



Fair Trading Regulation 2012

under the

Fair Trading Act 1987

His Excellency the Lieutenant-Governor, with the advice of the Executive Council, has made the following Regulation under the *Fair Trading Act 1987*.

ANTHONY ROBERTS, MP
Minister for Fair Trading

Explanatory note

The object of this Regulation is to remake, with amendments, the provisions of the *Fair Trading Regulation 2007* which is repealed on 1 September 2012 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation includes provisions with respect to the following matters:

- (a) prescribing product information standards for textile products and the retail sale of fuel at petrol stations,
- (b) prescribing an information standard for employment placement services,
- (c) prescribing an information standard for funeral goods and services,
- (d) declaring an industry code of conduct relating to the conduct of the business of motor vehicle insurers and repairers to be an applicable code of conduct for the purposes of the *Fair Trading Act 1987* (which requires insurers and repairers to comply with such a code),
- (e) enabling certain functions conferred on the Commissioner for Fair Trading under the *Gas Supply Act 1996* to be delegated under the *Fair Trading Act 1987*,
- (f) prescribing certain offences under the *Fair Trading Act 1987* as offences in respect of which penalty notices may be issued.

This Regulation is made under the *Fair Trading Act 1987*, including sections 8, 38 (as in force before its repeal by the *Fair Trading Amendment (Australian Consumer Law) Act 2010* and as continued on by clause 18 of Schedule 5 to the *Fair Trading Act 1987*), 50, 53, 55, 67 and 92 (the general regulation-making power) and clause 1A of Schedule 5.

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Clause 1 Fair Trading Regulation 2012

Part 1 Preliminary

Fair Trading Regulation 2012

under the

Fair Trading Act 1987

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Fair Trading Regulation 2012*.

2 Commencement

This Regulation commences on 1 September 2012 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Fair Trading Regulation 2007* which is repealed on 1 September 2012 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definition

(1) In this Regulation:

the Act means the *Fair Trading Act 1987*.

(2) Notes included in this Regulation do not form part of this Regulation.

4 Compliance with specification

For the purposes of this Regulation, goods do not fail to comply with a standard referred to in a Division relating to those goods merely because they do not comply with a provision of the standard:

- (a) that is expressed to be a recommendation, or
- (b) in relation to which the word “should” or “preferably” is used to indicate that the provision is of an advisory nature only.

Part 2 Product information standards

Division 1 Preliminary

5 Information standards

- (1) The standards set out in the other Divisions of this Part are prescribed under section 38 of the Act as product information standards for the goods to which those Divisions apply.

Note. The consequences of failing to comply with a product information standard are set out in section 39 of the Act.

- (2) In this clause, a reference to section 38 or 39 of the Act is a reference to that section as in force before its repeal by the *Fair Trading Amendment (Australian Consumer Law) Act 2010* and as continued on by clause 18 of Schedule 5 to the Act (as modified by clause 25 (2) of this Regulation).

Division 2 Fibre content labelling of textile products

6 Definitions

In this Division:

AS/NZS 2392 means the Australian/New Zealand Standard entitled AS/NZS 2392:1999, *Textiles—Labelling of clothing, household textiles and furnishings*, as published jointly by Standards Australia and Standards New Zealand on 5 July 1999.

AS/NZS 2450 means the Australian/New Zealand Standard entitled AS/NZS 2450:1994, *Textiles—Natural and man-made fibres—Generic names*, as published jointly by Standards Australia and Standards New Zealand on 17 October 1994.

AS/NZS 2622 means the Australian/New Zealand Standard entitled AS/NZS 2622:1996, *Textile products—Fibre content labelling*, as published jointly by Standards Australia and Standards New Zealand on 5 September 1996.

textile product has the same meaning as it has in Clause 5.3 of AS/NZS 2622.

7 Product information standard

The product information standard for textile products is that they must comply with AS/NZS 2622.

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Clause 8 Fair Trading Regulation 2012

Part 2 Product information standards

8 Form of information

The label in which is contained any statement required for a textile product by AS/NZS 2622 must comply with AS/NZS 2392 and AS/NZS 2450.

Division 3 Fuel price signs

9 Definitions

In this Division:

consent authority, development application and *development consent* have the same meanings as they have in the *Environmental Planning and Assessment Act 1979*.

E10 petrol means petrol-ethanol blend that contains between 9% and 10% ethanol by volume.

lpg means liquefied petroleum gas.

normal price, in relation to a type of prescribed fuel supplied by retail at a petrol station, means the price per litre at which the fuel is available to all retail customers without any discounts or special offers.

petrol station means a building or place used for the fuelling of motor vehicles involving the sale by retail of prescribed fuel, whether or not any other fuel or other product is sold there and whether or not the building or place is used for any other purpose, but does not include a place where the primary business is the hiring, leasing or sale of motor vehicles.

prescribed fuel means the following:

- (a) petrol,
- (b) automotive diesel,
- (c) lpg,
- (d) liquefied natural gas,
- (e) compressed gas,
- (f) biodiesel (that is, a diesel fuel obtained by esterification of oil derived from plants or animals),
- (g) ethanol,
- (h) any fuel specified in the preceding paragraphs that is combined with any other such fuel or with any other substance.

10 Product information standard

The product information standard for prescribed fuel supplied to retail customers at a petrol station is that information in relation to the types

of prescribed fuel so supplied at the petrol station must be displayed in accordance with the requirements of clauses 11 and 12.

11 Product information standard

- (1) The price of prescribed fuel supplied to retail customers at the petrol station must be displayed at the petrol station on one or more signs that are so positioned and lit that any price and other matter that the signs display will be readily seen by motorists approaching the petrol station at any time that the petrol station is open for business for the supply of prescribed fuel.
- (2) All signs at the petrol station (including signs required by subclause (1)) that display information in relation to the price of prescribed fuel supplied to retail customers at the petrol station may display only the normal price of the prescribed fuel and no other price for that fuel.
- (3) If no more than 4 types of prescribed fuel are supplied to retail customers at the petrol station, subclause (1) applies to each type of prescribed fuel supplied.
- (4) If more than 4 types of prescribed fuel are supplied to retail customers at the petrol station, subclause (1) applies to 4 types of that prescribed fuel, as follows:
 - (a) if both diesel and lpg are supplied, the 4 types of prescribed fuel are diesel, lpg and the 2 other prescribed fuels that are the top-selling types of prescribed fuel at the petrol station (apart from diesel and lpg),
 - (b) if only one of diesel and lpg is supplied, the 4 types of prescribed fuel are whichever of diesel and lpg is supplied and the 3 other prescribed fuels that are the top-selling types of prescribed fuel at the petrol station (apart from diesel or lpg),
 - (c) if neither diesel nor lpg is supplied, the 4 types of prescribed fuel are the 4 prescribed fuels that are the top-selling types of prescribed fuel at the petrol station.
- (5) Nothing in subclauses (1)–(4) prevent:
 - (a) the normal price of other types of prescribed fuel supplied to retail customers at the petrol station from being displayed on signs required by subclause (1) in addition to the information required to be displayed on those signs, or
 - (b) the prices of types of prescribed fuel from being displayed in any order on a sign at the petrol station, or
 - (c) any sign at the petrol station containing information about discounts and special offers so long as the price of any type of prescribed fuel shown on the sign is the normal price of the fuel.

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Clause 12 Fair Trading Regulation 2012

Part 2 Product information standards

- (6) For the purposes of this clause, the top-selling types of prescribed fuel at a petrol station in relation to any month are the types of prescribed fuel of which the greatest volume were supplied to retail customers at the petrol station in the immediately preceding 6 months.

12 Octane rating information

- (1) The octane rating of each of the following types of prescribed fuel supplied to retail customers at the petrol station by means of a fuel pump at the petrol station must be displayed in one or more places on the fuel pump so as to be readily seen by a person while using any of the fuel dispensers at that fuel pump:
- (a) E10 petrol,
 - (b) each type of unleaded petrol.
- (2) The *octane rating* is the research octane number for the type of prescribed fuel rounded down to the next whole number and, in the case of a blend of petrol, is for the whole of the blend.
- (3) Octane rating of a prescribed fuel may be displayed by displaying a brand name that includes the octane rating number of the prescribed fuel.

13 Planning restriction not affected

The product information standard specified in clause 10:

- (a) is subject to any requirement imposed by or under the *Environmental Planning and Assessment Act 1979* or the *Local Government Act 1993*, including a requirement to obtain development consent, an approval or some other form of authorisation and any conditions of such a development consent, approval or authorisation, and
- (b) does not apply to the extent that any such development consent, approval or authorisation is required if the development consent, approval or authorisation has been applied for but has been refused, and
- (c) does not apply to the extent that compliance with the information standard would be inconsistent with a prohibition imposed by or under the *Environmental Planning and Assessment Act 1979* or the *Local Government Act 1993*.

14 Savings and transitional provision

Until 1 September 2013, a person is taken to comply with the requirements of clause 10 if the person complies with the requirements of clause 99 of the *Fair Trading Regulation 2007* as in force immediately before its repeal.

Part 3 Other information standards

Division 1 Employment placement services

15 Information standard for employment placement services

- (1) For the purposes of section 50 of the Act, the requirements of this clause are prescribed as an information standard for employment placement services.
- (2) A person who provides employment placement services must, before providing those services to a person seeking employment (a *job seeker*), give the job seeker a written notice that sets out the following statements:
 - (a) A person who provides employment placement services must not charge a job seeker a fee for the purpose of finding the job seeker employment.
 - (b) A person who provides employment placement services must not engage in misleading or deceptive conduct (such as advertising a position as being available when the person knows no such position exists or knowingly giving misleading information to a job seeker about the nature of a position).
 - (c) If a job seeker believes that a person has acted inappropriately in the course of providing employment placement services, the job seeker may contact the Office of Fair Trading for information on possible action that may be taken.

Division 2 Funeral goods and services

16 Information standard for funeral goods and services

For the purposes of section 55 of the Act, the requirements of this Division are prescribed as an information standard for funeral goods and services.

17 Application of Division

This Division applies to the supply of funeral goods and services for the arrangement and conduct of a funeral service, including:

- (a) the supply of goods to a consumer in connection with the burial or cremation of a body, and
- (b) the care, transport and preparation of the body prior to burial or cremation.

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Clause 18 Fair Trading Regulation 2012

Part 3 Other information standards

18 Definitions

In this Division:

basic funeral means a funeral comprising only the following funeral goods and services:

- (a) the obtaining of a standard death certificate from the Registrar of Births, Deaths and Marriages if requested by the consumer,
- (b) the arrangement and conduct of a funeral service, at either the premises of the supplier or at the place of burial or cremation of a body, to take place between the hours of 8 am and 5 pm on a weekday,
- (c) the transport of the body to any of the following places as required where no individual journey is further than 30 kilometres:
 - (i) the premises of a supplier of funeral goods and services,
 - (ii) a mortuary,
 - (iii) the place at which the body is to be buried or cremated,
- (d) the storage of the body at a mortuary or holding room,
- (e) the preparation at a mortuary for burial or cremation of the body, not including preparation for the viewing or embalming of the body,
- (f) the supply of the least expensive coffin that the supplier of funeral goods or services has available,
- (g) the collection of certificates or permits provided by a medical practitioner in relation to the body,
- (h) the burial or cremation of the body.

basic funeral notice means a written statement listing the following:

- (a) each of the funeral goods and services that comprise a basic funeral and the cost of each,
- (b) each of the necessary disbursements and a reasonable estimate of the amount of each.

body means the body of a dead person.

mortuary means premises that are used, or intended to be used, for the preparation or storage of bodies as part of the arrangements for their burial or cremation, but does not include any premises (such as a hospital) in which bodies may be temporarily stored pending their transfer to a mortuary.

necessary disbursements for a burial or cremation means disbursements in relation to:

- (a) any fees charged by a medical practitioner in respect of certificates or permits provided by the practitioner, and
- (b) any fees charged by a cemetery or crematorium.

prospective consumer means a person who indicates to a supplier of funeral goods and services that he or she is, or might be, interested in purchasing funeral goods and services from the supplier.

19 Information to prospective consumers

- (1) A supplier of funeral goods and services who receives a request from a person to provide information about the cost of particular funeral goods and services offered by the supplier must, within 48 hours after receiving the request (or within such other period as is agreed between the person and the supplier), give to the person:
 - (a) a basic funeral notice if the supplier ordinarily offers a basic funeral to consumers, and
 - (b) a written statement listing the following in relation to the particular funeral goods and services specified by the person if those goods and services are not for a basic funeral:
 - (i) the cost of each of the funeral goods and services,
 - (ii) each of the necessary disbursements for the burial or cremation and a reasonable estimate of the amount of each,
 - (iii) any other disbursements that would be likely to be made by the supplier and a reasonable estimate of the amount of each.
- (2) Before entering into an agreement for the supply of funeral goods and services, a supplier of funeral goods and services must give to the consumer entering into the agreement:
 - (a) a basic funeral notice if the supplier ordinarily offers a basic funeral to consumers, and
 - (b) the following information if the agreement is not for the provision of a basic funeral:
 - (i) each of the funeral goods and services that are to be supplied to the consumer under the agreement and the cost of each,
 - (ii) each of the necessary disbursements for the burial or cremation and a reasonable estimate of the amount of each,
 - (iii) any other disbursements that are likely to be made by the supplier and a reasonable estimate of the amount of each.

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Clause 20 Fair Trading Regulation 2012

Part 3 Other information standards

- (3) A supplier of funeral goods and services is not required to give any notice or information under subclause (2) to a person if the same notice or information has already been given by the supplier to the person in accordance with subclause (1).

20 Information on final account

- (1) Before accepting final payment under an agreement for the supply of funeral goods and services to a consumer, the supplier of the funeral goods and services must give to the consumer a written statement listing the following:
- (a) each of the funeral goods and services supplied to the consumer under the agreement and the cost of each,
 - (b) each of the necessary disbursements for the burial or cremation and the amount of each,
 - (c) any other disbursements made by the supplier and the amount of each,
 - (d) the total amount payable for the supply of the funeral goods and services under the agreement.
- (2) This clause applies only in relation to contracts entered into on or after 1 February 2009.

Note. Clause 20 (1) was carried over from the former *Fair Trading Regulation 2007*. 1 February 2009 was the date on which the clause was originally made.

Part 4 Industry code for motor vehicle insurers and repairers

21 Declaration of industry code of conduct in relation to motor vehicle insurers and repairers

- (1) For the purpose of section 53 (1) of the Act, the code published in Gazette No 127 on 27 October 2006 at pages 9139–9168 (referred to in this Part as the *published code*) is declared to be an applicable industry code of conduct.
- (2) For the purpose of section 53 (2) (a) of the Act, the following classes of motor vehicles are excluded from the application of the provisions of the applicable industry code of conduct relating to the repair of any such motor vehicles that are or may be damaged:
 - (a) motor vehicles owned or used by the repairer,
 - (b) motor vehicles not registered in New South Wales, except when repaired in New South Wales.
- (3) For the purpose of section 53 (2) (b) of the Act, any provisions of the published code in so far as they relate to:
 - (a) the code or its application being voluntary, or
 - (b) the signatories to the code and the process by which the signatories are bound, or
 - (c) any other incidental matters,are excluded and the declaration under subclause (1) does not apply to those provisions.

22 Savings and transitional provisions

- (1) The applicable industry code of conduct applies to a dispute between an insurer and repairer with respect to a motor vehicle insurance policy, even if the policy was entered into before the relevant provisions of the code took effect.
- (2) The applicable industry code of conduct applies to damage to a motor vehicle covered by a motor vehicle insurance policy, even if the policy was entered into before the relevant provisions of the code took effect.

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Clause 23 Fair Trading Regulation 2012

Part 5 Miscellaneous

Part 5 Miscellaneous

23 Delegation by Director-General

For the purposes of section 8 (1) (i) of the Act, section 83A of the *Gas Supply Act 1996* is a prescribed provision of a prescribed Act.

24 Penalty notice offences

For the purposes of section 67 of the Act:

- (a) each offence created by a provision specified in Column 1 of Schedule 1 is a prescribed offence, and
- (b) the prescribed penalty for such an offence is the amount specified opposite in Column 2 of Schedule 1.

25 Savings and transitional provisions

- (1) Any act, matter or thing that, immediately before the repeal of the *Fair Trading Regulation 2007*, had effect under that Regulation continues to have effect under this Regulation.
- (2) Clause 18 (1) of Schedule 5 to the Act is to be read as if a reference to the amendment and repeal of the regulations made under section 38 of the Act includes a reference to the remaking (with or without amendment) of the regulations.

Schedule 1 Penalty notice offences

(Clause 24)

Column 1	Column 2
Offences under the ACL	
Section 154 (2)	\$550
Section 161 (1), (3) and (4)	\$550
Section 164 (1) and (2)	\$550
Section 165 (1)	\$550
Section 167 (1)	\$550
Section 169 (1)	\$550
Section 170 (1)	\$550
Section 171 (1)	\$550
Section 172 (1) and (2)	\$550
Section 173 (1)	\$550
Section 174 (1) and (2)	\$550
Section 175 (1)	\$550
Section 176 (1)	\$550
Section 177 (1)	\$550
Section 178 (1)	\$550
Section 179 (1)	\$550
Section 180 (1)	\$550
Section 181 (1) and (2)	\$550
Section 182 (1) and (2)	\$550
Section 183 (1)	\$550
Section 188 (1)	\$550
Section 189 (1)	\$550
Section 190 (1)	\$550
Section 191 (1)	\$550
Section 192 (1)	\$550
Section 193 (1)	\$550

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Schedule 1 Penalty notice offences

Column 1	Column 2
Section 194 (1), (2), (3) or (5)	\$550
Section 195 (1) and (2)	\$550
Section 197 (1), (2), (3) or (5)	\$550
Section 198 (1) and (2)	\$550
Section 199 (1) and (2)	\$550
Section 201 (1)	\$550
Section 203 (1), (2) or (3)	\$550
Section 204 (1) and (2)	\$550
Section 205 (1)	\$550
Offences under the Fair Trading Act 1987 (other than the ACL)	
Section 39 (1) (as in force before its repeal by the <i>Fair Trading Amendment (Australian Consumer Law) Act 2010</i> and as continued on by clause 18 of Schedule 5 to the Act)	\$550
Section 45	\$550
Section 49 (1)	\$550
Section 50 (3)	\$550
Section 56 (1)	\$550
