

An Act to amend the Fair Trading Act 1986

1990, No. 42

[29 June 1990

ANALYSIS

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BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—

(1) This Act may be cited as the Fair Trading Amendment Act 1990 and shall be read together with and deemed part of the Fair Trading Act 1986 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of July 1990.

2. Interpretation—

Section 2 (1) of the principal Act is hereby amended by inserting, after the definition of the term “person”, the following definition:

“Place’ includes any premises, building, aircraft, ship, carriage, vehicle, box, or receptacle:”.

3. New sections substituted—

The principal Act is hereby amended by repealing section 47, and substituting the following sections:

“47. Power to search—

(1) The Commission may, from time to time, authorise an employee of the Commission to search under a warrant issued under subsection (2) of this section any place named in the warrant for the purpose of ascertaining whether a person has engaged in or is engaging in conduct that constitutes or may constitute a contravention of this Act.

“(2) A District Court Judge, or Justice, or a Court Registrar (not being a constable) who is satisfied on application made on oath by a person who is authorised under subsection (1) of this section that there are reasonable grounds to believe that it is necessary for the purpose of ascertaining whether or not a person has engaged in or is engaging in conduct that constitutes or may constitute a contravention of this Act for an employee of the Commission to search any place may, by warrant, authorise that employee to search a place specified in the warrant.

“(3) A person who applies for a warrant shall, having made reasonable inquiries, disclose—

“(a) Details of every previous application for a warrant to search the place that the person knows has been made within the preceding 28 days; and

“(b) The result of the application.

“47A. Powers conferred by warrant—

(1) A warrant issued under section 47 of this Act authorises the person named in it—

“(a) To enter and search the place specified in the warrant on one occasion within 30 days of the date of issue of the warrant at a time that is reasonable in the circumstances:

“(b) To use such assistance as is reasonable in the circumstances:

“(c) To use such force for gaining entry and for breaking open any article or thing as is reasonable in the circumstances:

“(d) To search for and remove documents or any article or thing that the person executing the warrant believes on reasonable grounds may be relevant:

“(e) To search for and remove goods that the person executing the warrant believes on reasonable grounds may be relevant:

“(f) Where necessary, to take copies of documents, or extracts from documents, that the person executing the warrant believes on reasonable grounds may be relevant:

“(g) Where necessary, to require a person to reproduce, or assist any person executing the warrant to reproduce, in usable form, information recorded or stored in a document.

“(2) A person assisting the person executing the warrant also has the powers referred to in paragraphs (c), (d), (e), and (f) of subsection (1) of this section.

“(3) The warrant shall be executed in accordance with such reasonable conditions as may be specified in the warrant when it is issued.

“47B. Warrant to be produced—

A person executing a warrant under section 47 of this Act—

“(a) Must have the warrant with him or her; and

“(b) Must produce it on initial entry and, if requested, at any subsequent time; and

“(c) Must identify himself or herself to the owner or occupier or person in charge of the place if that person is present; and

“(d) Must produce evidence of his or her identity.

“47C. Other duties of person who executes a warrant—

(1) A person who executes a warrant issued under section 47 of this Act must, before completing the search, leave in a prominent place at the place searched,—

“(a) In the case of a search carried out at a time when the owner or occupier was not present, a written notice stating—

“(i) The date and time when the warrant was executed; and

“(ii) The name of the person who executed the warrant; and

“(b) In the case of a search where documents or goods were removed from the place being searched, a schedule of documents or goods that were removed during the search.

“(2) If it is not practicable to prepare a schedule before completing the search, or if the owner or occupier of the place being searched consents, the person executing the warrant—

“(a) May, instead of leaving a schedule, leave a notice stating that documents or goods have been removed during the search and that, within 7 days of the search, a schedule will be delivered, left, or sent stating what documents or goods have been removed; and

“(b) Must, within 7 days of the search,—

“(i) Deliver a schedule to the owner or occupier; or

“(ii) Leave a schedule in a prominent position at the place searched; or

“(iii) Send a schedule by mail to the owner or occupier of the place searched.

“(3) Every schedule must state—

“(a) The documents or goods that have been removed; and

“(b) The location from where they were removed; and

“(c) The location where they are being held.

“47D. **Duty to assist**—

The occupier or person in charge of the place that a person authorised pursuant to a warrant issued under section 47 of this Act enters for the purpose of searching must provide that person with all reasonable facilities and assistance in executing the warrant.

“47E. **Power to inspect documents and goods**—

The Commission, or any person authorised in writing by the Commission for the purpose, may—

“(a) Inspect and take copies of any documents or extracts from documents obtained pursuant to a warrant issued under section 47 of this Act; or

“(b) Inspect any goods obtained under any such warrant.

“47F. **Offence**—

Every person who resists, obstructs, or delays any authorised person acting pursuant to a warrant issued under section 47 of this Act commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 in the case of an individual, or \$30,000 in the case of a body corporate.

This Act is administered in the Ministry of Commerce.