

Let's Get Legal

The activities of Young Enterprisers are subject to laws governing commercial operations and relationships with consumers. **The following notes are only guidelines.**

THE CONSUMER GUARANTEES ACT 1993

Any good or service that is normally bought for personal, household or domestic use is covered by the Act. It does not cover goods or services sold to a person who will sell them on to someone else. It also does not cover goods or services bought at auction, or real estate or land, or goods bought privately (e.g. from garage sales, school gala days or private newspaper advertisements).

The trader can opt out (called "contract out") of the Act if a person buys goods generally bought for personal, household or domestic use, for a business purpose.

- The goods that you sell must be of "acceptable quality". This means that:
- the goods do what they are made to do, and are fit for all the purposes the goods are normally used for,
- they do not have any small faults,
- the goods are acceptable in appearance,
- the goods comply with any guarantee or description given by you, and
- the goods are safe to use and durable.

The services that you provide must be carried out with "reasonable care and skill". This will be judged by looking at other competent people doing the same work. This means that:

- you can do the job with reasonable competence,
- you avoid causing any damage, and
- you take the same care that other competent people take to do the job.

If the goods or services that you provide do not comply with the above criteria:

- the customer may claim compensation,
- if the defect is serious, the customer may claim a cash refund, and
- the customer may also claim any extra loss or damage foreseeable caused by the fault in the good or service.
- The customer **may** claim against the retailer OR the manufacturer.

You cannot contract out of your obligations under this Act. This means that even if the customer and you agree otherwise, you are still obliged to abide by the terms of this Act.

THE SALE OF GOODS ACT 1908

People who buy goods are protected by the Sale of Goods Act. This means:

- the quality of the goods bought are guaranteed to a certain extent,
- the goods sold must comply with any guarantee that is given and
- Redress is available against the person or company that the goods are bought from, for example repair, refund, replacement or a discount.

This Act applies to you, both as you buy goods and as you sell goods on to someone else.

The Fair Trading Act 1986

This Act covers advertising and marketing, and is aimed at preventing misleading and deceptive conduct, false representations and unfair trading practices.

This means that you must not:

- Mislead your customer about their legal rights, for example "no refunds" signs,
- mislead your customer about the price,
- mislead your customer about the good itself,
- Produce "bait advertising". You must supply a reasonable quantity of goods for reasonable time at the price advertised.

- be involved in pyramid selling. This is when a promoter sells the right to sell a product AND the right to introduce others into the scheme.
- Offer a prize or a gift without intending to supply it, or
- accept payment for goods or services without believing that you can supply them within a reasonable time.

You cannot contract out of your obligations under this Act.

FOOD

Food Act 2014

The Food Act 2014 came into force on 1 March 2016. It takes a new approach to managing food safety. The focus of the Act is for commercial activity.

Exemptions from plans or programmes

Under the Food Act 2014, some food businesses and community groups are not required to operate under a food control plan or a national programme. To find out if this applies to you check out the the MPI website. www.mpi.govt.nz/food-safety/food-act-2014/

Who doesn't need a food control plan or programme?

Food activities that are low risk, either because they don't happen often or cater to only a small number of people, don't need to operate under a food control plan or a national programme. This applies to some fundraising and community group food activities, and some businesses.

However, even if you don't need a written plan or programme, you still have to comply with food safety laws and make sure your food is safe and suitable to eat.

[Find out how to make safe and suitable food](#) [PDF, 167 KB]

Fundraising and community group exemptions

You don't need a food control plan or programme if you are:

- Selling food for fundraising less than 20 times a year. Fundraising activities include sausage sizzles, raffles and charity events
- Sharing food with others at sports clubs, social clubs or marae where food is not the purpose of the event. For example, providing nibbles at a bowling club games night or serving food at a tangi.

[Learn more about community activity exemptions](#)

Businesses and education provider's exemptions

Types of businesses that don't need a food control plan or programme include:

- people who sell only pre-packaged foods that don't need refrigeration or freezing, like packets of biscuits or cans of food

For a full list of exemptions, see Schedule 3 of the Food Act 2014.

[Schedule 3 of the Food Act – NZ Legislation website](#)

Exemptions for specific businesses

The Food Act 2014 exempts some food activities from registration.

The Act also gives MPI the power to exempt a business – which would not otherwise be exempt – from operating under a food control plan or national programme. If you are not exempt, but you think you should be, you can apply to MPI for an exemption.

The types of activities that may be considered would be similar to those listed above, such as infrequent events or activities that may not be considered food for sale.

You will need to show that you understand how to manage food safety hazards and ensure that your food is safe to eat. You will also need to show that you have a valid and appropriate reason for why your business should be treated as a special case.

- [Apply for exemption from the requirement to operate under a food control plan or national programme under Food Act 2014](#) [PDF, 528 KB].

Registration under the Food Act

- The Young Enterprise Trust is a great initiative. We would like to work with you to find a solution that will be practical for the Trust. We recognise that your programme provides young people with useful skills and experience, and an entry pathway for new innovative businesses that contribute to the New Zealand economy.
- In coming up with options for the Trust, we've kept in mind the need to implement the Food Act consistently where possible, and fairly.

Below is a summary of options for young enterprise businesses under the Food Act:

A) Model or template

Under the Act the Young Enterprise Trust or another group could develop a template or model for young enterprise food businesses to operate under. This is provided for in section 40 of the Food Act. It would need to be assessed (hourly charge ~\$160) and renewed every three years.

B) Exemption

The Young Enterprise Trust could apply for an exemption from registration for all or some businesses. This is provided for in section 33 of the Food Act. There's a form on our website <https://www.mpi.govt.nz/document-vault/11545> and the cost of making an application would be around \$180, but could be more if the application took longer than expected to process.

It's up to you to suggest the scope of the exemption, for example: businesses making low-risk food products only, businesses with turnover under a certain level, or any combination etc.

On the face of it, large young enterprise businesses would probably distribute food to many customers, and may be in competition with other local food businesses so there would need to be a strong case to exempt them from the requirement to register.

A key factor for MPI would be the level of food safety risk. For example, preparing shelf-stable foods is lower risk than refrigerated foods. Preparing food for a few customers is lower risk than many customers. The 'Where do I fit' tool gives you a good indication of the level of risk: if your result is a food control plan the activity is higher risk, if your result is National Programme 1 it means the activity is lower risk. <https://www.mpi.govt.nz/food-safety/food-act-2014/where-do-i-fit/>

C) Sell once per year, or up to 20 times per year for fundraising purposes

Businesses that fall in this category are already exempt from the requirement to register.