



Motor Dealers and Repairers Bill 2013 (Proof)

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Second Reading

The Hon. JOHN AJAKA (Minister for Ageing, Minister for Disability Services, and Minister for the Illawarra) [9.55 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

I am pleased to introduce the Motor Dealers and Repairers Bill 2013. This bill reforms the regulation of motor dealers and motor vehicle repairers and will ensure greater consumer protection for anyone buying a motor car or getting his or her motor car repaired. The bill consolidates the Motor Dealers Act 1974 and the Motor Vehicle Repairs Act 1980 into a single piece of legislation, recognising the connections which exist between these two important sectors of the industry.

The bill will ensure that the requirements of the legislation are applied consistently to both motor dealers and motor vehicle repairers, which will assist those businesses which operate on both sides of the industry. The bill will modernise the laws and encourage and recognise a stronger, more up-to-date marketplace. Industry will benefit from cuts to red tape and the bill will support good businesses getting on with their job of selling and repairing cars. Importantly, the bill also creates a dispute resolution system, which will enable motor dealers to resolve a dispute about unfair contract terms in their contracts with motor vehicle manufacturers or suppliers.

The industry of selling and repairing cars is a vital sector of the New South Wales economy. There are almost six million cars registered in New South Wales. In 2012-13 more than 380,000 new vehicles were sold and more than 1.4 million used vehicles were sold, worth more than \$30 billion in total. It is estimated that the smash repairs and automotive services and maintenance sectors of the New South Wales economy are valued at more than \$5.5 billion. It is estimated the sector employs more than 140,000 people and there are over 12,000 licensed repairers and almost 4,000 motor dealers in New South Wales.

This bill is the culmination of a comprehensive consultation process which began in late 2011 when I asked Fair Trading to commence a review of the legislation. In May 2012 an issues paper was released seeking stakeholder feedback on the operation of the laws. Following the release of the issues paper there was an extensive period of consultation with stakeholders, including roundtable discussions with key industry groups. The review found that while the Acts generally worked well and are understood by industry, there were opportunities to consolidate them into a single Act, improve consumer protection and cut red tape for business.

I now turn to the detail of the Motor Dealers and Repairers Bill 2013. The bill consolidates the Motor Dealers Act 1974 and the Motor Vehicle Repairs Act 1980 into a single piece of legislation which will regulate both motor dealers and motor vehicle repairers. For the first time it establishes up-front objectives of the Act, which will make clear the purpose and aims of the legislation to all stakeholders, including industry and consumers. These are: to provide consumer protection and remedies for consumers who purchase motor vehicles from motor dealers or obtain motor vehicle repair services; to establish appropriate standards of conduct and transparency for motor dealers, motor vehicle repairers and motor vehicle recyclers; to provide enforcement mechanisms to prevent misleading or dishonest conduct and illegal dealings with motor vehicles and parts; and to provide protection for motor dealers against unfair contract dealings by motor vehicle manufacturers.

The O'Farrell-Stoner Government will introduce a transparent and simple business licensing system, consolidating 16 motor vehicle repair licences and six motor dealer licences into only three licence types, namely, a motor dealer, a motor vehicle recycler and a motor vehicle repairer. The bill will also remove the licensing requirements for car market operators and motor vehicle consultants. Car market operators do not actually sell motor vehicles. Instead, they act as a landlord for a space or market in which private sellers come to sell their vehicles. The internet has mostly replaced this method of selling and these businesses are more often than not run by charities or rotary clubs. They will welcome the removal of the red tape they currently operate within. Motor vehicle consultants do not sell vehicles either. Instead, they advise and assist consumers or businesses of where they can purchase a vehicle. It is not necessary to license this business type as ultimately the consumer must deal with a motor dealer, which means they will be safeguarded by the consumer protections within this bill.

To ensure consumers know they are getting a good deal, those in the industry who broker motor vehicle sales will be subject to specific obligations, which I will explain later. For the first time businesses will be offered the choice of a one-year or a three-year licence. Businesses which choose a three-year licence will see cost savings and major time savings in dealing with government paperwork. For a three-year licence the fee will be lower as the licensee will avoid the government processing fees for the second two years. They will also save time by not having to complete a renewal form for government every year. While a three-year licence will be a larger up-front payment, I expect many established businesses to take up this option to save money.

Businesses will of course have a choice of a one-year licence and this may benefit smaller businesses that wish to set up and establish themselves before they choose a three-year licence term. During consultation on the bill, the option of allowing a three-year licence was strongly supported by the industry and stakeholders involved in the review. I can advise that the occupational licensing system for motor vehicle repairers will also be simplified and made more transparent. The 13 classes of business licensing will also be consolidated into classes more in keeping with modern repair methods. The details of these classes of repair for licensing will be developed in the regulation to accompany this bill and will be examined in consultation with industry following this parliamentary process.

As part of the new occupational licensing system for tradesperson certificate licensing, tradespeople will be required to renew their certificates every three years. The cost of renewal for the tradesperson will be minimal and is expected to be between \$10 and \$20 per year over the three years. A tradesperson certificate is the industry paper which is required to be employed in the industry. If it is no longer valid, or if persons have not kept their skills current through training or working in the industry, they will no longer be able to properly repair new vehicles. A regular licence renewal every three years will ensure the licence is valid and employers can be assured the person they are employing is a skilled worker with recent work experience.

A regular renewal process and an up-to-date register of tradespeople will return legitimacy to the licensing system for employees and government alike. The new bill will ensure the Licensing and Registration (Uniform Procedures) Act 2002 applies to the licensing requirements. This will ensure that all licence types under the bill have standardised procedures for applications, renewals and refunds and importantly for businesses will provide fee discounting for any online transactions. The bill has a modern definition of "motor vehicle" which is based on the primary legislation for motor vehicles, the Road Transport Act 2013, which governs all road transport laws.

The current definition of "motor vehicle" in the repairers Act is old fashioned with references to a "motor carriage propelled by any volatile spirit or steam" and is clearly in need of an update. The bill will amend the definition of "repair work" to make it clear certain basic work on a vehicle does not require a person to have a licence. Repair work that is not a repair class prescribed by the regulations will not require a licence. This clarification will allow certain work on a motor vehicle to be done without a licence, including basic repairs or accessory fitting such as fitting windscreen wipers, changing light bulbs, fitting roof racks or other basic accessories which can be bolted onto a vehicle.

Consumers will always have the protections of the Australian Consumer Law regardless of whether or not the persons replacing their windscreen wiper blade or attaching a roof rack to their vehicles has a licence. One major issue raised as part of the review of the regulation of motor vehicles relates to the contractual relationship between small motor dealers and the manufacturer or supplier of the vehicles they sell. Stakeholders representing dealers raised concerns that the relationship between dealers and manufacturers is characterised by a power imbalance to the detriment of small motor dealers. Some of the very unfair practices which were reported to me as part of the review can either end a motor dealers business or destroy the goodwill that has existed between them and the manufacturer for decades. Such practices include being arbitrarily told to refit or redesign a business premise at the cost of millions of dollars shortly before their contract ends or having unrealistic sales requirements placed on them without any agreement or understanding of their business or the economic circumstances.

Stakeholders representing dealers argued that court action is prohibitively expensive and that mediation through the Commonwealth Franchising Code of Conduct does not resolve disputes and cannot be enforced. The bill will assist to resolve any power imbalance by introducing new provisions to establish a simple, cheap and effective mechanism for reviewing the fairness of manufacturers' contracts with motor dealers. The bill also extends this protection to motor dealers where manufacturers have engaged in unfair conduct. These dispute resolution provisions aim to resolve any disputes through mediation in the first instance—mediation usually resolves over 80 per cent of all disputes when both parties come to the table and discuss their issues.

Mediation is also critically important because if the problem cannot be resolved early on, before the dispute escalates, the business relationship could be significantly damaged. The bill requires any dealer in a dispute over an unfair term in their contract or unjust conduct to first approach the NSW Small Business Commissioner for assistance in dealing with the dispute. The Small Business Commissioner provides a low-cost dispute resolution service for business-to-business disputes. This service provides procedural and strategic information to help parties resolve their issues at the earliest possible point. It also provides assistance with negotiation plus informal and formal mediation to parties in dispute.

If the informal processes do not resolve the dispute, the parties will be required to go through the formal mediation process where mediation costs are kept low and are shared equally by parties. Should formal mediation fail, the Small Business Commissioner will certify each party's participation in the process which will allow the parties to apply to the Consumer, Trader and Tenancy Tribunal for the matter to be determined. The tribunal would be able to determine whether a contract or behaviour in relation to the contract is unjust. The test for what is considered an "unfair" contract term is based on the accepted three-part test for unfairness established in the Australian Consumer Law for unfair consumer contract terms. This law has been in existence since 2010 and is understood by the courts and businesses. The tribunal can make enforceable orders including orders declaring the contract or part of the contract to be void.

The tribunal can also vary the contract, or make directions to parties not to take specified actions relating to the

contract and will be able to make orders for monetary compensation. The tribunal will not have a monetary jurisdictional limit to hear applications, which means any motor dealer experiencing an unfair contract or unjust conduct can use this dispute resolution system regardless of the value of the dispute they are involved in. This makes the system affordable and provides protections for mum-and-dad dealers who sign up to expensive contracts but cannot afford lawyers to fight multibillion-dollar manufacturers through the courts. During the review motor dealers stressed they do not, and will not, take action in relation to unfair contract terms due to the fear that this will lead to reprisals, including the loss of their business.

To counter this problem, the bill also allows a motor industry group to apply to the Small Business Commissioner on behalf of a dealer or dealers about an unfair term in a contract or class of contracts. The industry or manufacturer will therefore not be able to directly identify the dealer thereby removing the fear of reprisal. The new dispute resolution mechanism for dealers will, for the first time, provide a balanced, effective and low-cost means of resolution. This will address any significant imbalance in financial and legal power between motor dealer franchisees and global vehicle manufacturers. It will also encourage competition and the growth of this important industry in New South Wales.

Motor vehicle brokers are an emerging sector of the market who negotiate on a person's behalf for the purchase of motor vehicles. This bill will place new obligations on brokers to ensure they disclose to customers any financial or business relationship with the supplier or if they receive any fee or consideration from the supplier arising from the service. These obligations are not onerous but will help to provide brokers' customers with information to help them assess whether they are receiving a good deal or not. The obligations are similar to requirements brokers face in other industries such as financial services and should be well understood.

This bill reforms the warranty provisions to ensure they are consistent with the Australian Consumer Law and the national consumer protection framework. The current Motor Dealers Act 1974 contains a set of statutory warranties which apply to motor vehicles sold by licensed dealers. These warranties were based on the previous Trade Practices Act 1974 implied warranty provisions and assisted to exempt certain vehicles and define concepts such as "merchantable quality", especially in relation to used vehicles. The provisions are now outdated and need to be modernised by reference to the consumer guarantees definitions in the Australian Consumer Law, which replaced these parts of the Trade Practices Act 1974. The warranties require dealers to fix a motor vehicle if it is found to be defective within the warranty period.

These warranties are well known and understood by consumers and the industry and will remain in the bill, but the definition of what constitutes a defective vehicle will be based on whether the vehicle would breach a consumer guarantee under the Australian Consumer Law. When the Australian Consumer Law commenced, the New South Wales Government agreed to review all laws which may be inconsistent with the provisions of the law and as much as possible remove any inconsistencies. The bill will support that requirement by keeping the well-understood and accepted requirements for vehicle warranties but ensuring that unnecessary exemptions are removed and the definitions for what can be claimed match the national consumer protection framework.

To provide additional protections for consumers the jurisdictional limit for used car claims in the Consumer, Trader and Tenancy Tribunal will be increased from \$30,000 to \$40,000 to keep up to date with the cost of used cars. This will provide consumers with better redress for more expensive used vehicles. The increase in jurisdictional limit does not form part of this bill and will be made through a regulation change on commencement of the legislation. To ensure consumers are protected against "lemon" vehicles, the laws will continue to provide for an unlimited jurisdictional limit in the tribunal for new cars.

The Motor Dealers Act 1974 and Motor Vehicle Repairs Act 1980 both provided for compensation to pay consumers in the event of a loss. The new bill will combine these compensation funds into a new Motor Dealers and Repairers Compensation Fund. Funding will come from a percentage of the licence application and renewal fees dealers and repairers pay. In a major new benefit for consumers the maximum amount of money that a consumer can claim through the compensation fund will increase from \$30,000 to \$40,000. The bill will provide a new protection for consumers by allowing Fair Trading inspectors to issue rectification orders in clear examples of when repair work on a vehicle is incomplete or defective, or if a dealer guarantee has not been completed or is defective. Rectification orders are effectively enforceable documents which can be used as evidence before a court or tribunal. Failure to follow an order can result in disciplinary action by Fair Trading.

Rectification orders will advise the dealer or repairer exactly what work must be completed to fix the issue under dispute in order to abide by the requirements of the law. Rectification orders are already used in Fair Trading home building disputes and are an effective method of resolving disputes quickly and efficiently in a fair and transparent manner. They also keep disputes out of courts or tribunals and are often a relief to both parties because they resolve the problem fairly and equally allowing the consumer and the trader to get on with their business. The new laws will require a motor dealer who intends to sell vehicles on consignment to notify Fair Trading up-front in their licence application. Small business motor dealers often start by selling most of their vehicle stock on consignment to keep up-front costs to a minimum.

However, these businesses often fail, leaving consumers out of pocket with unrecoverable vehicles and no payment. There is a compensation fund which generally assists consumers to recover their losses. Over the last several years consignment-related business failures account for approximately 80 per cent of all compensation claims made on Fair Trading's Motor Dealers Compensation Fund. Currently dealers only need to notify Fair Trading annually of any consignment sales and this may well be after the event. Requiring up-front notification of the intention to sell on consignment will allow Fair Trading to proactively inspect and ensure compliance with the strict consignment obligations. It may also assist Fair Trading to identify businesses that are in trouble at an early stage thereby minimising consumer detriment.

This bill will increase Fair Trading's ability to enforce the law against dodgy people in the motor industry. We read about

too many stories of odometer tampering and see examples of business phoenixing where a dealer or repairer closes their business to avoid any action by Fair Trading and then reopens under a different name or company. Odometer readings are one of the major factors consumers look at when buying a used car. As members would be aware the value of the vehicle can be dramatically increased by unscrupulous people winding back the clock. This bill will double the maximum offence for odometer interference to 200 penalty units or \$22,000, making the cost of the penalty a better fit to the severity of the crime.

The bill will also introduce a requirement that a licence holder, or any employee, must report any suspected odometer reading or tampering to Fair Trading without delay. This will allow Fair Trading to properly examine and investigate the history of the vehicle and take any compliance action that may be necessary. The bill includes two new mechanisms to assist Fair Trading to reduce business phoenixing and ensure effective enforcement of the Act. Phoenixing is where a licensee surrenders their licence to Fair Trading before any disciplinary action can be taken and then later reappplies for a licence under the same name, a different company name or through a close associate or family member to avoid their licence application being refused.

The bill will permit Fair Trading to take disciplinary action against a former licensee within 12 months of the surrender of the licence. This will stop operators from surrendering a licence to avoid regulatory sanctions. Disciplinary action would only be taken in serious cases where the breaches of the law are likely to lead to a licence suspension or cancellation for a period of time. This will prevent the former licensee from being able to reapply for a licence, as Fair Trading will have a concrete reason to reject a licence application. In addition to this, the bill will provide Fair Trading with the power to reject a licence application on the grounds that a close associate of the licensee who has significant influence over the operation and management of the business is not a fit and proper person. This would prevent a family member or close business associate taking over the business with the previous licensee being the silent partner running the business on a day-to-day basis. These two measures will give Fair Trading a clear power to prevent former motor dealers or repairers who have broken the law in a serious way from getting another licence and reoffending or ripping off consumers all over again.

If a repairer does not complete work to the appropriate standard Fair Trading has always been able to take disciplinary action against the licensee. The trigger for disciplinary action in the Motor Vehicle Repairs Act was based on old and unclear terminology of "below usual trade standards". As part of the review, stakeholders supported updating this terminology to modern terms and language. This bill does that by requiring repair work to meet the Australian Consumer Law standards for the supply of goods and services. These basic consumer protections and trader obligations are requirements that all businesses have to abide by regardless of the industry. This new definition modernises the requirements for repairers and dealers and will ensure that consumers get essential and basic guarantees of goods and services when they enter into a contract to repair or buy a vehicle. For repairers, this will mean that they must repair a vehicle with due care and skill, ensure that the service or repair is fit for the specified purpose, and ensure that the repairs are done within a reasonable time.

The bill will also ensure that dealers must disclose all relevant material facts to a consumer prior to the sale of the vehicle. Consumer complaints about motor vehicle purchases often relate to matters about which they had not been properly informed. The sort of information required to be disclosed will be in the regulations to accompany the new legislation and industry will be involved in the development of this through the consultation process for the regulations. However, matters to be considered as part of the disclosure of material facts include such things consumers would consider vital to know before they make their decision to buy including: whether the vehicle has suffered hail or flood damage; whether the vehicle had ever been written off; whether there is any indication of odometer interference; and whether the vehicle had major modifications which might affect the future registration or insurance of the vehicle.

The bill will also modernise the enforcement and inspection powers of NSW Fair Trading officers, police officers and Roads and Maritime Services officers, who all use this legislation to ensure dealers and repairers do not break the law. The law now makes it clear that authorised officers under the Act can exercise their powers of entry and inspection to ascertain whether any provisions of this Act are being complied with or contravened, determine whether any laws relating to written-off vehicles are being complied with or contravened, investigate complaints under the Act, and obtain evidence, records or information in relation to a contravention of the Act or regulations. The powers of entry have also been modernised and written clearly to ensure industry and government know exactly what powers can be exercised.

The two current laws are old fashioned and were not written to utilise everyday technology such as cameras or memory sticks to record events or take records. That has been addressed in this bill. Finally, many provisions of this bill will not commence immediately. As I said, some detail of how this bill will work will be completed through the regulations. The regulations will be developed after this parliamentary process in consultation with all key stakeholders and interested parties. The current regulations contain the classes of repair for repairer occupational licensing, the records dealers, repairers and recyclers must keep, the disclosure requirements for dealers when they sell vehicles and fees for such things as license applications.

I believe this reform package ushers the legislation into the twenty-first century and will set up the motor vehicle legislation to effectively and efficiently regulate the industry well into the future. The simplified and consistent legislation will bring great benefits to the industry and will maintain and improve the critical elements of protection for consumers buying or repairing a vehicle. I acknowledge in the gallery James McCall, the former chief executive officer of the Motor Traders Association, who has played an instrumental role in the development of this legislation. I also acknowledge Geoff Corrigan, who is a director of the Motor Traders Association. I thank them for the work that they have done on behalf of the industry. I commend the bill to the House.