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## Operating a Business in Queensland?

### What You Need To Know

Running your own business is hard work – managing staff, finding reliable suppliers, attracting and maintaining customers and operating at a profit often require a lot of blood, sweat and tears. In all the hard work put into the actual running of a business, some operators forget about the myriad of rules and regulations that they need to comply with.

MRH Lawyers has put together a summary of some of the important regulations that you should think about in Queensland. These regulations apply in Queensland only (some with similar provisions in other states) and do not include the regulations imposed at the Federal level (such as taxes, company registration etc).

### Business Name Registration

It is a requirement under the **BUSINESS NAMES ACT 1962** that if you operate a business in Queensland you register that name with the Department of Fair Trading unless you are operating the business under your own name in its entirety.

To register a business name, the name must not:

- be likely to be confused with or mistaken for a business name, incorporated association or cooperative already registered in Queensland; or
- identical to any registered Australian company name.

Once your business name is registered, you will receive a certificate that must be displayed in a prominent position at your place of business.

FOR FURTHER INFORMATION,  
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It is important to remember that a business name does not give you the exclusive right to use that name – it simply means you are authorised to carry on business in Queensland using that name. Only a trade mark will give you exclusive ownership of a name in relation to specific classes of goods or services. So, if your registered business name was **THE FLOWER POT**, another trader could apply for those words as a trade mark and you may have to cease trading under that name. As the trade mark owner, they would have the exclusive use of those words. It is recommended that you considering registering your business name as a trade mark to ensure that you have the exclusive use of the name.

## Occupational Licences

Certain occupations are required to be registered with the Office of Fair Trading, including:

- motor dealers;
- real estate agents;
- auctioneers;
- property developers;
- restricted letting agents;
- commercial agents (i.e. debt collectors);
- security providers (i.e private investigators, security guards etc);
- pastoral houses; and
- residential service providers (i.e. boarding houses, hostels etc).

Heavy penalties and fines apply for individuals and businesses operating without the appropriate licences.

## PRODUCT SAFETY AND PACKAGING

Under the **FAIR TRADING ACT**, all wholesalers, retailers, manufacturers and importers are responsible for the safety of products they supply or sell, even when those products are second-hand. Depending on the type of product, you may also be required to comply with mandatory information standards (for products such as cosmetics, furniture, leather goods, shoes and textiles) and mandatory safety standards (for products including children's equipment and clothing, motorbike and bicycle products, cigarette related products and sunglasses).

## Accurate Weights and Measure

You must always ensure that your customers get what they pay for. The **TRADE MEASUREMENT ACT 1990** places an obligation on you to ensure that any weights or measures used to sell goods are accurate and used properly.

## UNCONSCIONABLE CONDUCT

Under the **FAIR TRADING ACT**, you must not engage in unconscionable conduct, by taking advantage of someone from who is in a lesser bargaining position to you (for example, where the customer has trouble understanding English) and must not use undue influence, unfair tactics or pressure to force a customer to enter into an unreasonable contract.

## ADVERTISING



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There are many restrictions relating to advertising and promotions under the **FAIR TRADING ACT**. Avoid making statements in your advertising that:

- are misleading or inaccurate about the nature of a good, how it was manufactured, characteristics or
- suitability or quantity;
- represents that you intend to offer something for free or give award prizes if you have no intention of actually
- doing so;
- indicates that you have an affiliation or association that you do not have;
- says that a good is new if it is not;
- imply that an offer is for a limited time if it is normally sold at that price.

You should be careful to ensure that you do not engage in 'bait advertising' which is a way of attracting customers by offering a good at a special or lower price where there is not enough stock to meet anticipated demand, and customers are then switched to the higher price. Bait advertising carries a penalty of up to \$40,500 under the **FAIR TRADING ACT**

## MARKETING

When conducting direct marketing you must be careful not to breach the provisions in the **PRIVACY ACT 1988**, which regulates how you collect, record, store, and disclose information.

If you are engaged in telemarketing or selling goods over the phone, you should be aware of Direct Marketing Model Code of Conduct guidelines.

If you are thinking of conducting a competition you may need a licence and a permit number under the **CHARITABLE AND NOT-FOR-PROFIT GAMING ACT 1999**. This often must be obtained before you begin any advertising for the competition, and it is a good idea to seek legal advice about this first.

## Refunds

If you are in the business selling goods, it is vital that you understand your obligations regarding refunds. Where a good is faulty, does not do what it is supposed to do, isn't the same as a sample the customer was shown or is not what was described, customers have a right to a refund, repair or replacement.

Refund signs such as "No Refund" or "No Refunds after 7 days" should not be used as they give a false impression that a customer cannot return a good if it is faulty.

## Environmental Regulations

There are many environmental obligations that you may need to comply with, depending on the type of business you operate. Failing to comply with environmental regulations often carry heavy penalties and you should seek advice about what regulations are relevant to your business.



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## Conclusion

As it can be seen, the legal regulations for operating a business can be just as difficult and time consuming to manage as all the other elements of operating. What is most difficult is finding out what regulations apply to your business. Our team of commercial lawyers at MRH Lawyers can help you sort through the myriad laws that may apply to you so that you can effectively manage your legal obligations.



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