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LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

FAIR TRADING (MOTOR VEHICLE REPAIR INDUSTRY) BILL 2009

EXPLANATORY STATEMENT

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FAIR TRADING (MOTOR VEHICLE REPAIR INDUSTRY) BILL 2009

Overview of Bill

The Fair Trading (Motor Vehicle Repair Industry) Bill 2009 (the Bill) provides for the licensing and regulation of people in the motor vehicle repair industry. The Bill is designed to replace the existing Fair Trading (Motor Vehicle Service and Repair Industry) Code of Practice 1999 (the Code) established under the *Fair Trading Act 1992*.

The Bill develops a business licensing model for people carrying on business as a motor vehicle repairer in the ACT. This captures people who perform motor vehicle repair work for reward; motor vehicle repair work is defined in the Bill replicating the existing definition of 'repairs' in the Code.

The Bill provides exceptions to this general rule. The main exception ensures that individuals who perform motor vehicle repair work in the course of their employment are not regarded as carrying on the business of a repairer. Other exceptions include members of a partnership, and publishers of advertisements relating to a business carried on, or a service provided, by a repairer.

The business licensing model ensures that a person (including partnerships and corporations) is prohibited from carrying on a business of motor vehicle repair work for reward without a licence.

The Bill sets up the application process that must be completed in order to obtain a licence. The licensing of motor vehicle repairers will be undertaken by the Commissioner for Fair Trading. While it will not be necessary for a person applying for a business licence to hold relevant qualifications, there will be eligibility requirements which must be satisfied by an application prior to the issuing of a licence – that the applicant is an adult, and is not a disqualified person. A licence application will also need to be accompanied by a police certificate, and a signed statement that the applicant has obtained the relevant planning and other approvals required to carry on a business at each premises where the applicant proposes to carry on the business under the licence.

The Code contains general obligations of principals that must be complied with in respect to the provision of repairs. These obligations have been largely replicated as conditions on the licence that a licensee must comply with, with the exception of three which provide a separate ground for occupational discipline (being compliance with fair trading, environmental, and occupational health and safety laws).

The Bill replicates the existing framework, under the Code, which provides for a principal's obligation to a consumer in relation to the performance of repair work as a condition on the licence. It will be required that a licensee provide estimates of the costs of repair work required and obtain authority for the

repair work, as well as explaining, providing estimates and obtaining authorisation for any additional repair work.

The Code also requires a principal to provide a consumer with information that would alert the consumer to the existence of the Code, the general obligations of the principal, and the responsibilities the consumer has in his or her dealings with the principal. The Bill replicates this obligation through a condition on the licence which requires the licensee to give an information sheet, approved by the Commissioner for Fair Trading, to a person prior to commencing repair work for the person.

Any breach of a condition on a licence by a licensee will be a ground for occupational discipline which may be dealt with by the ACT Civil and Administrative Tribunal. Section 66 of the *ACT Civil and Administrative Tribunal Act 2008* sets out the different types of orders the Tribunal may make. A breach of a condition on a licence will also be a disqualifying act, and therefore will impact on a person's eligibility for application/renewal of a motor vehicle repair licence.

The Bill provides two mechanisms to allow exemptions from the application of the Act: (1) exemption of a person through regulation made by the Executive and (2) exemption of a person by application to the Minister. The Minister may only make an exemption where the exemption is not likely to cause a substantial detriment to consumers.

The Bill provides transitional provisions to acknowledge the registration of existing principals under the Code and also provides the Executive with a transitional regulation making power to deal quickly with unanticipated issues to ensure for effective regulation of the motor vehicle repair industry.

The Bill also amends the *Fair Trading (Consumer Affairs) Act 1973* to ensure that part 3 of the *Fair Trading (Consumer Affairs) Act 1973* applies to the motor vehicle repair industry, providing among other things, that inspectors under the *Fair Trading (Consumer Affairs) Act 1973* will be able to use their powers to investigate complaints about the motor vehicle repair industry

Strict liability offences: human rights implications

The Bill has strict liability offences in clauses 8(1) and (2), 39, 40, and 41. A strict liability offence under section 23 of the *ACT Criminal Code 2002* means that there are no fault elements for any of the physical elements of the offence. Essentially, this means that conduct alone is sufficient to make the defendant culpable. However, under the Criminal Code, all strict liability offences will have a specific defence of mistake of fact. Clause 23(3) of the Criminal Code makes it clear that other defences may still be available for use in strict liability offences.

The offences incorporating strict liability elements have been carefully considered during the Bill's development. Strict liability offences in the Bill engage certain rights under the *ACT Human Rights Act 2004*. In particular, they engage the right to liberty and security (subsection 18(1)), the right to a

fair trial (subsection 22(1)), and the right to be presumed innocent (subsection 22(1)). Strict liability offences engage the right to be presumed innocent because the absence of a fault element generally places a burden upon the defendant to challenge the prosecution case, potentially creating a form of reverse onus.

Although engaging these rights, it is important to note that the Human Rights Act does not prevent the legislature from enacting offences of strict liability. This view has been supported by the ACT Court of Appeal in the case of *Hausmann v Shute* [2007] ACTCA 5 (5 April 2007). A study of international human rights jurisprudence also indicates that it is accepted that strict liability offences constructed in an appropriate way may still be compatible with human rights.¹

Section 28 of the Human Rights Act provides that human rights may be subject to reasonable limits set by Territory laws that can be demonstrably justified in a free and democratic society. The process for establishing whether a limitation on a human right is justifiable is now well established. To satisfy the test set out in section 28, the limitation must fulfil a pressing and substantial social need, pursue a legitimate aim and be proportionate to the aims being pursued.

The strict liability offences arise in a regulatory context where for reasons such as public safety, the public interest in ensuring that regulatory schemes are observed requires the sanction of criminal penalties. The objective of regulatory legislation is to protect the public and societal interests, moving away from the protection of individual interests, and aims to prevent future harm through the enforcement of minimum standards of conduct and care.

In particular, the strict liability offences have been crafted to address unlawful behaviour in a context where the defendant can reasonably be expected, because of the requirements of a regulatory regime to which they are subject, to know of their legal obligations under that regime.

For example, the offence in clause 40 provides that a licensee commits an offence where they fail to include specific details of their licence and business in an advertisement. This prohibited activity is suitable for a strict liability offence because the licensee is in a licensing framework and is therefore fully aware of their obligation to comply with this requirement for advertising. The licensee has chosen to participate in a regulated activity or is on notice that they are engaging in a regulated activity, and in doing so, have placed themselves in a responsible relationship to the public generally and must accept the consequences of that responsibility. The imposition of strict liability offences in this licensing scheme recognises the inherent risk to consumers, the environment, and the health and safety of employees, that is involved in operating a business of this nature.

¹ European Court of Human Rights: *Salabiaku v France* 10519/83 [1988] ECHR (7 October 1988); UK House of Lords: *Sheldrake v Director of Public Prosecutions & Attorney General's Reference (No 4 of 2002)* [2004] UKHL 43; Canadian Supreme Court: *R v Wholesale Travel Group Inc.* [1991] 3 S.C.R. 154.

The maximum monetary penalty imposed by the strict liability offences in the Bill is 50 penalty units (clause 8(1)), with other offences ranging from 10 to 20 penalty units (clauses 39 and 40 – 10 penalty units each and clauses 8(2) and 41 – 20 penalty units each).

Clause 8(1) imposes a maximum penalty of 50 penalty units, the maximum amount that should be imposed for strict liability offences to ensure compliance with the Human Rights Act. The offence in clause 8(1) is key to protecting the public interest in ensuring that the motor vehicle repair regulatory scheme is observed. The prohibition of unlicensed behaviour is crucial to ensuring that the regulatory scheme meets the following community expectations:

- addressing market failure and an imbalance in the consumer/trader relationship which arises from information asymmetry;
- preventing misleading and dishonest business practices in motor vehicle repairs;
- promoting and enhancing fairness of trading in the market place from the viewpoint of both business and consumers;
- improving the competency of motor vehicle repairers, and the quality of motor vehicle repairs, and reducing the incidence of rework;
- enhancing public safety by reducing the incidence of accidents to which inadequately performed repairs are a contributing factor;
- reducing the harmful environmental impact of motor vehicle emissions and motor vehicle repair work practices;
- enabling access to a speedy, relevant and efficient dispute resolution process between repairers and consumers; and
- making consumers and traders more aware of their rights and obligations.

In summary, it is considered that the strict liability offences in the Bill impose reasonable and proportionate limitations on the rights in the Human Rights Act. The offences are of a regulatory nature. The defence of mistake of fact is available to a defendant charged with a strict liability offence. The defence only imposes an evidential burden, as opposed to a legal or 'persuasive' burden, on the defendant: it is only incumbent on the defendant to present or point to evidence which suggests that there is a 'reasonable possibility' that they acted under a mistake of fact (see the Criminal Code, section 58(4) and (7)). If the defendant discharges the onus, the burden is then put back on the prosecution to disprove beyond reasonable doubt that the defendant did act under a mistake of fact (see the Criminal Code, section 56(2)). The use of strict liability offences will substantially assist in protecting the efficiency and integrity of the regulatory regime under the Bill.

Clause Notes

Part 1 - Preliminary

Clause 1 Name of Act – states the title of the Act as the *Fair Trading (Motor Vehicle Repair Industry) Act 2009*.

Clause 2 Commencement – provides that the Act will commence on the date decided by the Minister and notified in the Legislation Register. If the Minister has not fixed a date within six months after the day of notification of the Act, the Act will commence on the first day after this period.

Clause 3 Dictionary – provides that the dictionary at the end of the Act is part of the substantive provisions of the Act.

Clause 4 Notes – provides that notes included in the Act are explanatory only and do not form part of the substantive provisions of the Act. By contrast, where the Act includes an example, the example is part of the substantive provisions of the Act having regard to section 132 of the *Legislation Act 2001*.

Clause 5 Offences against Act – application of Criminal Code etc – provides that other legislation applies in relation to offences against the Act, including the *Criminal Code 2002* and the *Legislation Act 2001*.

Part 2 – Important Concepts

Clause 6 Carrying on business as motor vehicle repairer – this clause defines the following terms for the purposes of the Act: ***carries on business as a motor vehicle repairer*** and ***motor vehicle repair work***. The definition of ***motor vehicle repair work*** replicates the definition or ‘repairs’ in the existing Code (clause 3, part I: Preliminary).

Clause 7 Certain people not taken to carry on business as motor vehicle repairer – this clause ensures that the following circumstances below are not captured by the scope of the licensing scheme:

- a person who performs motor vehicle repair work in the course of their employment by another person;
- a member of a partnership that carries on the business; and
- a person who publishes advertising material relating to a business carried on, or a service provided, by another person.

Part 3 - Licences

Division 3.1 Requirement for licence

Clause 8 Person carrying on business as motor vehicle repairer to be licensed – this clause provides that it is an offence for a person to:

- (1) Carry on business as a motor vehicle repairer without a motor vehicle repair licence; and

- (2) Carry on business as a motor vehicle repairer at premises without holding a motor vehicle repair licence authorising the business to be carried out at those premises.

The two offences are strict liability offences. Section 23 of the *Criminal Code 2002* provides that if a law that creates an offence provides that the offence is one of strict liability, there are no fault elements for any of the physical elements of the offence. Essentially this means that conduct alone is sufficient to make the defendant culpable. However, under the Criminal Code, all strict liability offences have a specific defence of mistake of fact.

The maximum penalty for the first offence is 50 penalty units. The offence in clause 8(1) is key to protecting the public interest in ensuring that the motor vehicle repair regulatory scheme is observed. The prohibition of unlicensed behaviour is crucial to ensuring that the regulatory scheme meets the following community expectations:

- addressing market failure and an imbalance in the consumer/trader relationship which arises from information asymmetry;
- preventing misleading and dishonest business practices in motor vehicle repairs;
- promoting and enhancing fairness of trading in the market place from the viewpoint of both business and consumers;
- improving the competency of motor vehicle repairers, the quality of motor vehicle repairs, and reducing the incidence of rework;
- enhancing public safety by reducing the incidence of accidents to which inadequately performed repairs are a contributing factor;
- reducing the harmful environmental impact of motor vehicle emissions and motor vehicle repair work practices;
- enabling access to a speedy, relevant and efficient dispute resolution process between repairers and consumers; and
- making consumers and traders more aware of their rights and obligations

The maximum penalty for the second offence is 20 penalty units. The offence aims to ensure that the business of motor vehicle repair work is not carried out in locations where relevant planning and other approvals have not been obtained, and/or which have not been authorised through the licence grant/renewal/amendment process.

Division 3.2 Eligibility for licence

Clause 9 Eligibility for licence – this clause provides the eligibility criteria for a motor vehicle repair licence for a person, partnership and corporation.

Clause 10 Meaning of *disqualified person* – this clause sets out specific disqualifying acts that, if committed or engaged in by a person, will preclude them from being eligible to obtain a motor vehicle repair licence. However, the Commissioner for Fair Trading will have a discretion to licence a person, despite the fact that they have committed or engaged in a disqualifying act, where it would be unreasonable to regard the person as a disqualified person.

Division 3.3 Licence procedures and details

Clause 11 Application for motor vehicle repair licence – this clause provides the procedure for a person to apply for a motor vehicle repair licence. The clause enables the Commissioner for Fair Trading to seek additional information to facilitate the Commissioner’s proper consideration of an application.

The application must be accompanied by a police certificate and a signed statement that the applicant has obtained the relevant planning and other approvals required to carry on a business at each premises where the applicant proposes to carry on the business under the licence.

Clause 12 Decision on application – this clause makes it clear that the Commissioner for Fair Trading must issue, or refuse to issue, a licence within 60 days after receiving an application. Failure to issue, or refuse to issue, a licence within 60 days means that the Commissioner has decided not to issue the licence.

The clause also provides that the Commissioner must issue the licence if satisfied that the applicant:

- is eligible under clause 9 of the Bill;
- can comply with any conditions on the licence; and
- can satisfy anything else prescribed by regulation.

Clause 13 Licence conditions – this clause provides that a licence is subject to the conditions set out in division 3.4 of the Bill, prescribed by regulation, or imposed on the licensee by the Commissioner for Fair Trading.

A condition can be imposed when the licence is issued or renewed, or at any other time by following the process for amendment set out in clauses 19 and 20 of the Bill.

Clause 14 Form of licence – this clause provides for the form that a licence must take.

Clause 15 Replacement licence – this clause allows the Commissioner for Fair Trading to issue a replacement licence if satisfied that the licence has been lost, stolen or destroyed. A fee may be charged for this service.

Clause 16 Licence term – this clause makes it clear that a licence is valid to up to one year from the date of its issue or last renewal.

Clause 17 Licence not transferable – this clause makes it clear that a licence is not transferable.

Clause 18 Renewal of licence – this clause sets out the renewal process for a licensee to renew a licence.

Clause 19 Amendment of licence on commissioner's initiative – this clause provides the process that applies where the Commissioner for Fair Trading amends a licence.

Clause 20 Amendment of licence on application – this clause provides the process that applies on an application by a licensee to the Commissioner for Fair Trading for an amendment to a licence.

Clause 21 Surrendering licence – this clause makes provision for a licensee to surrender a licence by writing to the Commissioner for Fair Trading and returning the surrendered licence.

Division 3.4 Licence conditions

Clause 22 Licence condition – equipment, materials and skill for carrying out work – this clause ensures that it is a condition of a motor vehicle repair licence that the licensee performs the work, or ensures that the work is performed by an employee, 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.

This licence condition replicates the existing obligations contained in the existing Code (Schedule A).

Clause 23 Licence condition – agreement for repairs - this clause provides a condition on a motor vehicle repair licence in relation to agreements for repairs (where the repair work is expected to cost \$150 or more). A licensee must not perform, or offer to perform, repairs until they have given an estimate of the cost of the work and obtained the necessary authorisation to perform the work. However, where diagnostic work must be undertaken prior to giving an estimate, the licensee must prior to performing the functions above, obtain authorisation to perform the diagnosis and is required to give an estimate of the cost of the diagnosis. This clause replicates the existing obligation in the Code (clause 8(1)-(2), part II: Obligations of Principals).

Clause 24 Licence condition – additional repairs - this clause provides a condition on a motor vehicle repair licence in relation to additional repairs. A licensee must not perform any additional repairs until they have explained the proposed work and associated costs/charges, and obtained the necessary authorisation to perform the work. This clause replicates the existing obligation in the Code (clause 8(3), part II: Obligations of Principals).

Clause 25 Licence condition – time to carry out work – this clause provides that it is a condition of a motor vehicle repair licence to complete the repair work in a reasonable time, and to tell the person for whom the work was done how much time was spent in undertaking the work. This licence condition replicates the existing obligation in the Code (Schedule A).

Clause 26 Licence condition –replaced parts – this clause provides that it is a condition of a motor vehicle repair licence to make available for inspection any part that was replaced as part of repair work. This licence condition replicates the existing obligation contained in Schedule A in the existing Code.

Clause 27 Licence condition – information sheets – this clause provides that it is a condition of a motor vehicle repair licence for the licensee to give to a person, prior to performing repair work for the person, an information sheet approved by the Commissioner for Fair Trading. This licence condition replicates the existing obligation contained in the Code (clause 8(1)(a) and (2)(a)). The licence condition is designed to provide a consumer with information that would alert the consumer to the existence of the regulatory framework, the general obligations of the principal, and the responsibilities the consumer has in his or her dealings with the licensee.

Clause 28 Licence condition – warranties and guarantees - this clause provides that it is a condition of a motor vehicle repair licence that the licensee, on completion of repair work, must give to the consumer, a signed copy of any warranty or guarantee relating to workmanship, parts or service provided by the licensee. This licence condition replicates the existing obligation contained in Schedule A in the existing Code.

Clause 29 Licence condition – display of licence – this clause provides that it is a condition of a motor vehicle repair licence that the licensee display their licence, or a copy, in a prominent place at the premises where the business is conducted. This licence condition replicates the existing obligation contained in Schedule A in the existing Code.

Clause 30 Licence condition – notification of change of name or address – this clause provides that it is a condition of motor vehicle repair licence that the licensee notify the Commissioner for Fair Trading about any changes in name, address or any other detail on the licence. The notification should occur as soon as practicable, but no later than seven days, after the day the change happens.

Part 4 – Occupational discipline

Clause 31 Meaning of *licensee* – pt 4 – this clause defines the term *licensee* for the purposes of part 4.

Clause 32 Grounds for disciplinary action – this clause provides grounds for occupational disciplinary action against a licensee.

Clause 33 Application to ACAT for occupational discipline – this clause provides that the Commissioner for Fair Trading may apply to the ACT Civil and Administrative Tribunal if they believe on reasonable grounds that a ground for occupational discipline exists in relation to a licensee.

Clause 34 Considerations before making occupational discipline orders – this clause provides a non-exhaustive list of considerations the ACT Civil and Administrative Tribunal must consider on an application for occupational discipline in relation to a licensee.

Clause 35 Information about cancellations etc to be given to corresponding authorities – this clause provides a process that may be used by the Commissioner for Fair Trading for informing local registering authorities if the ACT Civil and Administrative Tribunal cancels or suspends a licensee's licence.

Clause 36 Effect of licence suspension – this clause provides for the effect of a licence suspension.

Part 5 – Licence register

Clause 37 Licence register – this clause provides for the keeping of a register of licences by the Commissioner for Fair Trading. The clause also provides the opportunity for the public to inspect the register. Access to this information will empower consumers to make informed decisions before engaging a motor vehicle repairer to perform work.

Clause 38 Correcting register and keeping it up-to-date – this clause permits the Commissioner for Fair Trading to correct the register and make changes to keep it up-to-date.

Part 6 - Offences

Clause 39 Unlicensed person advertising – this clause provides that it is an offence for a person to advertise a motor vehicle repair business if the person does not hold a motor vehicle repair licence.

This is a strict liability offence. Section 23 of the *Criminal Code 2002* provides that if a law that creates an offence provides that the offence is one of strict liability, there are no fault elements for any of the physical elements of the offence. Essentially this means that conduct alone is sufficient to make the defendant culpable. However, under the Criminal Code, all strict liability offences have a specific defence of mistake of fact.

The maximum penalty for this offence is 10 penalty units. The offence aims to prevent consumer confusion about who is and who is not authorised to perform repair work under the Act.

Clause 40 Licensee advertising without details – this clause provides that it is an offence for a licensee to advertise a motor vehicle repair business omitting the following details:

- the licence number; and
- the address of the place where the repair business is carried on.

This is a strict liability offence. Section 23 of the *Criminal Code 2002* provides that if a law that creates an offence provides that the offence is one of strict liability, there are no fault elements for any of the physical elements of the offence. Essentially this means that conduct alone is sufficient to make the defendant culpable. However, under the Criminal Code, all strict liability offences have a specific defence of mistake of fact.

The maximum penalty for this offence is 10 penalty units. The aim of this offence is twofold: on the one hand it provides useful information to consumers which will empower them to make informed decisions when engaging a licensee to perform repair work, and on the other it will assist the Office of Regulatory Services in their regulation of the industry.

Clause 41 Return of amended, suspended or cancelled licences – this clause provides that it is an offence for a licensee to fail to surrender a licence as soon as practicable, but no later than 7 days after the day the licensee is told about the amendment, suspension or cancellation.

This is a strict liability offence. Section 23 of the *Criminal Code 2002* provides that if a law that creates an offence provides that the offence is one of strict liability, there are no fault elements for any of the physical elements of the offence. Essentially this means that conduct alone is sufficient to make the defendant culpable. However, under the Criminal Code, all strict liability offences have a specific defence of mistake of fact.

The maximum penalty for this offence is 20 penalty units. This offence aims to prevent people from giving their licence to another person to use, or from continuing to work in the industry after their licence is suspended or cancelled.

Part 7 – Notification and review of decisions

Clause 42 Meaning of *reviewable decision* – pt 7 – this clause defines the term ***reviewable decision*** for the purposes of part 7. The definition refers to the table in schedule 1 which sets out the type of decisions which are reviewable.

Clause 43 Reviewable decision notices – this clause places an obligation on the Commissioner for Fair Trading to give to each relevant person set out in schedule 1, a notice each time they make a reviewable decision.

The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

Section 67A of the *ACT Civil and Administrative Act 2008* also provides that the Commissioner for Fair Trading must take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision.

Clause 44 Applications for review – this clause specifies who is eligible to apply to the ACAT for a review of a reviewable decision. The clause refers to

the table in schedule 1 which sets out for each reviewable decision the relevant person who may apply for a review of that decision. The clause also enables any other person whose interests are affected by a decision to apply for a review.

Part 8 - Miscellaneous

Clause 45 Exemptions by regulation – this clause provides that the Executive may make a regulation for the Act which exempts a person from the operation of the Act. Regulations made under this clause must be notified on the Legislation Register (<http://www.legislation.act.gov.au>) and presented to the Legislative Assembly.

Clause 46 Exemptions by Minister – this clause provides a process whereby a person may apply to the Minister for an exemption from the operation of the Act. An exemption granted by the Minister is a disallowable instrument which must be notified on the Legislation Register (<http://www.legislation.act.gov.au>) and presented to the Legislative Assembly.

Clause 47 Determination of fees – this clause allows the Minister to determine fees for the purposes of the Act. Determinations made by the Minister under this clause are disallowable instruments which must be notified on the Legislation Register (<http://www.legislation.act.gov.au>) and presented to the Legislative Assembly.

Clause 48 Approved forms – this clause gives the Commissioner for Fair Trading power to approve forms for the Act which must be used for a particular purpose. Forms approved under this clause are notifiable instruments which must be notified on the Legislation Register (<http://www.legislation.act.gov.au>).

Clause 49 Regulation-making power – this clause permits the Executive to make regulations for the Act. Regulations made under this clause must be notified on the Legislation Register (<http://www.legislation.act.gov.au>) and presented to the Legislative Assembly.

Clause 50 Legislation repealed - this clause provides for the repeal of two legislative instruments.

The first legislative instrument repealed is the Fair Trading (Motor Vehicle Service and Repair Industry) Code of Practice 1999. The amendments in the Bill create a legislative licensing scheme to replace the existing registration scheme in the Code, and therefore the Code will be redundant on the making of this Bill.

The second legislative instrument repealed is the Fair Trading (Motor Vehicle Service and Repair Industry) Determination 1999. The determination had the following effect: where the actual value of repairs performed amounted to less than \$150, subclause 8(1) of the Code had no application and principals did not have to comply with the obligations set out in that subclause (provision of

estimate of repairs etc.). The effect of the determination has been replicated in the Bill at clause 23, therefore making the determination redundant.

Part 9 - Transitional

Clause 51 Definitions – pt 9 – this clause provides definitions for the terms ***commencement day*** and ***repealed code*** for the purposes of part 9.

Clause 52 Principals under repealed code licensed – this clause ensures that any principals registered under the Fair Trading (Motor vehicle Service and Repair Industry) Code of Practice 1999, immediately prior to the commencement of the amendments in this Bill, will be taken to be licensed under the new scheme created by this Bill, until the day the person's registration would have expired under the Code. As a consequence of this clause, principals will be entitled to apply for a renewal of their licence in accordance with clause 18.

Clause 53 Registration under repealed code – this clause ensures that the display of a document evidencing a registration under the repealed Code is sufficient to satisfy the requirement under clause 29 (licence condition – display of licence).

Clause 54 Transitional regulations – this clause provides the Executive with a transitional regulation making power. This power will enable the Executive to deal quickly with unanticipated issues to ensure for effective regulation of the motor vehicle repair industry, notwithstanding any legislative deficiency. When an issue is identified, the Executive may make a transitional regulation if the Executive considers that the issue is not, or is not adequately or appropriately dealt with in new part 9.

Clause 55 Expiry – pt 9 – this clause provides for the expiry of part 9 one year after the day it commences.

Clause 56 Fair Trading (Consumer Affairs) Act 1973 Dictionary, definition of *fair trading legislation*, new paragraph (ca) - this clause amends the dictionary definition of ***fair trading legislation*** in the *Fair Trading (Consumer Affairs) Act 1973*. The amendment adds the *Fair Trading (Motor Vehicle Repair Industry) Act 2009* to the list of legislation which give meaning to the term ***fair trading legislation*** when it is used in the *Fair Trading (Consumer Affairs) Act 1973*.

The effect of this amendment is to ensure that part 3 of the *Fair Trading (Consumer Affairs) Act 1973* applies to the motor vehicle repair industry. For example, inspectors under the *Fair Trading (Consumer Affairs) Act 1973* will be able to use their powers to investigate complaints about the motor vehicle repair industry.

Schedule 1 – Reviewable decisions

The schedule contains a table which list the decisions, made under clauses in the Bill, which are reviewable by the ACT Civil and Administrative Tribunal. The table specifies for each reviewable decision, the relevant person who may apply to the Tribunal for a review of the decision.