

South Australia

Fair Trading Regulations 2010

under the *Fair Trading Act 1987*

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Legislative history

1—Short title

These regulations may be cited as the *Fair Trading Regulations 2010*.

2—Commencement

These regulations will come into operation on 1 January 2011.

3—Interpretation

In these regulations—

Act means the *Fair Trading Act 1987*.

4—Related Acts (section 3 of Act)

For the purposes of paragraph (b) of the definition of *related Act* in section 3(1) of the Act, each of the following is prescribed as a *related Act*:

- (a) the *Hairdressers Act 1988*;
- (b) the *Land and Business (Sale and Conveyancing) Act 1994*;
- (c) Part 4¹ of the *Landlord and Tenant Act 1936*;
- (d) the *Residential Parks Act 2007*.

Note—

- 1 Part 4 of the *Landlord and Tenant Act 1936* was repealed by section 81 of the *Retail and Commercial Leases Act 1995*. However, it continues to apply (subject to modifications prescribed by regulation under the *Retail and Commercial Leases Act 1995*) to a retail shop lease entered into before the commencement of the *Retail and Commercial Leases Act 1995*.

**5—Liability relating to supply of recreational services may be limited
(section 42 of Act)**

- (1) Form 1 in Schedule 1 is prescribed for the purposes of section 42 of the Act.
- (2) For the purposes of section 42(2)(b) of the Act, a term of a contract for the supply of recreational services that excludes, restricts or modifies the liability of the supplier for any personal injury suffered by the consumer or a third party consumer must be in the form prescribed by Form 1 and contain the particulars prescribed in that form.
- (3) If a consumer agrees to a term that excludes, restricts or modifies the liability of the supplier (as specified in Form 1), the consumer must indicate his or her agreement by signing and dating the completed form.
- (4) If the consumer requests a copy of the signed and completed Form 1, the supplier must give the consumer the copy within 7 days of the request.

6—Embargo notices (section 78C of Act)

For the purposes of section 78C of the Act, an embargo notice must contain the following details in addition to the matters required by section 78C(4) of the Act:

- (a) a description of the thing to which the notice applies;
- (b) either the name of the person on whom the notice is to be served or a statement that the notice is to be affixed to the thing;
- (c) the name, signature and business telephone number of the authorised officer who issued the notice;
- (d) the date on which the notice was served or affixed.

7—Expiation of offences against *Australian Consumer Law (SA)*

The expiation fees specified in the following table are fixed for alleged offences against the *Australian Consumer Law (SA)* arising from an alleged contravention of the section specified opposite the fee:

| Section | Fee |
|---|---------|
| Section 151 False or misleading representations about goods or services | \$1 200 |
| Section 152 False or misleading representations about sale etc of land | \$1 200 |
| Section 153 Misleading conduct relating to employment | \$1 200 |
| Section 154 Offering rebates, gifts, prizes etc | \$1 200 |
| Section 155 Misleading conduct as to the nature etc of goods | \$1 200 |
| Section 156 Misleading conduct as to the nature etc of services | \$1 200 |
| Section 157 Bait advertising | \$1 200 |
| Section 158 Wrongly accepting payment | \$1 200 |
| Section 159 Misleading representations about certain business activities | \$1 200 |
| Section 161 Unsolicited cards etc | \$1 200 |
| Section 162 Assertion of right to payment for unsolicited goods or services | \$1 200 |
| Section 163 Assertion of right to payment for unauthorised entries or advertisements | \$1 200 |
| Section 164 Participation in pyramid schemes | \$1 200 |
| Section 165 Multiple pricing | \$150 |
| Section 166 Single price to be specified in certain circumstances | \$1 200 |
| Section 167 Referral selling | \$1 200 |
| Section 168 Harassment and coercion | \$1 200 |
| Section 169 Display notices | \$500 |
| Section 170 Permitted hours for negotiating an unsolicited consumer agreement | \$500 |
| Section 171 Disclosing purpose and identity | \$500 |
| Section 172 Ceasing to negotiate on request | \$500 |
| Section 173 Informing person of termination period etc | \$500 |
| Section 174 Requirement to give document to the consumer | \$500 |
| Section 175 Requirements for all unsolicited consumer agreements etc | \$500 |
| Section 176 Additional requirements for unsolicited consumer agreements not negotiated by telephone | \$500 |
| Section 177 Requirements for amendments of unsolicited consumer agreements | \$500 |
| Section 178 Obligations of suppliers on termination | \$500 |
| Section 179 Prohibition on supplies for 10 business days | \$500 |
| Section 180 Repayment of payments received after termination | \$500 |
| Section 181 Prohibition on recovering amounts after termination | \$500 |
| Section 182 Certain provisions of unsolicited consumer agreements void | \$500 |
| Section 183 Waiver of rights | \$500 |

| | | |
|-------------|---|---------|
| Section 188 | Lay by agreements must be in writing etc | \$300 |
| Section 189 | Termination charges | \$300 |
| Section 190 | Termination of lay by agreements by suppliers | \$300 |
| Section 191 | Refund of amounts | \$300 |
| Section 192 | Prescribed requirements for warranties against defects | \$500 |
| Section 193 | Repairers must comply with prescribed requirements | \$500 |
| Section 194 | Supplying etc consumer goods that do not comply with safety standards | \$1 200 |
| Section 195 | Supplying etc product related services that do not comply with safety standards | \$1 200 |
| Section 196 | Requirement to nominate a safety standard | \$150 |
| Section 197 | Supplying etc consumer goods covered by a ban | \$1 200 |
| Section 198 | Supplying etc product related services covered by a ban | \$1 200 |
| Section 199 | Compliance with recall orders | \$1 200 |
| Section 200 | Notification by persons who supply consumer goods outside Australia if there is compulsory recall | \$150 |
| Section 201 | Notification requirements for a voluntary recall of consumer goods | \$150 |
| Section 202 | Suppliers to report consumer goods etc associated with the death or serious injury or illness of any person | \$150 |
| Section 203 | Supplying etc goods that do not comply with information standards | \$1 200 |
| Section 204 | Supplying etc services that do not comply with information standards | \$1 200 |
| Section 205 | Compliance with substantiation notices | \$150 |
| Section 206 | False or misleading information etc | \$150 |

Schedule 1—Forms

Form 1—Recreational services—Exclusion, restriction or modification of rights under the *Australian Consumer Law (SA)*

Your rights:

Under sections 60 and 61 of the *Australian Consumer Law (SA)*, if a person in trade or commerce supplies you with services (including recreational services¹), there is—

- a statutory guarantee that those services will be rendered with due care and skill; and
- a statutory guarantee that those services, and any product resulting from those services, will be reasonably fit for the purpose for which the services are being acquired (as long as that purpose is made known to the supplier); and
- a statutory guarantee that those services, and any product resulting from those services, will be of such a nature, and quality, state or condition, that they might reasonably be expected to achieve the result that the consumer wishes to achieve (as long as that wish is made known to the supplier or a person with whom negotiations have been conducted in relation to the acquisition of the services).

Excluding, restricting or modifying your rights:

Under section 42 of the *Fair Trading Act 1987*, the supplier of recreational services is entitled to ask you to agree to exclude, restrict or modify his or her liability for any personal injury suffered by you or another person for whom or on whose behalf you are acquiring the services (a *third party consumer*).

If you sign this form, you will be agreeing to exclude, restrict or modify the supplier's liability with the result that compensation may not be payable if you or the third party consumer suffer personal injury².

Important

You do not have to agree to exclude, restrict or modify your rights by signing this form.

The supplier may refuse to provide you with the services if you do not agree to exclude, restrict or modify your rights by signing this form.

Even if you sign this form, you may still have further legal rights against the supplier.

A child under the age of 18 cannot legally agree to exclude, restrict or modify his or her rights.

A parent or guardian of a child who acquires recreational services for the child cannot legally agree to exclude, restrict or modify the child's rights.

Agreement to exclude, restrict or modify your rights:

I agree that the liability of [*the supplier of recreational services*] for any personal injury that may result from the supply of the recreational services that may be suffered by me (or a person for whom or on whose behalf I am acquiring the services) is—

- (a) excluded;
- (b) restricted as set out below:
[specify the nature of the restriction]
- (c) modified as set out below:
[specify the nature of the modification]

**Strike out whichever of (a), (b) or (c) do not apply and specify the nature of the restriction or modification, as is relevant.*

Signature:

Date:

Signature of witness:

Name and address of witness:

Definitions

- 1 **Recreational services** are services that consist of participation in—
 - a sporting activity or similar leisure-time pursuit; or
 - any other activity that involves a significant degree of physical exertion or risk and is undertaken for the purposes of recreation, enjoyment or leisure.
- 2 **Personal injury** is bodily injury and includes mental and nervous shock and death.

Further information:

Further information about your rights can be found at www.ocba.sa.gov.au

Schedule 2—Revocation of *Fair Trading (General) Regulations 1999*

The *Fair Trading (General) Regulations 1999* are revoked.

Legislative history

Notes

- Variations of this version that are uncommenced are not incorporated into the text.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal regulations and variations

New entries appear in bold.

| Year | No | Reference | Commencement |
|------|-----|--------------------------------|---------------|
| 2010 | 259 | <i>Gazette 9.12.2010 p5613</i> | 1.1.2011: r 2 |
| 2011 | 252 | <i>Gazette 1.12.2011 p4787</i> | uncommenced |