

**Reprint  
as at 1 May 2011**



## Fair Trading Act 1986

Public Act    1986 No 121  
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Commencement    see section 1(2)

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**Note**

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

**This Act is administered by the Ministry of Consumer Affairs.**

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representations, and unfair practices**

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**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**

## **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), this Act shall come into force on 1 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

**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 1 or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced

**goods**—

- (a) means personal property of every kind (whether tangible or intangible); and
- (b) includes—
  - (i) ships, aircraft, and vehicles:
  - (ii) animals, including fish:
  - (iii) minerals, trees, and crops, whether on, under, or attached to land or not:

- (iv) gas and electricity:
- (v) to avoid doubt, water and computer software

**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

**official standard** means—

- (a) a New Zealand Standard within the meaning of section 2 of the Standards Act 1988; or
- (b) a standard specification prescribed by a body, organisation, or association having or performing similar functions to those of the Standards Council within the meaning of section 2 of the Standards Act 1988

**person** includes a local authority, and any association of persons whether incorporated or not

**place** includes any premises, building, aircraft, ship, carriage, vehicle, box, or receptacle

**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:
- (iv) to avoid doubt, the supply of electricity, gas, telecommunications, or water, or the removal of waste water:
- (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.

Section 2(1) **Commission**: amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 2(1) **goods**: substituted, on 8 July 2003, by section 3(1) of the Fair Trading Amendment Act (No 2) 2003 (2003 No 34).

Section 2(1) **officer of the Commission**: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 2(1) **official standard**: inserted, on 28 July 1997, by section 2 of the Fair Trading Amendment Act 1997 (1997 No 43).

Section 2(1) **place**: inserted, on 1 July 1990, by section 2 of the Fair Trading Amendment Act 1990 (1990 No 42).

Section 2(1) **services** paragraph (a)(iv): added, on 8 July 2003, by section 3(2) of the Fair Trading Amendment Act (No 2) 2003 (2003 No 34).

### 3 Application of Act to conduct outside New Zealand

- (1) 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.
- (2) *See* section 51 for the application of this Act in relation to an international trade instrument.

Section 3(2): added, on 1 October 2008, by section 5 of the Fair Trading Amendment Act 2008 (2008 No 52).



**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.

Compare: 1975 No 113 s 20B; 1979 No 140 s 12; Trade Practices Act 1974 s 2A (Aust)

**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 5 may be brought against a body corporate referred to in subsection (1).

Compare: 1975 No 113 s 20A; 1979 No 140 s 11

**5A No liability under Act if not liable under Securities Act 1978 or Securities Markets Act 1988**

A court hearing a proceeding brought against a person under this Act must not find that person liable for conduct—

- (a) that is regulated by the Securities Act 1978 if that person would not be liable for that conduct under that Act;
- (b) that is regulated by the Securities Markets Act 1988 if that person would not be liable for that conduct under that Act.

Section 5A: inserted, on 29 February 2008, by section 4 of the Fair Trading Amendment Act 2006 (2006 No 49).

**5B Act does not apply to certain conduct regulated by Takeovers Code**

Nothing in this Act applies to conduct in relation to any transaction or event regulated by the Takeovers Code that is in force under the Takeovers Act 1993 or incidental or preliminary to a transaction or event that is or is likely to be regulated by that code.

Section 5B: inserted, on 29 February 2008, by section 4 of the Fair Trading Amendment Act 2006 (2006 No 49).

**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.

Compare: Trade Practices Act 1974 s 28(1)(a), (d), (e) (Aust)

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

*[Repealed]*

Section 7: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**8 Annual report**

*[Repealed]*

Section 8: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

**Part 1**

**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.

Compare: Trade Practices Act 1974 s 52 (Aust)

**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.

Compare: Trade Practices Act 1974 s 55 (Aust)

**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.

Compare: Trade Practices Act 1974 s 55A (Aust)

**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 mislead or deceive, as to the availability, nature, terms or conditions, or any other matter relating to that employment.

Compare: Trade Practices Act 1974 s 53B (Aust)

*False representations***13 False or misleading 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) make a false or misleading representation 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) make a false or misleading representation 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) make a false or misleading representation that a particular person has agreed to acquire goods or services; or
- (d) make a false or misleading representation that goods are new, or that they are reconditioned, or that they were manufactured, produced, processed, or reconditioned at a particular time; or
- (e) make a false or misleading representation that goods or services have any sponsorship, approval, endorsement, performance characteristics, accessories, uses, or benefits; or
- (f) make a false or misleading representation 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.

Compare: Trade Practices Act 1974 s 53 (Aust)

Section 13 heading: amended, on 15 November 2000, by section 3(b) of the Fair Trading Amendment Act 2000 (2000 No 64).

Section 13(a): amended, on 15 November 2000, by section 3(a) of the Fair Trading Amendment Act 2000 (2000 No 64).

Section 13(b): amended, on 15 November 2000, by section 3(a) of the Fair Trading Amendment Act 2000 (2000 No 64).

Section 13(c): amended, on 15 November 2000, by section 3(a) of the Fair Trading Amendment Act 2000 (2000 No 64).

Section 13(d): amended, on 15 November 2000, by section 3(a) of the Fair Trading Amendment Act 2000 (2000 No 64).

Section 13(e): amended, on 15 November 2000, by section 3(a) of the Fair Trading Amendment Act 2000 (2000 No 64).

Section 13(f): amended, on 15 November 2000, by section 3(a) of the Fair Trading Amendment Act 2000 (2000 No 64).

#### **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) make a false or misleading representation 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.

Compare: Trade Practices Act 1974 s 53A (Aust)

Section 14(1)(a): amended, on 8 July 2003, by section 3 of the Fair Trading Amendment Act 2003 (2003 No 31).

**15 Limited application of sections 9 to 14 to news media**

- (1) Nothing in sections 9 to 14 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 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) **newspaper** has the meaning given to that term by section 2 of the Films, Videos, and Publications Classification Act 1993:

- (ba) **publisher**, in relation to a newspaper, means its proprietor:
- (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 sections 158 and 158A of the Companies Act 1955 or sections 5 and 6 of the Companies Act 1993, as the case may be), or if both of them are subsidiaries (within the meaning of those sections) of one and the same body corporate; and **interconnected body corporate** shall be construed accordingly.

Section 15(3)(b): substituted, on 27 April 1995, by section 4(3) of the Newspapers and Printers Act Repeal Act 1995 (1995 No 13).

Section 15(3)(ba): inserted, on 27 April 1995, by section 4(3) of the Newspapers and Printers Act Repeal Act 1995 (1995 No 13).

Section 15(3)(c): substituted, on 1 July 1994, by section 2 of the Company Law Reform (Transitional Provisions) 1994 (1994 No 16).

## 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 sign so nearly resembling a trade mark as to be likely to mislead or deceive; or
  - (c) falsely use in relation to the provision of services any trade mark or sign 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 sign 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—**sign** includes—
  - (a) a brand, colour, device, heading, label, letter, name, numeral, signature, smell, sound, taste, ticket, or word; and

(b) any combination of signs

**trade mark** means a trade mark within the meaning of the Trade Marks Act 2002; and includes,—

- (a) in the case of goods, any sign used upon or in connection with the goods for the purpose of indicating that they are—
- (i) goods of the proprietor of the sign by virtue of manufacture, selection, certification, dealing with, or offering to supply; or
  - (ii) goods of a member of a body of persons that is the proprietor of the sign; or
  - (iii) goods certified by the proprietor of the sign in respect of origin, material, mode of manufacture, quality, accuracy, or other characteristic; and
- (b) in the case of services, any sign used in connection with the provision of the services for the purpose of indicating that they are—
- (i) services of the proprietor of the sign; or
  - (ii) services of a member of a body of persons that is the proprietor of the sign.

Section 16(1): substituted, on 1 May 1988, by section 33(1) of the Trade Marks Amendment Act 1987 (1987 No 156).

Section 16(1)(b): amended, on 1 January 1995, by section 2 of the Fair Trading Amendment Act 1994 (1994 No 124).

Section 16(1)(c): amended, on 1 January 1995, by section 2 of the Fair Trading Amendment Act 1994 (1994 No 124).

Section 16(2)(a): amended, on 1 January 1995, by section 2 of the Fair Trading Amendment Act 1994 (1994 No 124).

Section 16(3) **certification trade mark**: repealed, on 1 April 2000, by section 8(1) of the Trade Marks Amendment Act 1999 (1999 No 121).

Section 16(3) **sign**: inserted, on 1 April 2000, by section 8(1) of the Trade Marks Amendment Act 1999 (1999 No 121).

Section 16(3) **trade mark**: substituted, on 1 April 2000, by section 8(1) of the Trade Marks Amendment Act 1999 (1999 No 121).

Section 16(3) **trade mark**: amended, on 20 August 2003, by section 201 of the Trade Marks Act 2002 (2002 No 49).

### *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.

Compare: Trade Practices Act 1974 ss 53A(1)(c), 54 (Aust)

## 18 Trading stamp schemes prohibited

*[Repealed]*

Section 18: repealed, on 8 July 2003, by section 4 of the Fair Trading Amendment Act 2003 (2003 No 31).

## 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), 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.

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

## **20 Referral selling**

- (1) Subject to subsection (2), 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) applies to the acquisition of goods for resupply.

Compare: Trade Practices Act 1974 s 57 (Aust)

## **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.

Compare: Trade Practices Act 1974 s 58 (Aust)

## **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.

Compare: 1975 No 113 s 48B; 1979 No 40 s 23; Trade Practices Act 1974 s 59 (Aust)

## **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.

Compare: Trade Practices Act 1974 s 60 (Aust)

## **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 buy or sell

- an investment opportunity, whether personally or through an agent, rather than an opportunity to buy or 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.

Compare: 1975 No 113 s 48A; 1979 No 140 s 22(1)

Section 24(2)(a)(ii): substituted, on 8 July 2003, by section 5 of the Fair Trading Amendment Act 2003 (2003 No 31).

## **25 Provisions of this Part not limited by reference to other provisions of this Part**

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

**26 Importation of goods bearing false trade description**

- (1) This section applies to any goods to which a false trade description is applied.
- (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 54 of the Customs and Excise Act 1996 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).
- (4) For the purposes of subsection (1), a false trade description shall be deemed to be applied to goods if—
  - (a) it is woven in, impressed on, worked into, or annexed or affixed to the goods; or
  - (b) it is applied to a covering, label, reel, or thing in or with which the goods are supplied.
- (5) For the purposes of this section, a trade mark is not a representation.

Section 26: substituted, on 1 January 1995, by section 3(1) of the Fair Trading Amendment Act 1994 (1994 No 124).

Section 26(2): amended, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

**Part 2**  
**Consumer information**

Part 2: substituted, on 28 July 1997, by section 3 of the Fair Trading Amendment Act 1997 (1997 No 43).

**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 or 2 or more consumer information standards 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 must 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 Governor-General may, from time to time, on the recommendation of the Minister, by Order in Council, make regulations declaring that:
  - (a) an official standard or an official standard with such additions or variations as are specified in the regulations is a consumer information standard:
  - (b) a specified part or parts of an official standard or of an official standard with such additions or variations as are specified in the regulations is a consumer information standard:
  - (c) 2 or more official standards or 2 or more official standards with such additions or variations as are specified in the regulations are consumer information standards:
  - (d) specified parts of 2 or more official standards or of 2 or more official standards with such additions or variations as are specified in the regulations are consumer information standards.
- (3) The Minister must not make a recommendation under 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 to the Minister; and
  - (b) the Minister has considered any such comments.
- (4) A failure to comply with subsection (3) does not affect the validity of any Order in Council made under this section.
- (5) 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.

Section 27: substituted, on 28 July 1997, by section 3 of the Fair Trading Amendment Act 1997 (1997 No 43).

## **28 Compliance with consumer information standards**

- (1) If a consumer information standard in respect of goods or services relates to a matter specified in section 27(1), a person must not supply, or offer to supply, or advertise to supply those goods or services unless that person complies with that consumer information standard.
- (2) If 2 or more consumer information standards in respect of goods or services relate to a matter specified in section 27(1), a person must not supply, or offer to supply, or advertise to supply those goods or services unless that person complies with one of those consumer information standards.
- (3) Nothing in subsection (1) or subsection (2) applies to 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 regulations made under this section, that the goods are intended to be used outside New Zealand,—and it must be presumed for the purposes of this section, unless the contrary is established, that the goods so identified are intended to be so used.
- (4) For the purposes of subsection (3), a statement is deemed to be applied to goods if the statement is—
  - (a) woven in, impressed on, worked into, or annexed or affixed to the goods; or
  - (b) applied to a covering, label, reel, or thing in or with which the goods are supplied.

Section 28: substituted, on 28 July 1997, by section 3 of the Fair Trading Amendment Act 1997 (1997 No 43).

### **Part 3**

#### **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 or 2 or more product safety standards 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 Governor-General may, from time to time, on the recommendation of the Minister, by Order in Council, make regulations declaring that:
  - (a) an official standard or an official standard with such additions or variations as are specified in the regulations is a product safety standard:
  - (b) a specified part or parts of an official standard or of an official standard with such additions or variations as are specified in the regulations is a product safety standard:
  - (c) 2 or more official standards or 2 or more official standards with such additions or variations as are specified in the regulations are product safety standards:
  - (d) specified parts of 2 or more official standards or of 2 or more official standards with such additions or variations as are specified in the regulations are product safety standards.
- (3) The Minister must not make a recommendation under 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 per-



sons have had the opportunity to comment to the Minister; and

- (b) the Minister has considered any such comments.
- (4) A failure to comply with subsection (3) does not affect the validity of any Order in Council made under this section.

Section 29: substituted, on 28 July 1997, by section 4 of the Fair Trading Amendment Act 1997 (1997 No 43).

### **30 Compliance with product safety standards**

- (1) If a product safety standard in respect of goods relates to a matter specified in section 29(1), a person must not supply, or offer to supply, or advertise to supply those goods unless that person complies with that product safety standard.
- (2) If 2 or more product safety standards in respect of goods relate to a matter specified in section 29(1), a person must not supply, or offer to supply, or advertise to supply those goods unless that person complies with one of those product safety standards.
- (3) Nothing in subsection (1) or subsection (2) applies to 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 regulations made under this section, that the goods are intended to be used outside New Zealand,—and it must be presumed for the purposes of this section, unless the contrary is established, that the goods so identified are intended to be so used.
- (4) For the purposes of subsection (3), a statement is deemed to be applied to goods if the statement is—
  - (a) woven in, impressed on, worked into, or annexed or affixed to the goods; or
  - (b) applied to a covering, label, reel, or thing in or with which the goods are supplied.

Section 30: substituted, on 28 July 1997, by section 4 of the Fair Trading Amendment Act 1997 (1997 No 43).

**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) 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) declaring goods to be unsafe goods; and
  - (b) a product safety standard has not been prescribed pursuant to section 29 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) 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).

Compare: Trade Practices Act 1974 s 62(1)(b), (2D), (2E) (Aust)

**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).

- (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), 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).
- (3) For the purposes of subsections (1) and (2), 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) 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) 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 are hereby prohibited to be imported into New Zealand and shall be deemed to be included among goods pro-

hibited to be imported under section 54 of the Customs and Excise Act 1996 and the provisions of that Act shall apply to such goods accordingly.

Section 33: amended, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

## Part 4

### Safety of services

#### 34 Meaning of services

For the purposes of this Part **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.

Compare: Trade Practices Act 1974 s 74(3) (Aust)

#### 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 or 2 or more services safety standards relating to the performance of those services.
- (2) The Governor-General may, from time to time, on the recommendation of the Minister, by Order in Council, make regulations declaring that:
  - (a) an official standard or an official standard with such additions or variations as are specified in the regulations is a services safety standard:
  - (b) a specified part or parts of an official standard or of an official standard with such additions or variations as are specified in the regulations is a services safety standard:
  - (c) 2 or more official standards or 2 or more official standards with such additions or variations as are specified in the regulations are services safety standards:

- (d) specified parts of 2 or more official standards or of 2 or more official standards with such additions or variations as are specified in the regulations are services safety standards.
- (3) The Minister must not make a recommendation under 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 to the Minister; and
  - (b) the Minister has considered any such comments.
- (4) A failure to comply with subsection (3) does not affect the validity of any Order in Council made under this section.

Section 35: substituted, on 28 July 1997, by section 5 of the Fair Trading Amendment Act 1997 (1997 No 43).

### **36 Compliance with services safety standards**

- (1) If a services safety standard in respect of services is prescribed under section 35(1), a person must not supply, or offer to supply, or advertise to supply those services unless that person complies with that services safety standard.
- (2) If 2 or more services safety standards in respect of services are prescribed under section 35(1), a person must not supply, or offer to supply, or advertise to supply those services unless that person complies with one of those services safety standards.

Section 36: substituted, on 28 July 1997, by section 5 of the Fair Trading Amendment Act 1997 (1997 No 43).

## **Part 5 Enforcement and remedies**

### *Jurisdiction of courts*

#### **37 Jurisdiction of High Court**

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

- (a) appeals from criminal proceedings in a District Court for offences against sections 40 and 47J:

- (ab) appeals from proceedings in a District Court for orders under section 40A:
- (b) applications for injunctions under section 41:
- (c) applications for orders under sections 42 and 43.

Section 37(a): amended, on 8 July 2003, by section 6(1) of the Fair Trading Amendment Act 2003 (2003 No 31).

Section 37(ab): inserted, on 8 July 2003, by section 6(2) of the Fair Trading Amendment Act 2003 (2003 No 31).

### **38 Jurisdiction of District Courts**

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

- (a) proceedings for offences against sections 40 and 47J:
- (b) applications for orders under sections 40A, 42, and 43.

Section 38(a): amended, on 8 July 2003, by section 7(a) of the Fair Trading Amendment Act 2003 (2003 No 31).

Section 38(b): amended, on 8 July 2003, by section 7(b) of the Fair Trading Amendment Act 2003 (2003 No 31).

### **39 Jurisdiction of Disputes Tribunals**

In accordance with this Part, a Disputes Tribunal established under section 4 of the Disputes Tribunals Act 1988 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).

Section 39: substituted, on 1 March 1989, by section 82(2) of the Disputes Tribunals Act 1988 (1988 No 110).

## *Offences*

### **40 Contraventions of provisions of Part 1, Part 2, Part 3, and Part 4 an offence**

- (1) Every person who contravenes any of the provisions of Part 1 (except sections 9, 14(2), 23, and 24), or Part 2, or Part 3 or Part 4, commits an offence and is liable on summary conviction—
  - (a) in the case of a person other than a body corporate, to a fine not exceeding \$60,000; and
  - (b) in the case of a body corporate, to a fine not exceeding \$200,000.

- (1A) Every person who contravenes section 24 commits an offence and is liable on summary conviction to a fine not exceeding \$200,000.
- (2) Where a person is convicted, whether in the same or separate proceedings, of 2 or more offences 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) Despite section 14 of the Summary Proceedings Act 1957, proceedings under this section may be commenced at any time within 3 years after the matter giving rise to the contravention was discovered or ought reasonably to have been discovered.

Compare: Trade Practices Act 1974 s 79(3) (Aust)

Section 40(1): amended, on 8 July 2003, by section 8(1)(a) of the Fair Trading Amendment Act 2003 (2003 No 31).

Section 40(1)(a): amended, on 8 July 2003, by section 8(1)(b) of the Fair Trading Amendment Act 2003 (2003 No 31).

Section 40(1)(b): amended, on 8 July 2003, by section 8(1)(c) of the Fair Trading Amendment Act 2003 (2003 No 31).

Section 40(1A): inserted, on 8 July 2003, by section 8(2) of the Fair Trading Amendment Act 2003 (2003 No 31).

Section 40(3): substituted, on 8 July 2003, by section 8(3) of the Fair Trading Amendment Act 2003 (2003 No 31).

#### **40A Additional penalty for contravention of section 24 involving commercial gain**

- (1) If a person is convicted of an offence under section 40(1A), the court may, on the application of the Commission, in addition to any penalty that the court may impose under that subsection, order that person to pay an amount not exceeding the value of any commercial gain resulting from the contravention if the court is satisfied that the contravention occurred in the course of producing a commercial gain.
- (2) The value of any gain must be assessed by the court, and any amount ordered to be paid is recoverable in the same manner as a fine.

- (3) The standard of proof in proceedings under this section is the standard of proof that applies in civil proceedings.
- (4) In this section, **court** includes a District Court.

Section 40A: inserted, on 8 July 2003, by section 9 of the Fair Trading Amendment Act 2003 (2003 No 31).

### *Civil proceedings*

#### **41 Injunctions may be granted by court for contravention of Part 1, Part 2, Part 3, and Part 4**

- (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 1 to 4:
  - (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.
- (5) If the Commission applies to the court for the grant of an interim injunction, the court must not, as a condition of granting an interim injunction, require the Commission to give an undertaking as to damages.
- (6) However, in determining the Commission's application for the grant of an interim injunction, the court must not take into account that the Commission is not required to give an undertaking as to damages.

Compare: 1986 No 5 s 88A; Trade Practices Act 1974 s 80(1)–(5) (Aust)

Section 41(5): added, on 8 July 2003, by section 10 of the Fair Trading Amendment Act 2003 (2003 No 31).

Section 41(6): added, on 8 July 2003, by section 10 of the Fair Trading Amendment Act 2003 (2003 No 31).

Section 41 compare note: amended, on 8 July 2003, by section 10 of the Fair Trading Amendment Act 2003 (2003 No 31).

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

- (1) 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 1 to 4, 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.
- (2) The court may hear and determine an application under subsection (1) in conjunction with any other proceedings under any of sections 40, 40A, 41, or 43.

- (3) In this section, **court** includes a District Court.

Compare: Trade Practices Act 1974 s 80A(1) (Aust)

Section 42(2): added, on 8 July 2003, by section 11 of the Fair Trading Amendment Act 2003 (2003 No 31).

Section 42(3): added, on 8 July 2003, by section 11 of the Fair Trading Amendment Act 2003 (2003 No 31).

### **43 Other orders**

- (1) Where, in any proceedings under this Part, 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 1 to 4; 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) make all or any of the orders referred to in subsection (2).

- (2) For the purposes of subsection (1), 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) 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) 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) 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 to in subsection (1) 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) 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) in any case where the value of the consideration for the promise or act of any party to the contract or collateral arrangement exceeds \$200,000:
  - (b) make an order under subsection (2)(b) in any case where the value of the consideration for the promise or act of any party to the contract or arrangement exceeds \$200,000:
  - (c) make an order under subsection (2)(c) directing a person to refund money or return property where the amount of money or the value of the property exceeds \$200,000:
  - (d) make an order under subsection (2)(d) requiring a person to pay an amount exceeding \$200,000:
  - (e) make an order under subsection (2)(e) 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 \$200,000:
  - (f) make an order under subsection (2)(f) directing a person to supply services where the value of the services exceeds \$200,000.
- (4) Subject to subsection (4A), in the exercise of its jurisdiction under this section a Disputes Tribunal shall not—
- (a) make an order under subsection (2)(c) directing a person to refund money or return property where the amount of money or the value of the property exceeds \$15,000:
  - (b) make an order under subsection (2)(d) requiring a person to pay an amount exceeding \$15,000:
  - (c) make an order under subsection (2)(e) 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 \$15,000:
  - (d) make an order under subsection (2)(f) directing a person to supply services where the value of the services exceeds \$15,000.
- (4A) Where, in respect of any proceedings properly before a Disputes Tribunal, the jurisdiction of the Tribunal has been extended under an agreement made pursuant to section 13 of the Disputes Tribunals Act 1988, subsection (4) of this sec-

tion shall be read as if every reference in that subsection to \$15,000 were a reference to \$20,000.

- (5) An application under subsection (1) may be made at any time within 3 years after the date on which the loss or damage, or the likelihood of loss or damage, was discovered or ought reasonably to have been discovered.
- (6) An order made under subsection (2)(a) or (b) shall not prevent proceedings being instituted or commenced under this Part.
- (7) Nothing in this section limits or affects the Illegal Contracts Act 1970.
- (8) For the purposes of subsection (1), a reference to **court** includes a reference to a District Court and a Disputes Tribunal.
- (9) Nothing in this section affects section 317 of the Accident Compensation Act 2001.

Compare: Trade Practices Act 1974 s 87(1), (1A), (2) (Aust)

Section 43(3)(a): amended, on 1 July 1992, by section 19(1) of the District Courts Amendment Act 1991 (1991 No 61).

Section 43(3)(b): amended, on 1 July 1992, by section 19(1) of the District Courts Amendment Act 1991 (1991 No 61).

Section 43(3)(c): amended, on 1 July 1992, by section 19(1) of the District Courts Amendment Act 1991 (1991 No 61).

Section 43(3)(d): amended, on 1 July 1992, by section 19(1) of the District Courts Amendment Act 1991 (1991 No 61).

Section 43(3)(e): amended, on 1 July 1992, by section 19(1) of the District Courts Amendment Act 1991 (1991 No 61).

Section 43(3)(f): amended, on 1 July 1992, by section 19(1) of the District Courts Amendment Act 1991 (1991 No 61).

Section 43(4): substituted, on 1 March 1989, by section 82(2) of the Disputes Tribunals Act 1988 (1988 No 110).

Section 43(4)(a): amended, on 1 August 2009, by section 8 of the Disputes Tribunals Amendment Act 2009 (2009 No 22).

Section 43(4)(b): amended, on 1 August 2009, by section 8 of the Disputes Tribunals Amendment Act 2009 (2009 No 22).

Section 43(4)(c): amended, on 1 August 2009, by section 8 of the Disputes Tribunals Amendment Act 2009 (2009 No 22).

Section 43(4)(d): amended, on 1 August 2009, by section 8 of the Disputes Tribunals Amendment Act 2009 (2009 No 22).

Section 43(4A): inserted, on 1 March 1989, by section 82(2) of the Disputes Tribunals Act 1988 (1988 No 110).

Section 43(4A): amended, on 1 August 2009, by section 8 of the Disputes Tribunals Amendment Act 2009 (2009 No 22).

Section 43(5): substituted, on 3 May 2001, by section 3 of the Fair Trading Amendment Act 2001 (2001 No 20).

Section 43(8): amended, on 1 March 1989, by section 82(2) of the Disputes Tribunals Act 1988 (1988 No 110).

Section 43(9): amended, on 3 March 2010, pursuant to section 5(1)(b) of the Accident Compensation Amendment Act 2010 (2010 No 1).

Section 43(9): amended, on 1 April 2002, by section 337(1) of the Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49).

#### 44 Defences

- (1) Subject to this section, it is a defence to a prosecution for an offence against section 40 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), 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) that the contravention was due to reasonable reliance on information supplied by another person, or by subsection (1)(c)(i) 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, or to any other proceedings under this Part, 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), it is a defence to a prosecution for an offence against section 40, or to any other proceedings under this Part, in relation to a contravention of section 28, 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) 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.

Compare: Trade Practices Act 1974 s 85(1)–(5) (Aust)

Section 44(5): amended, on 8 July 2003, by section 12 of the Fair Trading Amendment Act 2003 (2003 No 31).

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

- (1) Where, in proceedings under this Part in respect of any conduct engaged in by a body corporate, being conduct in relation to which any of 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 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.

Compare: Trade Practices Act 1974 s 84 (Aust)

**46 Finding in proceedings to be evidence**

In any application for an order against a person under section 43, a finding of any fact made in proceedings for an injunction under section 41 or for an order under section 40A or section 42, or for an offence under section 40, 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) 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.

Compare: Trade Practices Act 1974 s 83 (Aust)

Section 46: amended, on 8 July 2003, by section 13 of the Fair Trading Amendment Act 2003 (2003 No 31).

## **Part 6**

### **Miscellaneous provisions**

**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), any place named in the warrant for any of the purposes set out in that subsection.
- (2) A District Court Judge, Justice, Community Magistrate, or court Registrar (not being a constable) may, by warrant, authorise a person who is authorised under subsection (1) to search a place specified in the warrant if he or she is satisfied on application made on oath by that employee that there are reasonable grounds to believe that a search is necessary for the purpose of—
- (a) investigating—

- (i) whether a person has engaged in, or is engaging in, conduct that constitutes, or may constitute, a contravention of this Act; or
    - (ii) the nature or extent of any conduct that constitutes, or may constitute, a contravention of this Act; or
  - (b) gathering, obtaining, or recovering evidence of—
    - (i) conduct that constitutes, or may constitute, a contravention of this Act; or
    - (ii) the nature or extent of any conduct that constitutes, or may constitute, a contravention of this Act.
- (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.

Section 47: substituted, on 1 July 1990, by section 3 of the Fair Trading Amendment Act 1990 (1990 No 42).

Section 47(1): substituted, on 8 July 2003, by section 14 of the Fair Trading Amendment Act 2003 (2003 No 31).

Section 47(2): substituted, on 8 July 2003, by section 14 of the Fair Trading Amendment Act 2003 (2003 No 31).

#### **47A Powers conferred by warrant**

- (1) A warrant issued under section 47 authorises the person named in it—
- (a) to enter and search the place specified in the warrant on 1 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).
- (3) The warrant shall be executed in accordance with such reasonable conditions as may be specified in the warrant when it is issued.

Section 47A: inserted, on 1 July 1990, by section 3 of the Fair Trading Amendment Act 1990 (1990 No 42).

#### **47B Warrant to be produced**

A person executing a warrant under section 47—

- (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.

Section 47B: inserted, on 1 July 1990, by section 3 of the Fair Trading Amendment Act 1990 (1990 No 42).

#### **47C Other duties of person who executes a warrant**

- (1) A person who executes a warrant issued under section 47 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.

Section 47C: inserted, on 1 July 1990, by section 3 of the Fair Trading Amendment Act 1990 (1990 No 42).

#### **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 enters for the purpose of searching must provide that person with all reasonable facilities and assistance in executing the warrant.

Section 47D: inserted, on 1 July 1990, by section 3 of the Fair Trading Amendment Act 1990 (1990 No 42).

**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; or
- (b) inspect any goods obtained under any such warrant.

Section 47E: inserted, on 1 July 1990, by section 3 of the Fair Trading Amendment Act 1990 (1990 No 42).

**47F Offence**

Every person who resists, obstructs, or delays any authorised person acting pursuant to a warrant issued under section 47 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.

Section 47F: inserted, on 1 July 1990, by section 3 of the Fair Trading Amendment Act 1990 (1990 No 42).

**47G Commission may require person to supply information or documents**

- (1) If the Commission considers it necessary or desirable for the purposes of carrying out its functions and exercising its powers under this Act, the Commission may, by notice in writing served on any person, require that person—
  - (a) to supply to the Commission, by writing signed by that person or, in the case of a body corporate, by a director or competent employee or agent of the body corporate, within the time and in the manner specified in the notice, any information or class of information specified in the notice; or
  - (b) to supply to the Commission, or to a person specified in the notice acting on its behalf in accordance with the notice, any document or class of documents specified in the notice.
- (2) Every person who is required to supply information or documents to the Commission has the same privileges in relation to

the supply of the information or documents as witnesses have in any court.

Compare: 1986 No 5 s 98; 1994 No 143 s 138(2)

Section 47G: inserted, on 8 July 2003, by section 15 of the Fair Trading Amendment Act 2003 (2003 No 31).

#### **47H Notices**

- (1) Any notice given by the Commission under section 47G is sufficiently given if—
  - (a) it is in writing; and
  - (b) it is—
    - (i) under the seal of the Commission; or
    - (ii) signed by the Chairman of the Commission; or
    - (iii) signed by 1 or more of the members of the Commission; or
    - (iv) signed by any person purporting to act by direction of the Commission; and
  - (c) it is served in accordance with section 47I on the person or persons primarily concerned or on any person or organisation considered by the Commission to represent the person or persons primarily concerned.
- (2) In all courts and in all proceedings under this Act, notices given under section 47G that purport to be signed by, or on behalf of, the Commission or to be sealed with the seal of the Commission must be treated as having been signed or sealed with due authority in accordance with subsection (1)(b) unless the contrary is proved.

Compare: 1986 No 5 s 101

Section 47H: inserted, on 8 July 2003, by section 15 of the Fair Trading Amendment Act 2003 (2003 No 31).

#### **47I Service of notices**

- (1) Any notice that is authorised to be served on, or given to, any person for the purposes of section 47G may be served or given by—
  - (a) delivering it to that person; or
  - (b) leaving it at—
    - (i) his or her usual or last known place of residence or business; or

- (ii) at the address specified by him or her in any notice, application, or other document made, given, or tendered to the Commission under this Act; or
  - (c) posting it by letter addressed to him or her at that place of residence or business or at that address.
- (2) If any notice is sent to any person by registered letter, then,—
  - (a) unless the contrary is proved, the notice must be treated as having been delivered to him or her when it would have been delivered in the ordinary course of post; and
  - (b) in proving the delivery, it is sufficient to prove that the letter was properly addressed and posted.
- (3) If the notice is required to be served on an association or body of persons,—
  - (a) the notice may be served on the secretary, executive officer, manager, or other officer holding a similar position in the association or body; and
  - (b) service on the association or body must, unless otherwise directed by the Commission, be treated as service on all persons who are members of the association or body, or who are represented on the association or body by those members.

Compare: 1986 No 5 s 102

Section 47I: inserted, on 8 July 2003, by section 15 of the Fair Trading Amendment Act 2003 (2003 No 31).

#### **47J Offence to contravene section 47G**

- (1) No person may,—
  - (a) without reasonable excuse, refuse or fail to comply with a notice under section 47G; or
  - (b) in purported compliance with the notice, supply information, or supply a document, knowing it to be false or misleading.
- (2) Every person who contravenes subsection (1) 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.
- (3) Proceedings for an offence against subsection (2) may be commenced within 6 months after the matter giving rise to

the contravention was discovered or ought reasonably to have been discovered.

Compare: 1986 No 5 s 103

Section 47J: inserted, on 8 July 2003, by section 15 of the Fair Trading Amendment Act 2003 (2003 No 31).

#### **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, lie against any member of the Commission, or any officer or employee of the Commission, or any member of a committee 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, unless it is shown that the person acted in bad faith.
- (3) Nothing in subsections (1) and (2) applies in respect of proceedings for—
  - (a) an offence against section 78 or section 78A or section 105 or section 105A of the Crimes Act 1961; or
  - (b) the offence of conspiring to commit an offence against section 78 or section 78A or section 105 or section 105A 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 105A of the Crimes Act 1961.
- (4) Section 59(3) of the Crown Entities Act 2004 (which provides that a statutory entity may bring an action against a member for breach of an individual duty) does not apply, unless it is shown by the Commission that the person acted in bad faith.
- (5) Sections 122 to 126 of the Crown Entities Act 2004 apply as if the conduct for which a person may be indemnified or insured under those sections were conduct that is covered by the protection from liability in this section.
- (6) This section contains an exception to section 121 of the Crown Entities Act 2004.



Section 48(2): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 48(4): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 48(5): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 48(6): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

#### **48A Sharing of information and documents with Financial Markets Authority or Takeovers Panel**

- (1) The Commission may provide to the Financial Markets Authority or the Takeovers Panel any information, or a copy of any document, that the Commission—
  - (a) holds in relation to the exercise of the Commission's powers, or the performance of its functions and duties, in respect of this Act; and
  - (b) considers may assist the Financial Markets Authority or the Takeovers Panel in the exercise of its powers, or the performance of its functions and duties, under the Financial Markets Authority Act 2011, any enactment listed in Schedule 1 of that Act, the Takeovers Act 1993, or the Takeovers Code in force under that Act.
- (2) The Commission may use any information, or a copy of any document, provided to it by the Financial Markets Authority under section 30 of the Financial Markets Authority Act 2011 or by the Takeovers Panel under section 15B of the Takeovers Act 1993 in the Commission's exercise of its powers, or the performance of its functions and duties, in respect of this Act.
- (3) This section applies despite anything to the contrary in any contract, deed, or document.
- (4) Nothing in this section limits the Privacy Act 1993.

Section 48A: substituted, on 1 May 2011, by section 82 of the Financial Markets Authority Act 2011 (2011 No 5).

#### **49 Repeals and consequential amendments**

- (1) The enactment specified in Schedule 1 is hereby amended in the manner indicated in that schedule.
- (2) The enactments specified in Part A of Schedule 2 are hereby repealed with effect from the commencement of this Act.

- (3) The enactments specified in Part B of Schedule 2 are hereby repealed with effect from 1 May 1987.
- (4) The orders and notices specified in Schedule 3 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.

Compare: 1978 No 103 s 65; Trade Practices Act 1974 s 75 (Aust)

#### **51 Application of Act to goods that are, or may be, exported to China**

- (1) This Act applies to conduct or representations relating to goods that are, or may be, exported from New Zealand pursuant to the Conformity Cooperation Agreement in the same way as this Act applies to goods supplied within New Zealand as follows:
  - (a) section 10 applies to conduct relating to goods that are, or may be, exported from New Zealand for supply to China:
  - (b) section 13 applies to representations relating to goods that are, or may be, exported from New Zealand for supply to China:
  - (c) a contravention of section 10 or 13 is an offence under section 40 and may authorise a warrant being issued in New Zealand under section 47(2) to search a place in New Zealand if the contravention relates to goods that are, or may be, exported from New Zealand for supply to China.
- (2) In this section, **Conformity Cooperation Agreement** means the Agreement between the Government of New Zealand and the Government of the People's Republic of China on Cooperation in the Field of Conformity Assessment in Relation to Electrical and Electronic Equipment and Components, which is Annex 14 of the Free Trade Agreement between the Gov-

ernment of New Zealand and the Government of the People's  
Republic of China done at Beijing on 7 April 2008.

Section 51: added, on 1 October 2008, by section 6 of the Fair Trading Amend-  
ment Act 2008 (2008 No 52).

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**Schedule 1**  
**Enactment amended**

s 49(1)

*[Repealed]*

Schedule 1: repealed, on 1 April 1993, by section 62(1) of the Health and Safety in Employment Act 1992 (1992 No 96).

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**Schedule 2**  
**Enactments repealed**

s 49(2), (3)

Part A

**Commerce Act 1986 (1986 No 5)**

*Amendment(s) incorporated in the Act(s).*

**Consumer Information Act 1969 (1969 No 12)**

**Employment Agents Act 1908 (1908 No 174) (RS Vol 17, p 201)**

**Employment Agents Amendment Act 1960 (1960 No 24) (RS  
Vol 17, p 209)**

**Employment Agents Amendment Act 1967 (1967 No 30) (RS  
Vol 17, p 210)**

**Employment Agents Amendment Act 1975 (1975 No 74) (RS  
Vol 17, p 211)**

**Fertilisers Act 1982 (1982 No 134)**

*Amendment(s) incorporated in the Act(s).*

**Labour Department Act 1954 (1954 No 71)**

*Amendment(s) incorporated in the Act(s).*

**Medicines Act 1981 (1981 No 118)**

*Amendment(s) incorporated in the Act(s).*

**Merchandise Marks Act 1954 (1954 No 43) (RS Vol 10, p 113)**

**Unsolicited Goods and Services Act 1975 (1975 No 46)**

*Amendment(s) incorporated in the Act(s).*

**Part B**

**Safety of Children's Night Clothes Act 1977 (1977 No 87)**

**Wool Labelling Act 1949 (1949 No 41) (RS Vol 11, p 903)**

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**Schedule 3**

s 49(4)

**Orders and notices revoked**

**Clothing Marking Order 1956 (SR 1956/118)**

**Consumer Information (Quantity) Notice 1971 (SR 1971/150)**

**Consumer Information (Quantity) Notice 1973 (SR 1973/139)**

**Dry Cell Batteries Marking Order (No 2) 1957 (SR 1957/205)**

**Footwear Marking Order 1955 (SR 1955/208)**

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## Fair Trading Amendment Act 1997

Public Act 1997 No 43  
Date of assent 28 July 1997  
Commencement 28 July 1997

### 1 Short Title

This Act may be cited as the Fair Trading Amendment Act 1997, and is part of the Fair Trading Act 1986 (“the principal Act”).

### 6 Transitional provisions relating to regulations in force before commencement of this Act

- (1) Regulations made under section 27 or section 28 of the principal Act (as in force before the commencement of this Act) and that were in force immediately before the commencement of this Act are deemed to have been made under section 27 of the principal Act (as substituted by this Act).
  - (2) Regulations made under section 29 or section 30 or under both sections 29 and 30 of the principal Act (as in force before the commencement of this Act) and that were in force immediately before the commencement of this Act are deemed to have been made under section 29 of the principal Act (as substituted by this Act).
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## **Contents**

- 1 General
  - 2 Status of reprints
  - 3 How reprints are prepared
  - 4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
  - 5 List of amendments incorporated in this reprint (most recent first)
- 

## **Notes**

### **1 *General***

This is a reprint of the Fair Trading Act 1986. The reprint incorporates all the amendments to the Act as at 1 May 2011, as specified in the list of amendments at the end of these notes. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, *see* <http://www.pco.parliament.govt.nz/reprints/>.

### **2 *Status of reprints***

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

### **3 *How reprints are prepared***

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked are omitted.

For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

#### **4 Changes made under section 17C of the Acts and Regulations Publication Act 1989**

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
  - indentation
  - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
  - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
  - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5 *List of amendments incorporated in this reprint  
(most recent first)***

Financial Markets Authority Act 2011 (2011 No 5): section 82

Accident Compensation Amendment Act 2010 (2010 No 1): section 5(1)(b)

Disputes Tribunals Amendment Act 2009 (2009 No 22): section 8

Fair Trading Amendment Act 2008 (2008 No 52)

Fair Trading Amendment Act 2006 (2006 No 49)

Crown Entities Act 2004 (2004 No 115): section 200

Fair Trading Amendment Act (No 2) 2003 (2003 No 34)

Fair Trading Amendment Act 2003 (2003 No 31)

Trade Marks Act 2002 (2002 No 49): section 201

Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49):  
section 337(1)

Fair Trading Amendment Act 2001 (2001 No 20)

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Fair Trading Amendment Act 2000 (2000 No 64)  
Trade Marks Amendment Act 1999 (1999 No 121): section 8(1)  
Fair Trading Amendment Act 1997 (1997 No 43)  
Customs and Excise Act 1996 (1996 No 27): section 289(1)  
Newspapers and Printers Act Repeal Act 1995 (1995 No 13): section 4(3)  
Fair Trading Amendment Act 1994 (1994 No 124)  
Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16):  
section 2  
Health and Safety in Employment Act 1992 (1992 No 96): section 62(1)  
District Courts Amendment Act 1991 (1991 No 61): section 19(1)  
Fair Trading Amendment Act 1990 (1990 No 42)  
Disputes Tribunals Act 1988 (1988 No 110): section 82(2)  
Trade Marks Amendment Act 1987 (1987 No 156): section 33(1)

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