

# Fair Trading Regulation 2019

[2019-441]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Fair Trading Regulation 2019



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Fair Trading Regulation 2019*.

### 2 Commencement

This Regulation commences on 1 September 2019 and is required to be published on the NSW legislation website.

**Note—**

This Regulation replaces the *Fair Trading Regulation 2012*, which is repealed on 1 September 2019 by section 10(2) of the *Subordinate Legislation Act 1989*.

### 3 Definition

(1) In this Regulation—

**the Act** means the *Fair Trading Act 1987*.

**Note—**

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

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

## Part 2 Information standards

### Division 1 Fuel price signs at service stations

#### 4 Information standard for fuel price signs at service stations

(1) For the purposes of section 47C of the Act, the requirements of this Division are prescribed as an information standard for the supply of prescribed fuel to consumers at a service station.

(2) In this Division—

**prescribed fuel** has the same meaning as in section 58 of the Act but does not include electricity.

**service station** and **standard retail price** have the same meanings as in section 58 of the Act.

## 5 Display of fuel price information

- (1) A service station that supplies prescribed fuel to consumers must display the following information on 1 or more signs (a **fuel price sign**)—
  - (a) if no more than 4 prescribed fuels are supplied—the standard retail price for each prescribed fuel,
  - (b) if more than 4 prescribed fuels are supplied—the standard retail price for at least 4 prescribed fuels, including for each of the following that are supplied—
    - (i) E10 petrol,
    - (ii) diesel,
    - (iii) liquefied petroleum gas (or LPG).
- (2) A fuel price sign must be positioned and lit so that the standard retail price and any other matter displayed on the sign is readily able to be seen by motorists approaching the service station at any time that the service station is open for business for the supply of prescribed fuel.
- (3) All signs at the service station (including any fuel price signs) that display information in relation to the price of prescribed fuel supplied to consumers at the service station must display only the standard retail price of the prescribed fuel and no other price for that fuel.
- (4) This clause does not prevent—
  - (a) the standard retail price of more than 4 prescribed fuels from being displayed on a sign at a service station, or
  - (b) the standard retail price of prescribed fuels from being displayed in any order on a sign at a service station, or
  - (c) a sign at a service station from containing information about discounts and special offers on fuel, but only if the price of a prescribed fuel displayed on the sign is the standard retail price of the fuel.

## 6 Display of octane rating information for petrol

- (1) The octane rating of any petrol supplied to consumers by means of a fuel pump at a service station must be displayed in 1 or more places on the fuel pump so that it is

readily able to be seen by a person using a fuel dispenser at the fuel pump.

- (2) The **octane rating** is the research octane number for the petrol rounded down to the next whole number and, in the case of a blend of petrol, is for the whole of the blend.
- (3) The octane rating may be displayed by displaying a brand name that includes the octane rating of the petrol.
- (4) In this clause, **petrol** means petrol as referred to in paragraph (a) of the definition of **prescribed fuel** in section 58 of the Act.

## Division 2 Funeral goods and services

### 7 Information standard for funeral goods and services

- (1) For the purposes of section 47C of the Act, the requirements of this Division are prescribed as an information standard for the supply of goods and services by a funeral director in relation to the burial or cremation of a body.
- (2) In this Division—

**funeral director** means a person who, in the conduct of the person's business, arranges the collection, transport, storage, preparation or embalming of bodies for the purposes of the burial or cremation of bodies.

**funeral information**, in relation to supply of goods and services by a funeral director in relation to the burial or cremation of a body, means the following—

- (a) the price of each of the following—
  - (i) the transport of the body prior to burial or cremation,
  - (ii) the storage of the body at a mortuary or holding room,
  - (iii) the hire of a refrigeration plate,
  - (iv) each type of coffin, casket or shroud supplied or the price range of all coffins, caskets or shrouds supplied,
  - (v) the care and preparation of the body prior to burial or cremation,
  - (vi) a viewing of the body prior to burial or cremation,
  - (vii) the arrangement and conduct of a funeral service (including hire of the venue),
  - (viii) the burial or cremation of the body,
- (b) the location of the mortuary or crematorium used by the funeral director,

- (c) if the funeral director uses a mortuary or crematorium that is not owned or managed by the funeral director, the name of the owner or manager,
- (d) a reasonable estimate of the following disbursements—
  - (i) the cost of obtaining of a death certificate from the Registrar of Births, Deaths and Marriages,
  - (ii) the cost of obtaining any certificate or permit required under the *Births, Deaths and Marriages Registration Act 1995* or the *Public Health Act 2010* in relation to the body,
  - (iii) any fee charged by a cemetery or crematorium in relation to the burial or cremation of a body,
- (e) the price of the least expensive package for the burial or cremation of a body supplied by the funeral director,
- (f) how a body is transported prior to burial or cremation.

#### **8 Display and provision of funeral information to prospective consumers**

- (1) A funeral director must prominently display the funeral information in relation to the goods and services supplied by the funeral director—
  - (a) at each place of business of the funeral director, and
  - (b) on any public website maintained by the funeral director.
- (2) A funeral director must provide a person with the funeral information in relation to the goods and services supplied by the funeral director—
  - (a) within 48 hours after receiving a request from the person for information about the burial or cremation of a body (or within another period agreed between the person and the funeral director), and
  - (b) before entering into an agreement with the person for the supply of goods and services in relation to the burial or cremation of a body, but only if the person has not already been provided with the funeral information.

#### **9 Provision of information to consumers**

Before entering into an agreement with a person for the supply of goods and services in relation to the burial or cremation of a body, a funeral director must provide the following information to the person—

- (a) the price of each of the particular goods and services that will be supplied to the person under the agreement,
- (b) the cost of any disbursements that will be payable by the person under the

agreement,

- (c) the total amount payable under the agreement.

#### **10 Effect of Division**

This Division does not prevent a funeral director from supplying—

- (a) any goods and services in relation to the burial or cremation of a body not referred to in this Division, or
- (b) goods and services in relation to the burial or cremation of a body in the form of a package.

#### **11 Transitional provision**

- (1) The information standard specified in this Division applies to the supply of goods and services by a funeral director in relation to the burial or cremation of a body from 1 February 2020.
- (2) The information standard specified in Division 2 of Part 3 of the [Fair Trading Regulation 2012](#), as in force immediately before 1 September 2019, continues to apply to the supply of funeral goods and services until 31 January 2020 as if it were an information standard prescribed under section 47C of the Act.

### **Part 2A Short-term rental accommodation industry code of conduct**

#### **11A Declaration of code of conduct**

The code of conduct entitled *Code of Conduct for the Short-term Rental Accommodation Industry*, as published in the Gazette on 28 October 2020, is declared for the purposes of section 54B of the Act.

#### **11B Additional class of short-term rental accommodation industry participants**

- (1) Persons who provide property management services for residential premises subject to a short-term rental accommodation arrangement are prescribed for the purposes of paragraph (e) of the definition of **short-term rental accommodation industry participant** in section 54A of the Act.
- (2) For the purposes of subclause (1), **property management services** include creating listings, rental pricing, guest vetting and communications and check-in services.

#### **11C Excluded arrangements**

- (1) The following are excluded from the definition of **short-term rental accommodation arrangement** in section 54A of the Act—
  - (a) an arrangement under which a person is given the right to occupy—



- (i) tourist and visitor accommodation within the meaning of the standard instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006*, or

**Note—**

**Tourist and visitor accommodation** includes backpackers' accommodation, hotel or motel accommodation and serviced apartments.

- (ii) a registrable boarding house within the meaning of the *Boarding Houses Act 2012*, or
  - (iii) a holiday park within the meaning of the *Holiday Parks (Long-term Casual Occupation) Act 2002*,
- (b) an arrangement under which a person resides or is permitted to reside in refuge or crisis accommodation provided by—
    - (i) a public authority (including the Department of Communities and Justice, the New South Wales Land and Housing Corporation or the Aboriginal Housing Office), or
    - (ii) a community housing provider registered under the *Community Housing Providers National Law (NSW)*, or
    - (iii) any other body funded wholly or partly by the Commonwealth or the State,
  - (c) an arrangement under which a person resides or is permitted to reside in disability accommodation,
  - (d) any other arrangement under which a person resides or is permitted to reside in temporary accommodation provided or funded wholly or partly by the Department of Communities and Justice.

- (2) In this clause—

**disability** has the same meaning as in the *Disability Inclusion Act 2014*.

**disability accommodation** means accommodation that is designed for a person with a disability who is receiving disability assistance, and includes (but is not limited to) specialist disability accommodation within the meaning of the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020* of the Commonwealth.

**disability assistance** means one or more of the following forms of assistance provided to a person with a disability by another person or body, whether permanently or not,—

- (a) assistance to help the person undertake the person's day-to-day activities,

- (b) assistance to increase the person's independence,
- (c) assistance to facilitate the person's social and economic inclusion in the community.

#### **11D Appeal against listing on exclusion register**

- (1) A person whose details have been listed on the exclusion register referred to in section 54B(2)(g) of the Act may apply to the departmental Secretary to have the person's details removed from the register.
- (2) An application must be in writing and specify the grounds for removing the person's details from the exclusion register.
- (3) The departmental Secretary is, within 28 days of receiving an application, to determine the application by deciding—
  - (a) to remove the person's details from the exclusion register, or
  - (b) to maintain the person's listing on the register.
- (4) The departmental Secretary is to notify the person in writing of the Secretary's decision as soon as practicable after it is made.
- (5) The notice is to include the reasons for the departmental Secretary's decision.
- (6) The departmental Secretary may delegate the Secretary's functions under this clause to any other person employed in the Department of Customer Service.
- (7) In this clause, **departmental Secretary** means the Secretary of the Department of Customer Service.

#### **11E Fees**

- (1) The Secretary may, for the purposes of recovering the costs incurred by the Secretary in connection with the enforcement and administration of the code of conduct declared under this Part, impose fees on short-term rental accommodation industry participants.
- (2) The Secretary may determine the amount of the fees to be paid and the times when they are payable.
- (3) Any fee imposed under this clause may be recovered by the Secretary as a debt due to the Crown.

#### **11F Civil penalty for contravention of code of conduct**

- (1) For the purposes of section 54D(2)(a) of the Act, a monetary penalty is not to exceed 10,000 penalty units, in the case of a corporation, and 2,000 penalty units, in any

other case.

- (2) The Local Court and the Supreme Court are prescribed for the purposes of section 54D(5) of the Act.
- (3) Despite subclause (1), a monetary penalty imposed by the Local Court under section 54D of the Act is not to exceed 200 penalty units.

## **Part 3 Miscellaneous**

### **12 Industry code of conduct for motor vehicle insurers and repairers**

- (1) For the purposes of section 53(1) of the Act, the *Motor Vehicle Insurance and Repair Industry Code of Conduct* (the **Code**) published in the Gazette on 21 July 2017 at pages 4192–4216 is declared to be an applicable industry code of conduct.

**Note—**

The Code is available on the website maintained by NSW Fair Trading.

- (2) For the purposes of section 53(2)(a) of the Act, the following classes of motor vehicles are excluded from the application of the provisions of the Code 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 purposes of section 53(2)(b) of the Act, any provisions of the Code in so far as they relate to any of the following are excluded and the declaration under subclause (1) does not apply to those provisions—
  - (a) the Code or its application being voluntary,
  - (b) the signatories to the Code and the process by which the signatories are bound,
  - (c) any other incidental matters.

### **13 Exceptions to gift card expiry date requirements**

- (1) For the purposes of section 58M(3)(a) of the Act, Part 4B of the Act does not apply to any of the following classes of gift cards—
  - (a) an ATM card, charge card, credit card or debit card,
  - (b) a reloadable prepaid card,
  - (c) a non-reloadable prepaid card sold during the period commencing on 31 March 2018 and ending at the end of 30 September 2018,

- (d) a card or voucher redeemable only for phone credit, internet access or any other utility,
- (e) a card or voucher supplied in substitution for goods returned to the supplier of the goods,
- (f) a card or voucher supplied as part of a customer loyalty or employee rewards program,
- (g) a card or voucher supplied as part of a temporary marketing promotion to the purchaser of goods or services in connection with the purchase of the goods or services,
- (h) a card or voucher sold for use in a fundraising appeal within the meaning of the [Charitable Fundraising Act 1991](#),
- (i) a card or voucher redeemable only for a particular good or service available for a limited period (such as entry to an exhibition or a live performance) that expires at the end of that period,
- (j) a card or voucher redeemable only for a particular good or service that is sold at a discount on the market value of the good or service that a reasonable person would consider to be a genuine discount on the market value of the good or service.

(2) In this clause—

**prepaid card** means a prepaid card that is redeemable for goods or services through an electronic payment system under a scheme such as EFTPOS Prepaid, Visa Prepaid or MasterCard Prepaid.

## 14 Savings

Any act, matter or thing that, immediately before the repeal of the [Fair Trading Regulation 2012](#), had effect under that Regulation continues to have effect under this Regulation.

## Schedule 1 Penalty notice offences

For the purposes of section 67 of the Act—

- (a) each offence specified in this Schedule is an offence for which a penalty notice may be issued, and
- (b) the amount payable under any such penalty notice is the amount specified in this Schedule for the offence.

**Column 1**

**Column 2**

**Column 3**

**Provision**

**Penalty for an individual**

**Penalty for a corporation**

**Offences under the Australian Consumer Law (NSW)**

Section 151(1)	\$750	\$5,500
Section 152(1)	\$750	\$5,500
Section 153(1)	\$750	\$5,500
Section 154(2)	\$750	\$5,500
Section 155(1)	\$750	\$5,500
Section 156(1)	\$750	\$5,500
Section 157(1) and (2)	\$750	\$5,500
Section 158(7)	\$750	\$5,500
Section 159(1) and (2)	\$750	\$5,500
Section 161(1), (3) and (4)	\$750	\$5,500
Section 162(1)-(3)	\$750	\$5,500
Section 163(1) and (2)	\$750	\$5,500
Section 164(1) and (2)	\$750	\$5,500
Section 165(1)	\$150	\$1,100
Section 166(1)	\$750	\$5,500
Section 167(1)	\$750	\$5,500
Section 169(1)	\$550	\$3,300
Section 170(1)	\$550	\$3,300
Section 171(1)	\$550	\$3,300
Section 172(1) and (2)	\$550	\$3,300
Section 173(1)	\$550	\$3,300
Section 174(1) and (2)	\$550	\$3,300
Section 175(1)	\$550	\$3,300
Section 176(1)	\$550	\$3,300
Section 177(1)	\$550	\$3,300
Section 178(1)	\$550	\$3,300
Section 179(1)	\$550	\$3,300
Section 180(1)	\$550	\$3,300
Section 181(1) and (2)	\$550	\$3,300

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Section 182(1) and (2)	\$550	\$3,300
Section 183(1)	\$550	\$3,300
Section 188(1)	\$350	\$2,200
Section 189(1) and (3)	\$350	\$2,200
Section 191(1)	\$350	\$2,200
Section 192(1)	\$550	\$3,300
Section 193(1)	\$550	\$3,300
Section 194(1)-(3) and (5)	\$750	\$5,500
Section 195(1) and (2)	\$750	\$5,500
Section 196(1)	\$150	\$1,100
Section 197(1)-(3) and (5)	\$750	\$5,500
Section 198(1) and (2)	\$750	\$5,500
Section 199(1) and (2)	\$750	\$5,500
Section 200(1)	\$150	\$1,100
Section 201(1) and (2)	\$150	\$1,100
Section 202(1)	\$150	\$1,100
Section 203(1)-(3)	\$750	\$5,500
Section 204(1) and (2)	\$750	\$5,500
Section 205(1)	\$150	\$1,100
Section 206(1)	\$150	\$1,100

**Offences under the *Fair Trading Act 1987***

Section 45	\$550	\$1,100
Section 47A(1)	\$550	\$1,100
Section 47B(1)	\$550	\$1,100
Section 47D(1)	\$550	\$1,100
Section 49(1)	\$550	\$1,100
Section 54C	\$550	\$1,100
Section 58(4)	\$550	\$1,100
Section 58G(1)	\$550	\$1,100
Section 58H(1)	\$550	\$1,100

Section 58I(1)	\$550	\$1,100
Section 58K(1)	\$550	\$1,100
Section 58L(7)	\$550	\$1,100
Section 58N(1) and (2)	\$550	\$1,100
Section 86AB(2)	\$550	\$1,100