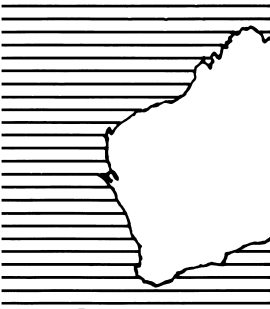




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TRADE PRACTICES ACT 1974
(COMMONWEALTH)

**TRADE PRACTICES
(AUSTRALIAN CONSUMER
LAW) AMENDMENT
REGULATIONS 2010 (No. 1)**



Trade Practices (Australian Consumer Law) Amendment Regulations 2010 (No. 1)¹

Select Legislative Instrument 2010 No. 280

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Trade Practices Act 1974*.

Dated 16 November 2010

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

DAVID BRADBURY
Parliamentary Secretary to the Treasurer

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1 Name of Regulations

These Regulations are the *Trade Practices (Australian Consumer Law) Amendment Regulations 2010 (No. 1)*.

2 Commencement

These Regulations commence as follows:

- (a) on 1 January 2011 — regulations 1 to 3 and Schedule 1;
- (b) on 1 July 2011 — Schedule 2;
- (c) on 1 January 2012 — Schedule 3.

3 Amendment of *Trade Practices Regulations 1974*

Schedules 1 to 3 amend the *Trade Practices Regulations 1974*.

Amendments commencing on 1 January 2011

Schedule 1

Schedule 1 Amendments commencing on 1 January 2011

(regulation 3)

[1] Regulation 1

substitute

1 Name of Regulations

These Regulations are the *Competition and Consumer Regulations 2010*.

[2] Subregulation 2 (1), definition of Act

substitute

Act means the *Competition and Consumer Act 2010*.

[3] Subregulation 2 (1), after definition of AEMO

insert

approved form means a form approved under regulation 4A.

Audit Bureau of Circulations means the organisation formed in 1932 which audits print circulation for the media industry.

[4] Subregulation 2 (1), after definition of *Competition Code*

insert

large proprietary company has the meaning given by section 9 of the *Corporations Act 2001*.

Schedule 1 Amendments commencing on 1 January 2011

[5] Subregulation 2 (1), after definition of *proprietary company*

insert

subsidiary has the meaning given by section 9 of the *Corporations Act 2001*.

[6] After regulation 4

insert

4A Approved form

The Commonwealth Minister may, in writing, approve a form for a purpose authorised or required by these Regulations.

[7] Regulation 4A

renumber as 4AA

[8] After Part 5

insert

Part 6 Australian Consumer Law

77 Prescribed requirements for definition of *assert a right to payment*

For paragraph 10 (1) (e) of the Australian Consumer Law, the following requirements are prescribed:

- (a) the statement must include the text ‘This is not a bill. You are not required to pay any money.’;
- (b) the text must be the most prominent text in the document.

78 Prescribed requirements for warning statements

For paragraphs 40 (3) (b) and 43 (2) (b) of the Australian Consumer Law, the following requirements are prescribed:

- (a) the warning statement must include the text ‘This is not a bill. You are not required to pay any money.’; and
- (b) the text must be the most prominent text in the document.

79 Specification of body

For paragraph 43 (3) (a) of the Australian Consumer Law, the Audit Bureau of Circulations is specified.

80 Specification of person

For paragraph 43 (3) (d) of the Australian Consumer Law, a person mentioned in paragraph (a), (b), (c) or (d) is specified if the person has not been found guilty of an offence under section 162 of the Australian Consumer Law:

- (a) a large proprietary company; or
- (b) a subsidiary of a large proprietary company; or
- (c) a listed corporation; or
- (d) a subsidiary of a listed corporation.

81 Agreements that are not unsolicited consumer agreements — general

- (1) For subsection 69 (4) of the Australian Consumer Law, the following kinds of agreement are not unsolicited consumer agreements:
 - (a) a business contract;
 - (b) a discontinued negotiations agreement;
 - (c) an agreement made in the course of a party plan event;
 - (d) a renewable agreement of the same kind;
 - (e) a subsequent agreement of the same kind.

Schedule 1 Amendments commencing on 1 January 2011

(2) In this regulation:

business contract means an agreement for the supply of goods or services not of a kind ordinarily acquired for personal, domestic or household use or consumption.

discontinued negotiations agreement means an agreement made as a result of:

- (a) a consumer for an unsolicited consumer agreement discontinuing negotiations with the supplier for the unsolicited consumer agreement; and
- (b) the consumer subsequently initiating negotiations with the supplier for the unsolicited consumer agreement.

invitation, for a party plan event, means:

- (a) an express statement that the persons invited to attend the party plan event are invited to the event for the purpose of negotiating for the supply of goods or services to 1 or more of the persons; or
- (b) an implied statement that a reasonable consumer would understand to be an invitation to attend the party plan event for the purpose of negotiating for the supply of goods or services to 1 or more persons.

inviter, for a party plan event, means the person who invites another person to the party plan event.

party plan event means an event for which the following circumstances exist:

- (a) the purpose of the event is to negotiate for:
 - (i) the supply of goods or services to 1 or more persons; or
 - (ii) the supply of goods and services to 1 or more persons;
- (b) before the event, the inviter for the party plan event invites 3 or more persons to attend the party plan event;
- (c) during the event, the persons are in the same premises as the inviter for the party plan event or a representative of the inviter for the party plan event.

renewable agreement of the same kind means an agreement made in the following circumstances:

- (i) a consumer and a supplier are parties to an agreement, for the supply of goods or services, that is in force;
- (ii) the consumer and supplier enter into another agreement for the supply of goods or services that are of the same kind as the goods or services supplied under the existing contract.

subsequent agreement of the same kind means an agreement made in the following circumstances:

- (a) a consumer and a supplier are parties to an agreement for the supply of goods or services;
- (b) the goods or services are supplied;
- (c) within 3 months of the supply of the goods or services:
 - (i) the consumer and supplier enter 1 or more other agreements for the supply of goods or services of the same kind as the goods or services supplied under the agreement; and
 - (ii) the total value of the other agreements is an amount of \$500 or less.

82 Information relating to identity of dealer

For paragraph 74 (c) of the Australian Consumer Law, the following information is prescribed:

- (a) the dealer's name;
- (b) if the dealer is the supplier of the goods or services about which the dealer proposes to negotiate — the dealer's address;
- (c) if the dealer is not the supplier of the goods or services about which the dealer proposes to negotiate — the supplier's name and address (not being a post office box).

83 Information about termination period

For subparagraph 76 (a) (iii) of the Australian Consumer Law, information about the prohibition in section 86 of the Australian Consumer Law is prescribed.

Note Section 86 of the Australian Consumer Law prohibits the supplier of an unsolicited consumer agreement from supplying goods or services under the agreement, accepting or requiring payment or any other consideration for those goods or services during a period of 10 business days starting:

- (a) if the agreement was not negotiated by telephone — at the start of the first business day after the day on which the agreement was made; or
- (b) if the agreement was negotiated by telephone — at the start of the first business day after the day on which the consumer was given the agreement document relating to the agreement.

84 Form and way of giving information about termination period

For subsection 76 (d) of the Australian Consumer Law, information given in writing must be:

- (a) attached to the agreement or agreement document for the supply of goods or services; and
- (b) transparent; and
- (c) in text that is the most prominent text in the document, other than the text setting out the dealer's or supplier's name or logo.

85 Information for front page of agreement or agreement document

For subparagraph 79 (b) (ii) of the Australian Consumer Law, the following information is prescribed:

- (a) the text 'Important Notice to the Consumer';
- (b) the text 'You have a right to cancel this agreement within 10 business days from and including the day after you signed or received this agreement';
- (c) the text 'Details about your additional rights to cancel this agreement are set out in the information attached to this agreement'.

86 Requirements for front page of agreement

For subparagraph 79 (b) (iii) of the Australian Consumer Law, the following requirements are prescribed:

- (a) the front page of the agreement must be signed by the consumer;
- (b) the front page of the agreement must include the day on which the consumer signed the document.

87 Requirements for notice accompanying agreement or agreement document

For subparagraph 79 (c) (ii) of the Australian Consumer Law, the requirement that the notice be in the approved form is prescribed.

88 Application of Division 2, Part 3-2 of Australian Consumer Law to emergency repair contract

- (1) For paragraph 94 (a) of the Australian Consumer Law, the following provisions of the Australian Consumer Law do not apply in relation to the circumstances specified in subregulation (2):
 - (a) section 76;
 - (b) paragraph 79 (c);
 - (c) paragraph 82 (3) (a);
 - (d) paragraph 82 (3) (b);
 - (e) paragraph 82 (3) (d);
 - (f) section 86;
 - (g) section 173;
 - (h) paragraph 175 (1) (c);
 - (i) section 179.
- (2) For subregulation (1), the circumstances are:
 - (a) that as a result of an earthquake, fire, flood, storm or similar event a state of emergency has been declared under a law of the Commonwealth, a State or a Territory for an area in which a person's property is located; and

Schedule 1 Amendments commencing on 1 January 2011

-
- (b) the person enters into an agreement (an *emergency repair contract*) with a supplier of goods or services for urgent work to be undertaken to:
- (i) rectify a hazard or potential hazard on the person's property; or
 - (ii) protect the health and safety of persons on the person's property; or
 - (iii) prevent substantial damage to the person's property; and
- (c) under a Commonwealth, State or Territory law for the area in which the person's property is located, the supplier of goods or services under the emergency repair contract is required to hold a licence that is in force and the supplier holds the licence.

89 Application of Division 2, Part 3-2 of Australian Consumer Law to particular unsolicited consumer agreement

- (1) For paragraph 94 (b) of the Australian Consumer Law, section 86 of the Australian Consumer Law does not apply in relation to an unsolicited consumer agreement to which the circumstances mentioned in subregulation (2) apply.
- (2) For subregulation (1), the circumstances are that the unsolicited agreement is for the supply of an electricity or gas service from a supplier to a premises and the service:
- (a) is not connected to the premises; or
 - (b) is connected to the premises and no electricity or gas is being supplied to the premises by the supplier.

92 Laws specified for supplier reports about consumer goods associated with death, serious injury or illness of any person

For paragraphs 131 (2) (c) and 132 (2) (c) of the Australian Consumer Law, a law of the Commonwealth, a State or a Territory mentioned in an item of the following table is specified.

Amendments commencing on 1 January 2011

Schedule 1

Item Law of the Commonwealth, a State or a Territory

- 1 *Agricultural and Veterinary Chemicals Act 1994* (Cth)
- 2 *National Health Security Act 2007* (Cth)
- 3 *Therapeutic Goods Act 1989* (Cth)
- 4 *Coroners Act 2009* (NSW)
- 5 *Public Health Act 1991* (NSW)
- 6 *Road Transport (Safety and Traffic Management) Act 1999* (NSW)
- 7 **Coroners Act 2008** (Vic)
- 8 **Public Health and Wellbeing Act 2008** (Vic)
- 9 **Road Safety Act 1986** (Vic)
- 10 *Coroners Act 2003* (Qld)
- 11 *Motor Accident Insurance Act 1994* (Qld)
- 12 *Public Health Act 2005* (Qld)
- 13 *Transport Operations (Road Use Management – Road Rules) Regulation 2009* (Qld)
- 14 *Coroners Act 1996* (WA)
- 15 *Food Regulations 2009* (WA)
- 16 *Health Act 1911* (WA)
- 17 *Road Traffic Act 1974* (WA)
- 18 *Coroners Act 2003* (SA)
- 19 *Public and Environmental Health Act 1987* (SA)
- 20 *Road Traffic Act 1961* (SA)
- 21 *Coroners Act 1995* (Tas)
- 22 *Public Health Act 1997* (Tas)
- 23 *Traffic Act 1925* (Tas)
- 24 *Coroners Act 1997* (ACT)
- 25 *Public Health Act 1997* (ACT)
- 26 *Road Transport (Safety and Traffic Management) Act 1999* (ACT)
- 27 *Coroners Act* (NT)
- 28 *Notifiable Diseases Act* (NT)

Schedule 1 Amendments commencing on 1 January 2011

Item Law of the Commonwealth, a State or a Territory

29 *Traffic Act* (NT)

30 Regulations made under an Act mentioned in items 1 to 12, 14 and 16 to 29

Part 7 Transitional matters — Australian Consumer Law

93 Saving State or Territory laws for compliance with regulation 82 and regulations 83 to 87 — 1 January 2011 to 30 June 2011

- (1) This regulation is made for item 12 of Schedule 7 to the *Trade Practices Amendment (Australian Consumer Law) Act (No.2) 2010* and applies in the period starting on 1 January 2011 and ending on 30 June 2011.
- (2) Despite the repeal of the provisions mentioned in column 3 of the following table, a dealer or supplier who deals with or supplies goods or services in a State or Territory mentioned in an item of the table, is taken to have complied with regulation 82 if the dealer or supplier complies with the law of the State or Territory mentioned in column 3 of the item.

| Item | State or Territory | Law of the State or Territory |
|------|------------------------------|---|
| 1 | New South Wales | Section 40J of the <i>Fair Trading Act 1987</i> (NSW) |
| 2 | Victoria | Section 62D of the Fair Trading Act 1999 (Vic) |
| 3 | Queensland | Section 64 of the <i>Fair Trading Act 1989</i> (Qld) |
| 4 | Western Australia | Section 11 of the <i>Door to Door Trading Act 1987</i> (WA) |
| 5 | South Australia | Section 20 of the <i>Fair Trading Act 1987</i> (SA) as amended by the <i>Fair Trading (Telemarketing) Amendment Act 2009</i> (SA) |
| 6 | Tasmania | Section 11 of the <i>Fair Trading Act 1990</i> (Tas) |
| 7 | Australian Capital Territory | Section 10 of the <i>Door-to-Door Trading Act 1991</i> (ACT) |
| 12 | | <i>Trade Practices (Australian Consumer Law) Amendment Regulations 2010</i> (No. 1) 2010.280 |

Amendments commencing on 1 January 2011

Schedule 1

| Item | State or Territory | Law of the State or Territory |
|------|--------------------|--|
| 8 | Northern Territory | Section 104 of the <i>Consumer Affairs and Fair Trading Act</i> (NT) |

- (3) Despite the repeal of the provisions mentioned in column 3 of the following table, a dealer or supplier who deals with or supplies goods or services in a State or Territory mentioned in an item of the table, is taken to have complied with regulations 83 to 87 if the dealer or supplier complies with the law of the State or Territory mentioned in column 3 of the item.

| Item | State or Territory | Law of the State or Territory |
|------|------------------------------|---|
| 1 | New South Wales | Section 40D of the <i>Fair Trading Act 1987</i> (NSW) |
| 2 | Victoria | Section 61, 67E or 69 of the Fair Trading Act 1999 (Vic) |
| 3 | Queensland | Section 61 of the <i>Fair Trading Act 1989</i> (Qld) |
| 4 | Western Australia | Section 7 of the <i>Door to Door Trading Act 1987</i> (WA) |
| 5 | South Australia | Section 17 of the <i>Fair Trading Act 1987</i> (SA) as amended by the <i>Fair Trading (Telemarketing) Amendment Act 2009</i> (SA) |
| 6 | Tasmania | Section 7 of the <i>Fair Trading Act 1990</i> (Tas) |
| 7 | Australian Capital Territory | Section 7 of the <i>Door-to-Door Trading Act 1991</i> (ACT) |
| 8 | Northern Territory | Section 101 of the <i>Consumer Affairs and Fair Trading Act</i> (NT) |

94 Application of section 86 of Australian Consumer Law — 1 January 2011 to 31 December 2011

- (1) For item 12 of Schedule 7 to the *Trade Practices Amendment (Australian Consumer Law) Act (No.2) 2010* and paragraph 94(b) of the Australian Consumer Law, the application, savings or transitional matter in subregulation (2):
- (a) is prescribed; and
 - (b) applies during the period starting on 1 January 2011 and ending on 31 December 2011.

Schedule 1 Amendments commencing on 1 January 2011

-
- (2) For subregulation (1) and despite the repeal of a relevant State or Territory law, sections 86 and 179 and subparagraph 76 (a) (iii) of the Australian Consumer Law do not apply to a dealer or supplier in a State or Territory if the dealer or supplier:
- (a) deals with or supplies goods or services in the State or Territory; and
 - (b) complies with the relevant State or Territory law for the dealer or supplier.
- (3) In this regulation a *relevant State or Territory law* means:
- (a) if the dealer or supplier deals with or supplies goods or services in New South Wales — section 40H of the *Fair Trading Act 1987* (NSW); and
 - (b) if the dealer or supplier deals with or supplies goods or services in Victoria — section 80 of the **Fair Trading Act 1999** (Vic); and
 - (c) if the dealer or supplier deals with or supplies goods or services in Queensland — section 62 of the *Fair Trading Act 1989* (Qld); and
 - (d) if the dealer or supplier deals with or supplies goods or services in Western Australia — section 8 of the *Door to Door Trading Act 1987* (WA); and
 - (e) if the dealer or supplier deals with or supplies goods or services in South Australia — section 18 of the *Fair Trading Act 1987* (SA) as amended by the *Fair Trading (Telemarketing) Amendment Act 2009* (SA); and
 - (f) if the dealer or supplier deals with or supplies goods or services in Tasmania — section 8 of the *Fair Trading Act 1990* (Tas); and
 - (g) if the dealer or supplier deals with or supplies goods or services in the Australian Capital Territory — section 8 of the *Door-to-Door Trading Act 1991* (ACT); and
 - (h) if the dealer or supplier deals with or supplies goods or services in the Northern Territory — section 102 of the *Consumer Affairs and Fair Trading Act* (NT).

Amendment commencing on 1 July 2011

Schedule 2

Schedule 2 Amendment commencing on 1 July 2011

(regulation 3)

[1] Before regulation 92

insert

91 Requirement for notice relating to repair of goods

- (1) For subsection 103 (1) of the Australian Consumer Law, the following requirements are prescribed:
- (a) if the notice relates to the repair of goods that are capable of retaining user-generated data, the notice must state that repair of the goods may result in loss of the data;
 - (b) the notice must include the text mentioned in subregulation (2) if it is the practice of a repairer of goods:
 - (i) to supply refurbished goods as an alternative to repairing a consumer's defective goods; or
 - (ii) to use refurbished parts in the repair of a consumer's defective goods.
- (2) For paragraph (1) (b), the text is 'Goods presented for repair may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the goods.'
- (3) In this regulation:

User-generated data means any data stored on goods.

Examples

- 1 Files stored on a computer hard drive.
- 2 Telephone numbers stored on a mobile telephone.
- 3 Songs stored on a portable media player.
- 4 Games saved on a games console.
- 5 Files stored on a USB memory stick.

Schedule 3 Amendment commencing on 1 January 2012

Schedule 3 Amendment commencing on 1 January 2012

(regulation 3)

[1] After regulation 89

insert

90 Requirements for warranties against defects

- (1) For subsection 102 (1) of the Australian Consumer Law, the following requirements are prescribed:
 - (a) a warranty against defects must be in a document that is transparent;
 - (b) a warranty against defects must concisely state:
 - (i) what the person who gives the warranty must do so that the warranty may be honoured; and
 - (ii) what the consumer must do to entitle the consumer to claim the warranty;
 - (c) a warranty against defects must include the text mentioned in subregulation (2);
 - (d) a warranty against defects must prominently state the following information about the person who gives the warranty:
 - (i) the person's name;
 - (ii) the person's business address;
 - (iii) the person's telephone number;
 - (iv) the person's email address (if any);
 - (e) a warranty against defects must state the period or periods within which a defect in the goods or services to which the warranty relates must appear if the consumer is to be entitled to claim the warranty;
 - (f) a warranty against defects must set out the procedure for the consumer to claim the warranty including the address to which a claim may be sent;

Amendment commencing on 1 January 2012

Schedule 3

-
- (g) a warranty against defects must state who will bear the expense of claiming the warranty and if the expense is to be borne by the person who gives the warranty — how the consumer can claim expenses incurred in making the claim;
- (h) a warranty against defects must state that the benefits to the consumer given by the warranty are in addition to other rights and remedies of the consumer under a law in relation to the goods or services to which the warranty relates.
- (2) For paragraph (1)(c), the text is ‘Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure’.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.