

# Acceptable business conduct

## Trading in NSW

If you want to start a business venture, there is a lot you need to do before you commence. Take time to think carefully about the following:

- What are you going to offer that is different or better than your competitors. Are you going to be offering a better price, service or product?
- Is there a need for your business – will people use your services?
- Once you start your business, can your competitors match what you do?
- Think about your finances – do you have enough money to start and maintain your business. If not, where are you going to obtain finance from?
- Obtain information on starting a business. Fair Trading's website contains useful information covering registering business names, business licences, product safety, trade measurement, and labelling.
- Talk to people you know who have gone through the process of setting up their own business.
- Decide on a business structure that suits you. The most common business structures are sole trader, partnership, proprietary limited company, association and co-operative. The Fair Trading website can provide information on business structures.
- Write your ideas down and prepare a business plan – this may help in applying for a loan to get you started.
- For more information or other useful websites, visit:
  - Australian Securities and Investments Commission  
[www.asic.gov.au](http://www.asic.gov.au)
  - NSW Government website  
[www.nsw.gov.au](http://www.nsw.gov.au)
  - Australian Government business website  
[www.business.gov.au](http://www.business.gov.au)

## Running your business

Once your business is up and running, you need to be fully aware of the laws that govern fair trading in the day-to-day operation of your business.

This is not as difficult as you may think, because NSW Fair Trading laws are a two-way street. They recognise that traders, as well as consumers, can suffer at the hands of unfair operators. From time to time, the laws are reviewed to ensure ongoing fairness in the marketplace. Business and industry associations are invited to comment, as it is important to get their perspective.

Many of our fair trading laws are similar to those in other Australian states and territories and countries around the world. They reflect the basic consumer rights contained within the United Nations Guidelines for Consumer Protection.

These guidelines formally recognise the rights that should be available to every consumer and include the right to:

- information
- choice
- safety
- representation
- redress
- consumer education.

## Acceptable business behaviour

The main law covering business behaviour in NSW is the *Fair Trading Act 1987*.

It is unlawful for a business to make false claims about a product or service or operate in a misleading or deceptive way. They are required to tell the truth to their customers and not hide any relevant information. This also includes any advertising that you may undertake for your business.

It is illegal to take advantage of customers and this is known as unconscionable conduct. For example:

- the owner of the only shop in a country town cannot charge unreasonably high prices

- a trader should not abuse bargaining power regardless of whether their product or service is in high demand
- a trader must not exert undue influence or pressure, regardless of whether documents are understood by the customer or the conditions are unfair.

A good way to check on whether you may be engaging in such conduct is to ask yourself if there is any significant difference in the amount your customers pay or the way they are treated in comparison to businesses in similar situations? Particularly in terms of location, product/service or sales tactics. If there is, you may need to think whether the differences are justified and be sure that you are conducting business in an ethical manner.

## What happens if a business operator breaches the Act?

The Fair Trading Act gives the NSW Government a number of options to enforce the law and also empowers the courts to punish operators who have broken it. These options include:

- An **enforceable undertaking**. This is a legally-binding agreement on a trader to do certain things so that they comply with the law.
- An **injunction** to stop a trader continuing to do something which breaks the law. For example, they may have to cancel advertising considered to be misleading under the Act.
- Issuing a **public warning** notice.
- **Prosecution** through the courts.
- Imposing of **financial penalties**.
- Notice to place **corrective advertising**. A trader may be required to place an advertisement in a major paper that gives customers certain information about their business, such as fees not disclosed in previous advertisements.
- **Freezing of bank accounts**.
- **Referral of complaints** to other authorities or bodies.

**IMPORTANT** – Consumers and businesses also have a right to compensation through the courts for any loss or damage that occurs due to the law being broken.

## Other laws that apply to business

Federal laws also have a bearing on your business. The *Trade Practices Act 1974* complements the NSW Fair Trading Act and the consumer protection/fair trading provisions are very similar. The Trade Practices Act may be used for NSW, national or cross-border issues and provides protection for consumers against unfair practices by prohibiting anti-competitive or restrictive behaviour by business operators. The Trade Practices Act is administered by the Australian Competition and Consumer Commission (ACCC).

## Our online services

**Business name renewal**  
[www.licencedft.nsw.gov.au](http://www.licencedft.nsw.gov.au)

**Business Licence Information Service (BLIS)**  
[blis.fairtrading.nsw.gov.au](http://blis.fairtrading.nsw.gov.au)

**Building, conveyancing and property services licence check**  
[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)

**Government Licensing Service**  
[www.licence.nsw.gov.au](http://www.licence.nsw.gov.au)

**Business name registration details check**  
[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)

## Need more information?

NSW Fair Trading  
 Tel: 13 32 20

Australian Competition and Consumer Commission  
 Tel: 1300 302 502

[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)  
 Fair Trading enquiries 13 32 20  
 TTY 1300 723 404  
 Language assistance 13 14 50

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