

WORKSHOP ON THE COLLECTION AND ASSESSMENT OF DATA ON PRODUCT-RELATED INJURIES

Relevant Practices in New Zealand

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Agenda

1. Legislative Framework
2. Product Safety Reporting
3. New Zealand & Australia
4. New Zealand & ASEAN



Legislative Overview

Product liability law in New Zealand is primarily governed by two laws:

- Fair Trading Act 1986 (FTA)
 - Regulates market interactions generally
 - Purpose: both to protect consumers and ensure effective competition of businesses
 - Prohibits unfair trade conduct (misleading and deceptive conduct, and unsafe products)
 - Promotes safety
 - Provides for disclosure of consumer information
 - Instituted the NZ Commerce Commission
 - Enforced by NZ Commerce Commission
- Consumer Guarantees Act 1993 (CGA)
 - Regulates supply of goods and services to consumers
 - Operates to provide guarantees owed by a manufacturer or supplier when supplying goods and services to a consumer
 - Consumer can commence proceedings against either the supplier or manufacturer
 - Not enforced by the NZ Commerce Commission

Legislative Thresholds and Definitions

Who is a Consumer?

- Any person including an individual or business;
- Who acquires a good or service (from a supplier) ordinarily acquired for personal or domestic household use or consumption;
- Are owed the following guarantees:
 - Title
 - Delivery
 - Quality
 - Fitness for purpose
 - Price
 - Repairs and spare parts
 - Compliance with a description or sample

Legislative Thresholds and Definitions

Fair Trading Act

- Misleading or deceptive conduct


Consumer Guarantees Act

- A breach of ‘substantial character’ of one of the guarantees in the CGA
- One of the following must apply
 - Goods would not have been acquired by a **reasonable consumer** fully acquainted with the nature and extent of the defect
 - Goods depart in one or more significant respects from the **description** by which they were supplied, or which depart from a sample or description model
 - The goods are **substantially unfit for a purpose** for which the goods are commonly supplied, and the goods cannot easily be remedied to make them fit for purpose;
 - The goods are not of **acceptable quality** because they are **unsafe**.



Obligations and Defences

Claims under the CGA are enforced by the consumer, who elects **one of** the supplier or manufacturer in claiming remedies



Claims under the FTA are enforced by the New Zealand Commerce Commission, and take the form of product safety obligations. The regulator, Trading Standards, may order product recalls.

Product Safety Oversight and Reporting

- Who
 - Ministry of Business, Innovation and Employment
- What
 - Product safety elements of *Consumer Guarantees Act* and *Fair Trading Act*
- Why
 - Promoting safety
 - Monitoring and market surveillance
 - Working with other agencies
 - Publishing recalls
- Particular relevance to Business
 - Enforcement of above by Commerce Commission (in country) and Customs (border)
 - Note other agencies responsible for regulating particular industries i.e. food, medicine, vehicles, gas products, electrical products, hazardous products, firearms, etc
- Particular relevance to Consumers
 - Enforcement of above by Commerce Commission and Customs
 - For product standards: Standards NZ

Comparison to Australia

New Zealand Commerce Commission *Established under Commerce Act 1986*

Enforces:

- Commerce Act 1986
- Fair Trading Act 1986
- Credit Contracts and Consumer Finance Act 2003
- Telecommunications Act 2001

Australian Competition and Consumer Commission *Established under Competition and Consumer Act 2010*

Enforces:

- Competition and Consumer Act 2010 (formerly the Trade Practices Act 1974)
- Australian Consumer Law 2010

Regionalism and Takeaways for ASEAN

Relationship with Australia

- Australia New Zealand Closer Economic Relations Trade Agreement
 - Unique, close relationship
- Consumer Affairs Australia and New Zealand (CAANZ)
 - Regulators of relevant legislation in both countries participate in CAANZ
 - Annual reports on compliance and enforcement

International Compliance

- International Consumer Product Health and Safety Organization
- International Consumer Product Safety Caucus

Questions?

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