

2010

**THE LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY**

**FAIR TRADING (MOTOR VEHICLE REPAIR INDUSTRY) BILL 2010
SUPPLEMENTARY EXPLANATORY STATEMENT**

Presented by
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Attorney General

Government Amendment 1: Clause 22 Licence condition—equipment, materials and skill for carrying out work

Clause 22 ensured that it is a condition of a motor vehicle repair licence that the licensee performs repairs, or ensures that repairs are performed by an employee, with the equipment, materials and skill necessary to carry out the work satisfactorily. This provision replicated the existing obligations contained in the existing Code (Schedule A). The provision has now been relocated in new section 41A and recast to ensure that action can be taken against licensee's who misrepresent their capacity to perform repairs.

New clause 22 provides that the Minister may supplement the requirements included in new section 41A by way of more specific requirements giving directions about the equipment, materials and skills necessary to perform repairs. The directions power permits a Minister responsible for the legislation to set objective standards which give effect to advice (for example, from the advisory committee or the commissioner for fair trading) about the way repairs are undertaken. For example, the directions might require a repairer:

- to use specific equipment when undertaking a repair on a specific vehicle; or
- to only use a person with a particular competency in relation to a particular class of repairs; or
- to require all workers to have specific competencies (for example, apply safe working practices, and/or identify environmental regulations and best practice in a workplace or business).

Directions under this section are disallowable. In addition, if the direction is likely to impose appreciable costs on the community, or a part of the community, they must be the subject of a regulatory impact statement (see Chapter 5, *Legislation Act 2001*).

Government Amendment 2: Clause 26 Licence condition—replaced parts

Clause 26 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.

The amendment better clarifies the intent of the legislation – that the cost of disposal be made known to a customer, and that a customer should not pay for disposal when they elect to take the part from the premises.

Government Amendment 3: Part 5A Advisory committee

The amendment inserts new 38A – 38G which establish an advisory committee to consider the need for additional amendments to legislation in this sector, or directions under clause 22.

New clause 38A – establishes the motor vehicle repair industry advisory committee (“the committee”).

New clause 38B – tasks the committee with advising the Minister about possible amendments to the law, matters affecting consumers, unfair commercial practices affecting repairers and environmental issues. The committee also can advise the Minister about directions under clause 22 and exercise other functions given under the Act.

New clause 38C – provides for the membership of the Committee.

New clause 38D – provides that the commissioner for fair trading is the committee chair.

New clause 38E – provides for the procedure of the committee.

New clause 38F – provides for reimbursement of expenses of members reasonably incurred in attending meetings.

New clause 38G – requires the committee to report on the impact of the law within 12 months of the commencement of the clause, including an analysis of specified matters. The Minister is to present the report and the Minister’s response to the report within 6 months of receiving the report.

Government Amendment 4: New section 41A False or misleading representations

This amendment inserts a provision concerning false or misleading representations. The provision is based on section 14 of the *Fair Trading Act 1992*, with the inclusion of new 41A(1)(l) ensuring that a licensee does not make a misrepresentation about the performance of repairs. The new paragraph has recast the obligation in clause 22 (as introduced) as a prohibition. The prohibition will operate to ensure that licensees do not make misrepresentations about their ability to conduct repairs. The new provision will result in more effective enforcement, leading to improved protections for consumers.

A breach of the provision is an offence with a maximum penalty of 200 penalty units.

Government Amendment 5: Dictionary “advisory committee”

This formal amendment adds a definition of “advisory committee”.

Government Amendment 6: Dictionary “representative members”

This formal amendment adds a definition of “representative members”.