

## Guide: Legislative requirements

If you deal in goods and services, you need to be aware of statutory controls on marketing those goods and services.

### Fair Trading Act 1986

The Fair Trading Act 1986 (FTA) protects the marketplace through promoting disclosure and prohibiting unfair conduct.

“Unfair conduct” includes:

- misleading and deceptive conduct (including any conduct likely to mislead or deceive)
- unsubstantiated, false or misleading representations, and
- unfair terms or practices (including collateral offers and coercion).

The FTA also promotes product safety and safety of services.

Non-compliant persons may be convicted and fined up to \$600,000. Breaches may also attract civil penalties and other sanctions such as injunctions, compensation and banning orders.

### Commerce Act 1986

The Commerce Act 1986 (CA) regulates competition for the long-term benefit of consumers in New Zealand.

“Restrictive trade practices” include:

- contracts, covenants, arrangements and understandings either intended or likely to substantially lessen competition
- cartel provisions either intended or likely to fix prices, restrict output or allocate markets
- abusing market powers by restricting, preventing, deterring or eliminating competition, and
- maintaining resale prices by conditioning supply on set prices.

The CA establishes the Commerce Commission to investigate, manage and prosecute offences. Depending on the circumstances, the Commission may accept (and enforce) written undertakings or seek injunctions, pecuniary penalties up to \$10 million and/or damages.

### Consumer Guarantees Act 1993

The Consumer Guarantees Act 1993 (CGA) protects consumers by implying minimum guarantees as to all goods and services ordinarily acquired for personal, domestic, or household use.

The CGA grants rights of redress against suppliers (of goods or services) as well as manufacturers (of goods).

Remedies include repairs, replacements, and refunds.

Whenever you review insurance cover, consider whether potential liability arising because of the Consumer Guarantees Act is covered appropriately.

### Health and Safety at Work Act 2015

The Health and Safety at Work Act 2015 (HSWA), which came into force on 4 April 2016, has wide ranging implications for all those involved in the workplace.

HSWA sets out the principles, duties, and rights in relation to workplace health and safety. A guiding principle of HSWA is that workers and others need to be given the highest level of protection from workplace health and safety risks.

HSWA ensures that everyone has a role to play and makes everyone’s responsibilities clear:

- Businesses have the primary responsibility for the health and safety of their workers and any other workers they influence or direct. They are also responsible for the health and safety of people at risk from the work of their business
- Officers (company directors, partners, board members, chief executives) must do due diligence to make sure the business understands and is meeting its health and safety responsibilities
- Workers must take reasonable care for their own health and safety and that their actions don't adversely affect the health and safety of others. They must also follow any reasonable health and safety instruction given to them by the business and cooperate with any reasonable business policy or procedure relating to health and safety in the workplace
- Other people who come into the workplace, such as visitors or customers, also have some health and safety duties to ensure that their actions don't adversely affect the health and safety of others.

## **Employment Agreements**

The relevant Acts here are the Employment Relations Act 2000 and the Holidays Act 2003.

The very act of employing staff automatically creates legal obligations for both parties. These must be stated in writing. This provides employers and employees the opportunity to understand exactly what the rules are.

An individual employment agreement must contain the following aspects:

- the names of the parties
- description of position and work to be performed
- an indication of where the employee is to perform the work
- the hours to be worked or an indication of the arrangements as to times worked
- the wages or salary payable
- the entitlement to time and a half for working on a public holiday
- the employee's rights in contracting out situations
- in the event that the business is sold to a new employer, the process outlining both what will happen if the position will transfer to the new employer and what will happen if the position will not transfer or the employee chooses not to transfer to the new employer
- a plain language explanation of the services available for the resolution of employment problems, including a reference to the period of 90 days within which a personal grievance must be raised.

## **Privacy Act 2020**

The Privacy Act 2020 sets out 13 information privacy principles in respect of the following identifiable issues:

- collection of information
- storage and security of information
- access by the individual and correction of the information
- updating and disposal of information
- checking, use and disclosure of information, including the disclosure of personal information outside New Zealand
- the assignment, use and disclosure of unique identifiers.

Businesses will need to be wary of sharing individuals' information with others. A breach may arise when information is shared for a purpose unrelated to the purpose for which it was obtained.

## **Emissions Trading Scheme**

The Climate Change Response Act 2002 provides for the implementation, operation and administration of a greenhouse gas emissions trading scheme in New Zealand that supports and encourages global efforts to

reduce greenhouse gas emissions.

The Emissions Trading Scheme (ETS) is the price-based mechanism established by Parliament to:

- reduce net greenhouse gas emissions below business-as-usual levels
- comply with our international obligations, including our Kyoto Protocol obligations.

It involves all sectors, including agriculture and forestry. MAF administers the scheme for the forestry and agriculture sectors, in conjunction with the Ministry for the Environment and Ministry of Economic Development.

Businesses involved in activities which come under the umbrella of the ETS need to familiarise themselves with the scheme and their obligations under it.

## Other Legislation

The Resource Management Act 1991 was enacted to promote sustainable management of natural and physical resources.

The Act provides that any use of environmental resources (air, land or water) which may arise from taking the resource, or discharging into it, requires that a resource consent is in place.

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