

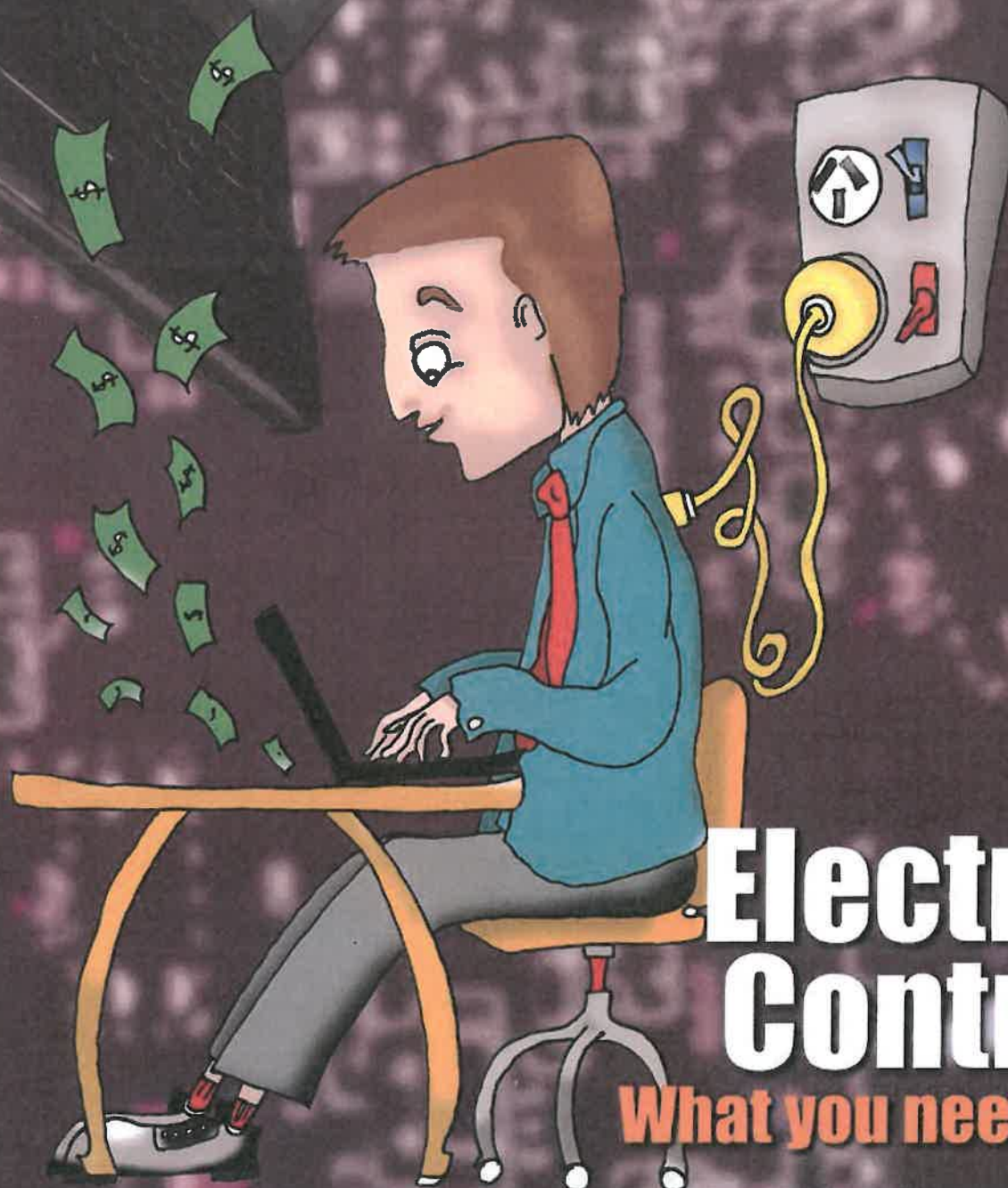
BUSINESS

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## Electronic Contracts

What you need to Know

- CONSTRUCTION CONTRACTS ACT
- UNSUBSTANTIATED REPRESENTATIONS
- MUST YOUR OPINION BE REASONABLE?
- DYNAMISM IS THE NEW BOTTOM LINE FOR BUSINESS
- CULTIVATING A PROFESSIONAL IMAGE
- RETIREMENT VILLAGE OPTION
- INVESTING IN PIEs

# 5 Compliance Tips for Businesses to Avoid Criminal Liability for Unsubstantiated Representations

**F**rom 17 June 2014, representations made in the course of trade have needed to be “substantiated” at the time they are made. This means there must be some basis for every claim you make about your products or services.

For example, a claim that your product is five times faster than your competitor’s would be substantiated if you relied on an independent research body’s test results, which backed up your claim. It would not be substantiated if you just said that...even if later testing proved you right.

Even comments which are true could lead to criminal liability under the Fair Trading Act if they are not substantiated at the time they are made. Companies can face fines of up to \$600,000, and individuals could be fined up to \$200,000.

To comply with the Fair Trading Act...

1. Don’t make any representation about your product or service unless you have good grounds for believing it to be true.
2. Don’t make any representations without some kind of evidence to back up that representation. For example, a publicly available Government research report.
3. Rely on credible and reliable sources to back up your claims and representations.



4. Keep records of all the sources you use to back up your representations.
5. Keep records of all the representations you make to potential purchasers.

Depending on the kind of business you run, further compliance measures may also be necessary. As always, we are happy to discuss with you how to put in place a comprehensive compliance mechanism and how to structure your contracts to minimise any risk.

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*“It is always the novice who exaggerates.”*  
– C.S. Lewis, *The Screwtape Letters*

**TIP**

## STRUCTURE THE AGREEMENT

The easiest way to write a contract is to number and label each paragraph and include only that topic in the paragraph. By segmenting the contract into individual units, it will be more easily understood by the parties (and by a court should it come to that).

**TRAP**

## REMEDIES

When drafting a contract, each term must be clear as to each party’s obligations. Don’t forget to spell out the remedies that you have in the event that the other party fails to meet their obligations.