

Legislative Council—No 153

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South Australia

**Fair Trading (Motor Vehicle Insurers and
Repairers) Amendment Bill 2021**

A BILL FOR

An Act to amend the *Fair Trading Act 1987*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

- 5 This Act may be cited as the *Fair Trading (Motor Vehicle Insurers and Repairers) Amendment Act 2021*.

2—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Fair Trading Act 1987*

10 3—Amendment of section 4B—Administration of Act

- (1) Section 4B(2)—after paragraph (b) insert:

and

- (c) Part 3B in relation to an applicable industry code of conduct or a provision of that Part if the regulations made for the purposes of that Part declare that the Commissioner is to have that responsibility.

- (2) Section 4B(3)—delete "or Part 3A in relation to an industry code or provisions of an industry code" and substitute:

, Part 3A in relation to an industry code or provisions of an industry code or Part 3B in relation to an applicable industry code of conduct or a provision of that Part

4—Insertion of Part 3B

After section 28F insert:

Part 3B—Regulation of motor vehicle insurers and repairers

28G—Object of Part

The object of this Part is to provide for fair, timely and transparent conduct between insurers and repairers so that consumers with damaged motor vehicles are not unduly inconvenienced or unfairly treated as a result of the business practices in, or disputes between, the motor vehicle insurance and repair industries.

28H—Interpretation

In this Part, unless the contrary intention appears—

applicable industry code of conduct means a code of conduct declared under section 28I;

Commissioner means—

- (a) the Commissioner for Consumer Affairs; or
- (b) the Small Business Commissioner;

insurer means an insurer who is in the business of insuring motor vehicles in respect of property damage and who, in the course of that business, engages or authorises repairers to repair motor vehicles;

repairer means a person who is in the business of repairing motor vehicles that have been damaged.

28I—Declaration of industry code of conduct in relation to motor vehicle insurers and repairers

- (1) The regulations may declare that a code of conduct specified or referred to in the regulations is an applicable industry code of conduct for the purposes of this Part in relation to the conduct of the business of insurers and repairers.
- (2) A regulation declaring a code of conduct under subsection (1) may—
 - (a) exclude any class of motor vehicles from the application of the code; and
 - (b) exclude any provision of the code that relates to the voluntary application of that code.
- (3) The regulations may contain provisions of a saving or transitional nature consequent on the declaration of an applicable industry code of conduct.

28J—Compliance with applicable code of conduct

- (1) An insurer or repairer must not, in trade or commerce, contravene or fail to comply with a provision of an applicable industry code of conduct.

Maximum penalty:

- (a) in the case of a body corporate—\$100 000;
(b) in the case of a natural person—\$20 000.

- (2) If an alleged contravention of an applicable industry code of conduct is the subject of a dispute between an insurer and repairer, the provisions of Part 7 for enforcement or remedies in respect of the contravention do not apply unless—

- (a) the Commissioner has attempted to resolve the dispute under section 8A but the dispute has not been resolved; or
(b) the dispute resolution procedures under the code of conduct have been followed but the dispute has not been resolved; or
(c) the insurer or repairer refuses to take part in conciliation under section 8A or dispute resolution procedures under the code of conduct.

- (3) The Commissioner may only institute, defend or assume the conduct of legal proceedings under Part 7 if the insurer or repairer is not the party refusing to take part in the dispute resolution procedures under the applicable code of conduct.

- (4) The annual report required to be submitted by the Commissioner under section 12 must include information as to the number of prosecutions for offences against subsection (1) undertaken in the financial year to which the report relates and the outcome of those prosecutions.

28K—Insurer must disclose relevant interest in relation to repairer

- (1) An insurer must, before engaging or authorising a repairer to undertake repairs under a policy of insurance issued by the insurer, disclose to the holder of the insurance policy in the prescribed manner any relevant interest held by the insurer in relation to the repairer.

Maximum penalty:

- (a) in the case of a body corporate—\$100 000;
(b) in the case of a natural person—\$20 000.

- 5 (2) An insurer must, at the prescribed times and in the prescribed manner, disclose to the holder of an insurance policy issued by the insurer whether or not the insurance policy contains a provision allowing the holder of the insurance policy to make a choice as to which repairer may be engaged to undertake repairs under the insurance policy.

Maximum penalty:

- (a) in the case of a body corporate—\$100 000;
- (b) in the case of a natural person—\$20 000.
- 10 (3) In this section, an insurer holds a *relevant interest* in relation to a repairer if—
- (a) the insurer owns, or has any financial interest in, the business of the repairer; or
- (b) the insurer has entered into a contract or other arrangement with the repairer in relation to engaging the services of the repairer under a policy of insurance issued by the insurer.
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28L—Regulations

- (1) Regulations made for the purposes of this Part may—
- 20 (a) declare (subject to section 4B(3)) whether the Commissioner for Consumer Affairs or the Small Business Commissioner is to be responsible for the administration of this Part or a provision of this Part; and
- (b) prescribe fees payable in relation to dispute resolution procedures undertaken under an applicable industry code of conduct.
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- (2) A proposal for regulations for the purposes of this Part or a provision of this Part may be initiated by—
- 30 (a) if the Commissioner for Consumer Affairs is to be responsible for the administration of this Part or a provision of this Part—the Minister responsible for the administration of this Act; and
- (b) if the Small Business Commissioner is to be responsible for the administration of this Part or a provision of this Part—the Minister responsible for the administration of the *Small Business Commissioner Act 2011*.
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- (3) If a Minister initiates a proposal for regulations in relation to an applicable industry code of conduct or another provision under this Part, the Minister must, before the regulations are made, consult with each organisation that the Minister considers to be representative of an industry likely to be affected by the applicable industry code of conduct or provision (as the case requires).
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- (4) For the purposes of the *Subordinate Legislation Act 1978*, the Minister responsible for the administration of the *Small Business Commissioner Act 2011* is to be taken to be the Minister responsible for the administration of this Act in respect of regulations that declare the Small Business Commissioner to be responsible for the administration of this Part or a provision of this Part.

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