

Consumer protection in New Zealand

Grow | Protect | Operate | Finance

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Consumer protection in New Zealand



3 partners

9 professionals

Specialists in:

The Fair Trading Act

Consumer Guarantees Act and
other consumer legislation

Reviewing marketing collateral
for compliance with both the
Fair Trading Act and Advertising
Standards Codes



The team has great attention to detail, can deliver on required timelines, always with a smile and can act as external advisers or another pair of hands in an in-house environment, depending on the client's needs.

— Legal 500 Asia Pacific, 2023

Ranked with:





Key points about consumer protection in New Zealand



Consumers in New Zealand are protected by six key sources of law:

- Fair Trading Act 1986
- Consumer Guarantees Act 1993
- Credit Contracts and Consumer Finance Act 2003
- Privacy Act 2020
- Unsolicited Electronic Messages Act 2007
- The sales promotion scheme regime in the Gambling Act 2003.



There are also voluntary codes such as the Advertising Standards.

The detail

Fair Trading Act 1986 (FTA)

The FTA promotes trading which is fair, honest, and transparent. It applies to the supply of goods or services in 'trade'. The FTA prohibits:

- **Deceptive or misleading conduct:** Consumers must not be misled or deceived about the nature, manufacturing process, characteristics, suitability to purpose, or quantity of goods or services.
- **False, misleading and unsubstantiated representations:** Representations made to consumers about goods or services must not be false or misleading. Representations made without reasonable grounds, even if they are believed to be true (or are in fact true), will also breach the FTA.
- **Unfair contract terms:** A contract term is unenforceable if a court declares that it is unfair. An 'unfair' contract term is one that causes significant imbalance in the parties' rights and obligations, is not reasonably necessary to protect the legitimate interests of the business and causes detriment if enforced. The scope of this applies to:
 - standard form consumer contracts – involving the supply of goods or services of a kind ordinarily acquired for personal, domestic, or household use or consumption; and
 - small trade contracts – where each party is engaged in trade, the contract is not a consumer contract and it does not comprise or form part of a trading relationship that exceeds an annual value threshold of NZ\$250,000 when the contractual relationship first arose.
- **Unfair practices:** The FTA lists a number of activities which are considered to be unfair and which are prohibited. Some examples of the listed activities include pyramid selling schemes, bait advertising, and requiring payment for unsolicited goods or services.

Contracting out

In most cases, the FTA cannot be contracted out of. In some business-to-business transactions, contracting out is possible in writing if both parties are 'in trade' and the goods or services are both supplied and acquired 'in trade' and it is fair and reasonable to do so.

Other matters dealt with under the FTA include:

- compliance with safety standards for certain products and services offered to consumers, to prevent or reduce risk of injury to a person;
- compliance with consumer information requirements for certain products and services offered to consumers;
- layby sale agreements and disclosure requirements to consumers;
- uninvited direct sale agreements and disclosure requirements to consumers;
- extended warranties; and
- auctions.

Penalties for breaching the FTA

- a maximum fine for breach by an individual of NZ\$200,000 per offence, or NZ\$600,000 per offence for a business;
- compensation to affected consumers;
- injunctions; and
- management banning orders.

Consumer Guarantees Act 1993 (CGA)

- Provides consumers with a number of guarantees that apply to goods or services purchased from a supplier in trade.
- Has a broad scope defining a consumer as a person who acquires goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption, provided that

the person does not represent themselves as acquiring the goods or services for resupplying them in trade, consuming them in the course of a process of production or manufacture, or in the case of goods, repairing or treating in trade other goods or fixtures on land.

- Applies to certain business-to-business transactions, giving the business consumer the benefit of the same guarantees as an individual consumer.
- The guarantees generally cannot be contracted out of, but as with the FTA, there is a limited exception for parties to a business-to-business transaction where the goods or services are purchased for business purposes and it would be fair and reasonable to contract out of the CGA.

In relation to the supply of goods, the CGA implies the following guarantees:

- the supplier has the legal right to sell the goods, the goods are free of any undisclosed security interests and that the consumer has the undisturbed possession of the goods;
- the goods will be delivered at the time agreed or within a reasonable time if the supplier is to deliver the goods;
- the goods are of acceptable quality;
- the goods are fit for a particular purpose made known by the consumer or represented by the supplier;
- the goods match the supplier's description of the goods or any sample;
- the goods are sold at a reasonable price where the price is not pre-determined by the contract, left to be determined in a manner agreed by the contract nor left to be determined by the course of dealing between the parties; and
- repairs and spare parts will be made reasonably available for a reasonable period after the goods are so supplied.

In relation to the supply of services, the CGA implies the following guarantees for services. The services will be:

- performed with reasonable care and skill;
- reasonably fit for any particular purpose that the consumer makes known to the supplier;
- completed within a reasonable time where the time has not been pre-determined by the contract, left to be fixed in a manner agreed by the contract nor left to be fixed by the course of dealing between the parties; and
- supplied at a reasonable price where the price is not pre-determined by the contract, left to be determined in a manner agreed by the contract nor left to be determined by the course of dealing between the parties.

Liabilities and Penalties

Where goods do not comply with a guarantee, a consumer may seek redress against the supplier or, in the case of goods supplied, the manufacturer or importer, at the consumer's election. If the failure is capable of remedy, the consumer must first give the supplier (or otherwise) the right to rectify the breach. If the failure is minor, the supplier can choose to either repair the goods, replace the goods or refund the consumer. If the supplier refuses to repair faulty goods or fails to do so within a reasonable time, the consumer may have them repaired elsewhere and recover the costs from the supplier. If the failure cannot be remedied or cannot be put right within a reasonable time, or is substantial, the consumer may reject the goods or cancel the service contract, or obtain damages for any reduction in value of the good or service.

In addition, the consumer can also claim for any other reasonably foreseeable loss that results from the failure.

Credit Contracts and Consumer Finance Act 2003 (CCCFA)

- Places strict requirements on lenders who provide credit to consumers for personal, domestic or household purposes under credit contracts and consumer leases, and buy-back transactions of land.
- Requires lenders to comply with the 'lender responsibility principles', some of which include:
 - exercising care, diligence and skill in advertising credit services, before entering into credit arrangements with a borrower and in all subsequent dealings with a borrower in relation to an agreement or relevant insurance contract or a guarantor in relation to a relevant guarantee;
 - making reasonable inquiries into a borrower's requirements and objectives;
 - considering a borrower's repayment abilities;
 - assisting a borrower to make an informed decision; and
 - treating a borrower reasonably and in an ethical manner.

Penalties

Lenders can be fined up to NZ\$200,000 for individuals and NZ\$600,000 for businesses for breaching the CCCFA. Courts can also reopen 'oppressive' contracts which are unjustly burdensome, unconscionable or breach reasonable standards of commercial practice.

Privacy Act 2020 (Privacy Act)

- Governs the collection, storage, use and disclosure of personal information by requiring compliance with thirteen Information Privacy Principles (IPPs).
- 'Personal information' is broadly defined as 'information about an identifiable individual.' The Privacy Act applies to agencies, which include any person or body of persons, whether corporate or unincorporated and whether in the public sector or private sector (unless an

exception applies). It applies to New Zealand agencies as well as overseas agencies carrying on business in New Zealand.

The IPPs, among other things, specify that an agency:

- Must not collect personal information unless it is necessary for a lawful purpose connected with a function or activity of the agency (and must not require identifying information if the purpose does not require it);
- must collect personal information from the individual concerned (unless an exception applies);
- should take reasonable steps to ensure the individual is aware of the collection of personal information, and other information in relation to the collecting agency and the purpose for such collection, who the information will be disclosed to, the consequences (if any) for the individual if the information is not provided, and the individual's rights of access to, and correction of, information;
- may only collect personal information by lawful means, and by fair and not unreasonably intrusive means (particularly in the case of children or young persons);
- ensure that the personal information is protected by reasonable security safeguards to protect the information from loss, unauthorised access, use, modification or disclosure and other misuse;
- upon request from an individual, give confirmation of whether or not the agency holds, and give access to, their personal information, and also advise the individual that they may request correction of any personal information, and, if the agency does not correct the information, it must attach a statement of correction to the information if the individual has provided it;
- must not use or disclose personal information without taking reasonable steps to ensure that the information is accurate, up to date, complete, relevant and not misleading;

- must not to keep personal information longer than necessary;
- should only use or disclose personal information for the purposes it was collected for, unless the individual consents or another of the exceptions applies;
- may only disclose personal information to a foreign entity in certain circumstances, essentially where the information will be protected by similar safeguards to those provided under the Privacy Act; and
- may only use unique identifiers when it is necessary, may not use a unique identifier assigned by another agency, and must take reasonable steps to protect unique identifiers from misuse.

The Privacy Act requires mandatory reporting of privacy breaches where it is reasonable to believe the breach has caused serious harm or is likely to do so.

Penalties

Breach of any of the IPPs is grounds for a complaint to the Privacy Commissioner. The Privacy Commissioner may investigate the complaint and may refer matters to the Director of the Human Rights Review Tribunal, who may award remedies such as damages, a declaration that the actions interfere with privacy, a compliance order, costs, or other relief deemed appropriate. The Privacy Commissioner may issue compliance notices and binding decisions on access requests. Privacy Act fines of up to NZ\$10,000 may be imposed for offences. The Human Rights Review Tribunal has jurisdiction to award damages of up to NZ\$350,000 in respect of the interference with the privacy of an individual. However, in practice, awards by the Human Rights Review Tribunal in relation to breaches of the IPPs tend to be much lower, and the highest awards (closer to NZ\$100,000) are reserved for only the most egregious breaches where significant harm has been caused to the aggrieved individual. See [here](#) for more information about claims and damages awarded by the Human Rights Review Tribunal.

Unsolicited Electronic Messages Act 2007 (UEMA)

An individual or organisation (person) must comply with the UEMA when sending emails (and SMS messages) to consumers. The UEMA prohibits the sending of unsolicited commercial electronic messages. Essentially, in order to send commercial electronic messages, the person must first obtain consent from the recipient. Consent can either be:

- express (for example by way of a 'tick the box' opt in when a person provides their contact details);
- inferred (from the conduct, business and other relationships of the person concerned); or
- deemed (where an email address has been published by a person in a business or official capacity, they have not expressly said they do not wish to receive unsolicited electronic messages and the message sent to that address is relevant to the business or duties of the person in a business or official capacity).

'Electronic messages' that are subject to the UEMA include emails, faxes, instant messages, SMS (txt), multimedia messages, and other mobile phone messages, but not voice calls or voice messages. 'Commercial' electronic messages are defined to include 'electronic messages that market or promote goods, services, land, an interest in land, or a business or investment opportunity'.

Common electronic messages that are not considered 'Commercial' electronic messages include those that:

- provide a quote or estimate of goods or services, if that quote was requested by the recipient;
- facilitate, complete or confirm a commercial transaction which was previously agreed to with the person sending the message;
- provide notification of factual information about a subscription, membership, account, loan, or similar relationship involving the ongoing purchase or use by the recipient of goods or services offered by the person who authorised

the sending of the message or the recipient's ongoing subscription, membership, account, loan, or similar relationship; or

- deliver goods or services, including product update or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously entered into with the person who authorised the sending of the message.

The person, when sending a commercial electronic message, must also:

- identify itself clearly as the sender of each commercial electronic message; and
- include a functional unsubscribe facility in all commercial electronic messages which is functional and valid for at least 30 days after the principal message is sent.

Penalties

An individual can be liable to pay a penalty not exceeding NZ\$200,000 in respect of a civil breach and an organisation can be liable to pay a penalty not exceeding NZ\$500,000. The Department of Internal Affairs is active in this space, and if a complaint is made it is very likely to be investigated.

Gambling Act 2003 (Gambling Act)

Businesses may use sales promotions or competitions as a marketing technique to promote the goods and/or services they offer to consumers. However, a business will be prohibited from running a promotion in New Zealand if the promotion is considered 'gambling'. The exception to this is if the promotion is expressly permitted under the Gambling Act. 'Gambling' is defined as the 'paying or staking of consideration', directly or indirectly, on the outcome of something and seeking to win money, where that outcome depends wholly or partly on chance. For this purpose, 'money' includes 'money's worth', whether or not convertible into money.

A promotion or competition may be authorised if it is considered a 'sales promotion scheme'. A 'sales promotion scheme' is defined under the Gambling Act as gambling that meets the following criteria:

- a promotion which does not involve a gaming machine, nor a prize restricted or prohibited under the Gambling Act;
- a promotion which is used by a creator, distributor, or vendor of goods or services to promote the sale of those goods or services, in that:
 - participation in the gambling requires a person to purchase the goods or services promoted for a price not exceeding the usual retail price; and
 - the date or period on or over which the outcome of the gambling will be determined is clear to the participant at the time and place of sale;
- the person is not required to pay direct or indirect consideration other than to purchase the goods or services promoted (except the cost, at the standard rate, incurred in submitting an entry into the promotion, for example, the cost of sending a telecommunication by a mobile phone at the standard rate); and
- the outcome is determined:
 - random or wholly by chance; or
 - partly by chance (whether chance plays the greater or lesser part) and partly by the application of some knowledge or skill).

Penalties

In the case of an individual, an offence under the Gambling Act can hold a person liable to imprisonment for a term not exceeding 1 year or to a maximum fine of NZ\$20,000. In the case of a body corporate, a business may be liable to pay a maximum fine of NZ\$50,000.

Advertising Standards

Advertising in New Zealand is regulated by the Advertising Standards Authority (the self-regulatory body, 'ASA') under the Advertising Standards Code, Children and Young People's Advertising Code, Alcohol Advertising and Promotion Code and several others (Advertising Standards). Although the Advertising Standards are not laws per se, they set important expectations for how businesses in New Zealand should operate when advertising their goods and/or services. ASA members consist of associations and incorporations representing the majority of the media and advertising industries in New Zealand.

The ASA will consider complaints about any advertisement in any medium, and any person can complain. The ASA can make orders as to the removal or amendment of any advertisement and publicise its decisions. Compliance with the ASA's decisions are voluntary, but the rate of compliance in the industry is extremely high and enforced by media and advertisers (i.e. TV stations, advertising agencies, outdoor marketers, etc).

The Advertising Standards Code aims to ensure that every advertisement is a responsible advertisement, and all advertising is legal, decent, honest and respects the principles of fair competition. Of relevance, the Advertising Standards Code establishes two broad principles which are linked to 17 rules. These include:

- Principle 1: Social Responsibility – Advertisements must be prepared and placed with a due sense of social responsibility to consumers and to society.
- Principle 2: Truthful Presentations – Advertisements must be truthful, balanced and not misleading.

How we can help you

FTA and CGA

- Draft or review your consumer contracts and terms of trade.
- Draft or review your business-to-business contracts.
- Review your marketing material.
- Advise you on your obligations under the FTA and CGA.
- Defend a claim for an alleged breach of the FTA.
- Provide training on the CGA and FTA to avoid staff breaching it.

CCCFA

- Draft or review your credit contract terms, consumer leases or buy-back agreements.
- Advise you on advertising requirements under the CCCFA.
- Draft or review your disclosure statements to borrowers.
- Register and enforce security interests.
- Defend a claim for an alleged breach of the CCCFA.
- Provide training on the CCCFA to avoid staff breaching it.

Privacy Act

- Advise you on how to safely hold, collect, store, use and disclose information.
- Draft or review your Privacy Notices for New Zealand and Australian law; and GDPR.
- Prepare templates and guidance on data audits and privacy impact assessments.
- Prepare policies for various aspects of privacy compliance, for example, in relation to HR matters, front-line staff, breach protocols and procedures.
- Provide training for your staff about how they can comply with their Privacy Act obligations.
- Assist you in responding to requests for information.

How we can help you

UEMA

- Advise you on whether your methods of obtaining consent to send commercial electronic messages are adequate for the purposes of the UEMA.
- Prepare internal policies and provide training on the UEMA to avoid staff breaching it.
- Assist you in responding to investigations by the Department of Internal Affairs.

Gambling Act

- Review your competition formats and terms to ensure they comply with the Gambling Act 'sales promotion scheme'.

Advertising Standards

- Review your marketing material.
- Defend a claim for an alleged breach of the standards.
- Provide training on the standards to avoid staff breaching them.

Contact



Hayley Miller

Partner

D +64 9 915 3366

M +64 21 870 477

hayley.miller@dentons.com

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