

Version No. 002
Fair Trading Regulations 2009

S.R. No. 86/2009

Version incorporating amendments as at 1 December 2009

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Version No. 002
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1 Objectives

The objectives of these Regulations are—

- (a) to prescribe forms for the purposes of the **Fair Trading Act 1999**; and
- (b) to prescribe certain persons and bodies for the purposes of that Act; and
- (c) to provide for exemptions relating to telephone marketing agreements; and
- (d) to specify offences in respect of which an infringement notice may be issued and to prescribe infringement penalties; and
- (e) to provide for any other matters authorised to be prescribed under the **Fair Trading Act 1999**.

2 Authorising provision

These Regulations are made under section 165 of the **Fair Trading Act 1999**.

3 Commencement

These Regulations come into operation on 16 August 2009.

4 Revocation

The Regulations referred to in Schedule 1 are **revoked**.

5 Definition

In these Regulations, *the Act* means the **Fair Trading Act 1999**.

6 Persons section 27 of the Act does not apply to

The following persons are prescribed for the purposes of section 27(5)(a)(iv) of the Act—

- (a) each member of the Victorian Country Press Association Limited (ACN 004 405 761) and each person who is a related body corporate of such a member;
- (b) each member of the Australasian Religious Press Association Inc. and each person who is a related body corporate of such a member.

7 Telephone marketing agreements exempted from Division 2A of Part 4 of the Act

The following classes of telephone marketing agreement are exempt from the provisions of Division 2A of Part 4 of the Act—

- (a) an agreement for the supply of a financial product, or a managed investment scheme, within the meaning of the Corporations Act;

Note

The hawking of certain financial products and managed investment schemes is prohibited under the Corporations Act (see sections 992A and 992AA of that Act).

- (b) if an agreement for the supply of goods or services exists between a purchaser and a supplier, an agreement between the purchaser and the supplier for the supply of goods or services that are of the same kind as those supplied under the existing agreement;

Examples

An example of such an exempted agreement is where the purchaser has joined a scheme (such as a wine society or club) and agrees to allow the supplier subsequently to telephone the purchaser to offer goods or services in connection with the scheme. In that case, the subsequent agreement for the supply of those goods or services is exempt.

An example of a telephone marketing agreement that is not for the supply of goods or services that are of the same kind as those supplied under an existing agreement is if a supplier of telecommunications services, who has an existing agreement with a purchaser for the supply of a landline telephone service, telephones the purchaser for the purpose of negotiating an agreement for the supply of a mobile telephone service or an Internet service. In such a case, the subsequent agreement for the supply of those other services is not exempt.

- (c) if an agreement for the supply of goods or services exists between a purchaser and a supplier, a subsequent agreement between the purchaser and the supplier for the purposes of—
- (i) maintaining the goods or services provided under the existing agreement; or

Example

The rectification of a fault in the goods supplied under the existing agreement.

- (ii) making a minor change to the terms of the existing agreement.

Example

A change to the address to which payments are to be sent under an agreement for the supply of a mobile telephone service.

8 Telephone marketing agreements exempted from sections 67E and 67H of the Act

A telephone marketing agreement for the supply of classified advertising is exempt from sections 67E and 67H of the Act if the agreement entitles the purchaser to cancel the agreement at any time until the expiry of the publication deadline by telephoning the supplier or the person acting on behalf of the supplier.

9 Telephone marketing agreements exempted from section 80 of the Act

- (1) A telephone marketing agreement for services that are supplied to a purchaser on a continuing basis is exempt from section 80 of the Act.
- (2) Subregulation (1) does not apply to an agreement for the supply of services that are—
 - (a) supplied entirely on a one-off basis; or
 - (b) capable of being wholly supplied during the cooling-off period referred to in section 67H(1) of the Act.

Example

The carrying out of repairs for a purchaser.

- (3) A telephone marketing agreement for the supply of classified advertising is exempt from section 80 of the Act.

10 Form of lay-by cancellation form

The form for the lay-by cancellation form under section 85(1A) of the Act is Form 1 in Schedule 2.

11 Conciliation

The following persons and bodies are prescribed for the purposes of section 104(2) of the Act—

- (a) the Ombudsman appointed under section 3 of the **Ombudsman Act 1973**;

- (b) the Director, Police Integrity under section 7 of the **Police Integrity Act 2008**;
- (c) the Health Services Commissioner established under section 5 of the **Health Services (Conciliation and Review) Act 1987**;
- (d) the Legal Services Commissioner appointed under section 6.3.1 of the **Legal Profession Act 2004**;
- (e) the Private Health Insurance Ombudsman established under section 238-1 of the Private Health Insurance Act 2007 of the Commonwealth.

12 Form of embargo notice

For the purposes of section 126(1) of the Act, the prescribed form of an embargo notice is Form 2 in Schedule 2.

13 Infringement notice offences and penalties

- (1) For the purposes of section 160A(1) of the Act, an offence against a provision of the Act set out in column 2 of Schedule 3 is specified as an offence in respect of which an infringement notice may be issued.
- (2) For the purposes of section 160A(1A) of the Act, the prescribed infringement penalty for an offence set out in column 2 of Schedule 3 is—
 - (a) in the case of a natural person, the penalty set out in column 3 of Schedule 3 corresponding to that offence; and
 - (b) in the case of a body corporate, the penalty set out in column 4 of Schedule 3 corresponding to that offence.

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SCHEDULES

SCHEDULE 1

Regulation 4

REVOCATIONS

<i>S.R. No.</i>	<i>Title</i>
103/1999	Fair Trading Regulations 1999
162/2001	Fair Trading (Amendment) Regulations 2001
119/2003	Fair Trading (Amendment) Regulations 2003
36/2004	Fair Trading (Amendment) Regulations 2004
110/2004	Fair Trading (Further Amendment) Regulations 2004
168/2004	Fair Trading (Forms) Regulations 2004
23/2005	Fair Trading (Infringements) Regulations 2005
88/2008	Fair Trading (Amendment) Regulations 2008

SCHEDULE 2

FORMS

FORM 1

Regulation 10

LAY-BY CANCELLATION FORM

Fair Trading Act 1999

Section 85(1A)

Details of lay-by (*to be completed by the supplier*):

Name of supplier:

Address of supplier:

Date of lay-by:

Lay-by identification number (if any):

Description of goods:

Total payments made to date:	Cancellation fee (if any):	Refund/amount due:
\$ minus	\$	= \$

Name of purchaser:

Signature of purchaser:

Date:

Return this signed form to the supplier's address given above

FORM 2

Regulation 12

EMBARGO NOTICE

Fair Trading Act 1999

Section 126(1)

1. The thing described below has been embargoed under section 126 of the **Fair Trading Act 1999**.
2. Section 126(2) provides that a person who knows that an embargo notice relates to a thing and who—
 - (a) sells; or
 - (b) leases; or
 - (c) without the written consent of the inspector who issued the embargo notice, moves; or
 - (d) transfers; or
 - (e) otherwise deals with—the thing or any part of the thing is guilty of an offence and liable to a penalty not exceeding 60 penalty units.
3. Section 126(3) provides that it is a defence to a prosecution for such an offence to prove that the thing or part of the thing was moved for the purpose of protecting and preserving it.
4. Section 126(4) provides that despite anything in any other Act, a sale, lease, transfer or other dealing with a thing in contravention of that section is void.
5. Description of embargoed thing—
6. A copy of this notice has been—
 - ☐ served on *(insert name of occupier)*
 - ☐ affixed to thing described above.

Signature of inspector:

Name of inspector:

Telephone number:

Date:

Time:

SCHEDULE 3

Regulation 13

Sch. 3
amended by
S.R. No.
148/2009
reg. 3.

INFRINGEMENT NOTICE OFFENCES AND PENALTIES

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Item No.</i>	<i>Infringement notice offence in the Act</i>	<i>Prescribed infringement penalty for natural person</i>	<i>Prescribed infringement penalty for body corporate</i>
1	section 29(1)	6 penalty units	20 penalty units
2	section 29(4)	6 penalty units	20 penalty units
3	section 32M(1)	6 penalty units	20 penalty units
4	section 33(1)	10 penalty units	60 penalty units
5	section 33(2)	10 penalty units	60 penalty units
6	section 38	10 penalty units	60 penalty units
7	section 44	10 penalty units	60 penalty units
7A	section 46(1)	10 penalty units	60 penalty units
7B	section 46(2)	10 penalty units	60 penalty units
8	section 53	10 penalty units	60 penalty units
9	section 62(1)	8 penalty units	30 penalty units
10	section 67D(7)	6 penalty units	20 penalty units
11	section 67F(1)	8 penalty units	30 penalty units
12	section 70(1) (except with respect to the requirements in section 69(3))	8 penalty units	30 penalty units
13	section 79	8 penalty units	30 penalty units
14	section 80	8 penalty units	30 penalty units
15	section 81(3)	8 penalty units	30 penalty units
16	section 83(1)	6 penalty units	20 penalty units
17	section 84	6 penalty units	20 penalty units
18	section 89(1)	6 penalty units	20 penalty units

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Item No.</i>	<i>Infringement notice offence in the Act</i>	<i>Prescribed infringement penalty for natural person</i>	<i>Prescribed infringement penalty for body corporate</i>
19	section 161A(2)	6 penalty units	20 penalty units
20	section 161A(3)	6 penalty units	20 penalty units
21	section 161A(4)	6 penalty units	20 penalty units
22	section 161A(6)	6 penalty units	20 penalty units

ENDNOTES

1. General Information

The Fair Trading Regulations 2009, S.R. No. 86/2009 were made on 5 August 2009 by the Governor in Council under section 165 of the **Fair Trading Act 1999**, No. 16/1999 and came into operation on 16 August 2009: regulation 3.

The Fair Trading Regulations 2009 will sunset 10 years after the day of making on 5 August 2019 (see section 5 of the **Subordinate Legislation Act 1994**).

2. Table of Amendments

This Version incorporates amendments made to the Fair Trading Regulations 2009 by statutory rules, subordinate instruments and Acts.

Fair Trading Amendment Regulations 2009, S.R. No. 148/2009

Date of Making: 1.12.09

Date of Commencement: 1.12.09

3. Explanatory Details

No entries at date of publication.