

Version No. 003
Australian Consumer Law and Fair Trading
Regulations 2012

S.R. No. 62/2012

Version incorporating amendments as at
10 February 2013

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1 Objectives

The objectives of these Regulations are—

- (a) to prescribe particulars for the purposes of section 22(2)(c) of the **Australian Consumer Law and Fair Trading Act 2012**; and
- (b) to prescribe persons and bodies to whom the Director must refer certain disputes for the purposes of that Act; and
- (c) to prescribe Acts of other States and Territories for the purposes of the appointment of inspectors under that Act; and
- (d) to prescribe the form of an embargo notice for the purposes of that Act; and
- (e) to provide for any other matters authorised to be prescribed under that Act.

2 Authorising provision

These Regulations are made under section 232 of the **Australian Consumer Law and Fair Trading Act 2012**.

3 Commencement

These Regulations come into operation on 1 July 2012.

4 Revocations

The Regulations specified in Schedule 1 are **revoked**.

5 Definitions

In these Regulations—

gross negligence, in relation to an act or omission, means doing the act or omitting to do an act in a manner to which section 22(3)(b) of the Act applies;

the Act means the **Australian Consumer Law and Fair Trading Act 2012**.

5A Definition of a high value motor vehicle

For the purposes of paragraph (a) of the definition of **high value** in section 3(1) of the Act, the value prescribed is \$1000.

6 Limitation of liability in relation to supply of recreational services

(1) For the purposes of section 22(2)(c)(i) of the Act, a term excluding, restricting or modifying the application of, the exercise of a right conferred by, or any liability of a supplier for a breach of, the guarantees set out in sections 60 and 61 of the Australian Consumer Law (Victoria) or that has that effect must contain the following prescribed particulars—

- (a) if the term is contained in or on a sign displayed at the place at which the recreational services are being supplied, include the warning and note set out in Schedule 2 in a form that complies with subregulation (2); and
- (b) if the term is contained in or on a notice given to the purchaser, include the warning and note set out in Schedule 2; and

Reg. 5A
inserted by
S.R. No.
89/2012 reg. 4.

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- (c) if the term is contained in a form to be signed by the purchaser, include the warning and note set out in Schedule 3.
- (2) For the purposes of subregulation (1)(a), the warning and note must be in a font size at least equal to the largest font size used elsewhere in the sign, excluding the name or logo of the supplier.

7 Conciliation and mediation

The following persons and bodies are prescribed for the purposes of section 114(3) of the Act—

- (a) the Ombudsman appointed under section 3 of the **Ombudsman Act 1973**;
- (b) the IBAC within the meaning of the **Independent Broad-based Anti-corruption Commission Act 2011**;
- (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.

Reg. 7(b)
substituted by
S.R. No.
14/2013 reg. 4.

8 Interstate Acts

The following Acts are prescribed for the purposes of section 142(1)(c) and (4) of the Act—

- (a) Fair Trading Act 1987 of New South Wales;
- (b) Fair Trading Act 1989 of Queensland;
- (c) Fair Trading Act 1987 of South Australia;

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- (d) Fair Trading (Australian Consumer Law) Act 1992 of the Australian Capital Territory;
- (e) Consumer Affairs and Fair Trading Act of the Northern Territory;
- (f) Fair Trading Act 2010 of Western Australia;
- (g) Australian Consumer Law (Tasmania) Act 2010 of Tasmania.

9 Embargo notice

For the purposes of section 162(3) of the Act, the prescribed form of an embargo notice is the Form in Schedule 4.

SCHEDULES

SCHEDULE 1

Regulation 4

REVOCATIONS

<i>S.R. No.</i>	<i>Title</i>
34/2004	Fair Trading (Recreational Services) Regulations 2004
86/2009	Fair Trading Regulations 2009
124/2010	Fair Trading Amendment and Revocation Regulations 2010
80/2011	Fair Trading Amendment Regulations 2011

SCHEDULE 2

Regulation 6

WARNING: If you participate in these activities your rights to sue the supplier under the **Australian Consumer Law and Fair Trading Act 2012** if you are killed or injured because the activities were not supplied with due care and skill or were not reasonably fit for their purpose, are excluded, restricted or modified in the way set out in or on this *sign/*notice.

NOTE: The change to your rights, as set out in or on this *sign/*notice, does not apply if your death or injury is due to gross negligence on the supplier's part. *Gross negligence*, in relation to an act or omission, means doing the act or omitting to do an act with reckless disregard, with or without consciousness, for the consequences of the act or omission. See regulation 5 of the Australian Consumer Law and Fair Trading Regulations 2012 and section 22(3)(b) of the **Australian Consumer Law and Fair Trading Act 2012**.

*Delete whichever is not applicable.

SCHEDULE 3

Regulation 6

**WARNING UNDER THE AUSTRALIAN CONSUMER LAW
AND FAIR TRADING ACT 2012**

Under the Australian Consumer Law (Victoria), several statutory guarantees apply to the supply of certain goods and services. These guarantees mean that the supplier named on this form is required to ensure that the recreational services it supplies to you—

- are rendered with due care and skill; and
- are reasonably fit for any purpose which you, either expressly or by implication, make known to the supplier; and
- might reasonably be expected to achieve any result you have made known to the supplier.

Under section 22 of the **Australian Consumer Law and Fair Trading Act 2012**, the supplier is entitled to ask you to agree that these statutory guarantees do not apply to you. If you sign this form, you will be agreeing that your rights to sue the supplier under the **Australian Consumer Law and Fair Trading Act 2012** if you are killed or injured because the services provided were not in accordance with these guarantees, are excluded, restricted or modified in the way set out in this form.

NOTE: The change to your rights, as set out in this form, does not apply if your death or injury is due to gross negligence on the supplier's part. **Gross negligence**, in relation to an act or omission, means doing the act or omitting to do an act with reckless disregard, with or without consciousness, for the consequences of the act or omission. See regulation 5 of the Australian Consumer Law and Fair Trading Regulations 2012 and section 22(3)(b) of the **Australian Consumer Law and Fair Trading Act 2012**.

SCHEDULE 4

FORM

Regulation 9

EMBARGO NOTICE

Australian Consumer Law and Fair Trading Act 2012

Section 162(3)

1. The thing described below has been embargoed under section 162 of the **Australian Consumer Law and Fair Trading Act 2012**.
2. Section 162(4) 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.
The maximum penalty for the offence is 60 penalty units.
3. Section 162(5) 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 162(6) 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:

=====

ENDNOTES

1. General Information

The Australian Consumer Law and Fair Trading Regulations 2012, S.R. No. 62/2012 were made on 28 June 2012 by the Governor in Council under section 232 of the **Australian Consumer Law and Fair Trading Act 2012**, No. 21/2012 and came into operation on 1 July 2012: regulation 3.

The Australian Consumer Law and Fair Trading Regulations 2012 will sunset 10 years after the day of making on 28 June 2022 (see section 5 of the **Subordinate Legislation Act 1994**).

2. Table of Amendments

This Version incorporates amendments made to the Australian Consumer Law and Fair Trading Regulations 2012 by statutory rules, subordinate instruments and Acts.

Australian Consumer Law and Fair Trading Amendment Regulations 2012,
S.R. No. 89/2012

Date of Making: 28.8.12
Date of Commencement: 1.9.12; reg. 3

Australian Consumer Law and Fair Trading Amendment Regulations 2013,
S.R. No. 14/2013

Date of Making: 5.2.13
Date of Commencement: 10.2.13; reg. 3

Endnotes

3. Explanatory Details

No entries at date of publication.