



New South Wales

Fair Trading Regulation 2019

under the

Fair Trading Act 1987

[*The following enacting formula will be included if the Regulation is made:*]

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

Minister for Better Regulation and Innovation

Explanatory note

The object of this Regulation is to remake, with amendments, the *Fair Trading Regulation 2012*, which is repealed on 1 September 2019 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation provides for the following matters:

- (a) the information standards that apply to fuel signs at service stations and funeral goods and services,
- (b) the industry code of conduct for motor vehicle insurers and repairers,
- (c) the kinds of gift cards that are exempt from provisions in the *Fair Trading Act 1987* relating to the expiry date of gift cards,
- (d) the offences under the *Australian Consumer Law (NSW)* and the *Fair Trading Act 1987* for which penalty notices may be issued and the amounts of the penalties payable.

This Regulation is made under the *Fair Trading Act 1987*, including sections 47C, 53, 58M (3) (a), 67 and 92 (the general regulation-making power).

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Fair Trading Regulation 2019

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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 This Regulation replaces the *Fair Trading Regulation 2012*, which is repealed on 1 September 2019 by section 10 (2) of the *Subordinate Legislation Act 1989*.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) The standard retail price of prescribed fuel supplied to consumers at a service station must be displayed at the service station on 1 or more signs (the *fuel price signs*).
- (2) The fuel price signs 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) If more than 4 prescribed fuels are supplied to consumers at a service station, the requirements for fuel price signs under subclauses (1) and (2) apply to 4 prescribed fuels only.
- (4) All signs at the service station (including the 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.
- (5) This clause does not prevent the standard retail price of more than 4 prescribed fuels from being displayed on the fuel price signs or the standard retail price of prescribed fuels from being displayed in any order on a sign at a service station.
- (6) A sign at a service station may contain 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

- (1) If any type of petrol is supplied to consumers by means of a fuel pump at a service station, the octane rating of the petrol 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 of a petrol may be displayed by displaying a brand name that includes the octane rating number of the petrol.

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 funeral goods and services.
- (2) For the purposes of this Division, the following goods and services that may be supplied in connection with the burial or cremation of a body are ***funeral goods and services***:
 - (a) the obtaining of a death certificate from the Registrar of Births, Deaths and Marriages,
 - (b) the collection of certificates or permits provided by a medical practitioner in relation to the body,
 - (c) the care, transport and preparation of the body prior to burial or cremation,
 - (d) the storage of the body at a mortuary or holding room,
 - (e) the supply of a coffin,
 - (f) the arrangement and conduct of a funeral service,
 - (g) the burial or cremation of the body.

8 Display and provision of information about funeral prices

- (1) A supplier of funeral goods and services must prominently display the funeral price information:
 - (a) at each place of business of the supplier, and
 - (b) on the home page of any public website maintained by the supplier.
- (2) A supplier of funeral goods and services who receives a request for information about funeral goods and services from a person must, within 48 hours after receiving the request (or within a period agreed between the person and the supplier), provide the funeral price information to the person.
- (3) Before entering into an agreement for the supply of funeral goods and services, the supplier must provide a written notice to the consumer that contains the following information:
 - (a) the price of each of the particular funeral goods and services that are to be supplied to the consumer under the agreement,
 - (b) a reasonable estimate of the amount of each of the additional fees that are payable by the consumer under the agreement,
 - (c) a reasonable estimate of any other disbursements likely to be made by the supplier that are payable by the consumer under the agreement.
- (4) In this clause:

additional fee means a fee charged by a cemetery or crematorium, or by a medical practitioner in respect of a certificate or permit provided by the practitioner, in relation to a burial or cremation of a body.

funeral price information means:

 - (a) the price (or the price range) of each of the funeral goods and services offered by the supplier, and
 - (b) a reasonable estimate of the amount of each additional fee required for the burial or cremation of a body, and
 - (c) the price of the least expensive package for funeral goods and services required for a burial or cremation of a body that is offered by the supplier.

Part 3 Miscellaneous

9 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 purpose 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.

10 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.

11 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), (2) and (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

public consultation draft

Fair Trading Regulation 2019 [NSW]
Schedule 1 Penalty notice offences

Column 1	Column 2	Column 3
Provision	Penalty for an individual	Penalty for a corporation
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), (2), (3) and (5)	\$750	\$5,500
Section 195 (1) and (2)	\$750	\$5,500
Section 196 (1)	\$150	\$1,100
Section 197 (1), (2), (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), (2) and (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 47D (1)	\$550	\$1,100
Section 49 (1)	\$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)	\$550	\$1,100
Section 58N (2)	\$550	\$1,100
Section 86AB (2)	\$550	\$1,100
