

For information and help on fair trading issues call the Office of Fair Trading

General enquiries
13 32 20

Language assistance
13 14 50

TTY for hearing impaired
1300 723 404

Aboriginal enquiry officer
1800 500 330

Consumer, Trader & Tenancy Tribunal
1300 135 399

Registry of Co-operatives & Associations
1800 502 042

Or visit a Fair Trading Centre at:

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- Dubbo • Gosford • Goulburn • Grafton • Hurstville • Lismore • Liverpool
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- Sydney • Tamworth • Tweed Heads • Wagga Wagga • Wollongong

Visit our website for details
www.fairtrading.nsw.gov.au

13 32 20



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Good business matters

A quick guide to starting and running your business and complying with the *NSW Fair Trading Act 1987*

www.fairtrading.nsw.gov.au



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This publication can be viewed or printed from the Publications page of our website at www.fairtrading.nsw.gov.au

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New South Wales
Government

Contents

Introduction	2
Starting a business	2
Choosing your structure	2
Business names	3
Licensing	3
Running a business	4
Dealing with customers	4
Advertising	7
Customer options	10
Business scams	15
Selling safe products	19
Trade measurement	21
Online services	22
Other useful business websites	23

Introduction

This guide is a handy reference tool for new and existing business owners. It provides a quick snapshot of your rights and responsibilities under the *NSW Fair Trading Act 1987*.

Before you make any decisions, make sure you read the guide. It provides you with the tips you need to start and operate your business responsibly and ethically, allowing you to meet your obligations as a trader.

Starting a business

There is a lot you need to find out and do before you start a business.

Choosing your business structure

The most common business structures are sole trader, partnership, proprietary limited company, association and co-operative. Try and get a closer understanding of these business structures so that you can see which one will best suit your business. When choosing a structure make sure you think about such things as taxation, type and size of business, finance requirements and establishment costs. You may wish to seek legal or other professional advice about your situation when choosing your business structure.

Further information

Australian Securities and Investments Commission
www.asic.gov.au
 Tel: 1300 302 021

Business gateway to government
www.business.gov.au

Business Enterprise Centres
www.beca.org.au
 Tel: 1300 363 551

Important

When choosing a business structure, think about the type and size of business, finances required, establishment costs and taxation.

Important

Check out the licences you require at www.blis.fairtrading.nsw.gov.au

Business names

Do I need to register a business name?

Yes. If your business name is not exactly the same as your own then you need to register it. For example, if your name is Julie Smith and you are trading under 'Julie Smith's Salon', then this business name would need to be registered.

There is an application fee for registering your business name. Registration lasts for 3 years before you need to renew it.

Licensing

Do I need a business licence?

Your business will more than likely need government licences and/or permits before it can start to operate. The Business Licence Information Service (BLIS) is a free service and can assist you with the type of licences or government permits your business may need (if any).

Further information

www.blis.fairtrading.nsw.gov.au
 Tel: 13 32 20

If your business will be trading outside NSW, check with the licensing authorities in those states or territories about any permits or licences required.

Running a business

Once your business is up and running, you need to be aware that the fair trading laws also recognise the fact that traders as well as consumers can suffer from unfair operators. The laws are reviewed from time-to-time to ensure competition and fairness in the marketplace and businesses and industry associations are invited to comment on proposed changes.

Many of the NSW Government's fair trading laws are the same as in other states and countries around the world. These laws reflect the United Nations Guidelines for Consumer Protection which recognise the 'eight consumer rights' developed by Consumers International. These rights include the right to information, choice, safety, representation, redress and consumer education.

You can view fair trading laws in New South Wales by visiting our website and going to the Fair Trading legislation page.

You should also be aware that the *Federal Trade Practices Act 1974* may also affect your business operations. This Act is administered by the Australian Competition and Consumer Commission (ACCC). You will find their website address and other useful business websites at the back of this booklet.

Dealing with customers

Customer service

How do I provide quality customer service?

Ensure your staff, processes and policies are focussed on meeting customer needs. It's important that you:

- make quality customer service part of your business culture
- create a customer service focus across your whole business by considering your customers' needs and how to meet them

Important

Customers are your business. Lost sales through poor service means less profits for your business.

- display and follow a Customer Service Charter, which clearly outlines the quality of service your customers can expect
- keep good relations with both staff and customers
- capture regular, reliable feedback from customers about their needs and your service
- welcome customer feedback and complaints as an opportunity to build relationships with your customers and improve your product and/or service.

How do I best communicate with my customers?

Use concise and accurate information to explain what you offer. Further tips include:

- use plain language and simple diagrams
- don't use technical language, abbreviations or jargon
- make sure information is clearly displayed and can be mailed or emailed
- update information regularly
- meet all legislative requirements—do not engage in misleading or deceptive conduct.

Customer orders

What do I need to know when taking customer orders?

Make it as easy as possible for your customers to place orders by:

- being clear about how and where to order
- providing a range of options—telephone, face-to-face, in writing and your website
- being clear about what to expect and when
- keeping customers informed of any delays in delivery
- confirming when orders are completed.

What do I need to know about confirming customer orders?

When confirming the order remember:

- if a customer is ordering via the telephone, repeat order details back to them to ensure they are correct
- provide written confirmation of the order immediately if face-to-face, or within 2 days if electronically or by phone.

Important

Advise customers of any delays with the delivery of goods and services and confirm when the order has been completed.

Handling complaints

How do I set up an effective complaint handling policy and procedures?

Consider the following:

- involve your staff in developing your policy and procedures
- think of all the possible things that could happen and work out potential solutions
- establish a policy and procedures manual
- record your policy and procedures, circulate to staff and train them
- let your customers know they can provide feedback or make a complaint
- keep a record of all formal complaints.

Important

Ensure all details of customer complaints are recorded and easily retrieved.

Monitor your policy and procedures to make sure they are working effectively. Regularly review your manual and update as necessary.

How do I deal with unhappy customers?

The following steps will help you and your staff deal with disgruntled customers:

- **Listen.** Understand exactly what the problem is and let the customer know they have your full attention.
- **Acknowledge the problem.** Complaining can be difficult.

Important

Deceptive or misleading advertising is prohibited under the NSW Fair Trading Act.

Being sympathetic and calm will help alleviate the customer's stress.

- **Address the customer's needs.** Tell the customer you want to help improve the situation. Ask how they would like to proceed.
- **Communicate honestly.** Decide what can be done to fix the problem and tell them.
- **Follow-up.** Contact the customer within an agreed timeframe to ensure the problem was resolved.

Fair Trading complaint handling service

If after trying to settle the matter a customer is still unhappy, you or your customer can approach the Office of Fair Trading for assistance. Fair Trading provides information and assistance in negotiating resolutions to disputes and will usually contact your business by phone and attempt to sort out the problem.

Consumer, Trader and Tenancy Tribunal

If the customer is dissatisfied with your response to a complaint, they can take the matter to the Consumer, Trader and Tenancy Tribunal (CTTT). This brings an independent voice to the dispute without the need for costly legal battles. During an informal hearing, the Tribunal will attempt to negotiate a settlement, and if that fails the Tribunal will decide the case. The decision has to be followed by both parties.

Advertising

The NSW Fair Trading Act prohibits misleading or deceptive conduct. To 'mislead or deceive' is to 'lead into error' and includes lying, creating a false impression and leading people to a wrong conclusion.

How do I avoid misleading advertising?

You can avoid most problems by following these principles:

- make sure that products are actually as you have described or promoted them
- specify whether goods have already been used
- with second-hand goods, specify any defects the customer should know about
- when selling second-hand goods check with the Office of Fair Trading to see whether you need a licence
- never claim that you, your business or your products have endorsement, sponsorship or approval, uses or benefits, performance characteristics or accessories that they do not have
- make sure you and your staff know your products as this will impress your customers and allow you to answer questions accurately.

What is bait advertising?

Bait advertising is advertising a small number of goods at attractive prices to entice customers into your store. When the advertised goods quickly run out, customers are re-directed to higher-priced goods or lower-quality goods at the advertised price. It is an offence to advertise goods for sale knowing that you will be unable to supply those goods for a reasonable period. The period of offer should be made clear in the advertisement.

Retailers should not advertise goods or services at attractive prices to draw customers to a store, if they are aware or should be aware that they are unable to supply reasonable quantities at the advertised price for a reasonable period.

What price should I state in an ad?

You must state the full cash price (including GST) required to be paid in order to buy the product.

Important

Falsely raising customers' expectations by telling them only part of the price of an item can lead to disappointment for the customers and can damage your reputation.

Important

All advertising and other disclosures should be clear, conspicuous and legible.

What happens when an item has more than one price marked on it?

It's an offence to sell an item for more than the lowest marked price. It is also an offence to advertise that goods were previously sold at a higher price unless they were actually sold at that price for a reasonable time.

What must I include in balloon payment ads?

A balloon payment (or residual payment) is a substantial final payment made for a product or service, at the end of regular (weekly, monthly) smaller instalments.

In the case of balloon payments the advertisements should clearly state:

- the required regular payment (eg. weekly, monthly)
- the amount of the balloon payment and when it is to be paid
- in the case with print advertisements, the amount of the balloon payment immediately underneath the appropriate advertisement should be in type of no less than 9 points
- the annual percentage rate or rates
- the total period over which the instalments will be payable
- the amount of fees or charges which apply (or state that fees and charges apply or state the amount of some of the fees and charges that apply and that other fees and charges are also payable).

What must I include in ads for interest-free offers and promotions?

Advertisements about interest-free offers often cause confusion for customers who may be misled as to their overall commitment when entering into contracts.

Information should be presented in a manner that is clear, prominent and easy to read, including fine print.

Advertisements should clearly state:

- the nature of the ‘interest-free period’
- the conditions relating to the ‘interest-free period’
- the annual percentage rate or rates which apply after the ‘interest-free period’ has expired
- when the annual percentage will be applied from
- the amount of any fees or charges which apply (or state that fees and charges that apply and that other fees and charges are also payable).

Customer options

Providing credit

Credit laws are complex and you should seek legal advice if you provide credit or sell goods by instalment payments and a charge is applied.

What type of credit is covered under the Consumer Credit Code?

Most credit intended to be used mostly for personal, household or domestic purposes is covered by the Code. If you hire out goods for these purposes, for a fixed period of more than 4 months (but not an indefinite period), this is also covered by the Code.

What do the credit laws regulate?

Credit laws regulate:

- pre-contractual disclosure and conduct
- contract disclosure and the method of entering into contracts
- continuing obligations—including regular statements of account, variations and refinancing
- post-contractual disclosure and conduct
- termination

Important

It is in your interest to make sure your customers have all the information they need up-front so that the chances of possible disputes are reduced.

- re-opening provisions
- guarantees, insurances, mortgages
- advertising, canvassing and harassment
- enforcement procedures including notice requirements, the enforcement of acceleration clauses and civil penalties.

What are linked credit providers?

A credit provider which has a trade tie, agreement or a strong commercial or business link with the supplier of goods and services is a linked credit provider—such as a finance company which offers finance to customers through motor dealers. The Code extends to any representation, warranty or statement made by the linked supplier in relation to the credit contract.

Further information

For more detailed information about credit contracts and contractual law, contact your legal adviser. For further information on the Credit Code visit www.creditcode.gov.au

What about credit card fees?

Businesses can choose to pass credit card bank fees onto customers. If you do, you must tell the customer:

- that fees apply to purchases made by credit card
- the amount of the credit card fee (expressed in dollars or as a percentage) before they make the purchase or sign the contract.

Lay-by sales

If you provide lay-bys, make sure you give your customers a written statement of the lay-by terms which includes the purchase price, deposit and balance instalments, final payment dates and amounts and any cancellation charge.

What if a lay-by is cancelled?

Under the law, a customer can agree to pay instalments for goods being made especially for them. However, if the cancellation charge is not properly specified in advance, you are at risk of loss in the event of a cancellation.

When a lay-by is cancelled either by a trader or a customer, the trader is allowed to keep the cancellation charge specified in the lay-by statement and must refund all other payments to the customer.

How much should the cancellation charge be?

The cancellation charge must not be more than the sum of the following amounts:

- an amount sufficient to cover your reasonable selling costs (including storage costs and administrative expenses)
- an amount that is equivalent to any loss of value of the goods, but only if you can establish that there was a loss of value which you could not have avoided. Otherwise any loss of value is to be disregarded.

When do I need to give a full refund?

You must refund all monies (including the cancellation charge) to the customer, if:

- there was no written lay-by statement
- there was no cancellation charge in the statement
- the lay-by statement is misleading or deceptive or contains any false representation
- you have breached any term of the lay-by
- the goods were not supplied as, and when, agreed.

Further information

The Australian Retailers Association of NSW (ARA) has a lay-by information kit (available to members only).

Important

You can cancel a lay-by only if the customer has breached a term of the lay-by and you have given them at least 7 days to rectify the problem.

Important

When a lay-by is cancelled, the trader is allowed to keep the cancellation charge specified in the lay-by statement but must refund all other payments to the customer.

Important

Offering a voluntary warranty does not replace or restrict the operation of implied or statutory warranties.

Contact the ARA – NSW on 9290 3766 or visit their website at www.ara.com.au

Refunds and warranties

Goods purchased for personal, domestic or household use (consumer goods) are covered by a statutory or implied warranty. Some goods have a specific warranty which is prescribed by law. Check the legislation that is relevant to your industry by visiting our website.

When are my customers entitled to a statutory or implied warranty?

Customers are entitled to an implied warranty even when they don't fill in and return a manufacturer's guarantee card or registration form. Implied warranties require you to provide:

- the customer with clear title to the goods
- goods that correspond to their description
- goods that are of 'merchantable quality', that is, they must meet the basic level of quality and performance expected for their price and description
- goods that are fit for their intended purpose (if the customer makes known to the seller that the goods are being acquired for a specified purpose then the goods must be fit for that specified purpose).

What about voluntary warranties?

You can offer a voluntary warranty but it DOES NOT replace or restrict the operation of implied or statutory warranties. A voluntary warranty offers additional benefits to your customer. For example, you can accept a return of goods which the customer purchased from your store and provide them with a full refund even if it is only because the customer has changed their mind.

Can a customer insist on a refund?

If an implied condition is not met, you may offer to repair or exchange the goods but the customer has the right to insist on a refund.

A refund is appropriate where the goods purchased:

- are so defective that they should not have been sold, for example they don't work
- break down or develop a serious fault
- weren't suitable for their intended purpose
- do not match the sample or description provided.

Sale goods should be treated in the same way as other stock when it comes to determining a repair, replacement or refund.

Can I refuse to provide a refund?

You do not have to give a refund, when:

- the customer simply changes their mind
- the customer already knew of a particular fault
- the goods are damaged after the purchase.

But you can choose to provide a refund or credit note if you wish.

'No refund' signs – are they illegal?

Yes. Refund signs that impose time limitations for returning goods are illegal. Refund signs with disclaimers in small print may also be misleading because customers may not see them. Examples of illegal signs are:

- 'No refunds'
- 'No refunds after 7 days'
- 'We will exchange or repair or give credit notes but we do not refund'.

Important

Sales goods should be treated in the same way as other stock when it comes to determining a repair, replacement or refund.

Important

Put systems in place to make sure that any claimant who states you owe them money needs to have your order in writing.

Important

Check all purchase orders and invoices carefully before making payments.

Refund and warranty signs endorsed by Fair Trading and the Australian Retailers Association are available from all Fair Trading Centres, the Fair Trading website and the Australian Retailers Association (members only).

What are my rights as a seller against a manufacturer?

Manufacturers can't impose conditions on returns, if the return is part of a statutory warranty claim. If you, as the seller, have provided a refund to a customer on goods because of a design or manufacturing fault, then you can claim against the manufacturer or importer.

Business scams

Many businesses are targeted by scams. Scam merchants rely on the fact that business operators are busy and will give them the information they ask for without too much thought.

Invoice fraud (false billing)

Scammers target small businesses by telephone—although mail, email and fax are also used to trick them into advertising in bogus publications or directories.

If you receive a demand for payment which you have not authorised in writing, you should refuse to pay the bill and report the matter to Fair Trading.

Before ordering or making payments for advertising always:

- ask for previous editions of the proposed publication to be sent by mail
- check the publication's circulation with the Audit Bureau of Circulations at www.auditbureau.org.au
- check with other advertisers to determine credentials of the publication
- be satisfied with the authenticity of the invoice
- check your advertisement before payment.

Common scams

Fax back scams: unsolicited faxes offer great deals on products, entry into competitions or huge discounts, but the high cost of replying to the fax are buried in the fine print or not provided at all.

Office supply scams: you are invoiced for office supplies you never ordered or never received or supplies which are different from the ones you ordered.

Domain name renewal scams: you receive a fake renewal notice for your actual domain name, or a misleading invoice for a domain name that is very similar to your own.

Business opportunity scams: these promise success but usually only the promoter makes any money.

Suspicious overseas deals: scams also frequently cross national boundaries, so be alert for suspect deals offered by overseas organisations.

Phishing

'Phishing' refers to fraudulent messages usually sent via email used to gain illicit access to personal and banking information. These messages appear to come from legitimate businesses, most commonly financial institutions. They are designed to lure recipients into disclosing personal data such as bank account numbers, passwords and credit card numbers which are then used to commit fraud.

Phishing messages and emails often look authentic. They pretend to come from a financial institution or other company and have a believable email address. They often copy that institution's logo and message format. It is common for phishing messages to contain links to a website that is a convincing replica of the company's home page.

How to identify a 'phish'?

Never provide personal details, including customer identification numbers or passwords, in response to any email. Financial institutions including banks will never ask you for your personal Internet banking details.

Only access your bank's Internet banking log-on page by typing the address into your browser. Never click on a link or attachment in an email which looks authentic and sends you to what may look like a bank's website.

Be wary of any email from someone you do not know or trust. Delete without opening.

Most 'phishing' emails do not address you by your proper name as they are sent out as bulk to thousands of recipients. They sometimes contain typing errors and grammatical mistakes. Sometimes they include the banks' registered logos.

What to do if a consumer has responded to something 'phishy'?

If a customer has responded to a phishing email, they should contact their financial institution as soon as possible.

New scams, or reinvented old scams, target businesses all the time.

Avoid scams – protecting your business

Poorly organised businesses are the main targets for scammers. Steps you can take to protect yourself against scams include:

- keep proper records and insist on written confirmation of transactions
- don't give information about your business unless you know who you are giving it to and what the information is being used for

Important

Only access your bank's Internet banking log-on page by typing the address into your browser.

- limit how many staff members have authority to buy or order anything
- be wary when operating over the Internet as small businesses can be targets of phishing scams or domain name renewal scams
- seek independent advice where products or services involve a significant amount of money or other commitment
- don't allow tactics like bullying, negotiations for a lower price or charges for unordered/unused goods to affect your decision
- be careful about the way you store and manage your customer's details.

Further information

www.staysmart.gov.au is a key website designed to help small business to stay smart online

Australian Competition and Consumer Commission (ACCC)
Tel: 1300 302 502
www.accc.gov.au

Australian Communications and Media Authority
www.acma.gov.au or www.spam.acma.gov.au
Tel: 1300 850 115

ScamWatch
Tel: 1300 795 502
www.scamwatch.gov.au

Important

When problems occur with a product, Fair Trading has powers to instruct you or suppliers to remove the unsafe goods from sale and may include requiring businesses to recall dangerous products.

Important

Report scams or attempted scams to Fair Trading on 13 32 20.

Selling safe products

Your customers have the right to expect that the goods they purchase from you will be safe to use. Penalties for supplying non-compliant products range from \$22,000 for individuals to \$110,000 for corporations.

Do I need to check before supplying a product?

It's a good idea to do your research so that you minimise your risk of supplying unsafe products and services to your customers. To find out if there is a mandatory Australian Standard for a product, or whether it is subject to a banning order, contact Standards Australia. A pass test report from your supplier will show that the product meets the requirements of the current mandatory standard.

You can also refer to the 'Summary of Laws' document, available from the Office of Fair Trading which lists banned and regulated products in NSW.

If you are supplying the product nationally or into another state, contact the federal, state or territory Fair Trading and Consumer Affairs agencies to check for other bans or mandatory standards. The Product Recalls Australia website www.recalls.gov.au provides current product recall information.

You can often obtain useful information about your industry from your peak industry body or association.

Fair Trading regularly checks the marketplace for unsafe products and assesses compliance with the various mandatory safety and information standards.

When problems occur with a product, Fair Trading has powers to instruct you or suppliers to remove the unsafe goods from sale and may include requiring businesses to recall dangerous products.

Does my business need to keep records and have insurance?

If a product you have sold does not comply with a ban or mandatory standard, you will need to provide Fair Trading with details of the supplier. It is important that you maintain accurate business records and can identify individual projects through copies of invoices.

You may want to consider some type of liability insurance. If someone is injured using a product you supplied you may be eligible for compensation.

What about voluntary recalls?

You or the manufacturer can act on your own and recall a product which has been sold to the public.

If you organise a voluntary recall of defective goods, you must notify state and territory Fair Trading and Consumer Affairs agencies, including the NSW Commissioner for Fair Trading, within 2 days of deciding to conduct a recall.

More information about product recall notifications can be found at Standards Australia on the Product Recalls Australia website.

Further information

Standards Australia
Tel: 1300 654 646

Product Recalls Australia
www.recalls.gov.au

Important

You must notify state and territory Fair Trading and Consumer Affairs agencies, including the NSW Commissioner for Fair Trading, within 2 days if you decide to conduct a recall.

Important

Fair Trading inspectors regularly inspect goods and measuring instruments in use for trade throughout NSW, to protect consumers and traders from inaccurate measurement.

Trade measurement

You have the right to expect that the goods you buy from your suppliers are exactly what you paid for and your customers have the right to expect the same from you.

Accuracy of measurement promotes confidence in the marketplace and benefits both consumers and traders.

What are my responsibilities?

If you use weights or scales you must ensure that they are:

- operating correctly and regularly checked
- of an approved type
- verified or certified after repair or adjustment
- properly installed
- accurate during use
- accurate under possible extreme conditions
- level and register zero before use.

Are there labelling requirements for packaged goods?

Goods may be packed in any size as long as they are correctly labelled. Label requirements include:

- the correct quantity in grams (g), kilograms (kg), millimetres (mL), or litres (L)
- the name and address of the packaging company or manufacturer.

Further information

The Office of Fair Trading
www.fairtrading.nsw.gov.au

The National Measurement Institute
www.measurement.gov.au

Online services

The following online services are currently available:

- Business Licence Renewal
www.licencedft.nsw.gov.au
- Business Licence Information Service (BLIS)
www.blis.fairtrading.nsw.gov.au
- Property Services Licence Check
www.fairtrading.nsw.gov.au/realestaterenting/licencecheck.html
- NSW Government Licensing Service
www.licence.nsw.gov.au

What are the benefits of using online services?

You receive a discount of 10% off the processing fee component or \$5, whichever is the greater amount, for lodging online.

How do I use the online services?

Before you can access the online services, you need a unique reference number. You can obtain this number:

- from the top of your renewal form
- by calling 13 32 20 for business names (quote your business name and registration number), or for your motor dealer, travel agent, pawnbroker or second-hand dealer licence by calling 9372 9290 (please quote your licence type and licence number)
- by sending an email through our website's 'Contact us' page (include your business registration name and number, licence type and number and contact number).

Important

Keep your reference number strictly confidential.

Other useful business websites

AusIndustry

www.ausindustry.gov.au

Austrade

www.austrade.gov.au

Australian Competition and Consumer Commission

www.accc.gov.au

Australian guide to doing business online

www.e-businessguide.gov.au/resources/help/nsw

Department of Employment and Workplace Relations

www.workplace.gov.au

Department of State and Regional Development

www.smallbiz.nsw.gov.au
www.business.nsw.gov.au

IP Australia (Intellectual Property)

www.ipaustralia.gov.au

Office of the Employment Advocate

www.oea.gov.au

Office of Industrial Relations

www.industrialrelations.nsw.gov.au

WorkCover NSW

www.workcover.nsw.gov.au

