



Australian Capital Territory

# **Fair Trading (Motor Vehicle Repair Industry) Act 2010**

**A2010-16**

**Republication No 2**

**Effective: 1 January 2011 – 28 February 2011**

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Last amendment made by A2010-54

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Fair Trading (Motor Vehicle Repair Industry) Act 2010* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 January 2011. It also includes any commencement, amendment, repeal or expiry affecting the republished law to 1 January 2011.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$110 for an individual and \$550 for a corporation (see *Legislation Act 2001*, s 133).



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# Fair Trading (Motor Vehicle Repair Industry) Act 2010

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Australian Capital Territory

# Fair Trading (Motor Vehicle Repair Industry) Act 2010

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An Act to provide for the licensing and regulation of people in the motor vehicle repair industry, and for other purposes

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Fair Trading (Motor Vehicle Repair Industry) Act 2010*.

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*consumer*—see the *Australian Consumer Law (ACT)*, section 2 (1).’ means that the term ‘consumer’ is defined in that law and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

### 4 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.



## 5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## Part 2 Important concepts

### 6 Carrying on business as motor vehicle repairer

- (1) A person *carries on business as a motor vehicle repairer* if the person performs motor vehicle repair work for reward.
- (2) *Motor vehicle repair work* means—
  - (a) any of the following work performed on a motor vehicle, motor vehicle part or motor vehicle system:
    - (i) examining or assessing condition or performance improvement;
    - (ii) diagnosing and detecting of faults;
    - (iii) overhauling;
    - (iv) dismantling and assembling;
    - (v) servicing and maintenance;
    - (vi) replacing and adjusting of objects for performance improvement;
    - (vii) painting and treatment;
    - (viii) modifying, altering, installing or fitting work; or
  - (b) giving advice on any of the work mentioned in paragraph (a);  
or
  - (c) any other work prescribed by regulation to be motor vehicle repair work.
- (3) However, *motor vehicle repair work* does not include any work prescribed by regulation not to be motor vehicle repair work.

*Note* Power to make a statutory instrument (including a regulation) includes power to make different provision for different categories (see Legislation Act, s 48).

**7 Certain people not taken to carry on business as motor vehicle repairer**

For this Act, a person does not carry on business as a motor vehicle repairer only because the person—

- (a) performs motor vehicle repair work in the course of employment by another person; or
- (b) is a member of a partnership that carries on the business; or
- (c) publishes, on behalf of another person, an advertisement about—
  - (i) a business carried on, or to be carried on, by the other person; or
  - (ii) a service provided, or to be provided, by the other person.

## **Part 3 Licences**

### **Division 3.1 Requirement for licence**

#### **8 Person carrying on business as motor vehicle repairer to be licensed**

- (1) A person commits an offence if—
- (a) the person carries on business as a motor vehicle repairer; and
  - (b) either—
    - (i) the person does not hold a licence; or
    - (ii) if the person is a partner in a partnership that carries on the business—no partner in the partnership holds a licence.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if the person—
- (a) carries on business as a motor vehicle repairer at premises; and
  - (b) either—
    - (i) does not hold a licence authorising the person to carry on business as a motor vehicle repairer at the premises; or
    - (ii) if the person is a partner in a partnership that carries on the business—no partner in the partnership holds a licence authorising the person to carry on business as a motor vehicle repairer at the premises.

Maximum penalty: 20 penalty units.

- (3) An offence against this section is a strict liability offence.

## Division 3.2 Eligibility for licence

### 9 Eligibility for licence

- (1) An individual is eligible for a licence if the individual—
  - (a) is an adult; and
  - (b) is not a disqualified person.
- (2) A person in a partnership is eligible for a licence if—
  - (a) the person is eligible under subsection (1); and
  - (b) no partner in the partnership is a disqualified person.
- (3) A corporation is eligible for a licence if—
  - (a) at least 1 director of the corporation holds a licence; and
  - (b) no director of the corporation is a disqualified person.

### 10 Meaning of *disqualified person*

- (1) A person is a *disqualified person* if the person has committed or engaged in a disqualifying act.
- (2) However, even if a person has committed or engaged in a disqualifying act, the person is not a *disqualified person* if the commissioner is satisfied that, in all the circumstances, it would be reasonable not to regard the person as a disqualified person.
- (3) In making a decision under subsection (2) in relation to a person, the commissioner must have regard to—
  - (a) the circumstances of the disqualifying act; and
  - (b) whether the person cooperated in the investigation of the disqualifying act; and
  - (c) the extent to which the person provided restitution for any loss suffered because of the disqualifying act; and

- (d) the time since the disqualifying act was committed or engaged in; and
  - (e) whether the disqualifying act was an isolated event.
- (4) Subsection (3) does not limit the matters to which the commissioner may have regard in making the decision.
- (5) A director of a corporation is taken to have committed a disqualifying act if the director was a director of the corporation when the corporation committed the disqualifying act.
- (6) In this section:

***disqualifying act*** means—

- (a) a contravention of this Act (including a requirement made by the commissioner under this Act) or a corresponding law of a State, whether or not the contravention is an offence; or
- (b) a contravention of a condition of a licence; or
- (c) a contravention of the *Fair Trading (Motor Vehicle Service and Repair Industry) Code of Practice 1999*; or
- (d) an offence against the *Competition and Consumer Act 2010* (Cwlth); or
- (e) an offence against the *Australian Consumer Law (ACT)* or a corresponding law of a State; or
- (f) an offence against a law of the Territory, the Commonwealth, a State, another Territory or a foreign country punishable by imprisonment for longer than 1 year.

## **Division 3.3                      Licence procedures and details**

### **11                      Application for motor vehicle repair licence**

- (1) A person may apply to the commissioner for a motor vehicle repair licence.

*Note 1*    If a form is approved under s 56 for this provision, the form must be used.

*Note 2*    A fee may be determined under s 55 for this provision.

*Note 3*    The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) The application must be accompanied by—
- (a) a police certificate for the applicant, dated not earlier than 2 months before the day the application is made; and
  - (b) a signed statement to the effect that, apart from the licence, the applicant has obtained all planning and other approvals required to carry on the motor vehicle repair business at each premises where the applicant proposes to carry on business under the licence.
- (3) The commissioner may, in writing, require the applicant to give the commissioner additional information or documents that the commissioner reasonably needs to decide the application.
- (4) If the applicant does not comply with a requirement made of the applicant under subsection (3), the commissioner may refuse to consider the application further.

## 12 Decision on application

(1) Within 60 days after the day the commissioner receives an application for a motor vehicle repair licence, the commissioner must—

- (a) issue the licence; or
- (b) refuse to issue the licence.

*Note* Failure to issue a licence within the 60-day period is taken to be a decision not to issue the licence (see *ACT Civil and Administrative Tribunal Act 2008*, s 12).

(2) The commissioner must issue the licence if satisfied that the applicant—

- (a) is eligible for the licence under section 9; and
- (b) can comply with any conditions to which the licence is subject; and
- (c) can satisfy anything else prescribed by regulation.

## 13 Licence conditions

(1) A licence is subject to the conditions set out in division 3.4 (Licence conditions).

(2) A licence is also subject to any conditions—

- (a) prescribed by regulation; or
- (b) imposed on the licence by the commissioner.

### Examples—conditions

- 1 that an approved code of practice or standard must be complied with
- 2 that particular requirements about inspection and reporting must be complied with
- 3 that stated records must be kept

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act*, s 126 and s 132).



- (3) The commissioner may impose—
- (a) a condition on a licence when the licence is issued or renewed; and
  - (b) a condition on, or amend a condition of, a licence at any other time under section 19 (Amendment of licence on commissioner's initiative) or section 20 (Amendment of licence on application).

#### **14 Form of licence**

A licence must—

- (a) be in writing; and
- (b) state the name of the person to whom the licence is issued; and
- (c) if the licensee carries on business as a motor vehicle repairer under a name other than the licensee's name—state the name under which the licensee carries on business; and
- (d) have a unique identifying number (the *licence number*); and
- (e) state the premises where the licensee is authorised to carry on business as a motor vehicle repairer; and
- (f) state the period for which the licence is given; and
- (g) include anything prescribed by regulation.

#### **15 Replacement licence**

- (1) The commissioner may issue a replacement licence to a licensee if satisfied that the licensee's original licence has been lost, stolen or destroyed.

- (2) For subsection (1), the commissioner may require the licensee to give the commissioner a statutory declaration signed by the licensee, stating that the original licence has been lost, stolen or destroyed.

*Note 1* A fee may be determined under s 55 for this provision.

*Note 2* The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

## **16 Licence term**

A licence is issued for the period of up to 12 months stated in the licence.

## **17 Licence not transferable**

A licence is not transferable.

## **18 Renewal of licence**

- (1) A licensee may apply, in writing, to the commissioner to renew the licence.

*Note 1* If a form is approved under s 56 for an application, the form must be used.

*Note 2* A fee may be determined under s 55 for this provision.

- (2) The commissioner may, in writing, require the licensee to give the commissioner additional information or documents that the commissioner reasonably needs to decide the application.
- (3) If the applicant does not comply with a requirement made of the applicant under subsection (2), the commissioner may refuse to consider the application further.
- (4) On an application to renew a licence, the commissioner must—
- (a) renew the licence; or
  - (b) refuse to renew the licence.

- (5) The commissioner must renew the licence if satisfied of the matters mentioned in section 12 (2) in relation to the applicant.
- (6) If a licensee applies to renew a licence under this section, the licence remains in force until the application is decided.

## **19 Amendment of licence on commissioner's initiative**

- (1) The commissioner may, at any time and on the commissioner's own initiative, amend a licence (including by imposing a condition on, or amending a condition of, the licence).
- (2) However, the commissioner may amend a licence only if—
  - (a) the commissioner has given the licensee written notice of the proposed amendment; and
  - (b) the notice states that written comments on the proposal may be made to the commissioner before the end of a stated period of at least 14 days after the day the notice is given to the licensee; and
  - (c) the commissioner has considered any comments made before the end of the stated period.
- (3) Subsection (2) does not apply if the licensee applied for, or agreed in writing to, the amendment.

## **20 Amendment of licence on application**

- (1) A licensee may apply to the commissioner to amend the licensee's licence (including by removing or amending a condition of the licence).

*Note 1* If a form is approved under s 56 for an application, the form must be used.

*Note 2* A fee may be determined under s 55 for this provision.

- (2) The commissioner may, in writing, require the applicant to give the commissioner additional information or documents that the commissioner reasonably needs to decide the application.
- (3) If the applicant does not comply with a requirement made of the applicant under subsection (2), the commissioner may refuse to consider the application further.
- (4) On an application by a person to amend a licence, the commissioner must—
  - (a) amend the licence in the way applied for; or
  - (b) refuse to amend the licence.
- (5) In deciding whether to amend the licence, the commissioner may consider anything the commissioner may consider under section 12 (2) in relation to an application for a licence.

## **21 Surrendering licence**

- (1) A licensee may surrender the licence by giving written notice of the surrender to the commissioner.
- (2) The licensee must, with the notice—
  - (a) return the licence to the commissioner; or
  - (b) if the licence has been lost, stolen or destroyed—give the commissioner a statutory declaration signed by the licensee stating that the licence has been lost, stolen or destroyed.

*Note* The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

## **Division 3.4                      Licence conditions**

*Note*        A licence is also subject to conditions prescribed by regulation or imposed on the licence by the commissioner—see s 13.

### **22                      Licence condition—equipment, materials and skill for carrying out work**

- (1) It is a condition of a licence that motor vehicle repair work performed by the licensee or an employee of the licensee on a motor vehicle, part or system be performed in accordance with any directions under subsection (2).
- (2) The Minister may give directions about the equipment, materials and skills necessary to perform work on a motor vehicle, part or system satisfactorily.
- (3) A direction is a disallowable instrument.

*Note*        A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

### **23                      Licence condition—agreement for repairs**

- (1) It is a condition of a licence that the licensee, before performing motor vehicle repair work for a person that is expected to cost the person \$150 or more—
  - (a) give the person an estimate of the cost of the work; and
  - (b) give the estimate in writing if asked by the person to do so.
- (2) However, if it is not reasonably practicable to give an estimate of the cost of work without first undertaking diagnostic work, it is a condition of the licence that a licensee, when performing the diagnostic work for a person—
  - (a) give the person a written estimate of the cost of the work; and
  - (b) if the diagnosis is likely to result in any damage to the motor vehicle—tell the person of that fact in writing; and

- (c) obtain the person's written authorisation for the licensee to perform the diagnostic work, unless the person has agreed otherwise; and
- (d) after the diagnosis and before the licensee repairs the vehicle—
  - (i) give the person an estimate of the cost of repairs; and
  - (ii) obtain the person's authority to perform the repairs specified in the estimate.
- (3) It is a condition of a licence that the licensee, when performing motor vehicle repair work for a person after giving an estimate to the person, tell the person of any variation in the cost from the estimate.
- (4) It is a condition of a licence that the licensee keep records of written or verbal estimates and quotes given to people.

**24 Licence condition—additional repairs**

It is a condition of a licence that the licensee, before performing work for a person or using parts not agreed to by a person in the estimate of work—

- (a) explain to the person—
  - (i) what the additional work or part is; and
  - (ii) what the cost of the work or part is; and
- (b) obtain the person's authorisation to—
  - (i) conduct the work or install the part; and
  - (ii) charge for the additional work or installation.

**25 Licence condition—time to carry out work**

It is a condition of a licence that the licensee—

- (a) complete motor vehicle repair work in a reasonable time; and
- (b) tell the person for whom the work was done how much time was spent performing the work.

**26 Licence condition—replaced parts**

- (1) It is a condition of a licence that the licensee, on completing motor vehicle repair work for a person, offer to give the person any part that was replaced as part of the work.
- (2) It is a condition of a licence that the licensee not charge the person a fee for the disposal of a replaced part or oil unless there is displayed at the licensee's premises a sign clearly stating that a fee will be charged for the disposal.
- (3) If the person chooses to take the replaced part away from the licensee's premises, the licensee must refund any fee paid for the disposal of the part.

**27 Licence condition—information sheet**

It is a condition of a licence that the licensee, before performing motor vehicle repair work for a person, give the person an information sheet approved by the commissioner about motor vehicle repair work.

**28 Licence condition—warranties and guarantees**

It is a condition of a licence that the licensee, on completing motor vehicle repair work for a person, give the person a signed copy of any warranty or guarantee relating to workmanship, parts or service provided by the licensee.

**29 Licence condition—display of licence**

It is a condition of a licence that the licence, or a copy of the licence, be displayed in a prominent place at premises where business is carried on under the licence.

**30 Licence condition—notification of change of name or address**

It is a condition of a licence that, if the licensee changes name, address or any other detail on the licence, the licensee must tell the commissioner, in writing, about the change as soon as practicable (but not later than 7 days) after the day the change happens.



## Part 4 Occupational discipline

### 31 Meaning of *licensee*—pt 4

In this part:

*licensee* includes a former licensee.

### 32 Grounds for disciplinary action

- (1) Each of the following is a *ground for occupational discipline* in relation to a licensee:
  - (a) the licensee gave information to the commissioner in relation to the application for, or an application for amendment of, the licensee's licence that was false or misleading in a material particular;
  - (b) the licensee has contravened, or is contravening, this Act, whether or not the licensee has been convicted or found guilty of an offence for the contravention;
  - (c) the licensee has contravened, or is contravening, a territory law (other than this Act) or a law of the Commonwealth, a State or another Territory, whether or not the licensee has been convicted or found guilty of an offence for the contravention;
  - (d) the licensee has contravened, or is contravening, an order of the ACAT;
  - (e) the licensee has contravened, or is contravening a condition of the licence;
  - (f) the licence was obtained by fraud or mistake;
  - (g) a ground prescribed by regulation for this section.
- (2) A ground for occupational discipline applies to a former licensee if the ground applied to the licensee while licensed.

### **33 Application to ACAT for occupational discipline**

If the commissioner believes on reasonable grounds that a ground for occupational discipline exists in relation to a licensee, the commissioner may apply to the ACAT for an occupational discipline order in relation to the licensee.

*Note* The *ACT Civil and Administrative Tribunal Act 2008*, s 66 sets out occupational discipline orders the ACAT may make.

### **34 Considerations before making occupational discipline orders**

- (1) This section applies if the ACAT is considering an application for occupational discipline in relation to a licensee.
- (2) Without limiting the matters the ACAT must consider in relation to the licensee, the ACAT must consider the following:
  - (a) the degree of responsibility of the licensee for the act or omission that made up the ground for occupational discipline;
  - (b) the extent to which it is necessary to discourage the licensee and others from doing something, or not doing something, that made up the disciplinary ground;
  - (c) whether, and the extent to which, it is necessary to protect the public from the licensee;
  - (d) the desirability of making the licensee responsible for the consequences of the licensee's actions or omissions;
  - (e) the desirability of maintaining public confidence in the regulatory system set up by this Act.

*Note* The *ACT Civil and Administrative Tribunal Act 2008*, s 65 (3) sets out other considerations that must be taken into account by the ACAT.

**35 Information about cancellations etc to be given to corresponding authorities**

- (1) This section applies if the ACAT cancels or suspends a licensee's licence or disqualifies a licensee from applying for a licence.
- (2) The commissioner may give the corresponding authority of each State the following information about the licensee:
  - (a) the name and any other identifying details of the licensee;
  - (b) a short description of the ground for occupational discipline on which the occupational discipline order was based;
  - (c) whether the licence has been cancelled or suspended or the licence disqualified;
  - (d) if the licence has been suspended—the period of suspension;
  - (e) if the licensee has been disqualified—the period of disqualification.
- (3) This section does not limit any other requirement or power, under this Act or another law in force in the ACT, to give information to an entity in another jurisdiction.

- (4) In this section:

*corresponding authority*, of a State, means the entity responsible in the State for regulation of the motor vehicle repair industry.

**36 Effect of licence suspension**

If a licence is suspended, the licence does not authorise the licensee to carry on any activity under the licence during the suspension.

## Part 5 Licence register

### 37 Licence register

- (1) The commissioner must keep a register of licences.
- (2) The register may include information about licences given to the commissioner under this Act and any other information the commissioner considers appropriate.
- (3) The register may be kept in any form, including electronically, that the commissioner decides.
- (4) The register may be kept in 1 or more parts, as the commissioner considers appropriate.
- (5) The commissioner must make information in the register available for public inspection.

**Example**

the register may be available on a website

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

### 38 Correcting register and keeping it up-to-date

- (1) The commissioner may correct a mistake, error or omission in the register.
- (2) The commissioner may change a detail included in the register to keep the register up-to-date.

## Part 6                      Advisory committee

### 39                      Establishment of advisory committee

The motor vehicle repair industry advisory committee (the *advisory committee*) is established.

### 40                      Advisory committee functions

The advisory committee has the following functions:

- (a) advising the Minister about—
  - (i) amendments of this Act in relation to the licensing, registration or training of people in the motor vehicle repair industry including people who perform motor vehicle repair work in the course of employment by another person; and
  - (ii) matters affecting the interests of consumers in relation to motor vehicle repair work; and
  - (iii) unfair commercial practices that affect people who carry on business as a motor vehicle repairer; and
  - (iv) environmental issues in relation to disposal of the motor vehicle repair industry's waste;
- (b) advising the Minister about directions or proposed directions under section 22 (2);
- (c) any other function given to the advisory committee under this Act.

**41 Advisory committee membership**

The advisory committee is made up of—

- (a) the commissioner for fair trading; and
- (b) the following members (the *representative members*) appointed by the Minister:
  - (i) a representative of the industry body for the motor vehicle repair industry;
  - (ii) a representative of people who carry on business as motor vehicle repairers;
  - (iii) a representative of employees of people who carry on business as motor vehicle repairers;
  - (iv) 2 people to represent the interests of consumers;
  - (v) a representative of the community's interest in the environment.

**42 Advisory committee—chair**

The commissioner for fair trading is the chair of the advisory committee.

**43 Advisory committee—general procedure**

- (1) Meetings of the advisory committee are to be held when and where it decides.
- (2) However—
  - (a) the advisory committee must meet at least twice each year; and
  - (b) the commissioner may, by reasonable written notice given to the other advisory committee members, call a meeting.
- (3) The advisory committee may conduct its proceedings (including its meetings) as it considers appropriate.

**44 Reimbursement of expenses for advisory committee members**

- (1) A representative member of the advisory committee is not entitled to be paid for the exercise of the member's functions.
- (2) However, a representative member may apply to the commissioner for reimbursement of expenses reasonably incurred by the member for the purpose of attending a meeting of the advisory committee.

**45 Advisory committee to report on impact of Act etc**

- (1) The advisory committee must prepare a report under this section and present it to the Minister not later than 1 year after the commencement of this section.
- (2) The report must include an analysis of—
  - (a) the impact of this Act on people who carry on business as motor vehicle repairers, their employees and on consumers; and
  - (b) the level of consumer satisfaction with the motor vehicle repair industry, and any recommendations for raising it; and
  - (c) the level of competence that employees should reach to work in the industry; and
  - (d) the cost of training employees to reach that level of competence and how the cost should be shared between employers and employees; and
  - (e) training courses required for the ACT (and who might provide the courses, when the courses might be available, and what benefits providing the courses would give consumers); and
  - (f) any transitional arrangements necessary to deal with existing industry participants.

- (3) In preparing the report, the advisory committee may seek the views of—
  - (a) people who carry on business as motor vehicle repairers; and
  - (b) people who provide training courses; and
  - (c) consumers; and
  - (d) other interested entities.
- (4) The Minister must present the report, and the Minister's response to the report, to the Legislative Assembly not later than 6 months after the day the Minister receives the report.
- (5) This section expires 2 years after the day it commences.



## Part 7                      Offences

*Note* For investigations by the commissioner—see the *Fair Trading (Australian Consumer Law) Act 1992*, div 3.2.

### 46                      Unlicensed person advertising

- (1) A person commits an offence if—
  - (a) the person advertises that the person performs or will perform motor vehicle repair work for reward; and
  - (b) either—
    - (i) the person does not hold a licence; or
    - (ii) if the person is a partner in a partnership—no partner in the partnership holds a licence.

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.

### 47                      Licensee advertising without details

- (1) A licensee commits an offence if—
  - (a) the licensee advertises that the person performs, or will perform, motor vehicle repair work for reward; and
  - (b) the licensee does not include in the advertisement—
    - (i) the licence number; and
    - (ii) the address of the premises where the work is or is to be performed.

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.

**48 Return of amended, suspended or cancelled licences**

- (1) A licensee commits an offence if—
- (a) the licensee's licence is—
    - (i) amended under section 19 (Amendment of licence on commissioner's initiative); or
    - (ii) amended under section 20 (Amendment of licence on application); or
    - (iii) suspended or cancelled by the ACAT; and
  - (b) the licensee fails to return the licence to the commissioner as soon as practicable (but not later than 7 days) after the day the licensee is told about the amendment, suspension or cancellation.

Maximum penalty: 20 penalty units.

- (2) An offence against this section is a strict liability offence.

**49 False or misleading representations**

- (1) A person must not, in trade or commerce, in connection with the supply or possible supply of goods or services in relation to motor vehicle repair work or in connection with the promotion by any means of the supply or use of goods or services in relation to motor vehicle repair work—
- (a) falsely represent that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use; or
  - (b) falsely represent that services are of a particular standard, quality, value or grade; or
  - (c) falsely represent that goods are new; or
  - (d) falsely represent that a particular person has agreed to acquire goods or services; or

- (e) represent that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits they do not have; or
  - (f) represent that the person has a sponsorship, approval or affiliation he or she does not have; or
  - (g) make a false or misleading representation in relation to the price of goods or services; or
  - (h) make a false or misleading representation about the availability of facilities for the repair of goods or of spare parts for goods; or
  - (i) make a false or misleading representation about the place of origin of goods; or
  - (j) make a false or misleading representation about the need for any goods or services; or
  - (k) make a false or misleading representation about the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy; or
  - (l) make a false or misleading representation that services have been or are to be performed with the equipment, materials and skill necessary to carry out the work satisfactorily, having regard to the age and make of the vehicle, part or system.
- (2) A person does not contravene subsection (1) (i) if the person makes a representation about the country of origin of goods and the person complies with the *Competition and Consumer Act 2010* (Cwlth), part 5 (Consumer protection), division 1AA (Country of origin representations).
- (3) A person commits an offence if the person contravenes subsection (1).

Maximum penalty: 200 penalty units.

(4) In this section:

**goods**—see the *Australian Consumer Law (ACT)*, section 2 (1).

**price**—see the *Australian Consumer Law (ACT)*, section 2 (1).

**services**—see the *Australian Consumer Law (ACT)*, section 2 (1).

**supply**—see the *Australian Consumer Law (ACT)*, section 2 (1).

**trade or commerce**—see the *Australian Consumer Law (ACT)*, section 2 (1).

## Part 8 Notification and review of decisions

### 50 Meaning of *reviewable decision*—pt 8

In this part:

*reviewable decision* means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

### 51 Reviewable decision notices

If the commissioner makes a reviewable decision, the commissioner must give a reviewable decision notice to each person mentioned in schedule 1, column 4 in relation to the decision.

*Note 1* The commissioner must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

*Note 2* The requirements for a reviewable decision notice are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

### 52 Applications for review

The following people may apply to the ACAT for a review of a reviewable decision:

- (a) a person mentioned in schedule 1, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

*Note* If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

## Part 9 Miscellaneous

### 53 Exemptions by regulation

A regulation may exempt a person from all or any of the provisions of this Act.

### 54 Exemptions by Minister

- (1) A person may, in writing, apply to the Minister for exemption from all or any of the provisions of this Act.

*Note 1* If a form is approved under s 56 for this provision, the form must be used.

*Note 2* A fee may be determined under s 55 for this provision.

*Note 3* A reference to an Act includes a reference to a provision of an Act (see Legislation Act, s 7 (3)).

- (2) The application must state the grounds on which it is made.
- (3) The Minister must not grant the exemption unless satisfied on reasonable grounds that the exemption is not likely to cause a substantial detriment to consumers.
- (4) In deciding whether to grant an exemption, the Minister must also take into account any criteria prescribed by regulation.
- (5) An exemption may be subject to conditions.
- (6) The Minister may amend or revoke an exemption at any time on reasonable grounds.
- (7) An exemption, and an amendment or revocation of an exemption, is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

**55 Determination of fees**

- (1) The Minister may determine fees for this Act.

*Note* The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

**56 Approved forms**

- (1) The commissioner may approve forms for this Act.

- (2) If the commissioner approves a form for a particular purpose, the approved form must be used for that purpose.

*Note* For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

**57 Regulation-making power**

The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

## Part 10 Transitional

### 59 Definitions—pt 10

In this part:

*commencement day* means the day this Act commences.

*repealed code* means the *Fair Trading (Motor Vehicle Service and Repair Industry) Code of Practice 1999* as in force immediately before the commencement day.

### 60 Principals under repealed code licensed

A principal registered under the repealed code immediately before the commencement day is taken to be licensed under section 12 (Decision on application) until the day the person's registration would have expired under the repealed code.

### 61 Registration under repealed code

For section 29 (Licence condition—display of licence), a registration under the repealed code is taken to be a licence for this Act.

*Note* It is a condition of a licence that the licence, or a copy of the licence, be displayed in a prominent place at premises where business is carried on under the licence—see s 29.



**62 Transitional regulations**

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.

**63 Expiry—pt 10**

This part expires 1 year after the day it commences.

## Schedule 1 Reviewable decisions

(see s 42)

| <b>column 1<br/>item</b> | <b>column 2<br/>section</b> | <b>column 3<br/>decision</b>                | <b>column 4<br/>person</b> |
|--------------------------|-----------------------------|---|----------------------------|
| 1                        | 9 (3) (b)                   | find person disqualified<br>person          | person found disqualified  |
| 2                        | 12 (1) (b)                  | refuse to issue licence                     | applicant                  |
| 3                        | 13 (3) (a)                  | impose condition on<br>licence              | licensee                   |
| 4                        | 18 (4) (b)                  | refuse to renew licence                     | licensee                   |
| 5                        | 19 (1)                      | amend licence                               | licensee                   |
| 6                        | 20 (4) (b)                  | refuse to amend licence                     | licensee                   |
| 7                        | 54 (3)                      | refuse to grant<br>exemption                | applicant                  |
| 8                        | 54 (6)                      | revoke, or amend<br>condition of, exemption | exemption holder           |

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## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACAT
- Australian Consumer Law (ACT)
- Corporations Act
- entity
- Minister (see s 162)
- occupational discipline order
- reviewable decision notice
- State.

*advisory committee*—see section 39.

*carries on business as a motor vehicle repairer*—see section 6 (1).

*commissioner* means the commissioner for fair trading.

*consumer*—see the *Australian Consumer Law (ACT)*, section 2 (1).

*corporation*—see the Corporations Act.

*disqualified person*—see section 10.

*ground for occupational discipline*—see section 32.

*licence* means a motor vehicle repair licence issued under section 12.

*licence number*—see section 14 (d).

*licensee*, for part 4 (Occupational discipline)—see section 31.

*motor vehicle*—see the *Sale of Motor Vehicles Act 1977*, dictionary.

*motor vehicle repair work*—see section 6 (2) and (3).

***police certificate***, for a person, means a written statement by the Australian Federal Police indicating—

- (a) whether, according to the records held by the Australian Federal Police, the person has been charged with, or convicted of, an offence against a law of—
  - (i) the Territory; or
  - (ii) the Commonwealth; or
  - (iii) a State; or
  - (iv) another country; and
- (b) if so—particulars of each offence.

*Note* A conviction does not include a spent conviction (see *Spent Convictions Act 2000*, s 16 (c) (i)).

***register*** means the register of licences kept under part 5.

***representative members***, of the advisory committee—see section 41.

***reviewable decision***, for part 8 (Notification and review of decisions)—see section 50.

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

|  |  |
|--|--|
| A = Act  | NI = Notifiable instrument   |
| AF = Approved form                                     | o = order  |
| am = amended   | om = omitted/repealed  |
| amdt = amendment                                       | ord = ordinance  |
| AR = Assembly resolution                               | orig = original  |
| ch = chapter   | par = paragraph/subparagraph   |
| CN = Commencement notice                               | pres = present   |
| def = definition                                       | prev = previous  |
| DI = Disallowable instrument                           | (prev...) = previously   |
| dict = dictionary                                      | pt = part  |
| disallowed = disallowed by the Legislative<br>Assembly | r = rule/subrule   |
| div = division   | reloc = relocated  |
| exp = expires/expired                                  | renum = renumbered   |
| Gaz = gazette  | R[X] = Republication No  |
| hdg = heading  | RI = reissue   |
| IA = Interpretation Act 1967                           | s = section/subsection   |
| ins = inserted/added                                   | sch = schedule   |
| LA = Legislation Act 2001                              | sdiv = subdivision   |
| LR = legislation register                              | SL = Subordinate law   |
| LRA = Legislation (Republication) Act 1996             | sub = substituted  |
| mod = modified/modification                            | <u>underlining</u> = whole or part not commenced<br>or to be expired |

## Endnotes

3 Legislation history

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### 3 Legislation history

#### **Fair Trading (Motor Vehicle Repair Industry) Act 2010 A2010-16**

notified LR 7 April 2010

s 1, s 2 commenced 7 April 2010 (LA s 75 (1))

remainder commenced 7 October 2010 (s 2 and LA s 79)

as amended by

#### **Fair Trading (Australian Consumer Law) Amendment Act 2010 A2010-54 sch 3 pt 3.8**

notified LR 16 December 2010

s 1, s 2 commenced 16 December 2010 (LA s 75 (1))

sch 3 pt 3.8 commenced 1 January 2011 (s 2 (1))

### 4 Amendment history

#### **Commencement**

s 2 om LA s 89 (4)

#### **Dictionary**

s 3 am A2010-54 amdt 3.22

#### **Meaning of *disqualified person***

s 10 am A2010-54 amdt 3.23

#### **Advisory committee to report on impact of Act etc**

s 45 exp 7 October 2012 (s 45 (5))

#### **Offences**

pt 7 hdg note am A2010-54 amdt 3.24

#### **False or misleading representations**

s 49 am A2010-54 amdt 3.25, amdt 3.26

#### **Legislation repealed**

s 58 om LA s 89 (3)

#### **Transitional**

pt 10 hdg exp 7 October 2011 (s 63)

#### **Definitions—pt 10**

s 59 exp 7 October 2011 (s 63)  
def **commencement day** exp 7 October 2011 (s 63)  
def **repealed code** exp 7 October 2011 (s 63)

#### **Principals under repealed code licensed**

s 60 exp 7 October 2011 (s 63)

**Registration under repealed code**s 61 [exp 7 October 2011 \(s 63\)](#)**Transitional regulations**s 62 [exp 7 October 2011 \(s 63\)](#)**Expiry—pt 10**s 63 [exp 7 October 2011 \(s 63\)](#)**Fair Trading (Consumer Affairs) Act 1973**

s 64 om LA s 89 (3)

**Dictionary**dict am A2010-54 amdt 3.28  
def **consumer** sub A2010-54 amdt 3.29**5 Earlier republications**

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

| <b>Republication No and date</b> | <b>Effective</b>           | <b>Last amendment made by</b> | <b>Republication for</b> |
|----------------------------------|----------------------------|-------------------------------|--------------------------|
| R1<br>7 Oct 2010                 | 7 Oct 2010-<br>31 Dec 2010 | not amended                   | new Act                  |

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