

**An Act to prohibit certain conduct and practices in trade,  
to provide for the disclosure of consumer information  
relating to the supply of goods and services  
and to promote product safety and also to repeal  
the Consumer Information Act 1969  
and certain other enactments**

1986, No. 121

[17 December 1986

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BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

**1. Short Title and commencement—**

- (1) This Act may be cited as the Fair Trading Act 1986.  
(2) Except as provided in section 49 (3) of this Act, this Act shall come into force on the 1st day of March 1987.

**2. Interpretation—**

- (1) In this Act, unless the context otherwise requires,—  
“Acquire”,—  
(a) In relation to goods, includes obtain by way of gift, purchase, or exchange; and also includes take on lease, hire, or hire purchase:  
(b) In relation to services, includes accept:

(c) In relation to interests in land, includes obtain by way of gift, purchase, exchange, lease or licence and “acquisition” has a corresponding meaning:

“Advertisement” means any form of communication made to the public or a section of the public for the purpose of promoting the supply of goods or services or the sale or granting of an interest in land:

“Business” means any undertaking—

- (a) That is carried on whether for gain or reward or not; or
- (b) In the course of which—
  - (i) Goods or services are acquired or supplied; or
  - (ii) Any interest in land is acquired or disposed of—

whether free of charge or not:

“Commission” means the Commerce Commission established by section 8 of the Commerce Act 1986; and includes a Division of the Commission, or a member of the Commission, performing any function of the Commission:

“Court” means the High Court of New Zealand:

“Credit instrument” means any agreement (whether in writing or not) acknowledging an obligation to pay a sum or sums of money on demand or at any future time or times:

“Document” means a document in any form whether signed or initialled or otherwise authenticated by its maker or not; and includes—

- (a) Any writing on any material:
- (b) Any information recorded or stored by means of any tape-recorder, computer, or other device; and any material subsequently derived from information so recorded or stored:
- (c) Any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means:
- (d) Any book, map, plan, graph, or drawing:
- (e) Any photograph, film, negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced:

“Goods” include—

- (a) Ships, aircraft, and vehicles:
- (b) Animals, including fish:
- (c) Minerals, trees, and crops, whether on, under, or attached to land or not:
- (d) Gas and electricity:

“Local authority” includes every local authority and every public body or other authority created by or pursuant to any public Act or local Act:

“Minister” means the Minister of Consumer Affairs:

“Officer of the Commission” means—

- (a) Any person appointed pursuant to section 18 (1) of the Commerce Act 1986:
- (b) Any person employed or engaged under section 18 (2) of the Commerce Act 1986:

“Person” includes a local authority, and any association of persons whether incorporated or not:

“Price” includes valuable consideration in any form, whether direct or indirect; and includes any consideration that in effect relates to the acquisition or supply of goods or services or the acquisition or disposition of any interest in land, although ostensibly relating to any other matter or thing:

“Services” includes any rights (including rights in relation to, and interests in, real or personal property), benefits, privileges, or facilities that are or are to be provided, granted, or conferred and, without limiting the generality of the foregoing, also includes the rights, benefits, privileges, or facilities that are or are to be provided, granted, or conferred under any of the following classes of contract:

- (a) A contract for, or in relation to,—
  - (i) The performance of work (including work of a professional nature), whether with or without the supply of goods; or
  - (ii) The provision of, or the use or enjoyment of facilities for, accommodation, amusement, the care of persons or animals or things, entertainment, instruction, parking, or recreation; or
  - (iii) The conferring of rights, benefits, or privileges for which remuneration is payable in the form of a royalty, tribute, levy, or similar exaction:
- (b) A contract of insurance, including life assurance, and life reinsurance:
- (c) A contract between a bank and a customer of the bank:
- (d) Any contract for, or in relation to, the lending of money or granting of credit, or the making of arrangements for the lending of money or granting of credit, or the buying or discounting of a credit instrument, or the acceptance of deposits;—  
but does not include rights or benefits in the form of the supply of goods or the performance of work under a contract of service:

“Supply”—

- (a) In relation to goods, includes supply (or resupply) by way of gift, sale, exchange, lease, hire, or hire purchase; and
- (b) In relation to services, includes provide, grant, or confer;—  
and “supply” as a noun, “supplied”, and “supplier” have corresponding meanings:

“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.

- (2) In this Act, a reference to engaging in conduct shall be read as a reference to doing or refusing to do an act, and includes,—
  - (a) Omitting to do an act; or
  - (b) Making it known that an act will or, as the case may be, will not be done.
- (3) In this Act—
  - (a) A reference to the acquisition of goods includes a reference to the acquisition of property in, or rights in relation to, goods, in pursuance of a supply of the goods:
  - (b) A reference to the supply or acquisition of goods or services includes a reference to agreeing to supply or acquire goods or services:
  - (c) A reference to the supply or acquisition of goods includes a reference to the supply or acquisition of goods together with other property or services or both:
  - (d) A reference to the supply or acquisition of services includes a reference to the supply or acquisition of services together with property or other services or both:
  - (e) A reference to the resupply of goods acquired from a person includes a reference to—
    - (i) A supply of goods to another person in an altered form or condition; and
    - (ii) A supply to another person of other goods in which the goods have been incorporated.

### **3. Application of Act to conduct outside New Zealand—**

This Act extends to the engaging in conduct outside New Zealand by any person resident or carrying on business in New Zealand to the extent that such conduct relates to the supply of goods or services, or the granting of interests in land, within New Zealand.

### **4. Application of Act to the Crown—**

- (1) Subject to this section, this Act shall bind the Crown in so far as the Crown engages in trade.

(2) The Crown shall not be liable to be prosecuted for an offence against this Act but in any case where it is alleged that the Crown has contravened any provision of this Act and that contravention constitutes an offence, the Commission or the person directly affected by the contravention may apply to the Court for a declaration that the Crown has contravened that provision; and, if the Court is satisfied beyond a reasonable doubt that the Crown has contravened that provision, it may make a declaration accordingly.

Cf. 1975, No. 113, s. 20B; 1979, No. 140, s. 12; Trade Practices Act 1974 (Aust.), s. 2A

#### **5. Application of Act to Crown corporations—**

(1) This Act applies to every body corporate that is an instrument of the Crown in respect of the Government of New Zealand engaged in trade.

(2) Notwithstanding any enactment or rule of law, proceedings under Part V of this Act may be brought against a body corporate referred to in subsection (1) of this section.

Cf. 1975, No. 113, s. 20A; 1979, No. 140, s. 11

#### **6. Functions of Commission in relation to dissemination of information—**

In addition to the functions conferred on the Commission by this Act, the Commission shall—

(a) Make available or co-operate in making available—

(i) For the guidance of persons engaged in trade, and other interested persons, general information with respect to their rights and obligations under this Act; and

(ii) For the guidance of consumers, general information with respect to the rights and obligations of persons under this Act affecting the interests of consumers; and

(b) Undertake studies and publish reports and information regarding matters affecting the interests of consumers; and

(c) Co-operate with and assist any association or body of persons in developing and promoting the observance of standards of conduct for the purpose of ensuring compliance with the provisions of this Act.

Cf. Trade Practices Act 1974 (Aust.), s. 28 (1) (a), (d), (e)

#### **7. Money to be appropriated by Parliament for purposes of this Act—**

All fees, salaries, wages, allowances, expenses, and other expenditure payable or incurred under or in the administration of this Act shall be payable out of money to be appropriated by Parliament for the purpose.

#### **8. Annual reported—**

(1) As soon as practicable after the 31st day of March in each year, the Commission shall furnish to the Minister a report of its operations under this Act during the 12 months preceding that date.

(2) A copy of the report shall be laid before Parliament.

## **PART I MISLEADING AND DECEPTIVE CONDUCT, FALSE REPRESENTATIONS, AND UNFAIR PRACTICES**

### *Misleading and Deceptive Conduct*

#### **9. Misleading and deceptive conduct generally—**

No person shall, in trade, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

Cf. Trade Practices Act 1974 (Aust.), s. 52

**10. Misleading conduct in relation to goods—**

No person shall, in trade, engage in conduct that is liable to mislead the public as to the nature, manufacturing process, characteristics, suitability for a purpose, or quantity of goods.

Cf. Trade Practices Act 1974 (Aust.), s. 55

**11. Misleading conduct in relation to services—**

No person shall, in trade, engage in conduct that is liable to mislead the public as to the nature, characteristics, suitability for a purpose, or quantity of services.

Cf. Trade Practices Act 1974 (Aust.), s. 55A

**12. Misleading conduct in relation to employment—**

No person shall, in relation to employment that is, or is to be, or may be offered by that person or any other person, engage in conduct that is misleading or deceptive, or is likely to misread or deceive, as to the availability, nature, terms or conditions, or any other matter relating to that employment.

Cf. Trade Practices Act 1974 (Aust.), s. 53B

*False Representations*

**13. False representations—**

No person shall, in trade, in connection with the supply or possible supply of goods or services or with the promotion by any means of the supply or use of goods or services,—

- (a) Falsely represent that goods are of a particular kind, standard, quality, grade, quantity, composition, style, or model, or have had a particular history or particular previous use; or
- (b) Falsely represent that services are of a particular kind, standard, quality, or quantity, or that they are supplied by any particular person or by any person of a particular trade, qualification, or skill; or
- (c) Falsely represent that a particular person has agreed to acquire goods or services; or
- (d) Falsely represent that goods are new, or that they are reconditioned, or that they were manufactured, produced, processed, or reconditioned at a particular time; or
- (e) Falsely represent that goods or services have any sponsorship, approval, endorsement, performance characteristics, accessories, uses, or benefits; or
- (f) Falsely represent that a person has any sponsorship, approval, endorsement, or affiliation; or
- (g) Make a false or misleading representation with respect to the price of any goods or services; or
- (h) Make a false or misleading representation concerning the need for any goods or services; or
- (i) Make a false or misleading representation concerning the existence, exclusion, or effect of any condition, warranty, guarantee, right, or remedy; or
- (j) Make a false or misleading representation concerning the place of origin of goods.

Cf. Trade Practices Act 1974 (Aust.), s. 53

**14. False representations and other misleading conduct in relation to land—**

(1) No person shall, in trade, in connection with the sale or grant or possible sale or grant of an interest in land or with the promotion by any means of the sale or grant of an interest in land,—

- (a) Falsely represent that a person has any sponsorship, approval, endorsement, or affiliation; or
- (b) Make a false or misleading representation concerning the nature of the interest in the land, the price payable for the land, the location of the land, the characteristics of the land, the use to which the land is capable of being put or may lawfully be put, or the existence or availability of facilities associated with the land.

(2) No person shall use physical force, harassment, or coercion in connection with the sale or grant or possible sale or grant of an interest in land, or the payment for an interest in land.

(3) In this section “interest”, in relation to land, means a legal or equitable estate or interest in the land; and includes—

- (a) A right of occupancy of the land, or of a building or part of a building erected on the land, arising by virtue of the holding of shares, or by virtue of a contract to purchase shares, in a company that owns the land or building; or
- (b) A right, power, or privilege, over, or in connection with, the land.

Cf. Trade Practices Act 1974 (Aust.), s. 53 A

**15. Limited application of sections 9 to 14 of this Act to news media—**

(1) Nothing in sections 9 to 14 of this Act applies to the publication of any information or matter in a newspaper by the publisher of that newspaper, not being—

- (a) The publication of an advertisement; or
- (b) The publication of any information or matter relating to the supply or possible supply or the promotion of the supply or use of goods or services or the sale or grant or the possible sale or grant or the promotion of the sale or grant of an interest in land by—
  - (i) That publisher or, where that publisher is a body corporate, by any interconnected body corporate; or
  - (ii) Any person who is a party to any contract, arrangement, or understanding with that publisher relating to the content, nature or tenor of the information or matter.

(2) Nothing in sections 9 to 14 of this Act applies to the broadcasting of any information or matter by a broadcasting body, not being—

- (a) The broadcasting of an advertisement; or
- (b) The broadcasting of any information or matter relating to the supply or possible supply or the promotion of the supply or use of goods or services or the sale or grant or the possible sale or grant or the promotion of the sale or grant of an interest in land by—
  - (i) That broadcasting body, or where that broadcasting body is a body corporate, by any interconnected body corporate; or
  - (ii) Any person who is a party to any contract, arrangement, or understanding with that broadcasting body relating to the content, nature or tenor of the information or matter.

(3) For the purposes of this section—

- (a) The expressions “broadcasting” and “broadcasting body” shall have the same meanings as they have in section 2 of the Broadcasting Act 1976:
- (b) The expressions “newspaper” and “publisher” shall have the same meanings as they have in section 2 of the Newspapers and Printers Act 1955:
- (c) Any 2 or more bodies corporate are to be treated as interconnected if one of them is a body corporate of which the other is a subsidiary (within the meaning of section 158 of the Companies Act 1955) or if both of them are subsidiaries (within the meaning of that section) of one and the same body corporate, and “interconnected body corporate” shall be construed accordingly.

**16. Certain conduct in relation to trade marks prohibited—**

(1) No person shall, in trade,—

- (a) Forge any trade mark; or
  - (b) Falsely apply to any goods any trade mark or mark so nearly resembling a trade mark as to be likely to mislead or deceive.
- (2) For the purposes of this section a person shall be deemed to forge a trade mark if that person—
- (a) Without the consent of the proprietor of the trade mark, makes that trade mark or a mark so nearly resembling that trade mark as to be likely to mislead or deceive; or
  - (b) Falsifies any genuine trade mark, whether by alteration, effacement or otherwise.

(3) For the purposes of this Part of this Act—

“Certification trade mark” means a mark registered as a certification trade mark under section 47 of the Trade Marks Act 1953; and includes any mark which is used upon or in connection with goods for the purpose of indicating that they are goods of the proprietor of the mark by virtue of certification:

“Trade mark” means any trade mark within the meaning of the Trade Marks Act 1953; and includes a certification trade mark, and any mark which is used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of the mark by virtue of manufacture, selection, certification, dealing with, or offering for supply.

### *Unfair Practices*

#### **17. Offering gifts and prizes—**

No person shall,—

- (a) In connection with the supply or possible supply of goods or services or with the promotion by any means of the supply or use of goods or services; or
- (b) In connection with the sale or grant or the possible sale or grant of an interest in land or with the promotion by any means of the sale or grant of an interest in land,—

offer gifts, prizes, or other free items with the intention of not providing them or of not providing them as offered.

Cf. Trade Practices Act 1974 (Aust.) ss. 53 A (1) (c), 54

#### **18. Trading stamp schemes prohibited—**

(1) No person shall, in trade, supply or arrange for the supply of any trading stamp, either directly or indirectly to any manufacturer, packer, importer, distributor, or seller of goods or supplier of services.

(2) In this section “trading stamp” means any coupon, stamp, token, cover, package, document or thing—

- (a) That is supplied or intended to be supplied in connection with the sale of goods or services or for the purpose of promoting the sale of goods or services; and
- (b) That is redeemable by a person who is not the manufacturer, packer, importer, or seller of goods or supplier of services in connection with which it is supplied; and
- (c) That entitles the holder on redemption to money, goods or services or qualifies the holder on redemption to receive money, goods or services.

Cf. 1975, No. 113, s. 49 A; 1979, No. 140, s. 24

#### **19. Bait advertising—**

(1) No person shall, in trade, advertise for supply at a specified price goods or services which that person—

- (a) Does not intend to offer for supply; or
- (b) Does not have reasonable grounds for believing can be supplied by that person—

at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.

(2) Any person who has advertised goods or services for supply at a specified price shall offer such goods or services for supply at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.



(3) In a prosecution of any person in relation to a failure to offer goods or services to a person (in this subsection referred to as the customer) in accordance with subsection (2) of this section, it is a defence if the person proves that—

- (a) He offered to supply, or to procure another person to supply, goods or services of the kind advertised to the customer within a reasonable time, in a reasonable quantity, and at the advertised price and where the offer was accepted by the customer, the person has so supplied or procured another person to supply the goods or services; or
- (b) He offered to supply immediately, or to procure another person to supply within a reasonable time, equivalent goods or services to the customer in a reasonable quantity and at the price at which the first-mentioned goods or services were advertised, and, where the offer was accepted by the customer, the person has so supplied, or procured another person to supply, such equivalent goods or services.

Cf. 1969, No. 12, s. 10 (3), (4); Trade Practices Act 1974 (Aust.), s. 56

#### **20. Referral selling—**

(1) Subject to subsection (2) of this section, no person shall induce another person to acquire goods or services by representing that the person acquiring the goods or services will, after the contract for the acquisition of the goods or services is made, receive a rebate, commission, or other benefit in return for giving that person the names of prospective customers or otherwise assisting that person to supply goods or services to other users or consumers, if receipt of the rebate, commission, or other benefit is contingent on an event occurring after that contract is made.

- (2) Nothing in subsection (1) of this section applies to the acquisition of goods for resupply.

Cf. Trade Practices Act 1974 (Aust.), s. 57

#### **21. Demanding or accepting payment without intending to supply as ordered—**

No person shall demand or accept payment or other consideration for goods or services, if at the time of the demand or acceptance that person—

- (a) Does not intend to supply the goods or services; or
- (b) Intends to supply goods or services materially different from the goods or services in respect of which the payment or other consideration is demanded or accepted; or
- (c) Does not have reasonable grounds to believe that that person will be able to supply the goods or services within any specified period; or if no period is specified, within a reasonable time.

Cf. Trade Practices Act 1974 (Aust.), s. 58

#### **22. Misleading representations about certain business activities—**

(1) No person shall make a representation that is false or misleading in a material particular concerning the profitability or risk or any other material aspect of any business activity that that person represents as one that can be, or can be to a substantial extent, carried on at or from a person's place of residence.

(2) No person who invites, whether by advertisement or otherwise, persons to engage or participate, or to offer or apply to engage or participate, in a business activity requiring—

- (a) The performance by the persons concerned of work; or
- (b) The investment of money by the persons concerned and the performance by them of work associated with the investment—

shall make, with respect to the profitability or risk or any other material aspect of the business activity, a representation that is false or misleading in a material particular.

Cf. 1975, No. 113, s. 48 B; 1979, No. 40, s. 23; Trade Practices Act 1974 (Aust.), s. 59

#### **23. Harassment and coercion—**

No person shall use physical force or harassment or coercion in connection with the supply or possible supply of goods or services or the payment for goods or services.

Cf. Trade Practices Act 1974 (Aust.), s. 60

**24. Pyramid selling schemes—**

- (1) No person shall promote or operate a pyramid selling scheme.
  - (2) For the purposes of this section, the term “pyramid selling scheme” means—
    - (a) A scheme—
      - (i) That provides for the supply of goods or services or both for reward; and
      - (ii) That, to many participants in the scheme, constitutes primarily an opportunity to sell an investment opportunity rather than an opportunity to supply goods or services; and
      - (iii) That is or is likely to be unfair to many of the participants in the scheme in that—
        - (A) The financial rewards of many of those participants are dependent on the recruitment of additional participants (whether or not at successively lower levels); and
        - (B) The number of additional participants in the scheme that must be recruited to produce reasonable financial rewards to participants in the scheme is not attainable or is not likely to be attainable by many of the participants in the scheme:
    - (b) A scheme of the type commonly known as a chain letter scheme (whether or not it provides for the supply of goods or services or both) that is likely to be unfair to many of the participants in the scheme, in that—
      - (i) The financial rewards of many of those participants are dependent on the recruitment of additional participants; and
      - (ii) The number of additional participants in the scheme that must be recruited to produce reasonable financial rewards to participants in the scheme is not attainable or is not likely to be attainable by many of the participants in the scheme.
- Cf. 1975, No. 113, s. 48 A; 1979, No. 140, s. 22 (1)

**25. Provisions of this Part of this Act not limited by reference to other provisions of this Part of this Act—**

No provision of this Part of this Act limits or affects any other provision of this Part of this Act.

**26. Importation of goods bearing false trade description or false trade mark prohibited—**

- (1) This section applies to—
  - (a) Any goods to which a false trade description is applied:
  - (b) Any goods to which there is falsely applied any trade mark or mark so nearly resembling a trade mark as to be likely to mislead or deceive.
- (2) All goods to which this section applies are hereby prohibited to be imported into New Zealand, and shall be deemed to be included among goods prohibited to be imported under section 48 of the Customs Act 1966 and the provisions of that Act shall apply to such goods accordingly.
- (3) In this section “false trade description” means any representation which if made in connection with the supply or possible supply of goods or with the promotion by any means of the supply or use of goods would constitute a contravention of section 13 (a), (d), or (j) of this Act.
- (4) For the purposes of subsection (1) of this section a false trade description or trade mark or mark shall be deemed to be applied to goods if—
  - (a) It is woven in, impressed on, worked into, or annexed or affixed to goods; or
  - (b) It is applied to a covering, label, reel, or thing in or with which the goods are supplied.

## PART II CONSUMER INFORMATION

**27. Consumer information standards—**

- (1) The Governor-General may, from time to time, on the recommendation of the Minister, by Order in Council, make regulations prescribing, in respect of goods or services of any description or any

class or classes of goods or services, a consumer information standard relating to all or any of the following matters:

- (a) The disclosure of information relating to the kind, grade, quantity, origin, performance, care, composition, contents, design, construction, use, price, finish, packaging, promotion, or supply of the goods or services:
- (b) The form and manner in which that information is to be disclosed on or in relation to, or in connection with, the supply or resupply, or possible supply or resupply, or promotion of the supply of the goods or services.
- (2) The Minister shall not make a recommendation under subsection (1) of this section unless—
  - (a) The Minister has consulted with such persons or representatives of such persons as the Minister considers will be substantially affected by any Order in Council made in accordance with the recommendation and those persons have had the opportunity to comment thereon to the Minister; and
  - (b) The Minister has considered any such comments.
- (3) A failure to comply with subsection (2) of this section shall not affect the validity of any Order in Council made under this section.
- (4) No person shall supply, or offer to supply, or advertise to supply goods or services in respect of which a consumer information standard has been prescribed, unless that person complies with that consumer information standard.
- (5) Nothing in subsection (4) of this section applies to any goods that are intended for use outside New Zealand if there is applied to the goods—
  - (a) A statement that the goods are for export only; or
  - (b) A statement indicating, by the use of words authorised by any regulations made under this section for the purposes of this subsection, that the goods are intended to be used outside New Zealand,—

and it shall be presumed for the purposes of this section, unless the contrary is established, that the goods so identified are intended to be so used.

- (6) For the purposes of subsection (5) of this section, a statement shall be deemed to be applied to goods if—
  - (a) The statement is woven in, impressed on, worked into, or annexed or affixed to the goods; or
  - (b) The statement is applied to a covering, label, reel, or thing in or with which the goods are supplied.
- (7) No Order in Council may be made under this section in respect of any medicine or related product within the meaning of the Medicines Act 1981, except in relation to the price of the medicine, or related product.

Cf. Trade Practices Act 1974 (Aust.) s. 63

#### **28. Standards may be declared to be consumer information standards—**

- (1) The Governor-General may, from time to time, on the recommendation of the Minister, by Order in Council, make regulations declaring, in respect of goods or services of any description or any class or classes of goods or services specified in the order, that—
  - (a) A standard specification or specified part of a standard specification promulgated by the Standards Council pursuant to the Standards Act 1965; or
  - (b) A standard specification or specified part of a standard specification prescribed by any association or body specified in the order; or
  - (c) A standard specification or specified part of a standard specification referred to in paragraph (a) or paragraph (b) of this subsection with such additions or variations as are specified in the order—

is a consumer information standard for the purposes of section 27 of this Act.

- (2) The Minister shall not make a recommendation under subsection (1) of this section unless—
- (a) The Minister has consulted with such persons or representatives of such persons as the Minister considers will be substantially affected by any Order in Council made in accordance with the recommendation and those persons have had the opportunity to comment thereon to the Minister; and
- (b) The Minister has considered any such comments.
- (3) A failure to comply with subsection (2) of this section shall not affect the validity of any Order in Council made under this section.
- (4) Every standard specification or part of a standard specification referred to in any regulations made under this section or the standard specification or part of a standard specification so referred to as added to or varied, as the case may be, shall be deemed to be a consumer information standard for the purposes of section 27 of this Act.
- (5) No Order in Council may be made under this section prescribing a consumer information standard which is inconsistent with a consumer information standard prescribed under section 27 of this Act.
- Cf. Trade Practices Act 1974 (Aust.), s. 63 AA

### PART III PRODUCT SAFETY

#### 29. Product safety standards—

- (1) The Governor-General may, from time to time, on the recommendation of the Minister, by Order in Council, make regulations in respect of goods of any description or any class or classes of goods, prescribing for the purpose of preventing or reducing the risk of injury to any person, a product safety standard relating to all or any of the following matters—
- (a) The performance, composition, contents, manufacture, processing, design, construction, finish or packaging of the goods;
- (b) The testing of the goods during or after manufacture or processing;
- (c) The form and content of markings, warnings or instructions to accompany the goods.
- (2) The Minister shall not make a recommendation under subsection (1) of this section unless—
- (a) The Minister has consulted with such persons or representatives of such persons as the Minister considers will be substantially affected by any Order in Council made in accordance with the recommendation and those persons have had the opportunity to comment thereon to the Minister; and
- (b) The Minister has considered any such comments.
- (3) A failure to comply with subsection (2) of this section shall not affect the validity of any Order in Council made under this section.
- (4) No person shall supply, or offer to supply, or advertise to supply, goods of a kind in respect of which a product safety standard has been prescribed unless those goods comply with that product safety standard.
- (5) Nothing in subsection (4) of this section applies to any goods that are intended for use outside New Zealand if there is applied to the goods—
- (a) A statement that the goods are for export only; or
- (b) A statement indicating, by the use of words authorised by any regulations made under this section for the purposes of this subsection, that the goods are intended to be used outside New Zealand,—
- and it shall be presumed for the purposes of this section, unless the contrary is established, that the goods so identified are intended to be so used.
- (6) For the purposes of subsection (5) of this section, a statement shall be deemed to be applied to goods if—
- (a) The statement is woven in, impressed on, worked into, or annexed or affixed to the goods; or

- (b) The statement is applied to a covering, label, reel, or thing in or with which the goods are supplied.

Cf. Trade Practices Act 1974 (Aust.), s. 62 (1) (a), (2)

**30. Standards may be declared to be product safety standards.—**

(1) The Governor-General may, from time to time, on the recommendation of the Minister, by Order in Council, make regulations declaring, in respect of goods of any description or any class or classes of goods specified in the order, that—

- (a) A standard specification or specified part of a standard specification promulgated by the Standards Council pursuant to the Standards Act 1965; or
- (b) A standard specification or specified part of a standard specification prescribed by any association or body specified in the order; or
- (c) A standard specification or specified part of a standard specification referred to in paragraph (a) or paragraph (b) of this subsection with such additions or variations as are specified in the order—

is a product safety standard for the purposes of section 29 of this Act.

(2) The Minister shall not make a recommendation under subsection (1) of this section unless—

- (a) The Minister has consulted with such persons or representatives of such persons as the Minister considers will be substantially affected by any Order in Council made in accordance with the recommendation and those persons have had the opportunity to comment thereon to the Minister; and
- (b) The Minister has considered any such comments.

(3) A failure to comply with subsection (2) of this section shall not affect the validity of any Order in Council made under this section.

(4) Every standard specification or part of a standard specification referred to in the order, or the standard specification or part of a standard specification so referred to as added to or varied, as the case may be, shall be deemed to be a product safety standard for the purposes of section 29 of this Act.

(5) No Order in Council may be made under this section prescribing a product safety standard which is inconsistent with a product safety standard prescribed under section 29 of this Act.

**31. Unsafe goods—**

(1) Where it appears to the Minister that goods of any description or any class or classes of goods will or may cause injury to any person, the Minister may, by notice in the *Gazette*, declare the goods to be unsafe goods.

(2) A notice made pursuant to subsection (1) of this section shall, unless previously revoked by the Minister by notice in the *Gazette*, remain in force for 18 months after the date of publication of the notice in the *Gazette*.

(3) Where—

- (a) A period of 18 months has elapsed after the date of publication of a notice in the *Gazette* pursuant to subsection (1) of this section declaring goods to be unsafe goods; and
- (b) A product safety standard has not been prescribed pursuant to section 29 of this Act in respect of the goods,—

the Minister may, by notice in the *Gazette*, prohibit the supply of the goods indefinitely or for such period as may be specified in the notice.

(4) A notice made pursuant to subsection (3) of this section, may be amended or revoked at any time by the Minister by notice in the *Gazette*.

(5) No person shall supply, or offer to supply, or advertise to supply, goods—

- (a) In respect of which there is in force a notice declaring the goods to be unsafe goods; or
- (b) In respect of which there is in force a notice under subsection (3) of this section.

Cf. Trade Practices Act 1974 (Aust.), s. 62 (1) (b), (2D), (2E)

### 32. Compulsory product recall—

(1) Where a person (in this section referred to as “the supplier”) has in trade supplied goods which—

- (a) Do not comply with a product safety standard prescribed in respect of the goods; or
- (b) Are goods of a kind which will or may cause injury to any person—

and the supplier has not recalled the goods or taken satisfactory action to recall the goods the Minister may, by notice to the supplier, require the supplier to take the action specified in subsection (3) of this section.

(2) Where a person (in this section referred to as “the supplier”) has in trade supplied goods which are goods of a kind in relation to which there is in force a notice under section 31 (1) or (3) of this Act, and the supplier has not recalled the goods or taken satisfactory action to recall the goods, the Minister may by notice to the supplier require the supplier to take the action specified in subsection (3) of this section.

(3) For the purposes of subsections (1) and (2) of this section, the Minister may require the supplier, in a manner and within a period specified and at his own expense, to do all or any of the following:

- (a) Recall the goods:
- (b) Disclose to the public information relating to—
  - (i) The characteristics of the goods which render them unsafe; or
  - (ii) The circumstances in which use of the goods is unsafe; or
  - (iii) Any other matters relating to the goods or the use of the goods as may be specified:
- (c) Repair or replace the goods or refund to any person to whom the goods were supplied or resupplied the price paid for the goods or any lesser amount as may be reasonable having regard to the use that person has had of the goods.

(4) Where a notice is given to a supplier under subsection (1) or subsection (2) of this section that supplier shall comply in all respects with the notice.

(5) Where a notice is given to a supplier under subsection (1) or subsection (2) of this section that supplier shall not, in trade,—

- (a) Where the notice identifies a defect in, or a dangerous characteristic of the goods, supply goods of a kind to which the notice relates which contain that defect or have that characteristic; or
- (b) In any other case, supply goods of a kind to which the notice relates.

### 33. Importation of certain goods prohibited—

All goods the supply of which would constitute a contravention of this Part of this Act are hereby prohibited to be imported into New Zealand and shall be deemed to be included among goods prohibited to be imported under section 48 of the Customs Act 1966 and the provisions of that Act shall apply to such goods accordingly.

## PART IV SAFETY OF SERVICES

### 34. Meaning of “services”—

For the purposes of this Part of this Act ‘services’ means the performance of work by way of—

- (a) The maintenance, repair, treatment, processing, installation, assembly, cleaning or alteration of goods:
- (b) The construction, maintenance, repair, cleaning or alteration of any building or other fixture on land:
- (c) The development of land:
- (d) The transportation of goods.

Cf. Trade Practices Act 1974, (Aust.), s. 74 (3)

### 35. Safety standards in respect of services—

(1) The Governor-General may, from time to time, on the recommendation of the Minister, by Order in Council, make regulations, in respect of services of any description or any class or classes of services, prescribing, for the purpose of preventing or reducing the risk of injury to any person, a services safety standard relating to the performance of those services.

(2) The Minister shall not make a recommendation under subsection (1) of this section unless—

(a) The Minister has consulted with such persons or representatives of such persons as the Minister considers will be substantially affected by any Order in Council made in accordance with the recommendation and those persons have had the opportunity to comment thereon to the Minister, and

(b) The Minister has considered any such comments.

(3) A failure to comply with subsection (2) of this section shall not affect the validity of any Order in Council made under this section.

(4) No person shall supply, or offer to supply, or advertise to supply, services of a kind in respect of which a services safety standard has been prescribed unless those services comply with that services safety standard.

### 36. Standards may be declared to be services safety standards—

(1) The Governor-General may, from time to time, on the recommendation of the Minister, by Order in Council, make regulations declaring in respect of services of any description or any class or classes of services specified in the order, that—

(a) A standard specification or specified part of a standard specification promulgated by the Standards Council pursuant to the Standards Act 1965; or

(b) A standard specification or specified part of a standard specification prescribed by any association or body specified in the order; or

(c) A standard specification or specified part of a standard specification referred to in paragraph (a) or paragraph (b) of this subsection with such additions or variations as are specified in the order—

is a services safety standard for the purposes of section 35 of this Act.

(2) The Minister shall not make a recommendation under subsection (1) of this section unless—

(a) The Minister has consulted with such persons or representatives of such persons as the Minister considers will be substantially affected by any Order in Council made in accordance with the recommendation and those persons have had the opportunity to comment thereon to the Minister; and

(b) The Minister has considered any such comments.

(3) A failure to comply with subsection (2) of this section shall not affect the validity of any Order in Council made under this.

(4) Every standard specification or part of a standard specification referred to in the order, or the standard specification or part of a standard specification referred to as added to or varied, as the case may be, shall be deemed to be a services safety standard for the purposes of section 35 of this Act.

(5) No Order in Council may be made under this section prescribing a services safety standard which is inconsistent with a services safety standard prescribed under section 35 of this Act.

## PART V ENFORCEMENT AND REMEDIES

### *Jurisdiction of Courts*

#### **37. Jurisdiction of High Court—**

In accordance with this Part of this Act, the High Court shall hear and determine the following matters—

- (a) Appeals from criminal proceedings in a District Court for offences against section 40 of this Act:
- (b) Applications for injunctions under section 41 of this Act:
- (c) Applications for orders under sections 42 and 43 of this Act.

#### **38. Jurisdiction of District Courts—**

In accordance with this Part of this Act, the District Courts shall hear and determine the following matters—

- (a) Proceedings for offences against section 40 of this Act:
- (b) Applications for orders under section 43 of this Act.

#### **39. Jurisdiction of Small Claims Tribunals—**

In accordance with this Part of this Act, a Small Claims Tribunal established under section 4 of the Small Claims Tribunals Act 1976 shall have jurisdiction to hear and determine applications for orders under section 43 (2) (c) to (f) of this Act (except in respect of a contravention of section 9 of this Act).

### *Offences*

#### **40. Contraventions of provisions of Part I, Part II Part III, and Part IV an offence—**

(1) Every person who contravenes any of the provisions of Part I (except sections 9, 14 (2), and 23), or Part II, or Part III or Part IV of this Act commits an offence and is liable on summary conviction—

- (a) In the case of a person other than a body corporate, to a fine exceeding \$30,000; and
- (b) In the case of a body corporate, to a fine not exceeding \$100,000.

(2) Where a person is convicted, whether in the same or separate proceedings, of 2 or more offenses in respect of contraventions of the same provisions of this Act and those contraventions are of the same or a substantially similar nature and occurred at or about the same time, the aggregate amount of any fines imposed on that person in respect of those convictions shall not exceed the amount of the maximum fine that may be imposed in respect of a conviction for a single offence.

(3) Proceedings under this section may be commenced at any time within 3 years after the matter giving rise to the contravention arose.

Cf. Trade Practices Act 1974 (Aust.), s. 79 (3)

### *Civil Proceedings*

#### **41. Injunctions may be granted by Court for contravention of Part I, Part II, Part III, and Part IV—**

(1) The Court may, on the application of the Commission or any other person, grant an injunction restraining a person from engaging in conduct that constitutes or would constitute any of the following—

- (a) A contravention of any of the provisions of Parts I to IV of this Act:
- (b) Any attempt to contravene such a provision:
- (c) Aiding, abetting, counselling, or procuring any other person to contravene such a provision:



- (d) Inducing, or attempting to induce, any other person, whether by threats, promises or otherwise, to contravene such a provision:
  - (e) Being in any way directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of such a provision:
  - (f) Conspiring with any other person to contravene such a provision.
- (2) The Court may at any time rescind or vary an injunction granted under this section.
- (3) Where an application is made to the Court under this section for the grant of an injunction restraining a person from engaging in conduct of a particular kind the Court may,—
- (a) If it is satisfied that the person has engaged in conduct of that kind, grant an injunction restraining the person from engaging in conduct of that kind; or
  - (b) If in the opinion of the Court it is desirable to do so grant an interim injunction restraining the person from engaging in conduct of that kind,—

whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind.

(4) Where an application is made to the Court under this section for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the Court may,—

- (a) If it appears to the Court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind, grant an injunction restraining the person from engaging in conduct of that kind; or
- (b) If in the opinion of the Court it is desirable to do so, grant an interim injunction restraining the person from engaging in conduct of that kind,—

whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first mentioned person engages in conduct of that kind.

Cf. Trade Practices Act 1974 (Aust.), s. 80 (1)–(5)

#### **42. Order to disclose information or publish advertisement—**

Where, on the application of the Commission, the Court is satisfied that a person has engaged in conduct constituting a contravention of any of the provisions of Parts I to IV of this Act, the Court may (whether or not that person has previously engaged in such conduct), make either or both of the following orders:

- (a) An order requiring that person, or any other person involved in the contravention, to disclose, at that person's own expense, to the public, or to a particular person or to persons included in a particular class of persons, in such manner as is specified in the order, such information, or information of such a kind, as is so specified, being information that is in the possession of the person to whom the order is directed or to which that person has access:
- (b) An order requiring that person, or any other person involved in the contravention, to publish, at that person's own expense, in such manner and at such times as are specified in the order, corrective statements the terms of which are specified in, or are to be determined in accordance with, the order.

Cf. Trade Practices Act 1974 (Aust.), s. 80 A (1)

#### **43. Other orders—**

(1) Where, in any proceedings under this Part of this Act, or on the application of any person, the Court finds that a person, whether or not that person is a party to the proceedings, has suffered, or is likely to suffer, loss or damage by conduct of any other person that constitutes or would constitute

- (a) A contravention of any of the provisions of Parts I to IV of this Act; or
- (b) Aiding, abetting, counselling, or procuring the contravention of such a provision; or
- (c) Inducing by threats, promises, or otherwise the contravention of such a provision; or
- (d) Being in any way directly or indirectly knowingly concerned in, or party to, the contravention of such a provision; or

- (e) Conspiring with any other person in the contravention of such a provision—

the Court may (whether or not it grants an injunction or makes any other order under this Part of this Act) make all or any of the orders referred to in subsection (2) of this section.

- (2) For the purposes of subsection (1) of this section, the Court may make the following orders—

- (a) An order declaring the whole or any part of a contract made between the person who suffered, or is likely to suffer, the loss or damage and the person who engaged in the conduct referred to in subsection (1) of this section or of a collateral arrangement relating to such a contract, to be void and, if the Court thinks fit, to have been void *ab initio* or at all times on and after such date, before the date on which the order is made, as is specified in the order:
- (b) An order varying such a contract or arrangement in such manner as is specified in the order and, if the Court thinks fit, declaring the contract or arrangement to have had effect as so varied on and after such date, before the date on which the order is made, as is so specified:
- (c) An order directing the person who engaged in the conduct, referred to in subsection (1) of this section to refund money or return property to the person who suffered the loss or damage:
- (d) An order directing the person who engaged in the conduct, referred to in subsection (1) of this section to pay to the person who suffered the loss or damage the amount of the loss or damage:
- (e) An order directing the person who engaged in the conduct, referred in subsection (1) of this section at that person's own expense, to repair, or provide parts for, goods that had been supplied by the person who engaged in the conduct to the person who suffered, or is likely to suffer, the loss or damage:
- (f) An order directing the person who engaged in the conduct, referred to in subsection (1) of this section at that person's own expense, to supply specified services to the person who suffered, or is likely to suffer, the loss or damage.

- (3) In the exercise of its jurisdiction under this section a District Court shall not—

- (a) Make any order under subsection (2) (a) of this section in any case where the value of the consideration for the promise or act of any party to the contract or collateral arrangement exceeds \$12,000:
- (b) Make an order under subsection (2) (b) of this section in any case where the value of the consideration for the promise or act of any party to the contract or arrangement exceeds \$12,000:
- (c) Make an order under subsection (2) (c) of this section directing a person to refund money or return property where the amount of money or the value of the property exceeds \$12,000:
- (d) Make an order under subsection (2) (d) of this section requiring a person to pay an amount exceeding \$12,000:
- (e) Make an order under subsection (2) (e) of this section directing a person to repair goods or provide parts for goods where the value of the work required to repair the goods, or the value of the parts, as the case may be, exceeds \$12,000:
- (f) Make an order under subsection (2) (f) of this section directing a person to supply services where the value of the services exceeds \$12,000.

- (4) In the exercise of its jurisdiction under this section a Small Claims Tribunal shall not—

- (a) Make an order under subsection (2) (c) of this section directing a person to refund money or return property where the amount of money or the value of the property exceeds \$1,000:
- (b) Make an order under subsection (2) (d) of this section requiring a person to pay an amount exceeding \$1,000:
- (c) Make an order under subsection (2) (e) of this section directing a person to repair goods or provide parts for goods where the value of the work required to repair the goods, or the value of the parts, as the case may be, exceeds \$1,000:
- (d) Make an order under subsection (2) (f) of this section directing a person to supply services where the value of the services exceeds \$1,000.

(5) An application under subsection (1) of this section may be made at any time within 3 years from the time when the matter giving rise to the application occurred.

(6) An order made under subsection (2) (a) or (b) of this section shall not prevent proceedings being instituted or commenced under this Part of this Act.

(7) Nothing in this section limits or affects the Illegal Contracts Act 1970.

(8) For the purposes of subsection (1) of this section, a reference to “Court” includes a reference to a District Court and a Small Claims Tribunal.

(9) Nothing in this section affects section 27 of the Accident Compensation Act 1982.

Cf. Trade Practices Act 1974 (Aust.), s. 87 (1), (1A), (2)

#### 44. Defences—

(1) Subject to this section, it is a defence to a prosecution for an offence against section 40 of this Act if the defendant proves—

(a) That the contravention was due to a reasonable mistake; or

(b) That the contravention was due to reasonable reliance on information supplied by another person; or

(c) That—

(i) The contravention was due to the act or default of another person, or to an accident or to some other cause beyond the defendant’s control; and

(ii) The defendant took reasonable precautions and exercised due diligence to avoid the contravention.

(2) For the purposes of subsection (1) (b) and (c) of this section, the term “another person” does not include—

(a) A servant or agent of the defendant; or

(b) Where the defendant is a body corporate, a director, servant or agent of the defendant.

(3) A defendant is not, without the leave of the District Court, entitled to rely on the defence provided by subsection (1) (b) of this section that the contravention was due to reasonable reliance on information supplied by another person, or by subsection (1) (c) (i) of this section that the contravention was due to the act or default of another person, unless the defendant has, not later than 7 days before the date on which the hearing of the proceedings commences, served on the informant a notice in writing identifying that person.

(4) It is a defence to a prosecution for an offence against section 40 of this Act, or to any other proceedings under this Part of this Act, in relation to a contravention of a provision of this Act committed by the publication of an advertisement, if the defendant proves—

(a) That the defendant’s business is publishing or arranging for the publication of advertisements; and

(b) That the defendant received the advertisement, or the information contained in the advertisement, as the case may be, in the ordinary course of that business and did not know and had no reason to suspect that the publication of the advertisement or the publication of the advertisement containing that information, as the case may be, would constitute a contravention of the provision.

(5) Subject to subsection (6) of this section, it is a defence to a prosecution for an offence against section 40 of this Act, or to any other proceedings under this Part of this Act, in relation to a contravention of section 27 of this Act, if the defendant proves—

(a) That the goods to which the proceedings relate were acquired by the defendant for the purpose of resupply from a person (not being an agent of a person outside New Zealand) who carried on in New Zealand the business of supplying such goods; and

(b) That the defendant did not know, and could not with reasonable diligence have ascertained, that the goods did not comply with the consumer information standard or that the defendant had not complied with that standard in relation to the goods, as the case may be, or that the defendant relied in good faith on a representation by the person from whom the defendant acquired the goods that a consumer information standard had not been prescribed for those goods.

(6) A defendant is not, without the leave of the District Court, entitled to rely on any defence provided by subsection (5) of this section unless the defendant has, not later than 7 days before the date on which the hearing of the proceedings commences, served, in the case of proceedings for an offence, on the informant, and in the case of any other proceedings, on the person commencing those proceedings, a notice in writing identifying the person by whom the goods were supplied.

Cf. Trade Practices Act 1974 (Aust.), s. 85 (1)–(5)

#### **45. Conduct by servants or agents—**

(1) Where, in proceedings under this Part of this Act in respect of any conduct engaged in by a body corporate, being conduct in relation to which any the provisions of this Act applies, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, acting within the scope of that person's actual or apparent authority, had that state of mind.

(2) Any conduct engaged in on behalf of a body corporate—

- (a) By a director, servant, or agent of the body corporate, acting within the scope of that person's actual or apparent authority; or
- (b) By any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant, or agent of the body corporate, given within the scope of the actual or apparent authority of the director, servant or agent—

shall be deemed, for the purposes of this Act, to have been engaged in also by the body corporate.

(3) Where, in a proceeding under this Part of this Act in respect of any conduct engaged in by a person other than a body corporate, being conduct in relation to which a provision of this Act applies, it is necessary to establish the state of mind of the person, it is sufficient to show that a servant or agent of the person, acting within the scope of that person's actual or apparent authority, had that state of mind.

(4) Any conduct engaged in on behalf of a person other than a body corporate

- (a) By a servant or agent of the person acting within the scope of that person's actual or apparent authority; or
- (b) By any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first-mentioned person, given within the scope of the actual or apparent authority of the servant or agent—

shall be deemed, for the purposes of this Act, to have been engaged in also by the first-mentioned person.

(5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for that intention, opinion, belief or purpose.

Cf. Trade Practices Act 1974 (Aust.), s. 84

#### **46. Finding in proceedings to be evidence—**

In any application for an order against a person under section 43 of this Act, a finding of any fact made in proceedings for an injunction under section 41 of this Act or for an order under section 42 of this Act, or for an offence under section 40 of this Act, being proceedings before the High Court or a District Court in which that person was found to have engaged in conduct of the kind referred to in section 43 (1) (a) to (e) of this Act is prima facie evidence of that fact and the finding may be proved by production of a document under the seal of the Court or District Court, as the case may be, in which the finding was made.

Cf. Trade Practices Act 1974 (Aust.), s. 83

## **PART VI MISCELLANEOUS PROVISIONS**

#### **47. Powers to obtain documents and inspect goods—**

(1) Subject to this section, an officer of the Commission authorised in writing for the purpose may, for the purpose of assisting the Commission to ascertain or establish whether any person has engaged in or is

engaging in conduct that constitutes or may constitute a contravention of this Act, enter upon and search any premises and—

(a) Inspect, remove and take copies of any documents or extracts therefrom, in the possession of or under the control of any person:

(b) Inspect and remove any goods in the possession of or under the control of any person.

(2) No officer of the Commission so authorised shall exercise the powers conferred by subsection (1) of this section unless the officer obtains a warrant authorising that officer to exercise those powers in accordance with subsection (3) of this section.

(3) Where any judicial officer is satisfied, on application in writing made on oath, that there is reasonable ground for believing that it is necessary for the purpose of assisting the Commission to ascertain or establish whether any person has engaged in or is engaging in conduct that constitutes or may constitute a contravention of this Act for an officer of the Commission to exercise the powers conferred by subsection (1) of this section, that judicial officer may by warrant, authorise any officer of the Commission to exercise those powers in relation to any premises specified in the warrant.

(4) Every warrant issued under subsection (3) of this section shall authorise the person named in the warrant within such period as shall be specified in the warrant to enter upon and search the premises specified in the warrant and—

(a) Inspect, remove, and take copies of any documents or extracts therefrom in the possession of or under the control of any person:

(b) Inspect and remove any goods in the possession of or under the control of any person.

(5) The power to enter and search any premises pursuant to a warrant issued under this section may be exercised on one occasion only and shall be exercised at a reasonable time.

(6) Every officer of the Commission authorised to enter upon and search any premises pursuant to subsection (3) of this section shall on first entering those premises, and, if requested, at any subsequent time, produce—

(a) Evidence of that person's authority to enter the premises; and

(b) Evidence of that person's identity.

(7) Every officer of the Commission who executes a warrant under this section shall prepare a schedule specifying—

(a) Any documents which have been removed from the premises or of which any copies or extracts have been taken:

(b) Any goods which have been removed from the premises:

(c) The place from which any such documents, or extracts, or goods have been removed:

(d) The place where any such documents, or extracts, or goods are held.

(8) A copy of every schedule prepared under subsection (7) of this section shall be given to the occupier or person in charge of the premises.

(9) The occupier or person in charge of any premises that an authorised officer enters pursuant to subsection (3) of this section shall provide the authorised officer with all reasonable facilities and assistance for the effective exercise of that officer's powers.

(10) The Commission, or any officer of the Commission, may—

(a) Inspect and take copies of any documents or extracts therefrom obtained under this section:

(b) Inspect any goods obtained under this section.

(11) Any person who obstructs or hinders an officer of the Commission acting pursuant to a warrant issued under subsection (3) of this section commits an offence and is liable on summary conviction to a fine not exceeding \$4,000 in the case of a person not being a body corporate, and \$12,000 in the case of a body corporate.

#### **48. Proceedings privileged—**

(1) No proceedings, civil or criminal, shall lie against the Commission for anything it may do or fail to do in the course of the exercise or intended exercise of its functions under this Act unless it is shown that the Commission acted without reasonable care or in bad faith.



(2) No proceedings, civil or criminal, shall lie against any member or associate member of the Commission, or any officer of the Commission, for anything that person may do or say or fail to do or say in the course of the operations of the Commission under this Act, unless it is shown that that person acted in bad faith.

- (3) Nothing in subsections (1) and (2) of this section applies in respect of proceedings for—
- (a) An offence against section 78 or section 78 A or section 105 or section 105 A of the Crimes Act 1961; or
  - (b) The offence of conspiring to commit an offence against section 78 or section 78 A or section 105 or section 105 A of the Crimes Act 1961; or
  - (c) The offence of attempting to commit an offence against section 78 or section 78A or section 105 or section 105 A of the Crimes Act 1961.

**49. Repeals and consequential amendments—**

(1) The enactment specified in the First Schedule to this Act is hereby amended in the manner indicated in that Schedule.

(2) The enactments specified in Part A of the Second Schedule to this Act are hereby repealed with effect from the commencement of this Act.

(3) The enactments specified in Part B of the Second Schedule to this Act are hereby repealed with effect from the 1st day of May 1987.

(4) The orders and notices specified in the Third Schedule to this Act are hereby revoked

**50. Saving of other laws—**

(1) Nothing in this Act limits or affects the operation of any other Act.

(2) Nothing in this Act limits or affects any liability that any person may incur under any rule of law or enactment other than this Act.

Cf. 1978, No. 103, s. 65; Trade Practices Act 1974 (Aust.), s. 75

**SCHEDULES**

Section 49 (1)

**FIRST SCHEDULE  
ENACTMENT AMENDED**

Title of Enactment	Amendment
1981, No. 25—The Factories and Commercial Premises Act 1981	By repealing paragraph (i) of subsection (1) of section 61, and substituting the following paragraph: “(i) Seeks or receives any premium in respect of the employment of any person in any undertaking in contravention of section 17 (1) of this Act; or”



**SECOND SCHEDULE  
ENACTMENTS REPEALED**

*Part A*

- 1908, No. 174—The Employment Agents Act 1908 (R.S. Vol. 17, p. 201).  
 1954, No. 43—The Merchandise Marks Act 1954 (R.S. Vol. 10, p. 113).  
 1954, No. 71—The Labour Department Act 1952: So much of the First Schedule as relates to the  
 Employment Agents Act 1908 (R.S. Vol. 7, p. 521).  
 1960, No. 24—The Employment Agents Amendment Act 1960 (R.S. Vol. 17, p. 209).  
 1967, No. 30—The Employment Agents Amendment Act 1967 (R.S. Vol. 17, p. 210).  
 1969, No. 12—The Consumer Information Act 1969.  
 1975, No. 46—The Unsolicited Goods and Services Act 1975: Section 8 (4).  
 1975, No. 74—The Employment Agents Amendment Act 1975 (R.S. Vol. 17, p. 211).  
 1981, No. 118—The Medicines Act 1981: Section 112.  
 1982, No. 134—The Fertilisers Act 1982: Section 25 (2).  
 1986, No. 5—The Commerce Act 1986: Section 115.

*Part B*

- 1949, No. 41—The Wool Labelling Act 1949 (R.S. Vol. 11, p. 903).  
 1977, No. 87—The Safety of Children’s Night Clothes Act 1977

Section 49 (4)

**THIRD SCHEDULE  
ORDERS AND NOTICES REVOKED**

Title	Statutory Regulations
The Footwear Marking Order 1955	1955/208
The Clothing Marking Order 1956	1956/118
The Dry Cell Batteries Marking Order (No. 2) 1957	1957/205
The Consumer Information (Quantity) Notice 1971	1971/150



The Consumer Information (Quantity) Notice 1973

1973/139

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This Act is administered in the Department of Trade and Industry.