



# Regulatory Impact Statement

Proposed Fair Trading Regulation 2019



**June 2019**

## **Disclaimer**

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# 1. Background Information

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## 1.1 Why the Fair Trading Regulation 2012 is being remade

Under the *Subordinate Legislation Act 1989* most regulations are scheduled for automatic repeal after 5 years. This is to ensure that each regulation remains relevant and fit for purpose. Regulations that are due for repeal can be remade (either with or without amendments), postponed or allowed to lapse.

The *Fair Trading Regulation 2012* is due for staged repeal on 1 September 2019. The repeal of this regulation has been postponed due to an issue with the power to prescribe information standards. This issue was resolved in late 2018 with the inclusion of section 47C into the *Fair Trading Act 1987*, as part of the Better Business Reforms.

Since there is no longer any reason to postpone it is proposed to remake the *Fair Trading Regulation*. Remaking this Regulation requires the preparation of a regulatory impact statement (RIS) and a period of public consultation. This RIS sets out the rationale and objectives of the proposed Regulation and options for achieving the objectives, including an assessment of the costs and benefits.

## 1.2 Matters outside the scope of this consultation

Matters covered by the principal Act – *Fair Trading Act 1987* - are not the subject of the consultation process. This RIS only deals with matters within the scope of the regulation not provisions contained in the Act itself.

In recent years a number of amendments have been made to the Act, some of which include new regulation making powers. These amendments are in the following:

- *Fair Trading Amendment (Commercial Agents) Act 2016*
- *Fair Trading Amendment (Short-term Rental Accommodation) Act 2018*
- *Fair Trading Legislation Amendment (Reform) Act 2018*

The above reforms are being progressed separately to this consultation process. No decision has yet been made on what regulations may be required under these reforms. Depending on the scope of any such regulations a separate consultation process may be undertaken in relation to any or all of these reforms.

## 2. Consultation Program

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### 2.1 Public consultation on the proposed Regulation & RIS

The proposed *Fair Trading Regulation 2019* and this RIS will be publicly exhibited for a period of 28 days until 29 July 2019. It is available on the 'Have Your Say' page of the Fair Trading website at [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)

A notice advising of the availability of the proposed Regulation and RIS has been published in the NSW Government Gazette and in the Daily Telegraph and the Sydney Morning Herald.

Details of the consultation have been placed on the general NSW Government Have Your Say webpage at [www.nsw.gov.au/improving-nsw/have-your-say/](http://www.nsw.gov.au/improving-nsw/have-your-say/)

Copies of the proposed Regulation and this RIS have also been provided directly to some key stakeholder groups and organisations. A list of these stakeholders is provided at **Appendix 2**.

### 2.2 How to make a submission

Interested organisations and individuals are invited to provide a submission on any matter relevant to the proposed Regulation, whether or not it is addressed in this RIS.

We would prefer to receive submissions by email and request that any documents provided to us are produced in an 'accessible' format. Accessibility is about making documents more easily available to those members of the public who have some form of impairment (visual, physical, cognitive). Further information on how you can make your submission accessible is contained at <http://webaim.org/techniques/word/>.

Please forward submissions by:

Email: [fttr@finance.nsw.gov.au](mailto:fttr@finance.nsw.gov.au)

or by mail to:

Fair Trading Regulation 2019  
Better Regulation Division, Regulatory Policy  
McKell Building  
Level 5, 2-24 Rawson Place  
SYDNEY NSW 2000

**The closing date for submissions is 29 July 2019.**

## **2.3 Confidential submissions**

All submissions are generally made publicly available on the Department's website. If you do not want your personal details or any part of your submission published, please indicate this clearly in your submission together with reasons. Automatically generated confidentiality statements in emails are not sufficient. You should also be aware that, even if you state that you do not wish certain information to be published, there may be circumstances in which the Government is required by law to release that information (for example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*). It is also a statutory requirement that all submissions are provided to the Legislation Review Committee of Parliament, with the final version of the Regulation.

## **2.4 Evaluation of submissions**

All submissions received will be considered and assessed. The proposed Regulation may be amended, if necessary, to address issues identified in the consultation process. If further information is required, targeted consultation will be held before the Regulation is finalised.

## **2.5 Commencement of proposed Regulation**

Once the Regulation has been finalised it will be submitted to the Governor for approval.

The final Regulation will then be published on the NSW Government website for online publication of legislation at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au) prior to commencing.

At this stage, the new Regulation will commence on 1 September 2019 when the current Regulation is due to be repealed.

## 3. Objective and rationale of the Regulation

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### 3.1 Need for government intervention

The primary objective of the proposed Regulation is to provide legislative support and administrative detail for the operation of the *Fair Trading Act 1987*. The objects of the Act are to:

- encourage fair trading practices and a competitive and fair market;
- protect consumers;
- regulate trade practices;
- provide for the powers and functions of the Fair Trading Commissioner, including powers to mediate disputes;
- promote uniformity with the consumer laws of other jurisdictions through the interpretation and application of the Australian Consumer Law in New South Wales; and
- set out the powers of NSW Fair Trading relating to compliance and investigation.

The proposed Regulation is necessary as it contains important provisions not contained in the Act or elsewhere. Without the Regulation, the Act could not be as effectively administered or enforced.

The specific objectives of the proposed Regulation are to:

- prescribe information standards relating to:
  - Fuel price signs at service stations
  - Funeral costs for goods and services
- mandate an industry code of conduct for motor vehicle insurers and repairers;
- grant exceptions relating to gift card expiry date requirements; and
- set out offences under the Australian Consumer Law and the Act for which penalty notices may be issued and the amount of the penalties payable for those offences.

The provisions in the proposed Regulation are directly related to the overall objectives of the Act. For example, the proposed information standards will help to encourage fair trading practices and a competitive and fair market in those particular industries. Penalty notice provisions will assist with achieving greater compliance while avoiding costly court proceedings for prosecutions.

## 3.2 Options for achieving objectives

Three options have been identified in this RIS as a means of achieving the objectives set out above. These options are:

### Option 1: Take no action

Allow the existing Regulation to lapse under the sunset provisions of the *Subordinate Legislation Act 1989* and do not make any replacement Regulation.

### Option 2: Maintain the status quo

Do not make the proposed Regulation, and instead remake the Regulation 'as is', identical to the existing Regulation.

### Option 3: Make the proposed Regulation

Remake the existing Regulation with amendments to modernise and improve upon the regulatory regime.

## 3.3 Criteria used to assess the regulatory options

The following criteria, which relates to the regulatory objectives has been used in the evaluation of the above options:

- the extent to which the option reduces red tape;
- the extent to which the option supports the objectives of the Act;
- the extent to which the option improves transparency for consumers; and
- the cost effectiveness of each option, in terms of costs and benefits to business, consumers and government.



## 4. Impact assessment of options

### 4.1 Assessment of option 1 – Take no action

This option would result the existing Regulation lapsing under the sunset provisions of the *Subordinate Legislation Act 1989* with no replacement of the Regulation.

Criteria	Score	Summary/Reasoning
Reduces red tape	1	Allowing the Regulation to lapse would result in the removal of certain regulatory requirements. Service station operators and funeral service providers would not have to comply with information standards. Motor vehicle insurers and repairers would no longer be bound by the mandatory Code of conduct.
Supports parent Act	-1	Having no Regulation would mean that the <i>Fair Trading Act 1987</i> would be unsupported. Specific provisions in the Act would be inoperable without supporting regulations. All offences could only be prosecuted in court making it harder to achieve compliance with the laws.
Increases transparency for consumers	-1	Allowing the Regulation to lapse would reduce transparency for consumers. In particular, there would be less transparency of fuel prices and the cost of a basic funeral.
<b>Total Score</b>	<b>-1</b>	

	Business	Consumers	Government
<b>Costs</b>	<ul style="list-style-type: none"> <li>Increase in legal expenses defending action for non-compliance</li> </ul>	<ul style="list-style-type: none"> <li>Increase the possibility of consumers paying more for fuel and basic funerals</li> </ul>	<ul style="list-style-type: none"> <li>Greater cost spent on enforcing the law</li> <li>Increase in dispute handling and pressure on the court system</li> </ul>
<b>Benefits</b>	<ul style="list-style-type: none"> <li>No regulations to comply with saving compliance costs for businesses affected by existing Regulation</li> </ul>	<ul style="list-style-type: none"> <li>No benefits</li> </ul>	<ul style="list-style-type: none"> <li>Administrative cost savings from not having to review and remake Regulation in the future</li> </ul>

## 4.2 Assessment of option 2 – Maintain the status quo

This option would result in remaking the current Regulation without amendment when it lapses on 1 September 2018 under the *Subordinate Legislation Act 1989*.

Criteria	Score	Summary/Reasoning
Reduces red tape	0	Maintaining the status quo would not allow a reduction of red tape. Outdated provisions, such as employment placement services and fibre content labelling of textile products would remain and service station operators would not benefit from the reduction of red tape in the proposed regulation.
Supports parent Act	+1	Maintaining the status quo would mean the current Regulation will continue to protect consumers through information standards and deter unfair market practices through the current penalty notice offences. However, under this option penalty notices for offences under the Australian Consumer Law will be inconsistent with other States and Territories.
Increases transparency for consumers	0	Maintaining the status quo would not increase transparency for consumers. Consumers would not experience improvements to the ease of accessing costs for funeral services and this would negatively impact consumers and the wider community who would benefit from transparency of costs and fees.
<b>Total Score</b>	<b>1</b>	

	Business	Public	Government
<b>Costs</b>	<ul style="list-style-type: none"> <li>No increase in costs</li> </ul>	<ul style="list-style-type: none"> <li>No increase in costs</li> </ul>	<ul style="list-style-type: none"> <li>No increase in costs</li> </ul>
<b>Benefits</b>	<ul style="list-style-type: none"> <li>Costs for conforming with the Regulation will remain the same</li> <li>Provisions are already familiar to industry and no changes would be required to existing practices and procedures, saving time and money</li> <li>No requirement to update any existing policies, processes or systems to adjust to new requirements</li> </ul>	<ul style="list-style-type: none"> <li>No identifiable benefits</li> </ul>	<ul style="list-style-type: none"> <li>Guidance and advice material for the community provided by Fair Trading would not need to be updated, saving time and money</li> </ul>

### 4.3 Assessment of option 3 – Remake the regulation

This option would result in the proposed Regulation with amendments being made to replace the current regulation when it lapses on 1 September 2019 under the Subordinate Legislation Act 1989.

Criteria	Score	Summary/Reasoning
Reduces Red Tape	+1	Remaking the regulation will reduce red tape, particularly in relation to information standards which are no longer applicable resulting in a cost saving to the industry. Changes include the removal of information standards relating to the textile industry and employment services and fuel operators having discretion to display which 4 types of fuel will be displayed on their sign board.
Supports Parent Act	+1	Remaking the Regulation would result in an updated regulatory framework, which has kept pace with modern standards and approaches. This option updates penalty notices under the Australian Consumer Law to be consistent with other States and Territories. This acts as a deterrent for businesses and provides greater protection for consumers.
Increased Transparency for Consumers	+1	Remaking the Regulation will result in greater clarity and transparency to consumers in the funeral industry under the proposed information standard for funeral services. Under the new arrangements, funeral service operators will be required to display a price for all goods and services offered at their place of business and on their website, including a total minimum cost of providing a funeral service.
<b>Total Score</b>	<b>3</b>	<b>This option is the preferred option</b>

	Business	Public	Government
<b>Costs</b>	<ul style="list-style-type: none"> <li>Initial administration costs for funeral service operators</li> </ul>	<ul style="list-style-type: none"> <li>No increase in costs</li> </ul>	<ul style="list-style-type: none"> <li>No increase in costs.</li> </ul>
<b>Benefits</b>	<ul style="list-style-type: none"> <li>Initial administration costs are balanced by the increase in transparency for consumers.</li> <li>Service station operators have greater flexibility and discretion for displaying fuel</li> <li>No increase in costs for service station operators</li> </ul>	<ul style="list-style-type: none"> <li>Updated and modern Regulation which is more relevant</li> <li>Greater access to information and transparency</li> </ul>	<ul style="list-style-type: none"> <li>Reduce cost for Government in administering the legislation and enforcing compliance with outdated provisions</li> </ul>

## 4.4 Conclusion and preferred option

Allowing the *Fair Trading Regulation 2012* to lapse under the base option of doing nothing (option 1) is not considered a feasible option. If the Regulation lapsed, NSW Fair Trading would not be able to issue penalty infringement notices. During 2017-18, ACL related compliance and enforcement actions by ACL regulators nationally included 181 infringement notices amounting to a total value of \$825,200.00.<sup>1</sup>

Under option 1 this fine income would not be received and more costly and time consuming court action would need to be taken to deal with non-compliance with the laws. Additionally, this option does not achieve any of the Act's objectives and will significantly reduce consumer protection in the marketplace. There would be less price transparency in the fuel and funeral industries. Gift card exemptions would no longer apply and there would be no mandatory code of conduct for motor vehicle insurers and repairers. Overall allowing the Regulation to lapse and not be replaced would reduce the effectiveness of the Act. For these reasons option 1 is not supported.

Remaking the Regulation without amendment, under option 2 is also not considered a feasible option. Under this option, the Act's objectives would still be able to be achieved, but it would not do so in the most effective and beneficial way given the potential for improvements. The current Regulation contains information standards which are no longer necessary such as fibre content labelling and employment placement services and other provisions which are no longer relevant such as the partial refund of valuer's application fees. The penalty infringement notice provisions would remain the same. As a result, the relatively low penalty amounts will continue to lose their effectiveness over time and may diminish as a deterrent factor. Option 2 would not impose any new costs on industry or consumers, but it would not result in any significant benefits or improvements to the marketplace. For these reasons option 2 is not supported.

Option 3 involves remaking the Regulation with the amendments proposed (see Annexure 1 for a summary of the main changes bring proposed to the Regulation). This option best meets the objectives of the Act, reduces red tape for businesses and provides greater clarity and transparency. Although there may be some additional administrative costs for the funeral industry in establishing and maintaining the new information standard, these costs are not expected to be significant and are balanced by the increase in transparency for consumers. Option 3 also aligns penalty infringement notice offences under the Australian Consumer Law to ensure consistency across States and Territories. These changes ensure that businesses treat penalties seriously and that such offences are a sufficient deterrent to prevent unscrupulous behaviour. For these reasons option 3 is the preferred option, as it provides the greatest net benefit to the community in comparison to the other options.

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<sup>1</sup> Australian Consumer Law, *Year in Review 2017-18*, March 2019.

## 5. Regulation making powers

The following table sets out the existing regulation making powers in the *Fair Trading Act 1987* and identifies those proposed to be used in the proposed Regulation. As discussed in 1.2 this table does not include regulation making powers for reforms not yet commenced.

Section of Act	Regulation making power under the Act	Scope of the proposed regulation
4(6)	Add to the list of Acts which are paramount to the <i>Fair Trading Act</i>	None prescribed
8(1)(i)	Prescribe other Acts under which the Secretary may delegate functions	None prescribed
9A (2)(d)	Clarify the types of information that may be subject to information sharing arrangements	None prescribed
13(4)(b)	Exclude expenses from the grant of legal assistance	None prescribed
47C(1),(2)	Enable information standards to be prescribed involving the supply of goods and services	The proposed Regulation prescribes information standards for funeral price signs and funeral goods and services ( <b>Clauses 4-8</b> )
48(3)(c)	Grant exemptions from requirements relating to employment placement services	None prescribed
53(1)	Declare a code of conduct for motor vehicle insurers and repairers	The proposed Regulation prescribes an industry code of conduct for motor vehicle insurers and repairers ( <b>Clause 9</b> )
53(2)	Grant exemptions from the motor vehicle insurance and repair industry code of conduct	The proposed Regulation prescribes classes of motor vehicles excluded from the code ( <b>clause 9(2)</b> )
53(3)	Prescribe savings or transitional provisions for the motor vehicle industry code of conduct	None prescribed
58C(2)	Declare a person to be the event organiser of a particular event for the sale of tickets	None prescribed

Section of Act	Regulation making power under the Act	Scope of the proposed regulation
58H(2)	Grant exemptions from requirement that tickets cannot be sold contingent on other purchases	None prescribed
58I(4)	Exclude a person from the definition of an owner re ticket resale advertising	None prescribed
58K(3)	Set out security measures needed for ticketing websites	None prescribed
58L(5)	Clarify the circumstances for when a ticket is or is not available for general public sale	None prescribed
58M(3)	Provide exemptions from the requirements applying to gift cards	The proposed Regulation contains classes of gift cards which are excluded from gift card expiry requirements ( <b>clause 10</b> )
66(4)	Specify costs and expenses recoverable as part of an investigation of an offence under the Act	None prescribed
67	Prescribe penalty notice offences	Schedule 1 of the proposed Regulation sets out the offences for which a penalty infringement notice can be issued and the amounts payable
79S(7)	Increase the \$40k NCAT jurisdictional limit in relation to a consumer claim	None prescribed
79X(2)	Expand particulars of matters recorded on the unsatisfactory suppliers list	None prescribed
79X(4)	Prescribe circumstances under which a supplier can be removed from the unsatisfactory suppliers list	None prescribed
82(2)	Add another body or person to the list of prescribed authority who can issue a certificate as an analyst	None prescribed
87(1)(d)	Expand the list of persons or organisations for which publication of certain statements is prohibited	None prescribed

Section of Act	Regulation making power under the Act	Scope of the proposed regulation
88	Provide additional methods for the service of notices under the Act	None prescribed
92(1A)(b)	Vary the times for negotiating an unsolicited consumer agreement under 73(1) of the ACL	None prescribed
92(1A)(c)	Specify how money is to be paid out of the NSW Consumer Law Fund	None prescribed
Sch 3 Cl 1(2)	Define what is a consumer good for consumer guarantee directions	None prescribed
Sch 3 Cl 1(3)	Change the value of goods covered by consumer guarantee directions	None prescribed
Sch 3 Cl 2(2)	Extend the time period in which a consumer can apply for a consumer guarantee direction	None prescribed
Sch 3 Cl 4(1)(b)	Prescribe other grounds a consumer guarantee direction application may not be accepted	None prescribed
Sch 3 Cl 4(2)(b)	Prescribe other reasons why a consumer guarantee direction may not be granted	None prescribed
Sch 3 Cl 7	Set procedures as to how consumer guarantee direction applications are handled	None prescribed
Sch 3 Cl 10(2)	Extend the timeframe in which a person can apply to NCAT for a re-determination of the making of a consumer guarantee direction	None prescribed
Sch 3 Cl 11(1)(c)	Vary how NCAT determines applications involving a consumer guarantee direction	None prescribed
Sch 5	General power to prescribe provisions of a savings or transitional nature	None prescribed

**1. Do any of the regulation making powers for which no regulations are in the proposed Regulation need to be used, and if so, why?**

## 6. Discussion of the proposed regulation

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Submissions are welcome on any aspect of the proposed Regulation or any other relevant issue, whether or not raised in this Regulatory Impact Statement. However, the following discussion points provide greater context for some provisions in the proposed Regulation and explore some regulatory options for these provisions.

### 6.1 Information standards generally

Under the Australian Consumer Law (ACL) a range of information standards are prescribed which apply to all jurisdictions. Following the Better Business Reforms in 2018 additional information standards can now be prescribed under the *Fair Trading Act 1987* to apply only to the supply of particular goods and services within NSW. The proposed Regulation contains two information standards to apply in NSW – fuel price signs and funeral costs. These are discussed in more detail below. Most other states and territories have a similar power to prescribe local information standards. Fuel price signs is the most common one. Queensland has a product safety standard for bunk beds for under 16s in short term accommodation. Western Australia has a prescribed information standard for builders plates for recreational vessels. These standards appear to address particular issues in those states.

**2. Are there any other information standards that should be prescribed to apply within NSW?**

### 6.2 Fuel price signage information standard

Clause 5 of the proposed Regulation maintains the current requirement that service station operators must have at least one sign displaying fuel prices readily visible by motorists approaching the service station. The sign/s must display the standard retail price and not include any conditional discounts. The sign/s must be appropriately lit during the hours the service station is open. If 4 or more fuels are sold at the service station the sign/s must display a minimum of 4 fuel prices. The proposed Regulation complements the provisions of the Act relating to the popular FuelCheck service, an online tool designed to provide consumers with real-time information about fuel prices at every service station across NSW. To improve legislative consistency the definitions in the proposed Regulation have been better aligned with those in the FuelCheck provisions.

Clause 6 of the proposed Regulation maintains the current requirement that the octane rating of petrol must be displayed on the fuel pump so that it can be seen by a person using the fuel dispenser.

**3. Are any further changes needed to the fuel price information standard in the proposed Regulation?**



## 6.3 Funeral goods and services information standard

Clauses 7 and 8 of the proposed Regulation expands upon the information standard for funeral goods and services. The main change is that under the proposed Regulation funeral service providers will be required to disclose the price (or the price range) of each of the funeral goods and services offered by the funeral service provider. This itemised price information will need to be prominently displayed at each place of business and on the home page of the provider's website (if they have one). Under the existing Regulation a funeral service provider must supply a written statement of the cost of each funeral goods and services, but only if requested by an individual consumer, and a basic funeral notice but only if the supplier ordinarily offers a basic funeral to consumers.

The information standard has been expanded in response to calls for greater transparency of the prices being charged for funeral goods and services. Research indicates that:

- consumers are unlikely to shop around for pricing of a funeral, often relying on word-of-mouth or prior interactions;
- consumers are often in a vulnerable state and unlikely to, or feel uncomfortable, enquiring about more affordable options, particularly as the decision making context is markedly different than other major processes (e.g. weddings);
- are unaware of options available (i.e. where services are not required to be performed) and are sold as bundles services;
- are unaware of the breakdown and ownership of the market.

Everybody will at some stage need a funeral so unlike other consumer purchases there is no choice to be made whether to proceed, only who with. Funerals often may need to be arranged unexpectedly and there is usually a very short timeframe in which all of the arrangements need to be agreed upon. In such situations there can be cases of 'up-selling' or the consumer can end up paying significantly more than a similar funeral organised by another provider.

Complaints figures about the funeral industry show that since 2013 there have been almost 420 complaints across the country. NSW received the most with 168, followed by Victoria with 87 and Queensland with 66. While these complaint figures are relatively low considering there may be more than 50,000 funerals in NSW each year, most of the complaints related to overcharging, misinformation, unsatisfactory services and failure to supply services.

Various jurisdictions have identified price transparency as a concern for consumers in the funeral industry. The Victorian funeral market is most similar to NSW, in terms of size, number of operators and regional and urban mix. Victoria has price information transparency requirements similar to those in the proposed Regulation, under their *Funerals Act 2006*.

The table below provides a summary of key government initiatives in overseas jurisdictions:

Jurisdiction	Key findings
United Kingdom	<ul style="list-style-type: none"> <li>• The Competition and Markets Authority (CMA) are currently investigating the lack of transparency in pricing and service information, particularly online in the funeral industry.</li> <li>• The CMA has identified that where prices are available, they can be difficult to compare due to a lack of clarity on what the price covers and/or bundling of various elements making up a funeral.</li> <li>• The CMA suggest some large companies are taking advantage of the “vulnerability of many people” by charging higher prices.</li> </ul>
Scotland	<ul style="list-style-type: none"> <li>• The Government has developed a ‘Funeral Costs Plan’ to tackle the issue of funeral poverty and make more affordable options available for consumers.</li> <li>• The Government is developing a publishing guidance on funeral costs to help improve the availability and transparency of funeral charges information to help consumers understand, compare and choose the services that are right for them at the time of planning a funeral.</li> </ul>
New Zealand	<ul style="list-style-type: none"> <li>• The New Zealand Law Commission identified that consumers in the funeral industry are particularly vulnerable. That vulnerability means that the balance of power and information is tilted away from the consumer and warrants some form of legislative control.</li> <li>• The Law Commission have provided a report to the House of Representatives with several recommendations. One key proposal is funeral providers, providing with an itemised statement of costs before a contract is signed.</li> </ul>

The funeral industry is continually changing. These changes come as the:

- State’s population continues to increase and age;
- Cost of living rises;
- Cultural and religious make-up of the state shifts;
- Attitudes towards funerals and end-of-life change.

These changes in society have brought about ‘disruptors’ to the industry who focus on personalised, customised and cheaper funeral services as well as contributed to the decline in burials and rise in cremations. In addition to this, the rise in technology is resulting in an increasing amount of people becoming digitally literate, including those who may not speak English as a first language. These factors all contribute to society wanting to be able to make informed decisions quickly, as accurately as possible, and using technology rather than engaging with service providers in the first instance.

Consequently, the need to display a range of pricing information allowing consumers to access this information is becoming more and more important. Requiring prices to be available on funeral service provider websites will enable consumers to more easily research what they want and narrow down the list of potential providers.

*An Investigation of Death Care and the Funeral Industry in Australia* (Van der Laan and Moerman 2017) demonstrates the nature of the issues the information standard is seeking to address.

This report explored results from a survey of funeral directors to determine pricing of two ‘standardised’ products using both online information and direct contact (via telephone). The following tables have been extracted from the report.

**Table 4.1:** Funeral Services – Online Contact (\$AUD)

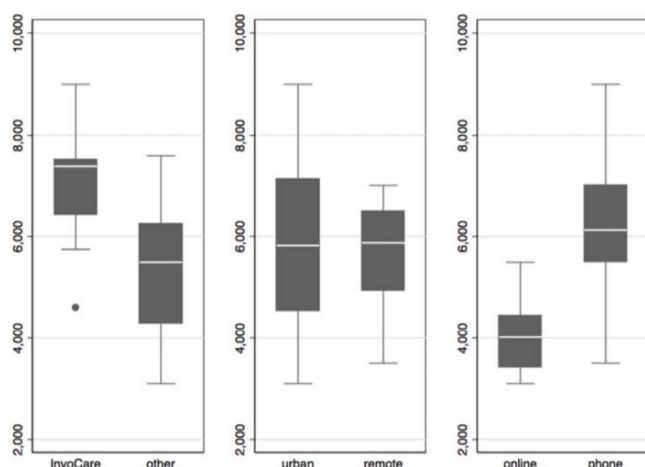
	N	Mean	Median	Min	Max
Direct committal	57	\$2215	\$2105	\$1200	\$3950
Budget funeral	59	\$4132	\$4000	\$2440	\$6500
Cremation fee	7	\$875	\$885	\$755	\$935
Casket	7	\$961	\$960	\$625	\$1250
Transport	2	\$322.50	\$322.50	\$295	\$350
Service	6	\$2604	\$2700	\$1150	\$4200
Certification	8	\$146	\$131	\$100	\$291

**Table 4.2:** Funeral Services – Direct Contact (\$AUD)

	N	Mean	Median	Min	Max
Direct committal	52	\$3346	\$3000	\$1500	\$6500
Budget/ES funeral	61	\$5646	\$5600	\$3300	\$9000

The above figures show a wide variety of prices for similar funeral goods and services. It also highlights that the average price and the spread of prices is significantly lower where prices were displayed on the internet than when the customer contacted the service provider directly. The report identified that details of individual components of prices was often not disclosed and a ‘packaged’ or ‘bundled’ total price was generally supplied.

The figure below has also been extracted from the same report. It shows that the prices for funerals provided by smaller operators is less than the largest funeral service provider. It also demonstrates the cost of funerals is higher in urban areas than in regional areas.



**Figure 4.2:** NSW Funeral Prices and Indicator Variables

Greater price transparency has the potential not only to benefit consumers but could also benefit smaller operators and those in regional and rural areas of NSW. They will be able to demonstrate more easily where they are cheaper than larger operators or other competitors.

Currently the revised funeral goods and services information standard is set to commence along with the rest of the proposed Regulation on 1 September 2019. This may or may not be sufficient time in which funeral service providers can comply with the new requirements. One option would be to include a savings and transitional provision under which the new requirements would not commence until a later date (e.g. 1 December 2019 or 1 January 2020).

The proposed funeral goods and services information station is part of a package of NSW Government initiatives to improve the 'End of Life journey'. This includes measures aimed at providing more transparent information on cemetery providers' fees for consumers. Work is also being carried out on reducing touch points with NSW Government agencies for persons dealing with the death of a loved one.

**4. Are any further changes needed to the funeral goods and services information standard in the proposed Regulation?**

**5. Should a later commencement date for the funeral goods and services information standard be prescribed to give the industry time to transition to the new requirements? If so, when should it commence?**

## **6.4 Code of conduct for motor vehicle insurers and repairers**

The Motor Vehicle Insurance and Repair Industry Code of Conduct (Code) has been in operation since 1st September 2006. The Code is voluntary in all states and territories, other than NSW where it is mandatory under the *Fair Trading Act 1987*. The Code was last revised in July 2017.

Clause 9 of the proposed Regulation carries forward the provision from the existing Regulation. A note has been added to say the Code is available on the NSW Fair Trading website to increase accessibility.

The provision exempts from the Code the repair of vehicles owned or used by the repairer and vehicles registered outside NSW (except when repaired in NSW).

**6. Are any further modifications to the Code required, including any additional exemptions?**

## 6.5 Exceptions to gift card expiry requirements

Clause 10 of the proposed Regulation replicates the current list of exemptions from the existing Regulation. This is a temporary measure as the Commonwealth Government is currently in the process of implementing a national scheme for the regulation of gift cards under the Competition and Consumer Amendment (Gift Cards) Act 2018.<sup>2</sup> The regulations supporting this scheme will exempt certain types of gift cards and circumstances from some or all the Act's requirements. The NSW gift card provisions are expected to be repealed when the national scheme commences.

**7. Are any urgent changes needed to the list of exemptions from the gift card expiry requirements, ahead of the introduction of the national scheme?**

## 6.6 Penalty notice offences

Section 67 of the Act empowers authorised officers to issue a penalty notice if it appears a penalty notice offence has been committed. For the purposes of section 67, Schedule 1 of the proposed Regulation specifies a range of offences against which a penalty notice may be issued. Penalty notices are used to enforce compliance in situations where it is not considered appropriate to take prosecution action against a corporation or individual. Penalty notices are an important feature of the suite of compliance and enforcement options available to NSW Fair Trading and are relied on as an effective deterrent against non-compliance.

The penalty notice offences in Schedule 1 have been expanded and the penalty amounts have been increased. This was the result of a jurisdiction comparison of penalty notice provisions for Australian Consumer Law (ACL) offences. The increase in penalties is also consistent with the 2016-2017 ACL Review which found that penalties were insufficient to deter unlawful conduct that could be highly profitable. As a consequence, the maximum penalties under the ACL for both corporations and individuals have been substantially increased.

**8. Are the proposed penalty notice offences and amounts fair and reasonable?**

**9. Are there any additional penalty notice offences that should be prescribed?**

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<sup>2</sup> Australian Government Treasury, *Gift Card Regulations*, retrieved on 1 May 2019 from <https://treasury.gov.au/consultation/c2018-t333988>, last updated unknown.

## Appendix 1 - Summary of main changes to Regulation

The proposed Regulation is a more streamlined and simplified version compared to the existing Regulation. Redrafting provisions into plainer English and removing unnecessary wording has resulted in a more succinct, relevant and easier to read Regulation. The proposed Regulation has only 9 pages and 11 clauses compared to the 16 pages and 26 clauses in the existing Regulation.

The following table sets out the main changes being proposed to the Regulation:

<b>Existing 2012 Regulation</b>	<b>Proposed 2019 Regulation</b>
Under the fuel price information standard the definition of prescribed fuel technically includes electricity. However, a statement of regulatory intent on the NSW Fair Trading website states that the fuel price signs product information standard will not be enforced in relation to electricity as a prescribed fuel.	The proposed Regulation excludes electricity from the definition of prescribed fuel. This clarifies the current policy intent and removes the potential for confusion or misunderstandings. The fuel price information standard was designed for regular service stations selling fuels, not electric vehicle recharging stations that only offer electricity.
The fuel price information standard requires the price of 4 types of prescribed fuel to be displayed on a sign (if 4 or more fuels are sold), but specifies 3 of the 4 types of fuel that must be on the sign.	The proposed Regulation maintains the requirement of 4 types of fuel to be displayed but no longer specifies any particular fuel. This provides greater flexibility to service station operators and is consistent with the approach taken by other jurisdictions with an equivalent fuel price information standard.
The funeral goods and services information standard only applies to a basic funeral service.	The information standard will apply to all funeral goods and services. This will increase price transparency for consumers.
The penalty infringement notices listed in Schedule 1 currently contains 35 offences under the Australian Consumer Law (ACL).	The proposed Regulation adds additional offences under the ACL for which a penalty infringement notice can be issued. These were identified following an examination of infringement notices able to be issued in other jurisdictions.
All penalty infringement notices currently have the same penalty amount.	The proposed Regulation varies the penalty amount depending on the nature of the offence. This is the same approach taken in other jurisdictions.

<p>The penalty amounts for all penalty infringement notices are the same regardless of whether the offence is committed by an individual or a corporation.</p>	<p>The proposed Regulation has different penalty amounts for individuals and corporations, with the later attracting higher amounts. This brings NSW into line with the approach taken in most other jurisdictions.</p>
<p>The current Regulation contains an information standard for fibre content labelling of textile products which requires compliance with various Australian Standards.</p>	<p>This information standard has been removed in the proposed Regulation. This will bring NSW into line with all other states and territories. Prior to the advent of the Australian Consumer Law several other states had fibre content labelling laws but these have all since lapsed.</p>
<p>The current Regulation contains an information standard relating to employment placement services.</p>	<p>This information standard has been removed as it does little more than repeat the requirements under section 49 of the Act. Removing the information standard negates the potential double jeopardy with non-compliance. No other jurisdiction has a similar information standard in place.</p>
<p>A miscellaneous provision enables the delegation of the Secretary's functions under the <i>Gas Supply Act 1996</i>.</p>	<p>This provision has been omitted as it is now dealt with under the <i>Gas and Electricity (Consumer Safety) Act 2017</i>.</p>
<p>A savings and transitional provision provides for a partial refund of valuers application fees following the repeal of the <i>Valuers Act 2003</i>.</p>	<p>This provision has been removed as the Valuers Act was repealed in March 2016 and all partial refunds of fees owing have since been paid.</p>

## Appendix 2 – list of targeted stakeholders

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A copy of the proposed Regulation and this RIS has been provided to key stakeholder groups and organisations. These include:

- NSW Service Station Association
- NRMA
- Australian Institute of Petroleum
- Motor Traders Association of NSW
- National Funeral Directors Association of Australia
- NSW Funeral Directors Association
- Australian Funeral Directors Association NSW/ACT
- Independent Funeral Directors Association of Australia
- Insurance Council of Australia
- InvoCare
- Choice
- ACCC
- NSW Small Business Commissioner
- Consumer Action Law Centre
- Law Society of NSW



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