



Trade Practices (Industry Codes—Oilcode) Amendment Regulation 2012 (No. 1)¹

Select Legislative Instrument 2012 No. 154

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Competition and Consumer Act 2010*.

Dated 28 June 2012

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

MARTIN FERGUSON
Minister for Resources and Energy for the Treasurer

1 Name of regulation

This regulation is the *Trade Practices (Industry Codes—Oilcode) Amendment Regulation 2012 (No. 1)*.

2 Commencement

This regulation commences on the day after it is registered.

3 Amendment of *Trade Practices (Industry Codes — Oilcode) Regulations 2006*

Schedule 1 amends the *Trade Practices (Industry Codes — Oilcode) Regulations 2006*.

Schedule 1 Amendments

(section 3)

[1] Regulation 1

substitute

1 Name of regulation

This regulation is the *Competition and Consumer (Industry Codes—Oilcode) Regulation 2006*.

[2] Regulation 2

omit

These Regulations commence

insert

This regulation commences

[3] Regulation 3

omit

Trade Practices Act 1974,

insert

Competition and Consumer Act 2010,

[4] Schedule 1, heading

substitute

Schedule 1 Oilcode

(section 3)

[5] Schedule 1, section 1, note

omit

[6] Schedule 1, section 2, note

omit

[7] Schedule 1, subsection 3 (2)

substitute

- (2) The Department of Resources, Energy and Tourism will commence a review of this code on or before 31 December 2013.

[8] Schedule 1, subsection 4 (1), definition of Act

substitute

Act means the *Competition and Consumer Act 2010*.

[9] Schedule 1, section 17*substitute***17 Giving additional disclosure document**

- (1) This section applies if:
 - (a) a supplier gives a disclosure document that is in accordance with Annexure 2 to a person or retailer; and
 - (b) the person or retailer asks the supplier to give a disclosure document that is in accordance with Annexure 1.
- (2) The supplier must give to the person or retailer the disclosure document mentioned in paragraph (1) (b) as soon as practicable.
- (3) However, the supplier is not required to give the disclosure document mentioned in paragraph (1) (b) if:
 - (a) the supplier has already given the disclosure document to the person or retailer; or
 - (b) the supplier has already given all of the information that is required to be contained in the disclosure document to the person or retailer; or
 - (c) it is otherwise not reasonable for the supplier to give the disclosure document.

[10] Schedule 1, after subsection 20 (1)*insert*

- (1A) A supplier must not enter into, renew or extend a fuel re-selling agreement if the contract includes a condition that requires the other party to not disclose their name, business address or ACN or ARBN.

[11] Schedule 1, subparagraph 29 (2) (b) (ii)

omit

trade practices law;

insert

the Act;

[12] Schedule 1, after subsection 43 (1)

insert

(1A) The complainant must tell the respondent in writing:

- (a) the nature of the dispute; and
- (b) what outcome the complainant wants; and
- (c) what action the complainant considers will settle the dispute.

[13] Schedule 1, after subsection 44 (4)

insert

(4A) When trying to resolve the dispute with the assistance of the person appointed under subparagraph (2) (b) (ii), a party must be represented by a person who has authority to enter an agreement to settle the dispute on behalf of the party.

[14] Schedule 1, after subsection 45 (6)

insert

- (7) Before making a non-binding determination under subsection (6), the dispute resolution adviser may allow each party to give, within the period specified by the dispute resolution adviser, information about the following matters:
- (a) the contractual arrangements between the parties;
 - (b) how the party has complied with the code;
 - (c) what action the party has taken towards resolving the dispute;
 - (d) how the dispute could be resolved;

- (e) if a non-binding determination was made, how much time the party would require to give effect to the determination;
- (f) any other matters the party considers relevant.

[15] Annexure 1, paragraph 1.1 (d)

substitute

- (d) the following statement:

This disclosure document contains some of the information you need in order to make an informed decision about whether to enter into a fuel re-selling agreement.

Entering into a fuel re-selling agreement is a serious undertaking.

If you sign a fuel re-selling agreement, it is legally binding on you.

You are entitled to a waiting period of 14 days before you enter into the agreement.

If the agreement is a new fuel re-selling agreement (not a renewal, extension or transfer), you will be entitled to a 7 day 'cooling off' period after signing the agreement, during which you may terminate the agreement without cost.

Take your time, read all the documents carefully, talk to other fuel re-selling businesses and assess your own financial resources and capabilities to deal with the requirements of the fuel re-selling business.

You should make your own enquiries about the agreement and the business of the agreement.

You should get independent legal, accounting and business advice before signing the fuel re-selling agreement. You should also seek advice on the Federal, State or Territory and local laws that apply to it.

It is often prudent to prepare a business plan and projections for profit and cash flow.

You should also consider educational courses, particularly if you have not operated a business before.

You should contact the appropriate industry association.

The Australian Competition and Consumer Commission (the **ACCC**) has published a wide range of information about the Oilcode to facilitate understandings and compliance with the Oilcode. This information can be obtained from the ACCC's website at www.accc.gov.au or by contacting the ACCC Infocentre on 1300 302 502.

[16] Annexure 1, subparagraph 4.1 (a) (ii)

omit

trade practices law;

insert

the Act;

[17] Annexure 1, item 6

substitute

6 Existing fuel re-selling agreements

6.1 For each existing fuel re-selling agreement:

- (a) if the supplier has fuel re-selling agreements with fewer than 50 retailers—the name, address and contact details of each retailer; or
- (b) if the supplier has fuel re-selling agreements with 50 or more retailers—the name, address and contact details of each retailer in the State, region or metropolitan area in which the fuel re-selling agreement is to operate.

6.2 A supplier does not need to provide the information mentioned in item 6.1 if a retailer has requested, in writing, that the information not be disclosed.

6.3 For each of the last 3 years and for each of the following events—the number of fuel re-selling businesses of the supplier for which the event happened:

- (a) the fuel re-selling agreement was transferred;
- (b) the fuel re-selling business ceased to operate;

- (c) the fuel re-selling agreement was terminated by the supplier;
- (d) the fuel re-selling agreement was terminated by the retailer;
- (e) the fuel re-selling agreement was not renewed when it expired;
- (f) the fuel re-selling business was bought back by the supplier;
- (g) the fuel re-selling agreement was terminated and the fuel re-selling business was acquired by the supplier.

Note An event may be counted more than once if more than one paragraph applies to it.

6.4 The supplier must supply for each event mentioned in item 6.3:

- (a) if there are fewer than 50 retailers involved in an event—the name, address and contact details of each retailer; or
- (b) if there are 50 or more retailers involved in an event—the name, address and contact details of each retailer in the State, region or metropolitan area in which the fuel re-selling agreement is to operate.

6.5 A supplier does not need to provide information mentioned in item 6.4 if a retailer has requested, in writing, that the information not be disclosed.

[18] Annexure 2, paragraph 1.1 (d)

substitute

- (d) the following statement:

This disclosure document contains some of the information you need in order to make an informed decision about whether to enter into a fuel re-selling agreement.

Entering into a fuel re-selling agreement is a serious undertaking.

If you sign a fuel re-selling agreement, it is legally binding on you.

You are entitled to a waiting period of 14 days before you enter into the agreement.

If the agreement is a new fuel re-selling agreement (not a renewal, extension or transfer), you will be entitled to a 7 day 'cooling off' period after signing the agreement, during which you may terminate the agreement without cost.

Take your time, read all the documents carefully, talk to other fuel re-selling businesses and assess your own financial resources and capabilities to deal with the requirements of the fuel re-selling business.

You should make your own enquiries about the agreement and the business of the agreement.

You should get independent legal, accounting and business advice before signing the fuel re-selling agreement. You should also seek advice on the Federal, State or Territory and local laws that apply to it.

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[19] Annexure 2, subparagraph 3.1 (a) (ii)

omit

trade practices law;

insert

the Act;

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.comlaw.gov.au.