

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

Overview of Bill

The object of this Bill is to amend the Fair Trading Act 1987 (the Principal Act) to require compliance with an industry code of conduct for motor vehicle insurers and repairers (the applicable industry code).

Representatives of the insurance and smash repair industries have been developing a voluntary code of conduct, particularly in connection with network repairer schemes under which a number of repairers are promoted under a scheme operated by an insurer to carry out repairs on damaged motor vehicles insured by that insurer. The Bill will enable the declaration by the regulations of such a code as the applicable industry code, and provide for its enforcement.

This Bill is intended to provide for fair, timely and transparent conduct between insurers and repairers so that consumers with damaged motor vehicles are not unduly inconvenienced or unfairly treated as a result of the business practices in, or disputes between, the insurance and repair industries.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent.

Clause 3 is a formal provision that gives effect to the amendments to the Principal Act set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the Interpretation Act 1987 provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Schedule 1 [1] inserts proposed Part 5E into the Principal Act to enable an applicable industry code of conduct to be declared by regulation. The proposed Part provides that an insurer or repairer must, in trade or commerce, comply with an applicable industry code of conduct.

Schedule 1 [2]–[10] extend certain provisions for enforcement and remedies under **Part 6** of the Principal Act to a contravention of an applicable industry code. The provisions include the following:

- (a) an application to the court for an injunction (section 65),
- (b) an action for damages (section 68),
- (c) provision of an enforceable undertaking (section 73A).

Under proposed Part 5E, if the insurer and repairer are in dispute over any alleged contravention of the applicable industry code, the enforcement mechanisms and remedies available under Part 6 may only be used if the dispute resolution procedures provided under the code have been unsuccessful or a party refuses to take part in those procedures. In any event:

- (a) insurers or repairers may only take action under Part 6 if they are not the party refusing to take part in those dispute resolution procedures, and
- (b) the Minister and Director-General may decline to take action with respect to an alleged contravention if they consider it is not in the public interest to take that action.

Schedule 1 [11] authorises the making of regulations under the Principal Act containing provisions of a savings or transitional nature consequent on the enactment of the proposed Act.