

# Guide to New Zealand Consumer Law

**This guide will help you understand your legal rights and obligations as a provider of products or services to consumers in New Zealand.**

- 
- 2** Consumer Guarantees Act (CGA)

---

  - 5** Fair Trading Act 1986 (FTA)

---

  - 8** Privacy Act 2020 (Privacy Act)

---

  - 10** Unsolicited Electronic Messages Act 2007 (EMA)

---

# Consumer Guarantees Act 1993 (CGA)

The main purpose of the CGA is to protect consumers (by giving them a right to a refund or replacement) where products or services they purchase are faulty.

## Does the CGA apply to my business?

The CGA applies to sales in New Zealand of:

- goods and services from businesses to consumers, and
- goods considered 'household products' from businesses to other businesses (eg, a microwave to be used in a company break room) unless the businesses agree it doesn't apply.

It does **not** apply to business-to-business sales of goods used commercially (such as industrial machinery).

## What promises do I make to consumers under the CGA?

The CGA contains a series of promises (called warranties or guarantees) that suppliers of goods and services automatically provide to consumers. If your goods or services do not comply with these warranties/guarantees, your customers have certain rights against you.

## What promises do I make about the products (aka 'goods') I sell?

- **Acceptable quality warranty** - goods must be of **acceptable** quality which means they must be:
  - › durable (last for a reasonable amount of time)
  - › fit for the purpose commonly used
  - › acceptable in 'appearance and finish'
  - › free of minor defects, and
  - › safe.

Goods **won't fail** to comply with this warranty where:

- › the supplier has told the consumer about the defect in a written notice
- › a consumer uses the goods in an unexpected way, or
- › the manufacturer makes a 'representation' about the goods (not on the label/packaging) and the goods don't comply with the representation (but otherwise comply with the warranty).

*To determine whether goods meet the requirements - what would a **reasonable** consumer think?*

### **Consider:**

- *type of goods, new vs second-hand*
- *price, more expensive should be higher quality*
- *information provided on packaging or products*
- *statements the supplier makes regarding quality*
- *nature of sale, online auction vs in store*



# Guide to New Zealand Consumer Law



- **Fit for purpose guarantee** – goods must be fit for any purpose the supplier tells/shows the consumer or a purpose the consumer informs the supplier they are purchasing the goods for.
- **Compliance with description/sample guarantee** – goods must correspond with any description given by the supplier (which includes any demo model or sample).
- **Price guarantees** – a consumer mustn't be required to pay more than the agreed price or a reasonable price (where the price isn't agreed).
- **Repairs guarantee** – a manufacturer must have repair facilities and spare parts available for a reasonable period after the goods are supplied.
- **Delivery Guarantee** – goods must be delivered at the agreed time (or within the agreed period) or within a reasonable time if no period is agreed. A consumer can reject goods (and obtain remedies) where the failure to deliver is 'substantial'. If goods are damaged during delivery or delivery is delayed, the supplier must resolve the issue for the consumer (it is up to the supplier to recover from the delivery company, if necessary).
- **Manufacturer warranties** – the remedies in the CGA (see below) also apply to any additional warranty a manufacturer gives.

## What promises do I make about my services?

### Services must be:

- ✓ performed with reasonable care and skill
- ✓ reasonably fit for the purpose the consumer told the supplier about
- ✓ performed within any agreed timeframe, or if no timeframe is agreed, within a reasonable period (considering a competent person in that line of work), and
- ✓ at the agreed price, or if no price is agreed, at a reasonable price compared with similar services in the area.



# Guide to New Zealand Consumer Law

## What happens if I don't deliver on my promises?

- A supplier **must provide a remedy** to the consumer where the supplier fails to comply with the warranties. The supplier can ask questions or inspect the goods or services where a consumer claims they are faulty.
- A supplier is **not required to provide** a remedy to a consumer for a **change of mind** or where a goods or service fault is caused by a customer or events outside the supplier's control.

If the failure can't be fixed or is 'substantial' the consumer can choose either:


- › replacement goods or services
- › a full refund, or
- › to cancel a service.

If the failure can be fixed, the supplier can choose either to:

- › provide replacement goods or services
- › repair the goods/reperform the service, or
- › if the above are not possible/practical, provide a refund.

*How to determine if a failure is substantial:*

- if the customer knew of the fault, they would not have purchased
- goods or services are significantly different from description or demo model
- goods or services are not fit for purpose (and can't easily be put right)
- goods/service unsafe



If a repair isn't within a reasonable period, the consumer can demand a refund or have the goods fixed elsewhere and claim the cost from the supplier.

A refund must be to the same method as the original payment or in cash.

## What do my customers have to do?

- a consumer must reject goods within a reasonable time after receiving the goods (considering the type of goods, how long it would reasonably take for the defect to show), and
- return the goods (unless it would involve 'significant' cost).



# Fair Trading Act 1986 (FTA)

The FTA aims to protect consumers by keeping suppliers honest and fair in their advertising and selling practices.

## What is misleading or deceptive conduct?

Under the FTA, a supplier **must not mislead or deceive consumers**.

This applies to all advertising or information provided (whether on the radio, a website, or in a sales pitch on the shop floor) and includes written or spoken information and the leaving out of information.

Examples of things a supplier can't say:

- ❌ 'buy the **world's most delicious** chocolate here'
- ❌ 'drink our protein shake and **you will lose 15 kilos**'

This applies to information about goods or services and includes any statements about:

- manufacturing processes
- characteristics of products
- quantity
- price
- standard or quality
- origin or history
- suitability for purpose
- benefits, and
- endorsements.



A supplier of goods or services needs 'reasonable grounds' to make a claim about its good/service and evidence to back up the claim. If a supplier can't back a claim up with evidence, it is considered 'unsubstantiated', even if the claim is true.

One exception is where a claim is a clear exaggeration, which is known as 'puffery'. The test is whether a reasonable person would know the claim is an exaggeration, for example, 'this drink will turn you into Superman'.









*In New Zealand, **puffins** are usually only found on coastal cliffs, but 'puffery' can be found almost anywhere!*



# Guide to New Zealand Consumer Law

## What types of sales practices aren't allowed?

The following practices are considered unfair sales practices and are prohibited under the FTA:

-  Bait advertising – a supplier can't offer products or services it can't supply, it must have reasonable quantities available (and any limits must be clearly stated).
-  Harassment and coercion – threats, force and controlling tactics are not allowed.
-  Unconscionable conduct – acting in a 'harsh or oppressive manner' that society views as wrong.
-  Pyramid selling – being paid purely for recruiting others to join a scheme (this is different to multi-level marketing schemes where you also earn commission from selling products, which may be acceptable).
-  Referral selling – offering people a reward of a product/service in exchange for the names of potential other customers.
-  Inertia selling – providing someone with a product they didn't agree to buy and then charging them for the product if it isn't returned.
-  Unsolicited products or services – electricity and gas are the only services a supplier can provide that are not requested or ordered.
-  Taking payment with no intention to supply – where a supplier knows it doesn't have products in stock or intends to supply replacement products.

## When is a term in a contract 'unfair'?

To protect consumers or small businesses with limited negotiating power (eg, when contracting with a much larger organisation), a consumer or small business can complain to the Commerce Commission if it believes a term of a 'standard contract' or 'small trade contract' is unfair. The Commission can then refer the complaint to a court for a declaration that the term is unfair.

A term may be declared 'unfair' only where:

- it would cause a **significant imbalance** between the consumer and supplier
- it is not reasonably necessary to **protect a legitimate interest** of the supplier, and
- **it would cause detriment** if enforced.



A standard contract is a contract where the consumer has no choice but to agree to the contract to buy the product or service (such as with a large telco or electricity provider).

A small trade contract is a contract between two businesses where the annual amount paid under the contract is less than \$250,000.

**Examples of unfair contract terms include:**

one party being able to cancel the contract and not the other,

or

one party being able to change the price without the other party being able to cancel the contract.

However, some terms cannot be declared unfair, including:

- the price, when set out clearly and upfront
- terms of the contract about the main subject matter (such as descriptions of the good or service), and
- certain terms expressly allowed by law.

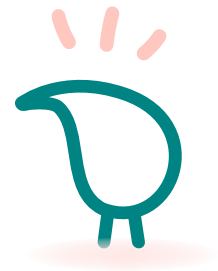
If a standard contract or small trade contract term is declared unfair:

- it is not enforceable, and
- it can't be included in the contract unless the term is changed.

## *What happens if I don't comply?*

A business that fails to comply with the FTA:

- may be ordered to refund the purchase price of a good or service to a consumer
- may be stopped from selling its products or services
- may be ordered to pay damages to the consumer, and/or
- can be fined up to NZ\$600,000.



# Privacy Act 2020 (Privacy Act)

The Privacy Act governs the collection, use, storage and disclosure of personal information by organisations and government agencies in New Zealand. It provides individual people with rights and protections regarding their personal data.

## Who does the Privacy Act apply to?

The Privacy Act applies to all organisations in New Zealand **collecting, holding or using personal information**.

Personal Information is anything that **identifies a living person**. This may be a name, email address, phone number, physical address or any other information linked to a particular person.

## What do I have to do to comply?

The Privacy Act contains 13 privacy principles, which, by way of overview, require organisations to comply with the following:

### DO:



- only collect the information you need to provide your goods or services
- tell your customers what will happen if they don't give you their personal information
- only use the information if you're reasonably sure it's accurate
- only use the information for the purpose you collected it
- keep the information safe
- dispose of the information when you no longer need it
- allow a customer to see information about them and correct any mistakes if requested, and
- have a privacy policy – this allows you to provide the information to your customers you are required to provide under the Privacy Act.

### DON'T:



- let any personal information be leaked/hacked
- pass information onto any other organisation (except as required to help you provide your goods or services)
- collect information by illegal, unfair or unreasonably intrusive means
- collect information about someone from someone else, or
- release information overseas (unless similar privacy protections apply).



## *What happens if I don't comply?*

If it is a **notifiable breach** (ie, causes someone **serious harm**), you must notify the individual and the New Zealand Privacy Commissioner. See the Privacy Commissioner's website here <https://www.privacy.org.nz/responsibilities/privacy-breaches/notify-us/> for information on how to notify.

Organisations can be fined up to NZ\$10,000 for failing to notify the Privacy Commissioner of a notifiable breach.

Anyone can make a complaint to the Privacy Commissioner if they think an organisation has breached any of the privacy principles which has caused them loss, resulted in loss of a benefit or caused humiliation or loss of dignity. The Privacy Commissioner can negotiate settlement of the complaint from the organisation if they think it is warranted. The Commissioner can also refer a complaint to the Director of Human Rights Proceedings, who can bring proceedings in the Human Rights Tribunal. The tribunal can grant a restraining order, payment of damages and/or compensation to be paid to the affected individual.



# Unsolicited Electronic Messages Act 2007 (EMA)

The EMA aims to restrict and reduce the sending of spam.

## What can I send to customers?

The EMA prohibits sending emails, faxes, texts or SMS without obtaining the recipient's consent. This applies to communication sent to, from or within New Zealand.

Consent can either be express (ie, the consumer ticks a box authorising the supplier to send marketing material) or 'reasonably inferred' from the relationship between the supplier and consumer. To ensure compliance, it is best practice to obtain express consent rather than relying on possible inferred consent (eg, if a consumer did not tick the box stating they did not want to receive marketing material).

If a supplier has obtained consent, they must provide a free way for the consumer to unsubscribe from receiving the communication that works within 5 days.

## What happens if I don't comply?

If a business fails to comply with the EMA, it can be issued an infringement notice, be ordered to repay any profit from the breach, be ordered to pay compensation to a person who suffers loss from the breach and/or be fined up to NZ\$500,000.

