



New South Wales

Fair Trading Amendment (Motor Vehicle Insurance and Repair Industries) Bill 2006

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Fair Trading Act 1987* (the ***Principal Act***) to require compliance with an industry code of conduct for motor vehicle insurers and repairers (the ***applicable industry code***).

Representatives of the insurance and smash repair industries have been developing a voluntary code of conduct, particularly in connection with network repairer schemes under which a number of repairers are promoted under a scheme operated by an insurer to carry out repairs on damaged motor vehicles insured by that insurer. The Bill will enable the declaration by the regulations of such a code as the applicable industry code, and provide for its enforcement.

This Bill is intended 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 insurance and repair industries.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent.

Clause 3 is a formal provision that gives effect to the amendments to the Principal Act set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Schedule 1 [1] inserts proposed Part 5E into the Principal Act to enable an applicable industry code of conduct to be declared by regulation. The proposed Part provides that an insurer or repairer must, in trade or commerce, comply with an applicable industry code of conduct.

Schedule 1 [2]–[10] extend certain provisions for enforcement and remedies under Part 6 of the Principal Act to a contravention of an applicable industry code. The provisions include the following:

- (a) an application to the court for an injunction (section 65),
- (b) an action for damages (section 68),
- (c) provision of an enforceable undertaking (section 73A).

Under proposed Part 5E, if the insurer and repairer are in dispute over any alleged contravention of the applicable industry code, the enforcement mechanisms and remedies available under Part 6 may only be used if the dispute resolution procedures provided under the code have been unsuccessful or a party refuses to take part in those procedures. In any event:

- (a) insurers or repairers may only take action under Part 6 if they are not the party refusing to take part in those dispute resolution procedures, and
- (b) the Minister and Director-General may decline to take action with respect to an alleged contravention if they consider it is not in the public interest to take that action.

Schedule 1 [11] authorises the making of regulations under the Principal Act containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

First print



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Fair Trading Amendment (Motor Vehicle Insurance and Repair Industries) Bill 2006

No. , 2006

A Bill for

An Act to amend the *Fair Trading Act 1987* with respect to an industry code of conduct for the motor vehicle insurance and repair industries; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Fair Trading Amendment (Motor Vehicle Insurance and Repair Industries) Act 2006</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6
3 Amendment of Fair Trading Act 1987 No 68	7
The <i>Fair Trading Act 1987</i> is amended as set out in Schedule 1.	8
4 Repeal of Act	9
(1) This Act is repealed on the day following the day on which this Act commences.	10 11
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	12 13

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Part 5E	3
	Insert after Part 5D:	4
	Part 5E Industry code for motor vehicle insurers and repairers	5
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	60V Definitions	7
	In this Part:	8
	<i>applicable industry code of conduct</i> means a code of conduct declared under section 60X (1).	9
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	<i>insurer</i> 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.	11
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	<i>repairer</i> means a person who is in the business of repairing motor vehicles that have been damaged.	15
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	60W Object of Part	17
	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.	18
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	60X Declaration of industry code of conduct in relation to motor vehicle insurers and repairers	24
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	(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.	26
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	(2) A regulation that declares a code of conduct under subsection (1) may:	30
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	(a) exclude any class of motor vehicles from the application of the code, and	32
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	(b) exclude any provision of the code that relates to the voluntary application of that code.	34
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(3)	The regulations may contain provisions of a savings or transitional nature consequent on the declaration of an applicable industry code of conduct.	1 2 3
60Y	Compliance with applicable industry code of conduct	4
(1)	An insurer or repairer must, in trade or commerce, comply with an applicable industry code of conduct.	5 6
(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 6 for enforcement or remedies in respect of the contravention do not apply unless:	7 8 9 10
(a)	the dispute resolution procedures under the code have been followed but the dispute has not been resolved, or	11 12
(b)	the insurer or repairer refuses to take part in those procedures.	13 14
(3)	An insurer or repairer may only take action under Part 6 if the insurer or repairer is not the party refusing to take part in the dispute resolution procedures under the applicable industry code of conduct.	15 16 17 18
(4)	The Minister and the Director-General may decline to take action under Part 6 with respect to an alleged contravention of an applicable industry code of conduct if they consider that it is not in the public interest to take that action.	19 20 21 22
[2]	Section 62 Offences against this Act	23
	Omit “other than section 42 or 43” from section 62 (1).	24
	Insert instead “other than section 42, 43 or 60Y”.	25
[3]	Section 65 Injunctions	26
	Insert “, 5E” after “, 5D” in section 65 (1) (a).	27
[4]	Section 66 Other injunctions	28
	Insert “, 5E” after “, 5D” in section 66 (1) (a) (i).	29
[5]	Section 67 Order to disclose information or publish advertisement	30
	Insert “, 5E” after “, 5D”.	31
[6]	Section 68 Actions for damages	32
	Omit “or 5D” from section 68 (1). Insert instead “, 5D or 5E”.	33

[7] Section 69 Finding in proceedings to be evidence	1
Omit “or 5D”. Insert instead “, 5D or 5E”.	2
[8] Section 72 Other orders	3
Omit “contravened a provision of Part 3, 4, 5, 5B, 5C, 5D or 8” wherever occurring from section 72 (1) and (2).	4
Insert instead “contravened a provision of Part 3, 4, 5, 5B, 5C, 5D, 5E or 8”.	5
[9] Section 72 (3)	6
Omit “contravention of Part 3, 4, 5, 5B, 5C, 5D or 8”.	7
Insert instead “contravention of Part 3, 4, 5, 5B, 5C, 5D, 5E or 8”.	8
[10] Section 72 (4)	9
Omit “contravention of a provision of Part 3, 4, 5, 5B, 5C, 5D or 8”.	10
Insert instead “contravention of a provision of Part 3, 4, 5, 5B, 5C, 5D, 5E or 8”.	11
[11] Schedule 5 Savings and transitional provisions	12
Insert at the end of clause 12 (1):	13
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