South Australia

Fair Trading (Pre-paid Funerals Industry Code) Regulations 2026

under the *Fair Trading Act 1987*

Contents

1 Short title
2 Commencement
3 Interpretation
4 Prescription of code
5 Contravention of code subject to civil penalty

Schedule 1—Pre-paid Funerals Industry Code

1 Short title
2 Interpretation
3 Obligations of funeral director
4 Obligations of approved investment manager

Schedule 2—Repeal and transitional provision

Part 1—Repeal of *Fair Trading (Pre-paid Funerals Industry Code) Regulations 2011*

1 Repeal of regulations

Part 2—Transitional provision

2 Approved investment managers

Legislative history

1—Short title

These regulations may be cited as the *Fair Trading (Pre-paid Funerals Industry Code) Regulations 2026*.

2—Commencement

These regulations come into operation on 1 September 2026.

3—Interpretation

In these regulations—

Act means the *Fair Trading Act 1987*;

civil penalty contravention has the same meaning as in Part 7 Division 3A of the Act;

code means the Pre-paid Funerals Industry Code 2026 set out in Schedule 1.

4—Prescription of code

(1) The code is prescribed as an industry code for the purposes of Part 3A of the Act.

(2) The Commissioner for Consumer Affairs is responsible for the administration of the code.

5—Contravention of code subject to civil penalty

(1) A contravention of section 28E of the Act constituted of a contravention of the code is to be subject to a civil penalty under Part 7 Division 3A of the Act.

(2) The expiation fee for an alleged civil penalty contravention involving an alleged contravention or attempted contravention of the code (other than an alleged contravention or attempted contravention of clause 3(2) of the code) is $500.

Schedule 1—Pre-paid Funerals Industry Code

1—Short title

This code may be cited as the *Pre-paid Funerals Industry Code 2026*.

2—Interpretation

In this code—

approved investment, in relation to the investment of pre-paid funeral costs, means a bond, endowment policy or other similar form of investment, the terms of which provide that the investment cannot be realised except on production of—

(a) a death certificate relating to the recipient of the funeral; or

(b) a duly signed notice of cancellation of the pre-paid funeral contract;

approved investment manager means—

(a) a body corporate carrying on life insurance business under the *Life Insurance Act 1995* of the Commonwealth, as amended from time to time, or an Act of the Commonwealth passed in substitution for that Act; or

(b) a friendly society; or

(c) a licensed trustee company within the meaning of the *Corporations Act 2001* of the Commonwealth; or

(d) the Public Trustee; or

(e) the Catholic Church Endowment Society Incorporated; or

(f) any other body that—

(i) carries on the business of investing money on behalf of other persons; and

(ii) is approved by the Commissioner for the purposes of this code (who must be satisfied that the body has adequate insurance cover for all money received in relation to a pre-paid funeral);

client means a person who enters into a pre-paid funeral contract with a funeral director;

funeral director means a person or body who carries on the business of providing funeral services;

pre-paid funeral contract means a contract (entered into during the life of the recipient) between a client and a funeral director under which the funeral director agrees to arrange a funeral for the recipient, being a funeral that is to be wholly or partly paid for on the making of the contract;

recipient means the person whose funeral is to be arranged pursuant to a pre-paid funeral contract.

3—Obligations of funeral director

(1) A funeral director must ensure that a pre-paid funeral contract to which the funeral director is a party—

(a) is in writing in a print size of not less than 12 points; and

(b) is signed by all the parties.

(2) If a pre-paid funeral contract is not to be signed by the recipient on the ground that the recipient lacks legal capacity to enter into the contract, the funeral director must—

(a) sight the power of attorney, guardianship order or other instrument that evidences the client's authority to enter into the contract on the recipient's behalf; or

(b) if the client does not have any authority to enter into the contract on the recipient's behalf—take reasonable steps to verify the recipient's lack of legal capacity.

(3) A pre-paid funeral contract must set out—

(a) the date of the contract; and

(b) the name, business address, email address and telephone number of the funeral director; and

(c) the name, business address, email address and telephone number of the approved investment manager with whom the costs of the funeral are to be deposited; and

(d) the name, residential address and email address of the client; and

(e) if the client is not the recipient—the name, residential address and email address of the recipient; and

(f) the name, address and, if available, email address and telephone number of the person or persons to be contacted in the event of the recipient's death.

(4) A pre-paid funeral contract must contain—

(a) the following particulars of the funeral to be arranged by the funeral director on the death of the recipient:

(i) the name and address of the church, crematorium, funeral chapel or other place at which the funeral service is to be held;

(ii) the manner of disposal of the recipient's remains;

(iii) if the recipient's remains are to be interred—the name and address of the cemetery at which they are to be interred;

(iv) the type and style of coffin or other container to be used, the materials of which it is made and details of linings, fittings and mountings;

(v) if the recipient's remains are to be cremated and interred in an urn or other container—the type and style of urn or other container and the materials of which it is made;

(vi) if there is an interment right in force for the benefit of the recipient—

(A) the name of the holder of the interment right; and

(B) the name of the cemetery authority that granted the right; and

(C) the period for which the interment right was granted; and

(D) the nature and location of the interment site;

(vii) if there is a separate contract for a pre-paid memorial for the recipient—

(A) the names of the parties; and

(B) a description of the memorial to be provided; and

(C) a statement as to whether the costs of the memorial have been fully paid; and

(b) particulars of the following matters associated with the funeral:

(i) floral arrangements;

(ii) death and funeral notices;

(iii) mourning coaches;

(iv) the funeral service, including use of clergy or a funeral celebrant;

(v) memorial work; and

(c) particulars of any other requirements associated with the funeral.

(5) A pre-paid funeral contract entered into on or after the commencement of this code must contain a cooling-off period of not less than 30 days commencing on the day on which the client signs the contract, during which the client may, by written notice to the funeral director, rescind the contract.

(6) If a client rescinds a pre-paid funeral contract by written notice to the funeral director within the cooling-off period, the funeral director must, within 14 days of receiving the notice, refund to the client any amount paid under the contract less 2% of the contract price or $200, whichever is the lesser (which the funeral director is entitled to retain).

(7) A pre-paid funeral contract must set out—

(a) the total cost of the funeral to be arranged under the contract; and

(b) the costs associated with each matter in relation to which particulars are provided under subclause (4); and

(c) the costs associated with any documentary material required in connection with funeral arrangements, such as a copy of the certificate of cause of death; and

(d) any charges that may be levied for transportation of the recipient's remains and the circumstances in which they will apply; and

(e) any amount to be retained by the funeral director for expenses to be incurred in advance of the recipient's death (such as the issue of an interment right); and

(f) the financial and other arrangements that will apply—

(i) if the funeral director ceases to carry on business before the contract is performed; or

(ii) if the funeral director is unable for any other reason to perform the contract; and

(g) if there is to be a right of cancellation (in addition to the right to rescind the contract during the cooling-off period)—

(i) the person who may exercise the right; and

(ii) the manner in which the right may be exercised; and

(iii) the financial arrangements that will apply, including the period of notice required for the withdrawal of funds deposited with the approved investment manager; and

(iv) the following note in bold type:

NOTE—FOR INFORMATION OF CANCELLING PARTY

It will be important to consider the taxation and social security implications of cancellation of the contract.; and

(h) the following note in bold type:

NOTE: Clients are advised to ensure that the recipient's next of kin and executor are aware of the existence of the pre-paid funeral contract.

(8) A funeral director who enters into a pre-paid funeral contract must ensure that, on the signing of the contract, a signed copy of it is given to all the parties.

(9) A funeral director who enters into a pre-paid funeral contract must, within 7 days of receiving money from a client (other than an amount referred to in subclause (7)(e)) or as soon as reasonably practicable after the expiration of the cooling-off period, whichever is the later—

(a) transfer the money to the approved investment manager specified in the contract; and

(b) give the approved investment manager a notice in writing setting out the provisions of the contract relating to the matters referred to in subclause (7)(f) and (g)(i), (ii) and (iii).

4—Obligations of approved investment manager

An approved investment manager must, within 28 days of receiving money from a funeral director for a pre-paid funeral—

(a) invest the money in an approved investment; and

(b) give the client and funeral director a written notice specifying—

(i) the name of the funeral director; and

(ii) the name of the client; and

(iii) if the client is not the recipient—the name of the recipient; and

(iv) the name of the approved investment manager; and

(v) the amount of money received; and

(vi) the amount of money paid for initial management expenses and commission to the approved investment manager or any other person; and

(vii) the amount of money invested; and

(viii) particulars of the form of the approved investment in which the money has been invested.

Schedule 2—Repeal and transitional provision

Part 1—Repeal of *Fair Trading (Pre-paid Funerals Industry Code) Regulations 2011*

1—Repeal of regulations

The *Fair Trading (Pre-paid Funerals Industry Code) Regulations 2011* are repealed.

Part 2—Transitional provision

2—Approved investment managers

A body approved or taken to have been approved by the Commissioner as an approved investment manager for the purposes of the *Pre-paid Funerals Industry Code 2011* will, if the approval was in force immediately before the commencement of this clause, be taken to have been approved by the Commissioner as an approved investment manager for the purposes of the *Pre-paid Funerals Industry Code 2026*.

Legislative history

Notes

- 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

Year	No	Reference	Commencement
2026	59	*Gazette 30.7.2026 p2443*	1.9.2026: r 2