

Guide to the Fair Trading Act

Govett Quilliam
THE LAWYERS

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WHAT IS THE PURPOSE OF THE ACT?

To prohibit certain conduct and practices in trade, to provide for the disclosure of consumer information relating to the supply of goods and services and to promote product safety.

WHO DOES THE FAIR TRADING ACT AFFECT?

The Fair Trading Act controls anyone involved in trade and also binds the Crown in so far as it engages in trade.

WHAT DOES THE TERM TRADE COVER?

This term is defined in the Act and includes any business, industry, profession, occupation, activity of commerce, or undertaking relating to the supply of acquisition of goods or services or to the disposition or acquisition of any interest in land.

WHAT AMOUNTS TO SUPPLY?

The Act defines this term:

- In relation to goods, and includes supply (or re-supply) by way of gift, sale, exchange, lease, hire, or hire purchase; and
- In relation to services, includes provide, grant, or confer.

WHAT IS MEANT BY ‘GOODS’?

The Act defines goods as personal property of every kind (whether tangible or intangible); and includes:

- ships, aircrafts, and vehicles
- animals
- minerals, trees, and crops
- gas and electricity
- water and computer software

WHAT IS MEANT BY ‘SERVICES’?

The Act defines this term and includes a contract for the performance of work, royalty contract, the provision of, or use of facilities for accommodation, amusement, care of persons or animals or things, entertainment, party or recreation, the supply of electricity, gas, telecommunications or water, a contract of insurance or the lending of money or granting of credit. However it does not include rights or benefits in the form of supply of goods or the performance of work under an employee/employer contract.

WHAT HAPPENS IF I BREACH THE FAIR TRADING ACT?

The Commerce Commission or anyone else can take an action under the Act. Court action may result in fines of up to \$60,000 for an individual, and \$200,000 for a company. Frequently the Commission prosecutes both the company and the individuals involved in a breach. The Court can also grant remedial relief for which the trader has to bear the cost.

Other options available to the Court, on top of fines are:

- Declare the contract void or vary it as it deems fit
- Order refund or return of property to person who suffered loss
- Order payment of loss or damage sustained
- Order the repair of, or provision of parts to person who suffered the loss
- Order the supply of specific services

A person who promotes or operates a pyramid selling scheme is also liable for a fine for up to \$200,000. They are also liable for any

additional penalty that the Court may impose to the value of any commercial gain made which is deemed to have resulted from the contravention and to have incurred in the course of producing that gain.

ARE THERE ANY DEFENCES TO A BREACH?

It shall be a defence if the defendant proves that the contravention was due to:

- A reasonable mistake
- Reasonable reliance on information supplied by another person
- Act or default of another person, or to an accident or some cause beyond the defendant's control

The term 'another person' does not include a servant or agent of the defendant and the Act provides for rules that apply to a body corporate.

COMPLIANCE PROGRAMME

It is important for people in business to establish a compliance programme. In most cases it is not relevant whether you as a trader intended to deceive or mislead your customers. The issue is rather whether your actions did mislead or deceive or were likely to.

WHAT ARE SOME OF THE TRADE PRACTICES COVERED BY THE ACT?

The Fair Trading Act covers selling goods, the setting of the price, advertising and promotion and making the final sale. The Act prohibits people in trade from engaging in misleading or deceptive conduct generally (Section 9). The Fair Trading Act also:

- Prohibits certain kinds of false or misleading representations about employment (Section 12), including false claims as to availability, nature, terms of conditions or any other matter in relation to that employment;
- Prohibits certain kinds of false or misleading representations about goods or services, including false claims that goods or services are of a particular price, standard, quality, origin or history or that they have particular uses or benefits (Section 13); and
- Prohibits certain kinds of false or misleading representations about the sale, grant or associated promotion with any interest in land, including location, characteristics or uses of land (Section 14),
- Prohibits certain unfair trading practices (Sections 17-24); and
- Provides for consumer information and product safety standards (Sections 27 - 33).

We can advise you if a proposed advertising campaign will comply with the provisions of the Fair Trading Act.

FALSE OR MISLEADING ADVERTISING

You must be careful when you advertise goods to ensure:

- You are able to supply the goods; and
- Any comparisons with other goods or services are accurate; and
- You convey the condition of the goods.

The range of matters covered in the Act may surprise you. For example, you may be guilty of misleading or deceiving conduct by not providing enough information in your advertisements. Fine

print to conceal important information or modify “big print” information is not advised.

CONSUMER INFORMATION AND SAFETY STANDARDS

If you are a manufacturer or retailer of certain goods such as clothing, or if you provide certain services, you may have additional obligations to comply with product safety and other standards. Failure to comply with these obligations in relation to goods may mean you have to recall the goods at considerable expense, on top of an additional penalties imposed.

MISREPRESENTATIONS ABOUT PRICE

Particular care is needed when making a representation as to the price of goods or services. If goods are offered at a reduced price, the goods must have been offered at the earlier price for a reasonable time. Comparisons with other traders’ prices must be based on current prices charged in that market. You should make clear the basis of a price reduction.

SALES TECHNIQUES, FINANCE AGREEMENTS, AND UNFAIR PRACTICES

Customers may be misled by the wording of a finance agreement. Your customer may not know the difference between “interest free” and “free credit” terms, you should clarify.

When recovering debts the law must be complied with. It is helpful if you know of the law before the customer fails to pay. You may only seek collection or late payment fees if the debtor was made aware before incurring the debt that they would face such charges.

You may also need to seek legal help if the debtor refuses to pay.

A number of specific practices are prohibited on the grounds of unfairness. For example, “pyramid selling” practices and “referral selling” are prohibited. These are defined in the Act.

SUMMARY

The Fair Trading Act controls how you may produce, advertise, market and sell your goods and services in trade. The team at Govett Quilliam can assist you in complying with the Fair Trading Act.

Please call this office if you would like further information on any guides prepared by this firm. Copies are also available from our website.

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- *Business Grants & Assistance*
- *Buying or Setting Up a Small Business*
- *Charities*
- *Companies Act 1993*
- *Consumer Guarantees Act*
- *Credit (Repossession) Act 1997*
- *De Facto Property Rights*
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