by Mr Christ Patterson and set down as an order of the day for a future day.