

Legislative Council—No 153A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 17 November 2021

South Australia

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

A BILL FOR

An Act to amend the *Fair Trading Act 1987* and to make related amendments to the *Small Business Commissioner Act 2011*.

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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*.

1A—Commencement

This Act comes into operation on a day to be fixed by proclamation.

2—Amendment provisions

- 10 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*

3—Amendment of section 4B—Administration of Act

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

and

- 15 (c) Part 3B (other than section 28K).

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;

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—
 - (a) prescribe fees in respect of the administration of an applicable industry code of conduct; and
 - (b) make 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.

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- (2) The Small Business Commissioner must, on or before 30 September in each year, prepare and submit a report to the Minister responsible for the administration of the *Small Business Commissioner Act 2011* containing the following information in respect of the immediately preceding financial year:
- (a) the number of proceedings commenced by the Commissioner under section 86B for an alleged civil penalty contravention against section 28J(1);
- (b) the outcome of those proceedings.
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- (3) A report required under subsection (2) may be combined with a report of the Small Business Commissioner required under any other Act (provided that such reports relate to the same period).

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

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- (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.
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- (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.
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- (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
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- (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.

28L—Regulations

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- (1) A proposal for regulations for the purposes of this Part (other than section 28K) may be initiated by the Minister responsible for the administration of the *Small Business Commissioner Act 2011*.
- (2) If the Minister responsible for the administration of the *Small Business Commissioner Act 2011* initiates a proposal for regulations for the purposes of 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 regulations.
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- 5 (3) 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 made for the purposes of this Part (other than section 28K).

5—Amendment of heading to Part 7 Division 3A

Heading to Part 7 Division 3A—delete "for contravention of industry codes"

6—Amendment of section 86A—Interpretation

10 Section 86A(a)—delete "contravenes section 28E and the contravention is of a class declared by regulation to be subject to a civil penalty" and substitute:

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- (i) contravenes section 28E and the contravention is of a class declared by regulation to be subject to a civil penalty; or
 - (ii) contravenes section 28J(1), 28K(1) or (2).

15 **Schedule 1—Related amendments**

Part 1—Amendment of *Small Business Commissioner Act 2011*

1—Amendment of section 5—Functions

(1) Section 5(1)—after paragraph (d) insert:

20 (da) to administer Part 3B (Regulation of motor vehicle insurers and repairers) of the *Fair Trading Act 1987* to the extent that responsibility for that administration is assigned to the Commissioner under that Act; and

(2) Section 5(1)(e)—after subparagraph (i) insert:

25 (ia) non-compliance with an applicable industry code of conduct declared under section 28I of the *Fair Trading Act 1987* that may adversely affect small businesses; and