

# Fair Trading Regulation 2019

[2019-441]



New South Wales

## Status Information

### Currency of version

Historical version for 1 July 2022 to 17 July 2022 (accessed 24 April 2025 at 5:15)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### 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](#).

File last modified 1 July 2022

# Fair Trading Regulation 2019



New South Wales

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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This Regulation replaces the *Fair Trading Regulation 2012*, which is repealed on 1 September 2019 by section 10(2) of the *Subordinate Legislation Act 1989*.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 applying to short-term rental accommodation industry participants**

For the purposes of the Act, section 54B(1), the *Code of Conduct for the Short-term Rental Accommodation Industry*, published in the Gazette on 22 October 2021, is declared.

#### **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 2B Regulation of commercial agents**

### **11G Disqualified persons—Act, s 60A(2)**

For the purposes of the Act, section 60A(2), definition of **relevant offence**, paragraph (d), the following offences are declared to be relevant offences—

- (a) an offence against the *Crimes Act 1900*, Part 3, Division 10, 10A, 14, 14A or 15, section 93T, Part 4 or section 351A or against corresponding provisions of a law of the Commonwealth or of another State or Territory,
- (b) an offence against the *Crimes (Domestic and Personal Violence) Act 2007*, section 13 or against corresponding provisions of a law of the Commonwealth or of another State or Territory, or
- (c) an offence against the *Privacy Act 1988* of the Commonwealth, section 13G,
- (d) an offence against the *Security Industry Act 1997* or against corresponding provisions of a law of the Commonwealth or of another State or Territory,
- (e) an offence against the *Surveillance Devices Act 2007*, Part 2 or 5 or against corresponding provisions of a law of the Commonwealth or of another State or Territory that provide for the authorisation of the use of surveillance devices.

### **11H Fit and proper person—Act, s 60D(3)(d)**

- (1) For the purposes of the Act, section 60D(3)(d), the following grounds are prescribed—
  - (a) the person is a mentally incapacitated person,
  - (b) the person is disqualified from holding a licence, permit or other authority under legislation administered by the Minister,
  - (c) the person has failed to pay a monetary penalty imposed on the person under the Act, Part 5 or has failed to comply with a direction given by the Secretary under the Part and the failure to pay the penalty or comply with the direction continues,
  - (d) the person has been the holder of a commercial agent licence issued under the Act that—
    - (i) has, within the previous 5 years, been cancelled and the person has not held a

licence since the cancellation, or

(ii) is suspended and the period of the suspension has not expired,

(e) the person was the holder of a master licence for process serving, a master licence for debt collection or a master licence for repossession of goods under the repealed Act that was, within the previous 5 years before its repeal—

(i) cancelled under the repealed Act, section 10(1) and the person has not held a licence since the cancellation, or

(ii) suspended under the repealed Act, section 10(4) and the period of the suspension has not expired,

(f) the person was the holder of an operator licence for process serving, an operator licence for debt collection or an operator licence for repossession of goods under the repealed Act that was, within the previous 5 years before its repeal—

(i) cancelled under the repealed Act, section 17(1) and the person has not held a licence since the cancellation, or

(ii) suspended under the repealed Act, section 17(4) and the period of the suspension has not expired.

(2) In this clause—

**repealed Act** means the *Commercial Agents and Private Inquiry Agents Act 2004*.

#### **11I Fees for commercial agent licences—Act, s 60E(5)**

(1) The application fees payable for the purposes of the Act are listed in Schedule 2, Part 1.

(2) An amount specified for an application fee in Schedule 2, Part 1, Column 3 under the heading **Processing component** is taken to be a fee to cover the costs incurred by the Secretary in processing the application.

**Note—**

This amount is consequently a **processing fee** for the purposes of the *Licensing and Registration (Uniform Procedures) Act 2002*, Part 2. If an application is refused or withdrawn, the applicant is entitled to a refund of all fees paid, other than the processing fee.

(3) The total application fee is set out in Schedule 2, Part 1, Column 4.

#### **11J Register—commercial agent licences—Act, s 60J(1)**

For the purposes of the Act, section 60J(1), the Secretary must enter and keep in the Register the following particulars for each commercial agent licence issued under the Act—

- (a) if the licence holder is an individual—the name and business address of the licence holder,
- (b) if the licence holder is a corporation—
  - (i) the name, business address and Australian Company Number of the corporation, and
  - (ii) the name and business address of each officer of the corporation,
- (c) whether the licence holder is a member of a partnership that carries on business,
- (d) the number of the licence,
- (e) the dates of issue and expiry of the licence,
- (f) whether the licence is current, expired, suspended or cancelled,
- (g) a condition of the licence under the Act, section 60E(4)(f), if any.

**11K Register—licence applications refused and licences cancelled—Act, s 60J(1)**

- (1) For the purposes of the Act, section 60J(1), the Secretary must enter and keep in the Register the following particulars—
  - (a) particulars of each application for a commercial agent licence that is refused on the grounds the applicant is not a fit and proper person to hold a licence,
  - (b) for each licence cancelled under the Act, Part 5—
    - (i) the name and business address of the person whose licence has been cancelled, and
    - (ii) the date on which it was cancelled, and
    - (iii) the reason for which it was cancelled.
- (2) The Secretary must remove the particulars from the Register in the following circumstances—
  - (a) for an application that is refused—
    - (i) on the subsequent grant of a licence to the applicant, or
    - (ii) if a licence is not granted—on the expiration of the period of 10 years after the application was refused if the Secretary is of the opinion it is no longer necessary or desirable to retain the information,
  - (b) for a licence that is cancelled—on the expiration of the period of 10 years after the date on which the licence was cancelled.

**11L Register—convictions, exclusion orders and restriction orders—Act, s 60J(1)**

- (1) For the purposes of the Act, section 60J(1), the Secretary must enter and keep in the Register the following particulars—
  - (a) for each conviction for an offence against the Act—
    - (i) the name and business address of the person convicted, and
    - (ii) the nature of the conviction and sentencing order made,
  - (b) for each exclusion order or restriction order made under the Act, Part 5—
    - (i) the name and business address of the person subject to the exclusion order or restriction order, and
    - (ii) details of the exclusion order or restriction order.
- (2) The Secretary must remove the particulars from the Register on the expiration of the period of 10 years after the date on which—
  - (a) the person was convicted, or
  - (b) the order was made.

**11M Commercial agent rules—Act, s 60K(1)**

For the purposes of the Act, section 60K(1), the commercial agent rules set out in Schedule 3 are prescribed as the commercial agent rules to be observed in the course of carrying out commercial agent activities.

## **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.

#### 15 Provision consequent on enactment of *Fair Trading Amendment (Commercial Agents) Act 2016 No 52—Act, Schedule 5, cl 1A(4)*

- (1) For the purposes of the Act, Schedule 5, clause 1A(4), on the commencement of the *Fair Trading Amendment (Commercial Agents) Act 2016*, a person is taken to hold a commercial agent licence under the Act if—
  - (a) the person held, under the repealed Act, a master licence or an operator licence for debt collection, process serving or repossession of goods that was in force on 30 June 2022, and
  - (b) from 30 June 2022 the person has carried out one or more commercial agent activities, and
  - (c) for the purposes of carrying out a commercial agent activity, the person has engaged in conduct that would otherwise constitute an offence under the Act, section 60C.
- (2) A licence held under subsection (1) is taken to expire on whichever date is the sooner of the following—
  - (a) the expiry of the period during which the licence granted under the repealed Act would, but for the repeal of that Act, have had effect,
  - (b) 30 June 2023.
- (3) In this clause—

**repealed Act** means the *Commercial Agents and Private Inquiry Agents Act 2004*.

### 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**



<b>Provision</b>	<b>Penalty for an individual</b>	<b>Penalty for a corporation</b>
<b>Offences under the <i>Australian Consumer Law (NSW)</i></b>		
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

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Section 181(1) and (2)	\$550	\$3,300
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 20(3)(a)	\$550	\$1,100
Section 23(1)	\$550	\$1,100
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 60B	\$1,100	\$5,500
Section 60C(1)	\$1,100	\$5,500
Section 60C(2)	\$1,100	\$5,500
Section 60C(3)	\$550	\$1,100
Section 60G(4)	\$1,100	\$5,500
Section 60K(3)	\$550	\$1,100
Section 60K(4)	\$550	\$1,100
Section 60K(5)	\$550	\$1,100
Section 86AB(2)	\$550	\$1,100

## Schedule 2 Fees

clause 111

### Part 1 Fees payable

Item	Column 1	Column 2	Column 3	Column 4
	Type of fee	Fixed component—in fee units	Processing component—in fee units	Total—in fee units
1	Application for grant of licence by individual—			
	(a) for 1 year	2.78	1.11	3.89
	(b) for 3 years	6.56	1.11	7.67
	(c) for 5 years	11.11	1.11	12.22
2	Application for grant of licence by corporation—			

	(a) for 1 year	8.50	3.50	12.00
	(b) for 3 years	20.00	3.50	23.50
	(c) for 5 years	33.50	3.50	37.00
3	Application for renewal or restoration of licence by individual—			
	(a) for 1 year	2.78	0.55	3.33
	(b) for 3 years	6.56	0.55	7.11
	(c) for 5 years	11.11	0.55	11.66
4	Application for renewal or restoration of licence by corporation—			
	(a) for 1 year	8.50	1.67	10.17
	(b) for 3 years	20.00	1.67	21.67
	(c) for 5 years	33.50	1.67	35.17
5	Application for replacement of licence	0.55	nil	0.55

## Part 2 Adjustment of fees for inflation

### 1 Definitions

In this Part—

**CPI number** means the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics in the latest published series of that index.

**financial year** means a period of 12 months commencing on 1 July.

### 2 Calculation of fee unit for purposes of Regulation

(1) For the purposes of this Regulation, a **fee unit** is—

- (a) in the financial year 2022–23—\$100, and
- (b) in each subsequent financial year—the amount calculated as follows—

$$\$100 \times \frac{A}{B}$$

where—

**A** is the CPI number for the March quarter in the financial year immediately preceding the financial year for which the amount is calculated.

**B** is the CPI number for the March quarter of 2017.

- (2) The amount of a fee unit is to be rounded to the nearest cent, and an amount of 0.5 cent is to be rounded down.
- (3) However, if the amount of a fee unit calculated for any financial year is less than the amount that applied for the previous financial year, then the amount for the previous financial year applies instead.

### 3 Rounding of fee amounts

The amount of a fee calculated by reference to a fee unit, including the amount of a component of a fee, is to be rounded to the nearest dollar, and an amount of 50 cents is to be rounded down.

### 4 Notice of indexed fees

- (1) As soon as practicable after the CPI number for the March quarter is first published by the Australian Statistician, the Secretary is required to—
  - (a) notify the Parliamentary Counsel of the amount of the fee unit for the next financial year so that notice of the amount can be published on the NSW legislation website, and
  - (b) give public notice on an appropriate government website of the actual amounts of the fees applying in each financial year resulting from the application of the amount of a fee unit calculated under this Part.
- (2) This Part operates to change an amount of a fee that is calculated by reference to a fee unit and that change is not dependent on the notification or other notice required by this clause.

## Schedule 3 Commercial agent rules

clause 11M

### 1 Definitions

In this Schedule—

**commercial agent** means a person who carries out a commercial agent activity, whether or not the person holds a commercial agent licence.

**commercial agent activity** has the same meaning as in the Act, Part 5.

**disqualified person** has the same meaning as in the Act, section 60A.

## **2 Knowledge of Act, Regulation, Schedule and other relevant laws**

- (1) A commercial agent must have a knowledge and an understanding of the following provisions—
  - (a) the Act, Part 5,
  - (b) this Regulation, Part 2B,
  - (c) this Schedule,
  - (d) all other laws relevant to carrying out commercial agent activities as may be necessary to enable the person to carry out the commercial agent activity lawfully.
- (2) Other relevant laws include laws relating to fair trading, competition and consumer protection, credit activities, bankruptcy, anti-discrimination and privacy.

## **3 Act in accordance with client's instructions**

A commercial agent must act in accordance with a client's instructions unless it would be contrary to the following provisions or otherwise unlawful to do so—

- (a) the Act, Part 5,
- (b) this Regulation, Part 2B,
- (c) this Schedule.

## **4 Conflicts of interest**

A commercial agent must not accept instructions to act, or continue to act, as a commercial agent for a client if doing so would place the commercial agent's interests in conflict with the client's interests.

## **5 Agent must ensure employee's compliance with exclusion orders and restriction orders**

If a commercial agent is notified by the Secretary that an exclusion order or a restriction order has been made with respect to an employee of the commercial agent who is employed to carry out a commercial agent activity, the commercial agent must immediately take all reasonable steps to ensure the employee complies with the exclusion order or restriction order while the employee continues in employment with the agent.

## **6 Physical force or violence**

A commercial agent must not use, or threaten to use, physical force or violence in the course of carrying out a commercial agent activity.

## **7 Entering private dwelling**

A commercial agent must not, for the purpose of carrying out a commercial agent activity,

enter, attempt to enter or threaten to enter a private dwelling without the consent of the owner or occupant of the dwelling.

### **8 Coercive, intimidating or unconscionable conduct**

A commercial agent must not, in the course of carrying out a commercial agent activity, engage in—

- (a) harassment or stalking or other coercive or intimidating conduct with the intention of causing physical or mental harm or of arousing apprehension or fear, or
- (b) unconscionable conduct.

### **9 Debts that cannot be subject of demand**

(1) A commercial agent must not carry out a commercial agent activity that is debt collection—

(a) if the commercial agent knows or ought reasonably to know—

- (i) a statutory limitation period applying to the collection of, or liability for, the relevant debt has expired, or
- (ii) the grounds on which the relevant debt is claimed are unsubstantiated, or
- (iii) there are other grounds on which liability for the relevant debt is excluded or can be denied, and

(b) unless the commercial agent believes on reasonable grounds the person from whom collection of the relevant debt is sought is liable for the debt.

(2) A commercial agent must provide to the person from whom collection of a debt is sought evidence of the grounds on which the commercial agent holds the belief that the person is liable for the debt when requested by the person to do so.

### **10 Contacting persons**

(1) This clause applies to commercial agents carrying out a commercial agent activity that is debt collection.

(2) A commercial agent must not contact a person—

- (a) by a method that the person has expressly requested the commercial agent not to use unless the commercial agent has exhausted all other available methods of contacting the person, or
- (b) after the person has expressly requested the commercial agent not to contact the person again, unless the contact is solely for the purpose of advising the person that the creditor intends to take further action to recover the relevant debt from the person, or

(c) outside the hours shown in the following table (**reasonable hours**)—

<b>Contact by telephone—person not at person’s place of business or employment</b>	<b>Contact in person—not at person’s place of business or employment</b>	<b>Contact in person—at person’s place of business or employment</b>
7:30am–9pm on weekdays, except public holidays	9am–9pm on any day of the week, except public holidays	9am–5pm on weekdays
9am–9pm on weekends, except public holidays		

(3) However, a commercial agent may contact a person outside reasonable hours if the commercial agent has made all reasonable efforts to contact the person during reasonable hours and has failed to do so.

(4) In this clause—

**telephone** includes person to person audio or audio visual electronic communication.

### **11 Acting with honesty**

A commercial agent must not misinform or otherwise mislead or deceive a person in the course of carrying out a commercial agent activity, including by impersonating another person or misrepresenting the commercial agent’s identity.

### **12 Costs of carrying out commercial agent activity**

- (1) A commercial agent must not request, demand or collect from a person who is the subject of a commercial agent activity a payment for the costs or expenses incurred by the commercial agent in connection with carrying out the commercial agent activity.
- (2) If the commercial agent activity is debt collection—this section does not limit a right that the person to whom the debt the subject of the commercial agent activity is payable (the **creditor**) may have at law in relation to the recovery from the debtor of the creditor’s costs of recovering the debt.

### **13 Confidentiality**

- (1) A commercial agent must not disclose, either expressly or by implication, that a person is the subject of a commercial agent activity to another person unless the disclosure is—
  - (a) made with the consent of the person who is the subject of the commercial agent activity, or



(b) reasonably necessary to the carrying out of the commercial agent activity by the commercial agent, or

(c) made with another lawful excuse.

(2) A commercial agent must not threaten a person with disclosure to another person that the person is the subject of a commercial agent activity unless the threat relates to a disclosure that is permitted under subclause (1).

#### **14 Money to be paid into account**

(1) A commercial agent must deposit all money received in connection with carrying out a commercial agent activity into an account with an authorised deposit-taking institution opened and held by the agent for that purpose.

(2) However, if the commercial agent is instructed by the commercial agent's client to hold the money on trust, the agent must, as soon as practicable, pay the money into a separate trust account opened and held by the agent for that purpose.

(3) A commercial agent who holds money on trust must, as soon as practicable after being directed to do so by the commercial agent's client and in accordance with the client's instructions—

(a) pay the money to the person for whose benefit the money is held, or

(b) otherwise disburse the money.

#### **15 Account records to be kept by agent**

(1) A commercial agent must maintain a record containing full particulars of all transactions in relation to an account, including a trust account, held with an authorised deposit-taking institution in connection with a commercial agent activity.

(2) The record may be kept in hard copy or electronic form.

(3) Information must be able to be produced from the record on demand in permanent legible form in the English language.

(4) In the case of a trust account—the commercial agent must also maintain a record, compiled in chronological sequence, of all changes, including creation, amendment or deletion, to the following information—

(a) the name and address of the person for whose benefit the money is held,

(b) the code reference number, if any, of the person for whose benefit the money is held,

(c) the trust account number.

- (5) The record of changes must disclose details of the information before and after the change.

#### **16 Records to be kept for at least 3 years**

A record required to be kept by the Act or this Regulation must be kept for a period of not less than 3 years from the date on which the record was created.

#### **17 Unclaimed trust money**

If money has been held by a commercial agent for more than 2 years in a trust account kept by the commercial agent under clause 14 (**unclaimed money**), the commercial agent must make reasonable efforts to—

- (a) identify and locate the owner of the unclaimed money, and
- (b) if the owner has been identified and located—ensure the unclaimed money is paid to the owner as soon as practicable after locating the owner.

#### **18 Agent must not employ or engage disqualified persons**

- (1) A commercial agent must take all reasonable steps to ensure the commercial agent does not employ or otherwise engage a disqualified person to carry out a commercial agent activity.
- (2) A commercial agent must notify the Secretary in writing within 7 days of becoming aware a person employed or otherwise engaged by the commercial agent to carry out a commercial agent activity is a disqualified person.

#### **19 Complaints**

A commercial agent must take all reasonable steps to resolve a complaint made to the commercial agent concerning the carrying out of a commercial agent activity by the commercial agent or an employee or agent of the commercial agent.