

New Zealand Model Code for Consumer Protection in Electronic Commerce

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Level 8, 33 Bowen Street,
PO Box 1473, Wellington
Tel: 04 474 2750
Fax: 04 473 9400
Email: mcainfo@mca.govt.nz



Introduction

1. Electronic commerce has the potential to substantially benefit both business and consumers. This model code provides guidance to businesses and empowers consumers by providing information on the practices that businesses should adopt when engaging in business to consumer electronic commerce. The purpose of the model code is to set out best practice for business.
2. The model code provides guidance to industry and consumers on the elements of an effective self-regulatory framework. The adoption of the model code will ensure that consumers are adequately protected and have confidence in making online transactions. Ideally, the model code will be adopted by relevant industry associations and their members as part of existing codes of practice, as well as by individual businesses.
3. The model code has been developed for businesses and/or their subsidiaries based in New Zealand, dealing with both New Zealand and overseas consumers. The issue of New Zealand consumers dealing with overseas traders is currently the subject of both bi-lateral and multi-lateral discussions.
4. The adoption of the model code will contribute to ensuring that consumers have effective protection and confidence in making online transactions.
 - a The implementation of effective industry self-regulation, including the adoption of this model code, is a mechanism for ensuring consumers' legitimate rights and interests are met.
 - b In accordance with the general principle of functional equivalence, that consumers should have a level of protection in the online environment that is not less than that in the offline environment, the model code addresses areas where the special characteristics of the online environment necessitate the adoption of business practices different to those in the offline environment. These include: the distance between the business and the consumer; the speed with which transactions can be completed online; the need for authentication and information collection practices.

Citation

5. This model code may be cited as "New Zealand Model Code for Consumer Protection in Electronic Commerce".



Definitions

6. References to the singular include references to the plural and vice versa.
7. In this model:
 - a *“business” means any person or legal entity, including a government body, acting in trade¹ as defined in s2 of the Fair Trading Act 1986.*
 - b *“commercial e-mail messages” means electronic mail that is of an advertising or promotional nature, except where the predominant purpose of the electronic mail is that of a contractual, operational or other service-related customer notice*
 - c *“consumer” means a natural person*
 - d *“electronic commerce” means commercial activities that are carried out through electronic networks including the promotion, marketing, supply, order or delivery of goods or services*
 - e *“goods and services” means goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption.*

Scope

8. The model code applies to business to consumer electronic commerce. However, businesses are encouraged to adopt relevant provisions of the model code when dealing with other businesses.
9. The model code is not applicable to transactions between individuals both acting in a non-business capacity.

Objectives

10. The objective of this model code is to provide guidance to businesses on:
 - a fair business practices
 - b advertising and marketing
 - c disclosure of the identity and location of businesses
 - d disclosure of the terms and conditions of contracts
 - e the implementation of mechanisms for concluding contracts

¹ “Trade” means any trade, business, industry, profession, occupation, activity of commerce or undertaking relating to the supply or acquisition of goods or services or to the disposition or acquisition of any interest in land.



- f the establishment of fair and effective procedures for handling complaints and resolving disputes
- g the adoption of privacy principles
- h the use and disclosure of information about payment, security and authentication mechanisms
- i the processes necessary to properly administer a code based on this Model Code.

Adoption of the code

11. Any business engaging in electronic commerce directed at consumers or any business or industry association whose members engage in electronic commerce directed at consumers is encouraged to adopt the provisions of the model code.

Existing laws and regulation

12. The model code is in addition to and not a replacement for other obligations that may exist as a result of consumer protection or other laws, codes of conduct and regulatory mechanisms. Compliance with the requirements of this model code does not exempt a business from compliance with any other such obligations.
13. Every effort has been made to avoid inconsistencies with existing laws. However, in the event of such an inconsistency, the law will take precedence over the provisions of the model code.
14. Businesses should note that some provisions of the model code are existing legal requirements. Businesses should not rely on the model code as a definitive statement of these requirements. In addition, not all legal requirements relevant to electronic commerce are contained in the model code.

Fair business practices

15. Businesses should adopt fair business practices when dealing with consumers.
16. In particular, the *Fair Trading Act 1986* and the *Consumer Guarantees Act 1993* require that businesses:
 - a not engage in conduct that is misleading or deceptive or is likely to mislead or deceive
 - b not make false or misleading representations about the goods or services which they supply
 - c ensure that any goods supplied correspond with the description of the goods
 - d ensure that any goods supplied are of acceptable quality and fit for any purpose made known to the supplier by the consumer where the consumer relied on the knowledge of the supplier



- e ensure that services supplied will be rendered with due care and skill and be reasonably fit for the purpose specified and achieve the result which the consumer makes known.

Advertising and marketing

- 17. Businesses should:
 - a ensure that advertising and marketing material is clearly identifiable as such and can be distinguished from other content, including editorial comment, terms and conditions of contracts and independent product reviews, where this may not be reasonably apparent
 - b ensure that the business is identifiable from the advertising, where failure to do so would be deceptive
 - c be able to substantiate advertising or marketing claims, where consumers could be reasonably expected to rely upon such claims.

Information - identification of the business

- 18. Businesses should provide consumers with accurate, clear and easily accessible information that is sufficient to enable:
 - a identification of the business involved in a particular transaction
 - b prompt, easy and effective communication with the business regarding such a transaction
 - c service of legal documents.
- 19. This information should include the following:
 - a the name under which the business trades and, where the business is a registered company, the name of that company
 - b the physical and postal address of the business
 - c e-mail address, telephone and other contact information where enquiries can be directed
 - d any relevant statutory registration or licence numbers
 - e where the business publicises its membership of any relevant self-regulatory scheme, business association, dispute resolution organisation or other certification body, the business should provide consumers with appropriate contact details, an easy method of identifying that membership and of accessing the relevant codes of practice of that body.

Information – contractual

- 20. Businesses engaged in electronic commerce should provide sufficient information about the terms and conditions of contracts to enable consumers to make fully informed decisions.



21. Such information should be clear, accurate, easily accessible, and provided in a manner that gives consumers an adequate opportunity for review before entering into the transaction.
22. Businesses should provide all information online which they are required to provide offline either by law or by any relevant code of practice to which they subscribe. Where there is a legislative or other mandatory regime for the disclosure of contractual information, compliance with that regime is sufficient to meet the obligations of the model code in relation to the disclosure of that information.
23. Information concerning the terms and conditions of a transaction should be clearly identified and distinguished from advertising and marketing material.
24. Businesses should provide consumers with a clear and complete text of the terms and conditions of the transaction in a manner that makes it possible for consumers to access and maintain an adequate record of such information.
25. All information that refers to costs should indicate the applicable currency.
26. Information concerning the terms and conditions of a transaction should be clearly identified and distinguished from advertising and marketing material.
27. Where applicable and appropriate given the nature of the transaction, the information should include the following:
 - a Either:
 - i. an itemisation of all costs collected by the business, or
 - ii. where the total cost of a transaction cannot be ascertained in advance, a statement that a total cost cannot be provided and a description of the method that will be used to calculate it, including any recurrent costs and the methods used to calculate them, and
 - b notice of the existence of other costs to the consumer that are not collected by the business, this may include delivery, postage, handling and insurance and, where it would be reasonably known to the business, taxes and duties, and
 - c notice of ongoing costs, fees and charges and methods of notification for changes to those costs, fees and charges, and
 - d if limited, the period for which the offer is valid, and
 - e any restrictions, limitations or conditions of purchase, such as geographic limitations or parental/guardian approval requirements for minors, and



- f details of payments options, and
- g terms of delivery, and
- h mandatory safety and health care warnings that a consumer would get at the offline point of sale, and
- i conditions related to termination, return, exchange, cancellation and refunds, and
- j details of any applicable cooling-off period or right of withdrawal, and
- k any conditions related to contract renewal or extension, and
- l details of any explicit warranty provisions offered by the manufacturer, supplier, or business and
- m details of any after-sales service provided, and
- n details of how to access complaint and dispute procedures.

Conclusion of contract

- 28. Businesses should implement mechanisms that allow an opportunity for the consumer to:
 - a review and accept or reject the terms and conditions of the contract
 - b identify and correct any errors
 - c confirm and accept or reject the offer.
- 29. Businesses should promptly acknowledge receipt of a confirmed contract/offer.

Privacy

- 30. Businesses should respect consumers' privacy in collecting and handling consumers' personal information. The Privacy Act 1993² requires that businesses comply with the following principles:
 - Principle 1 Purpose of collection of personal information.
 - Principle 2 Source of personal information.
 - Principle 3 Collection of information from subject.
 - Principle 4 Manner of collection of personal information.
 - Principle 5 Storage and security of personal information.
 - Principle 6 Access to personal information.
 - Principle 7 Correction of personal information.
 - Principle 8 Accuracy, etc of personal information to be checked before use.
 - Principle 9 Agency not to keep personal information for longer than necessary.
 - Principle 10 Limits on use of personal information.

² For further information access the website of the Office of the Privacy Commissioner at www.privacy.org.nz.



Principle 11 Limits on disclosure of personal information.
Principle 12 Unique identifiers.

31. Businesses should provide consumers with clear and easily accessible information online about the way in which they retain and use personal information.

Payment

32. Businesses should make available to consumers payment mechanisms that are easy to use and offer a level of security that is appropriate for the method and level of payment.
33. Businesses should ensure that consumers have access to information on:
 - a the available methods of making payments
 - b the security of those payment methods in clear, simple language in order to assist consumers to judge the level of risk in relying on those methods
 - c how to effectively use those methods.
34. Businesses should implement reasonable measures to update the payment mechanisms they use to ensure the level of security offered is maintained at an appropriate level over time.

Security and authentication

35. Businesses should:
 - a ensure that consumers have access to information about the security and authentication mechanisms that the business uses in clear, simple language in order to assist consumers to judge the level of risk in relying on those systems
 - b provide a level of security appropriate for protecting consumers' personal and payment information
 - c provide appropriate levels of security for identification and authentication mechanisms to be used by consumers
 - d not encourage consumers to provide confidential information in a manner that is considered insecure
 - e implement reasonable measures to update the security and authentication mechanisms they use to ensure the level of security offered is maintained at an appropriate level over time.

Internal complaint handling

36. Businesses should establish fair and effective internal procedures to address and respond to consumer complaints and difficulties:
 - a within a reasonable time
 - b in a reasonable manner
 - c free of charge to the consumer



- d without prejudicing the rights of the consumer to seek legal redress.
37. Businesses should provide clear and easily accessible information to consumers on complaints handling procedures.
38. If a consumer is unsatisfied with the resolution provided by the internal complaint handling mechanism, the business should provide the consumer with information regarding any external dispute resolution body to which it subscribes or any relevant government body.

External dispute resolution

39. A business should provide clear and easily accessible information to consumers on any independent customer dispute resolution mechanism to which the business subscribes that is capable of dealing with consumer complaints.
40. Such independent customer dispute resolution mechanisms should be:
- a accessible
 - b independent
 - c fair
 - d accountable
 - e efficient
 - f effective
 - g without prejudice to judicial redress.

Applicable law and forum

41. Where a business specifies an applicable law or jurisdiction to govern any contractual disputes, it should clearly and conspicuously state that information at the earliest possible stage of the consumer's interaction with the business.
42. A business and/or its subsidiary based in New Zealand that enters into a contract with a consumer whom the business reasonably believes is resident in New Zealand (e.g. because of address details supplied by the consumer) should specify that the governing law of that contract is the law of New Zealand and that disputes arising under the contract shall be determined by courts or tribunals in New Zealand.

Code administration

43. Any business adopting the model code outside the membership of an industry association should establish an internal reporting and review mechanism to ensure the effective implementation of the code.



44. Any industry association adopting the model code may set up a new code administration mechanism or use an existing body to administer the code³. This body should include an independent chair; and equal numbers of industry and consumer/community representatives; which would:
- a monitor and report on compliance with the code
 - b obtain adequate resources for the administration of the code from members of the organisation as well as the preparation of budgets and financial reports
 - c publicise the code to members and consumers
 - d implement a system of sanctions for breaches of the code
 - e arrange periodic independent review of the effectiveness of the code and the operations of its administering body and publicly report on the findings of the review
 - f prepare publicly available annual reports on the operation of the code.

Review of the model code

45. This model code will be formally reviewed by the Ministry of Consumer Affairs after one year of operation and then every three years after that time. In addition, the code may be modified between reviews as circumstances require. Businesses and industry organisations that adopt the model code should develop procedures to incorporate modifications to the model code within their own industry code promptly.

NOTES:

- Where a business represents that it adheres to all or part of the terms of this Model Code, action could be taken under the Fair Trading Act 1986 if that is not the case.
- This Model Code draws extensively on the “Guidelines for Consumer Protection in the Context of Electronic Commerce” published in January 2000 by the Organisation for Economic Co-operation and Development (OECD). The Ministry of Consumer Affairs was involved in the OECD committee that developed those guidelines.

³ The Ministry of Consumer Affairs published, in July 2000, a document “Guideline for Developing a Code of Practice”. It may be helpful to read this in conjunction with the Model Code. It provides guidance on matters referred to in paragraph 44.