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FAIR TRADING ACT 2010

**FAIR TRADING (PREPAID
FUNERALS CODE OF
PRACTICE) REGULATIONS 2020**

Western Australia

Fair Trading (Prepaid Funerals Code of Practice) Regulations 2020

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Defined terms

Fair Trading Act 2010

Fair Trading (Prepaid Funerals Code of Practice) Regulations 2020

SL 2020/138

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Fair Trading (Prepaid Funerals Code of Practice) Regulations 2020*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on 1 March 2021.

3. Code of practice prescribed

- (1) In this regulation —

cemetery contract has the meaning given in clause 2 of the code;

code means the code of practice prescribed under subregulation (2);

funeral service has the meaning given in clause 2 of the code;

prepaid funeral contract has the meaning given in clause 2 of the code.

Fair Trading (Prepaid Funerals Code of Practice) Regulations 2020**r. 4**

- (2) The code of practice set out in Schedule 1 and entitled the *Prepaid Funerals Code of Practice 2021* is prescribed under section 45 of the Act as a code of practice that applies in relation to the supply of funeral services, including —
- (a) the supply of goods or services under prepaid funeral contracts; and
 - (b) the payment of money received under a prepaid funeral contract in relation to a related cemetery contract; and
 - (c) how amounts received under prepaid funeral contracts are invested.

4. Expiry

These regulations expire at the end of 29 February 2024.

Fair Trading (Prepaid Funerals Code of Practice) Regulations 2020

Prepaid Funerals Code of Practice 2021

Schedule 1

Preliminary

Division 1**cl. 1****Schedule 1 — *Prepaid Funerals Code of Practice 2021***

[r. 3]

Division 1 — Preliminary**1. Application of code**

This code applies to prepaid funeral contracts and cemetery contracts entered into on or after the day this code comes into operation.

2. Terms used

In this code —

cemetery contract means a contract with a cemetery manager that relates to providing funeral services to a recipient under a prepaid funeral contract;

cemetery manager means a person who has the care, control and management of a cemetery under the *Cemeteries Act 1986*;

client means a person who enters into a prepaid funeral contract with a funeral organiser;

cooling-off period, in relation to a prepaid funeral contract, means the period —

- (a) starting when the client signs the contract; and
- (b) ending on the day that is 30 days after the day the funeral organiser gives the client a signed copy of the contract;

funeral broker means a person who arranges for funerals to be carried out by funeral directors;

funeral director means a person who provides funeral services;

funeral investment means a product managed by an investment manager in which —

- (a) prepayments are invested; and

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- (b) money is paid out —
- (i) when the investment manager receives written notice from the funeral organiser that the funeral arranged for the recipient under the prepaid funeral contract has been carried out in accordance with the contract; or
 - (ii) when the prepaid funeral contract is terminated;

funeral organiser means a funeral broker or funeral director;

funeral service —

- (a) means a good or service provided in connection with providing a funeral; and
- (b) includes —
 - (i) organising death and funeral notices; and
 - (ii) mortuary facilities or services; and
 - (iii) providing a coffin, casket, urn or other container to be used for the recipient's remains; and
 - (iv) providing flowers; and
 - (v) providing or erecting a memorial; and
 - (vi) transporting the recipient's remains; and
 - (vii) transporting the people attending the funeral; and
 - (viii) granting a right of burial; and
 - (ix) carrying out a service for the funeral; and
 - (x) carrying out an interment or a cremation;

GST has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth) section 195-1;

investment manager means a person who may act as an investment manager under clause 15;

prepaid funeral contract —

- (a) means a contract between a client and a funeral organiser entered into during the life of a recipient under which —
 - (i) the client agrees to make a prepayment; and
 - (ii) the funeral organiser agrees to arrange or provide funeral services for the recipient;

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Prepaid Funerals Code of Practice 2021

Schedule 1

Funeral organiser obligations in relation to prepaid funeral contracts

Division 2**cl. 3**

but

- (b) does not include a contract to carry out funeral services between a person and a cemetery manager;

prepayment means an amount (other than an amount paid as a fee or charge or in respect of GST) paid to the funeral organiser under a prepaid funeral contract before the death of the recipient;

recipient, in relation to a prepaid funeral contract, means the person for whom funeral services are provided under the contract.

Division 2 — Funeral organiser obligations in relation to prepaid funeral contracts**Subdivision 1 — Entering into prepaid funeral contracts****3. Disclosing information about funeral investments in relation to prepaid funeral contract**

- (1) A funeral organiser must not enter into a prepaid funeral contract unless the funeral organiser has given the client information about the way in which prepayments under the funeral contract will be invested in a funeral investment.
- (2) A funeral organiser may comply with subclause (1) by providing the client with any information about the funeral investment given by the investment manager.

4. Formation of prepaid funeral contracts

- (1) A funeral organiser must ensure that a prepaid funeral contract —
- (a) be printed in a size not less than 12 point type; and
 - (b) is signed by the funeral organiser and by the client; and
 - (c) is dated with the date when each party signed the contract.
- (2) If the recipient in relation to a prepaid funeral contract is not the client in relation to the contract, the funeral organiser must not enter into the contract unless the funeral organiser has taken reasonable steps to be satisfied that the recipient —
- (a) agrees to the client entering into the contract; or

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- (b) lacks the capacity —
 - (i) to enter into the contract; or
 - (ii) to agree to the client entering into the contract.

5. Prepaid funeral contracts to identify particular persons

A funeral organiser must not enter into a prepaid funeral contract unless the contract sets out —

- (a) the name, business address and telephone number of the funeral organiser; and
- (b) if the contract is entered into by a funeral broker and the contract requires a particular funeral director to carry out the funeral services — the name, business address and telephone number of the funeral director; and
- (c) the name and residential address of the client; and
- (d) if the client is not the recipient — the name and residential address of the recipient; and
- (e) the name, address and, if available, telephone number of the person the funeral organiser is to contact when the funeral organiser is notified of the recipient's death; and

Example for this paragraph:

The recipient's next of kin or the executor of the recipient's will.

- (f) the name, business address and telephone number of the investment manager to whom payments are to be made under the contract as referred to in clause 14.

6. Prepaid funeral contracts to include particular details about funeral services and costs

A funeral organiser must not enter into a prepaid funeral contract unless the contract sets out —

- (a) the funeral services to be provided on the death of the recipient, including —
 - (i) death and funeral notices; and
 - (ii) floral arrangements;
- and

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Funeral organiser obligations in relation to prepaid funeral **Division 2**
contracts

cl. 6

- (b) how the place where the funeral is to be held will be chosen; and
- (c) the service for the funeral, including who is to conduct the service; and
- (d) the way the recipient's remains are to be disposed of; and
- (e) the design, size and material of the coffin, casket, memorial, urn or other container that will be used for the recipient's remains; and
- (f) if the recipient's remains are to be interred — the name and address of the cemetery at which the remains will be interred; and
- (g) the way the recipient's remains and the people attending the funeral will be transported, including details about —
 - (i) the number and classes of vehicles that will be used to transport the remains and people attending the funeral; and
 - (ii) the maximum number of people who can be transported in the vehicles that will be used to transport people attending the funeral; and
 - (iii) the maximum distance that the remains and the people will be transported; and
 - (iv) any limitations or restrictions that apply to when the vehicles will be used;and
- (h) a list of documents that are to be prepared in relation to the funeral (including a document that is to be given to the Registrar under the *Births, Deaths and Marriages Registration Act 1998* section 42), the cost or likely cost of those documents and whether the costs are likely to change; and
- (i) all other funeral services to be provided under the contract and the agreed period of time within which they will be provided; and
- (j) the total cost, including GST, of —
 - (i) providing all the funeral services under the contract; and

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- (ii) each funeral service to be provided under the contract;

and

- (k) fees or charges that will or may be charged under the contract, including —

- (i) any administration or cancellation fee; and
 - (ii) any additional costs for providing funeral services under the contract, such as a fee or charge for a service being provided beyond an agreed period of time;

and

- (l) if the funeral organiser will organise a cemetery contract —
 - (i) who will be the parties to the contract; and
 - (ii) a description of the services to be provided under the contract; and
 - (iii) whether the costs of the services have been, or will be, fully paid.

7. Prepaid funeral contracts to state what happens to payments made in particular circumstances

A funeral organiser must not enter into a prepaid funeral contract unless the contract provides for what happens in relation to payments made or to be made under the contract if —

- (a) the funeral organiser ceases to carry on business before the contract is performed, including if —
 - (i) the funeral organiser is an individual who becomes a bankrupt or a person whose affairs are under insolvency laws according to the *Interpretation Act 1984* section 13D; or
 - (ii) the funeral organiser is a body corporate that becomes a Chapter 5 body corporate within the meaning given in the *Corporations Act 2001* (Commonwealth);

or

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- (b) the funeral organiser is unable to perform the contract for any reason; or
- (c) the payments required to be made under the contract are not made in full and on time; or
- (d) the recipient moves to a location where the funeral services can no longer be provided including, for example, moving outside of the State; or
- (e) the client ends the contract other than under a right in the contract; or
- (f) the recipient dies before a payment required under the contract is made.

8. Particular requirements for prepaid funeral contracts requiring a funeral director to be selected

A funeral broker must not enter into a prepaid funeral contract requiring that a client select a particular funeral director to provide the funeral services unless the contract —

- (a) sets out how, if the funeral director selected is not able to provide the funeral services, another funeral director is to be selected to provide the funeral services; and
- (b) includes the following note in not less than 14 point bold type —

NOTE — SELECTING A FUNERAL DIRECTOR

When you enter into this contract you will be required to select a particular funeral director to provide the funeral services. However, the funeral director you select is not guaranteed.

If the funeral director you select does not provide the funeral services, an alternate

Fair Trading (Prepaid Funerals Code of Practice) Regulations 2020**Schedule 1** Prepaid Funerals Code of Practice 2021**Division 2** Funeral organiser obligations in relation to prepaid funeral contracts**cl. 9**

**funeral director will be selected in
accordance with the contract.**

9. Prohibition on charging more for agreed services under prepaid funeral contracts

(1) In this clause —

agreed service, in relation to a prepaid funeral contract, means a funeral service to be provided under the prepaid funeral contract;

legal personal representative means —

- (a) the executor of the will or administrator of the estate of a deceased recipient; or
- (b) the trustee of the estate of a recipient under a legal disability; or
- (c) a person who holds an enduring power of attorney granted by a recipient.

(2) A funeral organiser must not charge a client an amount for an agreed service that is greater than the amount for the agreed service in the prepaid funeral contract unless —

- (a) the parties to the contract agree to the greater amount; or
- (b) the agreed service is varied and the parties to the contract agree to the variation; or
- (c) if the client is the recipient and the charge or agreed service is to be varied after the recipient's death — the recipient's legal personal representative agrees to the greater amount or the variation.

10. Giving signed prepaid funeral contracts to particular persons

The funeral organiser must give a copy of the signed prepaid funeral contract to the following persons as soon as is reasonably practicable after the client and funeral organiser have signed the contract —

- (a) the client;
- (b) if the client is not the recipient — the recipient;
- (c) the person stated in the contract under clause 5(e).

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11. Funeral organisers to keep register of prepaid funeral contracts

A funeral organiser must keep a register of prepaid funeral contracts that records the following for each contract that the funeral organiser enters into —

- (a) the details that must be set out in the contract under clause 5;
- (b) the amount of each prepayment and when it is received;
- (c) when the funeral organiser pays the whole or part of a prepayment to an investment manager.

Subdivision 2 — Terminating prepaid funeral contracts

12. Right to terminate during cooling-off period

- (1) A funeral organiser must not enter into a prepaid funeral contract unless the contract includes —
 - (a) a term that the client may end the contract during the cooling-off period by giving written notice to the funeral organiser; and
 - (b) a term that, if the client ends a prepaid funeral contract during the cooling-off period, the funeral organiser must —
 - (i) repay any amount the client has paid under the contract (other than an administration fee charged by the funeral organiser under the contract for ending the contract in the cooling-off period); and
 - (ii) not hold the client liable in any way for ending the contract within the cooling-off period;and
- (c) the following note in not less than 14 point bold type —

NOTE — COOLING-OFF PERIOD

When you enter into this contract you will receive a signed copy of the contract. You have the right to end the contract by giving written notice to the person with whom you

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entered into this contract within the period starting when you signed the contract and ending on the day that is 30 days after the day you receive a signed copy of the contract. If you exercise this right you are entitled to the full repayment of any amount that you have paid under the contract (other than an administration fee charged by the funeral organiser under the contract for ending the contract in the cooling-off period).

You should consider the taxation and social security implications of ending the contract.

- (2) If a client ends a prepaid funeral contract during the cooling-off period by giving written notice to the funeral organiser, the funeral organiser must —
- (a) repay any amount the client has paid under the contract (other than an administration fee charged by the funeral organiser under the contract for ending the contract in the cooling-off period); and
 - (b) not hold the client liable in any way for ending the contract within the cooling-off period.

13. Other termination rights

- (1) A funeral organiser must not enter into a prepaid funeral contract that provides a right to end the contract (in addition to the right to end the contract during the cooling-off period) unless the contract sets out —
- (a) who may exercise the right; and
 - (b) the way the person may exercise the right; and
 - (c) the financial arrangements that will apply if the right is exercised, including —
 - (i) any period of notice required to withdraw amounts paid to an investment manager; and

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- (ii) fees or charges (including an administration or cancellation fee) that will, or may, be charged by the funeral organiser because of the termination.
- (2) A funeral organiser must not enter into a prepaid funeral contract that provides a right to end the contract unless the contract sets out the following note in not less than 14 point bold type in the part of the contract dealing with termination rights —

NOTE — FOR THE INFORMATION OF THE PARTY ENDING THE CONTRACT

You should consider the taxation and social security implications of ending the contract.

Subdivision 3 — Prepayments under prepaid funeral contracts**14. Dealing with prepayments under prepaid funeral contracts**

- (1) A funeral organiser who receives a prepayment under a prepaid funeral contract must deal with the prepayment in the following way —
 - (a) if there is a cemetery contract that relates to the prepaid funeral contract — the part of the prepayment that relates to the cemetery contract must be paid to the cemetery manager with which the cemetery contract is entered into no later than 16 days after the day on which the funeral organiser receives it; and
 - (b) the prepayment is otherwise invested in a funeral investment designated in the client's name for the contract no later than 16 days after the day on which the funeral organiser receives it.
- (2) The funeral organiser must give the person to whom the prepayment was paid under subclause (1) a written notice that —
 - (a) identifies the contract to which the prepayment relates; and
 - (b) names the client; and
 - (c) if the client is not the recipient — names the recipient.

Fair Trading (Prepaid Funerals Code of Practice) Regulations 2020**Schedule 1** Prepaid Funerals Code of Practice 2021**Division 3** Investment managers**cl. 15**

Division 3 — Investment managers**15. Persons who may act as investment managers under the code**

A person must not act as an investment manager under this code unless the person is —

- (a) a company registered under the *Life Insurance Act 1995* (Commonwealth) section 21; or
- (b) a friendly society as defined in the *Life Insurance Act 1995* (Commonwealth) section 16C; or
- (c) a licensed trustee company as defined in the *Corporations Act 2001* (Commonwealth) section 601RAA; or
- (d) the Public Trustee as defined in the *Public Trustee Act 1941* section 2.

M. INGLIS, Clerk of the Executive Council.

Fair Trading (Prepaid Funerals Code of Practice) Regulations 2020**Defined terms****Defined terms**

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
agreed service	Sch. 1 cl. 9(1)
cemetery contract	3(1), Sch. 1 cl. 2
cemetery manager	Sch. 1 cl. 2
client	Sch. 1 cl. 2
code	3(1)
cooling-off period	Sch. 1 cl. 2
funeral broker	Sch. 1 cl. 2
funeral director	Sch. 1 cl. 2
funeral investment	Sch. 1 cl. 2
funeral organiser	Sch. 1 cl. 2
funeral service	3(1), Sch. 1 cl. 2
GST	Sch. 1 cl. 2
investment manager	Sch. 1 cl. 2
legal personal representative	Sch. 1 cl. 9(1)
prepaid funeral contract	3(1), Sch. 1 cl. 2
prepayment	Sch. 1 cl. 2
recipient	Sch. 1 cl. 2