

1999

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

FAIR TRADING ACT 1992

FAIR TRADING REGULATIONS (AMENDMENT)

Subordinate Law No. 9 of 1999

EXPLANATORY MEMORANDUM

**Circulated by the authority of
Gary Humphries MLA
Minister For Justice And Community Safety**

FAIR TRADING REGULATIONS (AMENDMENT)

Subordinate Law No. 9 of 1999

PURPOSE

The intention of this amendment is to have the *Fair Trading Regulations* ("the Principal Regulations") prescribe the *Motor Vehicle Service and Repair Industry Code of Practice* ("the Code") as a code of practice under section 34 of the *Fair Trading Act 1992* ("the Act").

BACKGROUND

The Director of Consumer Affairs has submitted the Code to the Minister in accordance with section 33 of the Act and the Minister has approved the Code without amendment.

DETAILS OF AMENDMENT

Regulation 4 of the Principal Regulations is amended by adding a reference to the Code so as to prescribe it as a code of practice under section 34 of the Act.

The Code and accompanying Explanatory Notes are contained in an Attachment to this memorandum.

FINANCIAL IMPLICATIONS

Costs associated with the Code will generally be met by industry through registration fees payable under the Code. While some administration and compliance costs will be incurred by the ACT Consumer Affairs Bureau, these costs are to be met within existing programs.

***Attachment to Explanatory Memorandum
to Fair Trading Regulations***



AUSTRALIAN CAPITAL TERRITORY

Fair Trading Act 1992

**Motor Vehicle Service and Repair Industry
CODE OF PRACTICE**

This Code is certified as a true and correct copy of that approved by the Minister in accordance with section 34 of the *Fair Trading Act 1992*.

A handwritten signature in black ink, appearing to read 'Gary Humphries'.

Gary Humphries MLA
Minister for Justice and Community Safety

Dated: 21 June 1999

Contents

PART I: PRELIMINARY	1
1 SHORT TITLE	1
2 OBJECTIVES	1
3 INTERPRETATION	2
4 APPLICATION OF CODE	4
5 EXEMPTIONS FROM CODE	4
PART II: OBLIGATIONS OF PRINCIPALS	5
6 OBLIGATION TO REGISTER	5
7 GENERAL OBLIGATIONS	5
8 AGREEMENT FOR REPAIRS	5
PART III: ADMINISTRATION	8
9 CODE ADMINISTRATION COMMITTEE	8
10 DISPUTE RESOLUTION PROCEDURE	9
11 DISPUTE RESOLUTION COMMITTEE	11
12 SANCTIONS	12
13 COMPLIANCE	13
14 ADMINISTRATIVE REPORT	13
15 REGISTER OF PRINCIPALS	13
16 TRANSITIONAL ARRANGEMENTS	14
SCHEDULE A: OBLIGATIONS AND RESPONSIBILITIES	15
SCHEDULE B: AGREEMENT FOR REPAIRS	17
SCHEDULE C: APPLICATIONS FOR REGISTRATION AS A PRINCIPAL	21

Fair Trading Act 1992 **Code of Practice**

Motor Vehicle Service and Repair Industry

PART I: PRELIMINARY

Short Title

1. This Code may be cited as the *Motor Vehicle Service and Repair Industry Code of Practice*.

Objectives

2. The objectives of the Code are:

- (a) to enhance fairness of trading in the market place from the viewpoint of both business and consumers;
- (b) to effect a speedy, relevant and efficient dispute resolution process between repairers and consumers;
- (c) to improve the competency of motor vehicle repairers;
- (d) to improve the quality of motor vehicle repairs and reduce the incidence of rework;
- (e) to enhance public safety by reducing the incidence of accidents to which inadequately performed repairs are a contributing factor; and
- (f) to reduce the harmful environmental impact of motor vehicle emissions and motor vehicle repair work practices.

Interpretation

3. In this Code, unless the contrary intention appears:

Code: means this Code of Practice;

consumer: means a person who receives repairs or who enquires about repairs and includes the agent of such person;

Director: means the Director of Consumer Affairs for the Australian Capital Territory or his or her nominee;

Dispute Resolution Committee: means the committee established under clause 11;

employ: includes any engagement whether or not for remuneration;

employee: includes any person engaged by a principal to provide repairs, whether or not for remuneration;

estimate of repairs: means a written statement which includes:

- (a) an estimate of the cost of the required repairs;
- (b) an outline of the work required and parts needed;
and
- (c) an estimate of the time required to carry out the repairs;

industry: means the industry encompassing principals within the meaning of the Code;

Minister: means the Minister responsible for administering the *Fair Trading Act 1992*;

motor vehicle: means:

- (a) a vehicle that uses, or is designed to use, a source of power other than human or animal power as its principal means of propulsion;
- (b) a vehicle without motive power designed for attachment to such a vehicle, or
- (c) a piece of machinery or equipment that is equipped with wheels and designed to be towed behind such a vehicle,

but does not mean a vehicle used on a railway or tramway or such vehicle as the Minister, after consultation with the Code Administration Committee, determines, from time to time.

principal: means a person, wherever located, who for any consideration whatsoever:

- (a) engages in business to provide repairs in the Australian Capital Territory;
- (b) accepts an engagement to perform repairs in the Australian Capital Territory; or
- (c) provides repairs in the Australian Capital Territory under warranty pursuant to the *Sale of Motor Vehicles Act 1977*,

but does not include a Territory, State or the Commonwealth Government unless an officer of that government is engaging in business within the meaning of the *Competition Policy Reform Act 1996*.

repairs: means any of the following work performed on, or in relation to, a motor vehicle or any component, system or part of a motor vehicle:

- (a) examination or assessment in relation to condition or performance;
- (b) detection of faults;
- (c) dismantling or assembling;
- (d) servicing or maintenance;
- (e) replacement;
- (f) adjustment;
- (g) painting;
- (h) modification, installation or fitting;
- (i) towing to a premises in anticipation of the performance of any of the foregoing; or
- (j) provision of advice in relation to any of the foregoing;

vehicle: means a mode of transport that is solely or principally designed for the carriage on land of people, animals or goods.



Application of Code

4. This Code applies to a principal.

Exemptions from Code

5. (1) A principal may apply to the Minister for an exemption from the application of all or any of the provisions of this Code.

(2) An application to the Minister under subclause (1) shall be in writing setting out the special circumstances on which the principal seeks the exemption.

(3) Where the Minister receives an application in accordance with subclause (1), the Minister shall seek advice from the Code Administration Committee.

(4) The Minister may:

- (a) after considering advice from the Code Administration Committee; and
- (b) if satisfied that there will be no substantial detriment caused to consumers;

grant to a principal:

- (c) an unconditional exemption; or
- (d) an exemption subject to conditions.

(5) The Minister may at any time revoke, or vary the conditions of, an exemption.

(6) If the Minister revokes, or varies the conditions of, an exemption, he or she shall give notice, in writing, to the principal.

PART II: OBLIGATIONS OF PRINCIPALS

Obligation to Register

6. (1) A principal shall not participate in the industry unless registered by the Director.

(2) A principal shall be eligible to be registered if that principal:

- (a) has made an application, in accordance with the relevant form contained in Schedule C, to participate in the industry as a principal and lodged it with the Director;
- (b) has made a declaration that all relevant planning and leasing approvals and consents have been obtained in relation to each premises occupied or leased by the principal at which repairs are performed; and
- (c) has paid the registration fee, if any, determined under subclause 15 (3).

General Obligations

7. A principal shall ensure, in respect to the provision of repairs, compliance with the obligations of principals listed in Part 1 of Schedule A.

Agreement for repairs

8. (1) Subject to this clause, when a principal performs, or offers to perform, repairs for a consumer, the principal shall:

- (a) provide to the consumer a copy of Schedule A to this Code endorsed by the principal, unless done so previously;
- (b) provide the consumer with a written estimate of repairs;
- (c) obtain the consumer's written authority to perform the repairs specified in the estimate; and



- (d) make arrangements with the consumer as to how the principal and consumer can be in contact with one another during the course of the repairs.

(2) Where it is not reasonably practicable for a principal to provide an estimate of repairs until a diagnosis of the motor vehicle has been carried out, the principal shall:

- (a) provide to the consumer a copy of Schedule A to this Code endorsed by the principal, unless done so previously;
- (b) provide the consumer with a written estimate of the cost of the diagnosis, including any costs associated with the return of the motor vehicle to the state in which it was placed in the principal's care;
- (c) if the diagnosis is likely to result in any damage to the motor vehicle, notify the consumer of that fact in writing;
- (d) obtain the consumer's written authorisation for the principal to perform the diagnosis; and
- (e) following the diagnosis, before any repairs are undertaken:
 - (i) provide the consumer with an estimate of repairs; and
 - (ii) obtain the consumer's authority to perform the repairs specified in the estimate.

(3) Where a principal finds, during the course of performing the repair, that additional work or parts are necessary to perform the repair, the principal shall, before continuing the repair:

- (a) contact the consumer to explain the additional work required; and
- (b) obtain the consumer's authorisation to perform the additional work and charge additional costs.

(4) A principal shall use the form "Agreement for Repairs (Estimate)" or "Agreement for Repairs (Diagnosis)" contained in Schedule B, or any other form which satisfies the requirements of this clause.

(5) Subclause (1) has no application if the actual value of repairs performed is less than the amount, if any, determined from time to time by the Minister.

(6) In determining an amount for the purposes of subclause (5), the Minister shall consider the advice of the Code Administration Committee.



Part III: ADMINISTRATION

Code Administration Committee

9. (1) The Code shall be administered by the Code Administration Committee.

(2) The Code Administration Committee shall consist of:

- (a) the Director;
- (b) a nominee of a peak industry body;
- (c) a representative of principals; and
- (d) two representatives of peak consumer organisations.

(3) The Chairperson of the Code Administration Committee shall be the Director.

(4) The persons referred to in paragraphs (2)(b) and (2)(d) shall be appointed by the Director.

(5) The person referred to in paragraph (2)(c) shall be elected at an open meeting of principals in the industry conducted by the Director.

(6) The Consumer Affairs Bureau shall provide secretariat services to the Code Administration Committee.

(7) The Code Administration Committee may appoint to the Code Administration Committee such other persons as it considers necessary to carry out its functions.

(8) Each member of the Code Administration Committee shall be elected or appointed for a period of 2 years and shall be eligible for reelection or reappointment.

(9) The Code Administration Committee shall meet at least once each year but may meet more frequently as required.

(10) The Code Administration Committee shall:

- (a) monitor compliance with the Code;



- (b) report to the Minister on the effectiveness of the Code;
- (c) monitor the operation and administration of the dispute resolution procedures and the Dispute Resolution Committees;
- (d) review and propose policy and procedures in relation to the Code;
- (e) advise on the promotion of the Code within the industry and the recognition of the Code by consumers; and
- (f) conduct periodic reviews of the effectiveness of the Code and consider recommendations for amendments to the Code.

(11) A member, or former member, of a Code Administration Committee shall not disclose any confidential or sensitive information acquired by him or her as a consequence of his or her position.

(12) A member, or former member, of a Code Administration Committee shall not be liable for anything done or omitted to be done in good faith in or in connection with the exercise or purported exercise of any duties conferred on him or her under this Code.

(13) The appointment or election of a member of the Code Administration Committee is not invalidated, and shall not be called in question, by reason of a defect or irregularity in, or in connection with, the appointment or election of the member.

(14) Where a member of the Code Administration Committee fails to attend two consecutive meetings of the Committee, without its leave, his or her appointment shall be deemed to have expired and a person shall be appointed in the outgoing member's place in accordance with this clause.

Dispute Resolution Procedure

10. (1) A principal shall make every reasonable effort to resolve quickly and fairly any complaint made in relation to the provision of services offered under an agreement with that principal, whether or not the complainant is a party to that agreement.

(2) Where there is an unresolved complaint which relates to:

- (a) the quality or adequacy of a repair;
- (b) the cost of a repair;
- (c) the estimate of repairs or diagnosis;



- (d) the timeliness of a repair; or
- (e) any damage caused to a motor vehicle or its contents while in the possession of the principal,

the complainant may, by written application to the Director, request that the dispute be dealt with by the Dispute Resolution Committee.

(3) Where the Director receives an application made under subclause (2) or subclause (10), the Director shall, as soon as practicable, appoint a Dispute Resolution Committee in accordance with clause 11 and refer the application to it for determination.

(4) Where an application is referred to a Disputes Resolution Committee, the Committee shall, within 7 working days of the referral, hear the application.

(5) The Dispute Resolution Committee may determine the procedure to be followed in determining an application.

(6) In considering the application, the Dispute Resolution Committee is not bound by the rules of evidence but may inform itself on any matter relevant to the referral in such manner as is reasonable and appropriate.

(7) The Dispute Resolution Committee shall conduct the hearing of an application with as little formality and technicality, and with as much expedition, as is reasonably possible.

(8) In considering the referral, the Disputes Resolution Committee is bound by the rules of natural justice.

(9) A Dispute Resolution Committee shall determine an application by majority decision and shall, within 7 working days of its decision:

- (a) prepare a written statement of reasons for the decision; and
- (b) provide that statement to the Director for distribution to the parties.

(10) Where a complainant could have made an application under this clause but for the fact that the complaint arose before the Code commenced, then that complainant may, with the written permission of each other party to the dispute, make such application.



Dispute Resolution Committee

11. (1) A Dispute Resolution Committee shall consist of:

- (a) an independent chair;
- (b) a representative of the industry; and
- (c) a consumer representative.

(2) The Code Administration Committee shall appoint a panel of eligible persons for membership of a Dispute Resolution Committee for the purposes of subclause (1).

(3) For the purposes of subclause 10(3), the Director shall appoint a Dispute Resolution Committee from the panel of eligible persons referred to in subclause (2).

(4) Where a member:

- (a) has a direct interest, pecuniary or otherwise; or
- (b) has an interest which could otherwise conflict, or appear to conflict, with the proper performance of his or her duties as a member of the Committee in a matter before the Dispute Resolution Committee,

the member shall advise the Committee and the Director of the interest and take no further part in those proceedings as a member of the Committee.

(5) A member, or former member, of a Dispute Resolution Committee shall not, unless required by law, disclose any information acquired by him or her as a consequence of his or her position.

(6) A member or former member of a Dispute Resolution Committee shall not be liable for anything done or omitted to be done in good faith in or in connection with the exercise or purported exercise of any duties conferred on him or her under this Code.

(7) The Director may appoint eligible persons as alternates in the event that the Director has reasonable grounds to believe that a member has an interest of the nature referred to in subclause (4).

(8) Each member of the panel referred to in subclause (2) shall be appointed for a period of 2 years and shall be eligible for reappointment.



(9) The appointment of a member of a Dispute Resolution Committee is not invalidated, and shall not be called in question, by reason of a defect or irregularity in, or in connection with, the appointment of the member.

Sanctions

12. (1) In determining a dispute, the Dispute Resolution Committee may do one or more of the following:

- (a) require the principal to remove or change any written material or work practice that is in breach of the Code;
- (b) require the principal to refund to a consumer such amount as is determined by the Committee, being part or all of the amount paid by the consumer to the principal;
- (c) require the principal to perform a repair;
- (d) require the principal to undertake rework;
- (e) require the principal to provide or replace a component, system or part;
- (f) require the principal to pay to the consumer an amount determined in accordance with subclause (2); or
- (g) make such recommendation to the Director as it considers appropriate.

(2) Where it appears to the Dispute Resolution Committee that it would be inappropriate for the principal to perform a repair or rework, or to provide or replace a component, system or part, the Committee may determine an amount that represents the reasonable cost of such repair, rework, provision or replacement less the amount, if any, that is to be refunded to the consumer under paragraph (1)(b).

(3) For the purpose of determining the reasonable cost of a repair, rework, provision or replacement of a component, system or part, under subclause (2), the Dispute Resolution Committee shall have regard to written quotes for such from at least two principals who are independent of the dispute.

(4) Where appropriate, a Dispute Resolution Committee may notify a party of its view in relation to that party's conduct.

(5) The Dispute Resolution Committee may advise a party of the existence of any options for redress that the party may have outside the Code.



(6) All parties shall be bound by the decision of the Dispute Resolution Committee and shall take all reasonable steps to put that decision into effect.

Compliance

13. If a principal refuses to:

- (a) attend to have a dispute determined by a Dispute Resolution Committee;
- (b) comply with a requirement imposed by the Dispute Resolution Committee; or
- (c) comply with the provisions of the Code,

the Director may exercise his or her powers under section 36 of the *Fair Trading Act 1992*.

Administrative report

14. (1) The Code Administration Committee shall, within 3 months after the end of each financial year, submit a report to the Minister.

(2) The report shall identify industry specific problems and recommend amendments to address inappropriate practices.

(3) The report shall include details of:

- (a) the number of applications for dispute resolution lodged;
- (b) the number of principals found to be in breach of the Code;
- (c) the number and nature of those breaches;
- (d) the amount of time taken to deal with each dispute; and
- (e) the number and nature of sanctions imposed.

(4) The Code Administration Committee shall, within 3 months after the end of the Code's first year of operation and at least every three years thereafter, undertake a review of the Code's performance against its objectives and submit a report to the Minister.

Register of Principals

15. (1) The Director shall maintain a register in which he or she shall record details of principals.



(2) Where the Director is satisfied that a principal is eligible for registration under subclause 6(2), the Director shall register that principal.

(3) The Director may, in consultation with the Code Administration Committee, charge a fee for any registration or maintenance of registration under the Code to the extent reasonably necessary to meet the cost of administering the Code.

(4) The Director shall deregister a principal where the principal has:

- (a) failed to pay a fee for the maintenance of registration; or
- (b) given any false or misleading information in relation to an application for, or the maintenance of, registration.

(5) Where it appears to the Director, having made appropriate inquiry in accordance with the principles of natural justice, that a principal has committed persistent breaches or a serious breach of the Code, the Director may deregister a principal and impose conditions on that person obtaining future registration.

Transitional arrangements

16. (1) From the day on which the Code commences, a principal shall comply with the Code to the extent that he or she is reasonably capable of complying.

(2) Notwithstanding subclause (1), a principal shall fully comply with the Code no later than six months after the day on which the Code commences.

Fair Trading Act 1992

Motor Vehicle Service and Repair Industry Code of Practice

SCHEDULE A: Obligations and Responsibilities

PART 1 - GENERAL OBLIGATIONS OF PRINCIPALS

In accordance with clause 7 of the Code, each principal is required to abide by the following practices:

- A principal's premises and work practices (including the disposal of waste materials) shall meet the requirements of the *Environment Protection Act 1997*, occupational health and safety legislation and other relevant ACT laws.
- A principal shall comply with the *Fair Trading Act 1992* and the *Trade Practices Act 1974*.
- A principal shall only perform a particular repair where the principal has the equipment and expertise necessary to carry out the repair satisfactorily, having regard to the age and make of the vehicle.
- A principal shall ensure that employees are capable of performing the repairs they undertake. If an employee is gaining experience to provide a particular repair then that employee shall be supervised by a person who is capable of performing the repair at the appropriate level.
- A principal shall ensure that repairs are performed in a safe, ethical and professional manner.
- A principal shall be personally responsible for the quality of the repairs performed by, and for the proper conduct of, an employee.
- Where the principal advertises as a specialist, adequate equipment and expertise pertaining to the advertised field of speciality must be available to carry out all or a substantial proportion of the repairs on the premises.
- In performing a repair, the principal shall use such components, systems and parts as are appropriate to that repair.



- A principal shall complete the work within a reasonable period of time having regard to all the circumstances.
- A principal shall, on completion of the repair, have available for inspection by the consumer all components, systems and parts replaced, other than items traded-in on an exchange basis.
- A principal shall display a sign on the premises which indicates that the principal is registered under the Code and which alerts consumers to the existence of the Code.

PART 2 - RESPONSIBILITIES OF CONSUMERS

In order to facilitate the objectives set out in paragraph 2(a) of the Code, consumers have the following responsibilities:

- A consumer should provide the principal with vehicle details and, to the best of the consumer's ability, a description of any faults.
- A consumer should make arrangements with the principal as to how the principal and consumer can be in contact during the course of the repair.
- A consumer should recognise that a detailed diagnosis of the motor vehicle may be needed to determine the extent of repairs required and that the principal may charge a fee for performing this diagnosis.
- A consumer should recognise that there may be delays beyond the control of the principal in obtaining parts for the motor vehicle.
- Where the consumer withdraws his or her consent to repairs being performed, or does not authorise further work where a diagnosis has been undertaken, the consumer should:
 - (a) meet the reasonable costs associated with the reassembly of a component, system or part of the vehicle,
 - (b) meet the reasonable cost of repairs to date; and
 - (c) remove the vehicle if necessary.

In addition, a consumer should be aware that there may be circumstances under the general law where the principal may exercise a repairer's lien to retain possession of the vehicle if authorised repairs are performed but not paid for by the consumer.

Signed by or on behalf of the principal:

Date:

Fair Trading Act 1992**Motor Vehicle Service and Repair Industry
Code of Practice****SCHEDULE B: Agreement for Repairs****FORM 1 - AGREEMENT FOR REPAIRS (ESTIMATE)**

A repairer is required to use this form or any other form that satisfies the requirements of clause 8 of the Code.

Vehicle Details	
Make	
Model	
Reg. No./Exp	
Odometer	

Consumer Details	
Name:	
Address:	
Phone (h):	Phone (w):
Fax:	Email:

Contact Arrangements:.....

.....

.....

.....

Owner's Instructions/Description of Faults:....

.....

.....

.....

Estimate of Repairs (given prior to repairs being undertaken)

Work Required	Parts		Labour		Total Cost Estimate
	Description	Cost	Time	Cost	
				Total	

Estimate provided by:

Authority to Perform Repairs:
I authorise the repairs listed in the above
Estimate

.....
Signature of Repairer

.....
Date

.....
Signature of Consumer

.....
Date

FORM 2 - AGREEMENT FOR REPAIRS (DIAGNOSIS)

A repairer is required to use this form or any other form that satisfies the requirements of clause 8 of the Code.

Vehicle Details	
Make	
Model	
Reg. No./Exp	
Odometer	

Consumer Details	
Name:	
Address:	
Phone (h):	Phone (w):
Fax:	Email:

Contact Arrangements:.....

.....

Owner's Instructions/Description of Faults:....

.....

Diagnosis

(A diagnosis is performed where it is not reasonably practicable for the repairer to provide an Estimate of Repairs without carrying out a diagnosis of the vehicle. If the diagnosis is likely to result in any damage to the vehicle, the consumer must be notified in writing.)

Estimated Cost of Diagnosis

(including any costs associated with the return of the vehicle to the state in which it was placed in the Repairer's care)

--

Authority to Perform Diagnosis:

I authorise the repairer to undertake a diagnosis

.....

Signature of Repairer Date

Signature of Consumer Date

Estimate of Repairs Following Diagnosis

(Following the diagnosis, an estimate of repairs must be provided to the consumer and the consumer's authority must be obtained prior to repairs being undertaken.)

Work Required	Parts		Labour		Total Cost Estimate
	Description	Cost	Time	Cost	
				Total	

Estimate of repairs provided by: Date:

Em

Fair Trading Act 1992
Motor Vehicle Service and Repair Industry
Code of Practice

**SCHEDULE C: Applications for
Registration as a Principal**

FORM 1 - APPLICATION BY A COMPANY

**Application to Participate in the ACT Motor Vehicle Service
and Repair Industry as a Principal**

*Warning: Please read the notification carefully. Providing false or misleading
information will result in automatic deregistration.*

To the Director of Consumer Affairs

Applicant name: [enter full name of company and ACN number]

Trading Name(s): [enter all trading names, whether or not registered business
names]

Place of Business: [include:

- the registered place of business; and
- the address and block and section number of each premises occupied or leased
by the principal on which repairs are performed, if applicable]

Contact details: [enter full contact details]

The following persons are directors of the applicant: [list the names and full
contact details of each director of the company]

Notification of participation in the industry

The applicant hereby notifies the Director that the applicant proposes to participate in
the ACT Motor Vehicle Service and Repair Industry as a principal.

The applicant understands that the *Motor Vehicle Service and Repair Industry Code
of Practice* applies to the applicant and the applicant agrees to abide by the Code.

The applicant acknowledges that this is a public notification.

Declaration as to approvals and consents

The applicant hereby declares that all relevant planning and leasing approvals and
consents have been obtained in relation to each premises occupied or leased by the
principal at which repairs are to be performed.



The applicant agrees to notify the Director of any change to the information contained in this notification within 28 days of that change. Failure to notify the Director within this period may be considered misleading and may result in deregistration.

.....
Signed for and on behalf of the applicant

.....
Name of signatory

.....
Dated

FORM 2 - APPLICATION BY AN INDIVIDUAL

Application to Participate in the ACT Motor Vehicle Service and Repair Industry as a Principal

Warning: Please read the notification carefully. Providing false or misleading information will result in automatic deregistration.

To the Director of Consumer Affairs

Applicant name: [enter full name]

Trading Name(s): [enter all trading names, whether or not registered business names]

Place of Business: [include:

- the registered place of business, if any; and
- the address and block and section number of each premises occupied or leased by the principal on which repairs are performed, if applicable]

Contact details: [enter full contact details]

Notification of participation in the industry

I hereby notify the Director that I propose to participate in the ACT Motor Vehicle Service and Repair Industry as a principal.

I understand that the *Motor Vehicle Service and Repair Industry Code of Practice* applies to me and I agree to abide by the Code.

I acknowledge that this is a public notification.

Declaration as to approvals and consents

I hereby declare that all relevant planning and leasing approvals and consents have been obtained in relation to each premises occupied or leased by the principal at which repairs are to be performed.

I agree to notify the Director of any change to the information contained in this notification within 28 days of that change. Failure to notify the Director within this period may be considered misleading and may result in deregistration.

.....
Signature of the applicant

.....
Dated

FORM 3 - APPLICATION BY MEMBERS OF A PARTNERSHIP

Application to Participate in the ACT Motor Vehicle Service and Repair Industry as Principals

Warning: Please read the notification carefully. Providing false or misleading information will result in automatic deregistration.

To the Director of Consumer Affairs

Name of the Partnership:

Names of all Partners: [enter full names, include silent partners]

Trading Name(s): [enter all trading names, whether or not registered business names]

Place of Business: [include:

- the registered place of business; and
- the address and block and section number of each premises occupied or leased by the principal on which repairs are performed, if applicable]

Contact details: [enter full contact details for all partners]

Notification of participation in the industry

The applicants hereby notify the Director that the applicants propose to participate in the ACT Motor Vehicle Service and Repair Industry as principals.

The applicants understand that the *Motor Vehicle Service and Repair Industry Code of Practice* applies to them and agree to abide by the Code.

The applicants acknowledge that this is a public notification.

Declaration as to approvals and consents

The applicants hereby declare that all relevant planning and leasing approvals and consents have been obtained in relation to each premises occupied or leased by the principal at which repairs are to be performed.

The applicants agree to notify the Director of any change to the information contained in this notification within 28 days of that change. Failure to notify the Director within this period may be considered misleading and may result in deregistration.

.....
Signed by a partner for and on behalf of
the partnership

.....
Name of signatory

.....
Dated

*Attachment to Explanatory Memorandum
to Fair Trading Regulations*



AUSTRALIAN CAPITAL TERRITORY

Fair Trading Act 1992

**Motor Vehicle Service and
Repair Industry
CODE OF PRACTICE**

Explanatory Notes

INTRODUCTION

On 10 November 1997, the ACT Motor Vehicle Repair Industry Working Party (consisting of industry, consumer and government representatives) published its report, *Motor Vehicles Repairers in the ACT: An Options Paper for Government*, which recommended that the industry be regulated via a negative licensing scheme in the form of a mandatory Code of Practice to be prescribed under the *Fair Trading Act 1992*.

In developing its recommendations, the Working Party took into account the Competition Principles Agreement to which the ACT is a signatory. The Working Party also took into account the findings and recommendations of various reports into the industry nationally and interstate, namely:

- the 1994 Report of the Commonwealth Vocational, Education, Employment and Training Advisory Committee;
- the 1995 Report by the Industry Commission into Vehicle and Recreational Marine Craft Repair and Insurance Industry;
- the 1996 NSW Motor Trade Review by ACIL Economics & Policy Pty Ltd; and
- the 1996 Federal Office of Road Safety's National In-Service Vehicle Emissions Study Motor Vehicle Pollution in Australia.

On 14 January 1998, the then Minister for Fair Trading directed the Director of Consumer Affairs to prepare, in accordance with subsection 33(1) of the *Fair Trading Act 1992*, a draft Code of Practice for fair dealing by persons who service and repair motor vehicles.

The draft *Motor Vehicle Service and Repair Industry Code of Practice* was subsequently prepared in consultation with representatives of industry and consumers, including:

- The Motor Trades Association (ACT);
- The Institute of Automotive Mechanical Engineers;
- Service providers;
- The NRMA;
- The Fair Trading Advisory Committee; and
- Canberra Consumers Incorporated.

The Director of Consumer Affairs has submitted the draft Code to the Minister in accordance with section 33 of the *Fair Trading Act 1992* and the Minister has approved the Code without amendment.

PART I : PRELIMINARY

Clause 1 : Short Title

Clause 1 sets out the short title of the Motor Vehicle Service and Repair Industry Code of Practice ("the Code").

Clause 2 : Objectives

Clause 2 sets out the overall objectives of the Code.

Clause 3 : Interpretation

Clause 3 sets out definitions of terms used in the Code. Generally, terms are defined in a broad way to ensure a comprehensive application of the Code.

"**employ**" and the related "**employee**" are defined to include any sub-contractors a principal may engage as well as persons employed under a contract of service.

"**estimate of repairs**" is intended to be a written statement that gives the consumer a realistic picture, or best estimate, of what needs to be done to the vehicle, how long it will take and how much the repairs will cost. The estimate of repairs is given in accordance with clause 8.

The estimate of repairs should be sufficiently detailed and accurate so that a consumer can compare estimates and "shop around". The estimate will also be relevant to the determination of any dispute concerning the cost of repairs.

"**motor vehicle**" - this definition is based on the definitions of "motor vehicle" and "road trailer" contained in section 5 of the Commonwealth *Motor Vehicle Standards Act 1989* and is to be read with the definition of "vehicle" in the Code. There are three arms to the definition with paragraph (a) representing the "core" concept of a vehicle with motive power. Examples include: cars, trucks, four-wheel drives, utilities, motorcycles, mopeds, buggies, buses, ride-on mowers, go-karts, motorised wheelchairs, bobcats, tractors, cranes, and cherry-pickers. Paragraphs (b) and (c) will cover various types of trailers.

"**vehicle**" is limited to a mode of transport designed for use on land.

"**principal**" covers both natural persons and corporate bodies and extends to a business entity that is located outside the ACT if that business operates within the ACT.

Clause 4 : Application of the Code

Clause 4 places the onus for compliance with the Code on the principal. The aim of the Code is to ensure fair dealing by industry participants by placing obligations on principals directly and placing obligations on employees indirectly through the obligations placed on principals.

Clause 5 : Exemptions from the Code

Clause 5 aims to provide a mechanism to allow exemptions from the Code where special circumstances would justify such an approach.

PART II : OBLIGATIONS OF PRINCIPALS

Clause 6 : Obligation to Register

Subclause 6(1) prohibits a principal operating in the industry unless registered by the Director of Consumer Affairs. The purpose of registration is to establish a system of negative licensing and facilitate effective compliance and education programs in relation to the Code. Subclause 6(2) sets out the criteria that a principal must meet to be registered by the Director under subclause 15(2).

Clause 7 : General obligations

Clause 7 requires that a principal meet the obligations listed in Part 1 of Schedule A.

Clause 8 : Agreement for repairs

Clause 8 establishes a framework for negotiation between a consumer and a principal where the principal performs, or offers to perform, repairs for the consumer.

Paragraph 8(1)(a) requires the principal to provide the consumer with a copy of Schedule A to the Code. This will 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.

Paragraph 8(1)(b) requires the principal to give the consumer a written estimate of repairs (note "repairs" is defined in clause 3). In most cases, the estimate will be made on delivery of the motor vehicle to the principal.

Paragraph 8(1)(c) requires the principal to obtain the consumer's consent to perform the repairs listed in the estimate before performing the work. The principal must be able to demonstrate this consent in writing.

Paragraph 8(1)(d) is intended to reduce delays and inconvenience that may be experienced in the case where either party cannot be contacted during the course of the repair.

Subclause 8(2) is intended to deal with the situation where a diagnosis of the consumer's vehicle must be undertaken before an estimate of repairs can reasonably be made. The principal is required to obtain a written authorisation to perform the diagnosis and is required to provide the consumer with an estimate of the cost of the diagnosis.

Paragraph 8(2)(e) outlines what must be done by a principal upon completion of the diagnosis. As it may be impractical for the consumer to return to the principal on completion of the diagnosis and provide a written authorisation for the repairs, subparagraph 8(2)(e)(ii) enables that authorisation to be given over the phone or by email. If additional repairs are found to be necessary during the repair, the principal must follow the procedure set out in subclause 8(3), however, an adequate diagnosis should in many cases uncover the need for work that could not be initially foreseen.

Subclause 8(3) is intended to deal with the situation where the principal finds that repairs beyond those listed in the estimate are necessary or desirable. The principal shall not perform any additional repairs without contacting the consumer and explaining the proposed work and obtaining the consumer's authorisation to perform the work.

Subclause 8(4) authorises the use the model forms provided contained in Schedule B. While it is not compulsory to use these forms, principals will need to ensure that all the requirements of clause 8 are met if they seek to use other forms.

Subclause 8(5) allows the Minister to set a threshold amount for the value of repairs attracting the application of subclause 8(1). If such an amount is set, the threshold is intended to relate to the actual value of repairs. Therefore, if the principal fails to provide an estimate of repairs on the assumption that the work will cost less than the threshold amount, the principal will breach subclause (1) in the event that the value of the work is subsequently calculated as greater than the threshold amount. The scheme of the Code would be frustrated if a principal could simply fail to provide an estimate of repairs and later claim that the repairs cost more than originally thought.

PART III : ADMINISTRATION

Clause 9 : Code Administration Committee

Clause 9 establishes the Code Administration Committee to oversee the performance of the scheme. The Code Administration Committee is intended to be representative of industry, consumers and Government. The key role of the Committee is to monitor the effectiveness of the Code (and make any necessary recommendations for its amendment) and to appoint panel members for membership of a Disputes Resolution Committee [see subclause 11(2)].

Clause 10 : Dispute Resolution Procedure

Clause 10 sets out the procedure for the resolution of complaints under the Code. However, it should be noted that nothing in the Code prevents any person from exercising his or her rights under the general law to take a matter directly to Court, but it would be expected that a Court would have regard to the existence of the dispute resolution process under the Code in determining any dispute.

Subclause 10(1) provides that, as a first step, a complainant should attempt to resolve the complaint directly with the principal.

Where a complaint relating to any of the matters in subclause 10(2) remains unresolved, the complainant may make a written application to the Director of Consumer Affairs to have the dispute dealt with by a Disputes Resolution Committee.

Under subclause 10(3), the Director has the responsibility of appointing a Disputes Resolution Committee to determine a particular dispute. In accordance with subclause 11(3), the appointment is made from a panel of eligible persons established by the Code Administration Committee.

Under subclause 10(4), the Dispute Resolution Committee is required to hear the dispute within 7 days of the Director's referral. The procedures to be followed in hearing an application are described in subclauses 10(5) - 10(9). In determining the dispute, the Committee may impose sanctions under clause 12.

The intention of subclause 10(10) is to allow parties, by mutual written consent, to bring a dispute, relating to matters in subclause 10(2), within the dispute resolution process of the Code even though the complaint arose before the Code came into operation.

Clause 11 : Dispute Resolution Committee

Subclause 11(1) sets out the membership of a Disputes Resolution Committee.

Under subclause 11(2), the Code Administration Committee appoints a panel of persons eligible for appointment having regard to the various categories of membership set out in subclause 11(1).

Under subclause 11(3), the Director appoints a Disputes Resolution Committee from amongst available panel members for each particular dispute.

If the panel is convened by the Director and a member becomes disqualified, the Director has the power to appoint an alternate person under subclause 11(7).

Clause 12 : Sanctions

This clause sets out the sanctions available to a Disputes Resolution Committee where it determines a dispute. It is for the Dispute Resolution Committee to determine what sanction, if any, is appropriate in the circumstances of the particular case.

The circumstances may warrant, for example, the consumer being placed in the position he or she was in before dealing with the principal or, alternatively, being placed in the position he or she expected to be in, if the repairs had been carried out properly.

However, this clause is not intended to authorise the Committee to impose "consequential" or "punitive" damages.

Paragraph 12(1)(f) is intended to deal with the situation where the Committee determines that it is appropriate for the consumer to have work done but it is not appropriate for the principal to do that work. In such a situation, the Committee may require that the principal pay an amount to the consumer to allow the consumer to have the work done by another repairer. This amount is calculated in accordance with subclauses 12(2) and 12(3).

Paragraph 12(1)(g) gives the Committee a discretion to make recommendations to the Director of Consumer Affairs. These recommendations are not binding on the Director but may include a recommendation that the Director use his or her powers under the *Fair Trading Act 1992* to seek an undertaking or injunctive relief. Such powers are available to the Director at all times, regardless of the outcome of the disputes resolution process.

Subclause 12(2) provides for the calculation of an amount for the purposes of paragraph 12(1)(f). This amount must represent the reasonable cost of the rework, repair or replacement but must also take into account any refund proposed in accordance with paragraph 12(1)(b).

Subclause 12(3) requires the Committee to have regard to two written quotes of principals independent of the dispute in determining what is the "reasonable cost" for the purposes of subclause 12(2).

Subclause 12(4) is intended to allow the Committee to comment on the conduct of a party in relation to the dispute.

Subclause 12(5) is intended to allow the Committee to bring to the attention of a party any options for redress that may lie outside the Code. For example, action in the Small Claims Court or compliant to an industry association.

Clause 13 : Compliance

Clause 13 recognises that the Director is ultimately responsible for enforcing the Code should a principal fail to comply with the dispute resolution process established under the Code.

Clause 14 : Administrative report

Subclause 14(1) requires the Code Administration Committee to submit an annual report to the Minister on the operation of the Code.

Subclause 14(4) requires the Code Administration Committee to undertake a special review of the Code after the first year of its operation and at three yearly intervals thereafter, assessing the performance of the Code against the objectives listed in clause 2.

Clause 15 : Register of Principals

Subclause 15(1) requires the Director of Consumer Affairs to establish and maintain a register of principals.

Subclause 15(2) requires the Director to register any principal who meets the criteria set out in subclause 6(2).

Subclause 15(3) authorises the Director to charge registration fees to recover the costs associated with administering the Code (this would include compliance activity, educational programs, publicity).

Principals may be deregistered under subclause 15(4) or 15(5). Whenever an event listed in subclause 15(4) occurs, deregistration is automatic. Subclause 15(5) enables the Director to deregister a principal where the gravity or frequency of breaches of the Code committed by the principal are such that it is in the public interest to do so.

Clause 16 : Transitional arrangements

As this Code is a new form of regulation for the industry, this clause is intended to allow industry participants sufficient time to prepare for the full effect of the Code. It is also intended to allow sufficient time for the various administrative processes associated with the implementation of the Code (for example, Disputes Resolution Committees) to be established.

Nevertheless, subclause 16(1) makes it clear that principals must make every effort to comply with such provisions of the Code as they are capable of complying during the first 6 months of the Code's operation.

Subclause 16(2) makes full compliance with the Code mandatory 6 months after the day on which the Code commences.

SCHEDULE A: Obligations & Responsibilities

A copy of Schedule A must be provided to a consumer in accordance with paragraphs 8(1)(a) and 8(2)(a) of the Code.

Part 1 of Schedule A contains the general obligations that clause 7 places on a principal.

Part 2 of Schedule A outlines the responsibilities of consumers. A consumer's failure to meet any of these responsibilities does not expose the consumer to any cause of action under the Code. However, where a dispute arises, the Dispute Resolution Committee will be able to have regard to the consumer's responsibilities in determining the dispute.

SCHEDULE B: Agreement for Repairs

The forms provided in Schedule B are intended to be model forms that principals can use in satisfying the requirements of clause 8. As subclause 8(4) provides, use of the model forms is not compulsory, however, where other forms are used, such forms must satisfy the requirements of clause 8.

It is envisaged that in some cases the model forms will simply be copied and used without alteration. In other cases, the content of the forms will be reproduced in a manner compatible with the database, office stationary or operating system of the principal.

SCHEDULE C: Application Forms for Registration as a Principal

Schedule C is intended to outline the content of the various application forms that the Director will use in registering principals. Under subclause 6(2) of the Code, a principal must make an application in accordance with the appropriate form in order to be eligible for registration.

While a partnership itself cannot be registered as it is not a legal entity separate from its members, a separate form for partnerships has been included to allow all members of a partnership to be identified.