



New South Wales

# Motor Dealers and Repairers Amendment Bill 2014

## Explanatory note

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

## Overview of Bill

The objects of this Bill are:

- (a) to require persons who carry on a business of assessing the value or cost of motor vehicle repairs, or inspecting the repair work carried out by motor vehicle repairers, to be licensed under the *Motor Dealers and Repairers Act 2013*, and
- (b) to require a register of offences committed under the *Motor Dealers and Repairers Act 2013* and the regulations under that Act to be kept and maintained, and
- (c) to enable motor vehicle repairers to seek assistance from the Small Business Commissioner in relation to unfair contracts between motor vehicle repairers and motor vehicle insurers and to apply to the Civil and Administrative Tribunal for certain orders.

## 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 1 month after the date of assent to the proposed Act.

## Schedule 1      Amendment of Motor Dealers and Repairers Act 2013 No 107

**Schedule 1 [1]–[8] and [28]** give effect to the object set out in paragraph (a) of the Overview above.

**Schedule 1 [9]** gives effect to the object set out in paragraph (b) of the Overview above.

**Schedule 1 [10]–[27]** give effect to the object set out in paragraph (c) of the Overview above.



New South Wales

# Motor Dealers and Repairers Amendment Bill 2014

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New South Wales

# Motor Dealers and Repairers Amendment Bill 2014

No. , 2014

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## **A Bill for**

An Act to 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 Small Business Commissioner.

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**The Legislature of New South Wales enacts:**

1

**1 Name of Act**

2

This Act is the *Motor Dealers and Repairers Amendment Act 2014*.

3

**2 Commencement**

4

This Act commences 1 month after the date of assent to this Act.

5

<b>Schedule 1</b>	<b>Amendment of Motor Dealers and Repairers Act 2013 No 107</b>	1
		2
<b>[1] Section 4 Definitions</b>		3
	Insert after paragraph (d) of the definition of <i>licence</i> in section 4 (1):	4
	(e) a motor vehicle assessor’s licence.	5
<b>[2] Section 4 (1)</b>		6
	Insert in alphabetical order:	7
	<i>motor vehicle assessor</i> —see section 6A.	8
	<i>motor vehicle assessor’s licence</i> means a motor vehicle assessor’s licence in force under this Act.	9
		10
<b>[3] Section 6A</b>		11
	Insert after section 6:	12
<b>6A Motor vehicle assessors</b>		13
	In this Act, a <i>motor vehicle assessor</i> means 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.	14
		15
		16
		17
<b>[4] Section 13A</b>		18
	Insert after section 13:	19
<b>13A Unlicensed motor vehicle assessors</b>		20
	A person must not carry on, or advertise that the person carries on or is willing to carry on, the business of a motor vehicle assessor unless the person is the holder of a motor vehicle assessor’s licence.	21
		22
		23
	Maximum penalty: 20 penalty units.	24
<b>[5] Section 20 Types of licences</b>		25
	Insert after section 20 (d):	26
	(e) a motor vehicle assessor’s licence.	27
<b>[6] Section 25 Grounds for refusal—licences other than tradespersons’ certificates</b>		28
	Omit “and motor vehicle recyclers’ licences” from section 25 (1).	29
	Insert instead “, motor vehicle recyclers’ licences and motor vehicle assessors’ licences”.	30
<b>[7] Section 27 Criteria for being a fit and proper person to hold a licence</b>		31
	Omit “or a motor vehicle recycler’s licence” from section 27 (1).	32
	Insert instead “, a motor vehicle recycler’s licence or a motor vehicle assessor’s licence”.	33
<b>[8] Section 37 Change in place of business to be notified to Secretary</b>		34
	Insert “(other than a motor vehicle assessor’s licence)” after “a licence”.	35

<b>[9] Part 3, Division 3</b>	1
Insert after Division 2 of Part 3:	2
<b>Division 3 Register of offences and penalty notices</b>	3
<b>47A Secretary to keep register of offences</b>	4
(1) The Secretary is to keep a register of information about offences under this Act or the regulations by a person who is, or who carries on the business of, a motor dealer, motor vehicle repairer, motor vehicle recycler or motor vehicle assessor.	5 6 7 8
(2) The register may contain any of the following information in relation to a person who has been convicted by a court of, or has been issued a penalty notice for, an offence under this Act or the regulations that, in the opinion of the Secretary, is a serious breach of this Act or the regulations:	9 10 11 12
(a) the name of the person,	13
(b) the name and address of the place of business at which the offence was committed, including the local government area in which it is located,	14 15
(c) the name and address of the usual place of business (if any) of the person,	16 17
(d) the trade name, if any, under which the person trades,	18
(e) if the person is a company, the name of the chief executive officer and any director of the company,	19 20
(f) 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,	21 22 23
(g) any other information of a general nature in relation to matters connected with the motor vehicle dealing and repairing industry that the Secretary thinks necessary.	24 25 26
(3) Information relating to a particular offence is not to be published in the register until:	27 28
(a) in the case of a person who has been convicted by a court:	29
(i) if no appeal is made—after the last day on which an appeal may be made against the conviction, or	30 31
(ii) if an appeal is made—after a final order has been made on appeal affirming the conviction, or	32 33
(b) in the case of a person who has been issued a penalty notice:	34
(i) the amount payable under the penalty notice has been fully or partly paid, or	35 36
(ii) a penalty notice enforcement order under Part 3 of the <i>Fines Act 1996</i> has been issued in respect of the penalty notice, or	37 38
(iii) at least 70 days have elapsed since the penalty notice was served and the penalty notice is unresolved.	39 40
(4) The register may be kept in any form that the Secretary considers appropriate.	41
<b>[10] Section 141 Definitions</b>	42
Insert in alphabetical order:	43
<i>insurer</i> means an insurer of a motor vehicle.	44

	<i>motor vehicle repairers' group</i> means a body, approved by the Secretary for the purposes of this Part, that represents motor vehicle repairers.	1 2
	<i>repairer contract</i> means a contract (including documents forming part of, or referred to in, the contract) between an insurer and a motor vehicle repairer for repair work by the motor vehicle repairer.	3 4 5
<b>[11]</b>	<b>Section 142 Unfair contracts</b>	6
	Insert "or repairer contract" after "supply contract" in section 142 (1).	7
<b>[12]</b>	<b>Section 142 (2)</b>	8
	Omit "supply".	9
<b>[13]</b>	<b>Section 142 (2) (e)</b>	10
	Insert "or services" after "goods".	11
<b>[14]</b>	<b>Section 142 (2) (f) and (g)</b>	12
	Insert "in the case of a supply contract—" before "a term" wherever occurring.	13
<b>[15]</b>	<b>Section 143</b>	14
	Omit the section. Insert instead:	15
	<b>143 Unjust conduct</b>	16
	In this Part, <i>unjust conduct</i> is conduct by a manufacturer in connection with a supply contract or by an insurer in connection with a repairer contract:	17 18
	(a) that is dishonest or unfair, or	19
	(b) that is authorised by an unfair term of the contract.	20
<b>[16]</b>	<b>Section 144 Complaints to Small Business Commissioner</b>	21
	Insert after section 144 (2):	22
	(2A) A motor vehicle repairers' group may apply to the Small Business Commissioner for assistance 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.	23 24 25 26
	(2B) A motor vehicle repairer may apply to the Small Business Commissioner for assistance in dealing with a dispute about an unfair term of a repairer contract or unjust conduct by an insurer who is a party to a repairer contract.	27 28 29
<b>[17]</b>	<b>Section 145 Applications to Tribunal about unfair contracts and unjust conduct</b>	30
	Insert after section 145 (2):	31
	(2A) A motor vehicle repairers' group or the Small Business Commissioner may apply to the Tribunal on behalf of a motor vehicle repairer or class of motor vehicle repairers for a declaration that a term of a repairer contract or class of repairer contracts is unfair, or that the conduct of an insurer is unjust, and for orders under this Part.	32 33 34 35 36
	(2B) A motor vehicle repairer may apply to the Tribunal for a declaration that a term of a repairer contract is unfair, or that conduct of an insurer is unjust, and for orders under this Part.	37 38 39

<b>[18] Section 145 (3)</b>	1
Omit “motor industry group or a motor dealer”.	2
Insert instead “motor industry group, a motor dealer, a motor vehicle repairers’ group or a motor vehicle repairer”.	3 4
<b>[19] Section 145 (3)</b>	5
Omit “or motor dealer”.	6
Insert instead “, motor dealer, motor vehicle repairers’ group or motor vehicle repairer”.	7
<b>[20] Section 146 Declarations by Tribunal</b>	8
Omit “or a motor dealer” from section 146 (1).	9
Insert instead “, a motor dealer, a motor vehicle repairers’ group or a motor vehicle repairer”.	10 11
<b>[21] Section 146</b>	12
Omit “supply” wherever occurring.	13
<b>[22] Section 146 (1)</b>	14
Insert “or insurer” after “manufacturer”.	15
<b>[23] Section 146 (3) (d), (f) and (g)</b>	16
Insert “or motor vehicle repairer” after “motor dealer” wherever occurring.	17
<b>[24] Section 147 Orders by Tribunal if term declared unfair or conduct declared unjust</b>	18
Omit “a supply contract or of a class of supply contracts” from section 147 (1).	19
Insert instead “a supply contract or repairer contract or a class of supply contracts or repairer contracts”.	20 21
<b>[25] Section 147 (2)</b>	22
Insert “or insurer” after “by a manufacturer”.	23
<b>[26] Section 147 (2) (a)</b>	24
Insert “, insurer” after “directing a manufacturer”.	25
<b>[27] Section 147 (2) (a)</b>	26
Omit “supply”.	27

<b>[28] Schedule 2 Savings, transitional and other provisions</b>	1
Insert after clause 13 of Schedule 2:	2
<b>Part 3 Provisions consequent on enactment of Motor Dealers and Repairers Amendment Act 2014</b>	3
	4
<b>14 Motor vehicle assessors</b>	5
A person is not guilty of an offence under section 13A of this Act if:	6
(a) the person made an application for a motor vehicle assessor's licence within the period of 3 months immediately after the commencement of the <i>Motor Dealers and Repairers Amendment Act 2014</i> , and	7
	8
	9
(b) the Secretary has not granted or refused the application.	10