

**Reprint
as at 1 April 2014**



Fair Trading Act 1986

Public Act 1986 No 121
Date of assent 17 December 1986
Commencement see section 1(2)

Contents

	Page
Title <i>[Repealed]</i>	5
1 Short Title and commencement	5
1A Purpose	5
2 Interpretation	6
3 Application of Act to conduct outside New Zealand	11
4 Application of Act to the Crown	11
5 Application of Act to Crown corporations	12
5A No liability under Act if not liable under Securities Act 1978 or Securities Markets Act 1988 <i>[Repealed]</i>	12
5B Act does not apply to certain conduct regulated by Takeovers Code	12
6 Functions of Commission in relation to dissemination of information	12
7 Money to be appropriated by Parliament for purposes of this Act <i>[Repealed]</i>	13
8 Annual report <i>[Repealed]</i>	13

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Consumer Affairs.

Part 1
Unfair conduct

Misleading and deceptive conduct

9	Misleading and deceptive conduct generally	13
10	Misleading conduct in relation to goods	13
11	Misleading conduct in relation to services	14
12	Misleading conduct in relation to employment	14

False representations

13	False or misleading representations	14
14	False representations and other misleading conduct in relation to land	15
14A	When vendor bids are misrepresentations	16
15	Limited application of sections 9 to 14 to news media	17
16	Certain conduct in relation to trade marks prohibited	18

Unfair practices

17	Offering gifts and prizes	20
18	Trading stamp schemes prohibited [<i>Repealed</i>]	20
19	Bait advertising	20
20	Referral selling	21
21	Demanding or accepting payment without intending to supply as ordered	21
22	Misleading representations about certain business activities	22
23	Harassment and coercion	22
24	Pyramid selling schemes	22
25	Provisions of this Part not limited by reference to other provisions of this Part	23
26	Importation of goods bearing false trade description	24

Part 2
Consumer information

27	Consumer information standards	24
28	Compliance with consumer information standards	26
28A	Regulations relating to disclosure by fund-raisers making requests for charitable purposes	27

Part 3
Product safety

29	Product safety standards	29
30	Compliance with product safety standards	30
30A	Product safety policy statements	31
30B	Review of product safety policy statements	32

31	Unsafe goods	32
31A	Voluntary product recall	34
32	Compulsory product recall	36
33	Importation of certain goods prohibited	37
	<i>Product safety officers</i>	
33A	Appointment of product safety officers	38
33B	Certificates of appointment	38
33C	Powers of product safety officers	39
33D	Suspension of supply notices	40
	Part 4	
	Safety of services	
34	Meaning of services	42
35	Safety standards in respect of services	42
36	Compliance with services safety standards	43
	Part 5	
	Enforcement and remedies	
	<i>Jurisdiction of courts</i>	
37	Jurisdiction of High Court	43
38	Jurisdiction of District Courts	44
39	Jurisdiction of Disputes Tribunals	45
	<i>Offences</i>	
40	Contraventions of provisions of Part 1, Part 2, Part 3, and Part 4 an offence	45
40A	Additional penalty for contravention of section 24 involving commercial gain	46
	<i>Civil proceedings</i>	
41	Injunctions may be granted by court for contravention of Part 1, Part 2, Part 3, and Part 4	47
42	Order to disclose information or publish advertisement	48
43	Other orders	49
43A	Application for order under section 43	51
43B	Limits on jurisdiction of District Court and Disputes Tribunal to make orders under section 43	51
44	Defences	52
45	Conduct by servants or agents	54
46	Finding in proceedings to be evidence	55
	<i>Enforceable undertakings</i>	
46A	Commission may accept undertakings	56

46B	Enforcement of undertakings	56
	<i>Management banning orders</i>	
46C	Management banning orders	57
46D	Terms of management banning orders	58
46E	Offence to breach management banning order	58
46F	Procedures relating to management banning order	58
46G	Seeking leave of court	58
	Part 6	
	Miscellaneous provisions	
47	Power to search	59
47A	Powers conferred by warrant <i>[Repealed]</i>	60
47B	Warrant to be produced <i>[Repealed]</i>	60
47C	Other duties of person who executes a warrant <i>[Repealed]</i>	60
47D	Duty to assist <i>[Repealed]</i>	60
47E	Power to inspect documents and goods <i>[Repealed]</i>	61
47F	Offence to resist, obstruct, or delay	61
47G	Commission may require person to supply information or documents or give evidence	61
47H	Notices	62
47I	Service of notices	63
47J	Offence to contravene section 47G	64
47K	Commission may authorise employees for monitoring and enforcement purposes	64
47L	Powers of authorised employees	65
48	Proceedings privileged	67
48A	Sharing of information and documents with Financial Markets Authority or Takeovers Panel	68
48B	Purpose of sections 48C to 48O (which relate to assistance to overseas regulators)	69
48C	Definitions of terms used in sections 48B to 48O	69
48D	Restrictions on providing compulsorily acquired information and investigative assistance	70
48E	Government-to-government co-operation arrangements	70
48F	Regulator-to-regulator co-operation arrangements	71
48G	Content of co-operation arrangements	71
48H	Procedures relating to co-operation arrangements	72
48I	Providing compulsorily acquired information and investigative assistance	72
48J	Conditions on providing compulsorily acquired information and investigative assistance	74
48K	Notice to persons affected by provision of information	74

48L	Reporting on use of co-operation arrangements	75
48M	Sharing of non-compulsorily acquired information not affected	75
48N	Information provided by consent	76
48O	Maintenance of privilege	76
48P	Proceedings relating to financial products or financial services	77
48Q	No pecuniary penalty and fine for same conduct involving financial products or financial services	78
48R	Unsubstantiated representations prohibition does not apply to financial markets disclosure	78
48S	Certain conduct under Financial Markets Conduct Act 2013 does not contravene various provisions of this Act	78
49	Repeals and consequential amendments	79
50	Saving of other laws	79
51	Application of Act to goods that are, or may be, exported to China	79
	Schedule 1	80
	Enactment amended	
	<i>[Repealed]</i>	
	Schedule 2	81
	Enactments repealed	
	Schedule 3	82
	Orders and notices revoked	

Title *[Repealed]*

Title: repealed, on 18 December 2013, by section 4 of the Fair Trading Amendment Act 2013 (2013 No 143).

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.

1A Purpose

- (1) The purpose of this Act is to contribute to a trading environment in which—
 - (a) the interests of consumers are protected; and

- (b) businesses compete effectively; and
 - (c) consumers and businesses participate confidently.
- (2) To this end, the Act—
- (a) prohibits certain unfair conduct and practices in relation to trade; and
 - (b) promotes fair conduct and practices in relation to trade; and
 - (c) provides for the disclosure of consumer information relating to the supply of goods and services; and
 - (d) promotes safety in respect of goods and services.

Section 1A: inserted, on 18 December 2013, by section 5 of the Fair Trading Amendment Act 2013 (2013 No 143).

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

chief executive means the chief executive of the Ministry

Commission means the Commerce Commission established by section 8 of the Commerce Act 1986

consumer means a person who—

- (a) acquires from a supplier goods or services of a kind ordinarily acquired for personal, domestic, or household use or consumption; and
- (b) does not acquire the goods or services, or hold himself or herself out as acquiring the goods or services, for the purpose of—
 - (i) resupplying them in trade; or
 - (ii) consuming them in the course of a process of production or manufacture; or
 - (iii) in the case of goods, repairing or treating, in trade, other goods or fixtures on land

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

extended warranty agreement has the meaning given in section 36T

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

infringement fee, infringement notice, and infringement offence have the meanings given in section 40B

layby sale agreement has the meaning given in section 36B

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

Ministry means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

negotiation, in relation to an agreement or a proposed agreement, includes any discussion or dealing directed towards making the agreement or proposed agreement (whether or not the terms of the agreement or proposed agreement are open to any discussion or dealing)

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) **chief executive**: inserted, on 18 December 2013, by section 6(2) of the Fair Trading Amendment Act 2013 (2013 No 143).

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

Section 2(1) **consumer**: inserted, on 18 December 2013, by section 6(2) of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 2(1) **court**: repealed, on 18 December 2013, by section 6(1) of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 2(1) **extended warranty agreement**: inserted, on 18 December 2013, by section 6(2) of the Fair Trading Amendment Act 2013 (2013 No 143).

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) **infringement fee, infringement notice, and infringement offence**: inserted, on 18 December 2013, by section 6(2) of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 2(1) **layby sale agreement**: inserted, on 18 December 2013, by section 6(2) of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 2(1) **Ministry**: inserted, on 18 December 2013, by section 6(2) of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 2(1) **negotiation**: inserted, on 18 December 2013, by section 6(2) of the Fair Trading Amendment Act 2013 (2013 No 143).

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 High Court for a declaration that the Crown has contravened that provision; and, if the High 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)

Section 4(2): amended, on 18 December 2013, by section 7 of the Fair Trading Amendment Act 2013 (2013 No 143).

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

[Repealed]

Section 5A: repealed, on 1 April 2014, by section 7 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

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
Unfair conduct**

Part 1 heading: replaced, on 18 December 2013, by section 9 of the Fair Trading Amendment Act 2013 (2013 No 143).

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).

14A When vendor bids are misrepresentations

- (1) This section applies where property (being goods, services, or an interest in land) is offered for sale—
 - (a) by auction (as defined in section 36X); or
 - (b) by any other bidding process in which all bids are disclosed.
- (2) The vendor of the property makes a false or misleading representation with respect to the price of the property if the vendor, or any agent acting on behalf of the vendor, makes a vendor bid for the property.
- (3) However, subsection (2) does not apply if—
 - (a) there is a reserve price for the property; and
 - (b) the bid is made before the reserve price is reached and is clearly identified as a vendor bid.
- (4) If property is unsold at the end of an auction or other bidding process referred to in subsection (1), any subsequent reference to a particular bid as being the amount at which the property was passed in is a false or misleading representation with respect to the price of the property if the bid was a vendor bid.
- (5) In this section, **vendor bid** means a bid made by the vendor or any person (including an auctioneer) acting as agent for the vendor.

Section 14A: inserted, on 18 December 2013, by section 12 of the Fair Trading Amendment Act 2013 (2013 No 143).

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 section 5 of the Companies Act 1993), or if both of them are subsidiaries (within the meaning of that section) of one and the same body corporate; and **interconnected body corporate** shall be construed accordingly.

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).

Section 15(3)(c): amended, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

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 quan-

tity, 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, by Order in Council made on the recommendation of the Minister, make regulations prescribing consumer information standards in respect of goods or services of any description or any class or classes of goods or services.
- (1A) A consumer information standard may—

- (a) require 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; and
 - (b) specify how that information must be obtained or verified before it is disclosed; and
 - (c) specify the form and manner in which that information must be disclosed on or in relation to—
 - (i) the supply or possible supply of the goods or services; or
 - (ii) the resupply or possible resupply of the goods or services; or
 - (iii) the promotion by any means of 1 or more of the matters described in subparagraphs (i) and (ii).
- (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 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.
- (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).

Section 27(1): replaced, on 18 December 2013, by section 15 of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 27(1A): inserted, on 18 December 2013, by section 15 of the Fair Trading Amendment Act 2013 (2013 No 143).

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(1A), 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(1A), 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).

Section 28(1): amended, on 18 December 2013, by section 16 of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 28(2): amended, on 18 December 2013, by section 16 of the Fair Trading Amendment Act 2013 (2013 No 143).

28A Regulations relating to disclosure by fund-raisers making requests for charitable purposes

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister in accordance with subsection (2), make regulations, in relation to fund-raisers making requests for charitable purposes, for all or any of the following purposes:
 - (a) prescribing requirements for the disclosure of information about—
 - (i) the fund-raiser, the charitable organisation, and the relationship between those parties:
 - (ii) the financial benefits that the fund-raiser or any person other than the charitable organisation has received, or will or may receive, (whether directly or indirectly) as a result of making requests:
 - (iii) the amount of any donation included in the price of goods or services:
 - (b) prescribing the manner of disclosure, including—
 - (i) by whom, and to whom, disclosure must be made:
 - (ii) when and how disclosure must be made, including any particular words required:
 - (c) prescribing how the financial benefit must be calculated and expressed:
 - (d) specifying any financial benefit that the fund-raiser is not required to disclose.
- (2) 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.
- (3) A failure to comply with subsection (2) does not affect the validity of any Order in Council made under this section.
- (4) If regulations made under this section require a fund-raiser to disclose information, that fund-raiser must comply with the regulations.
- (5) In this section,—
- charitable entity** has the meaning given to it in section 4(1) of the Charities Act 2005
- charitable organisation**—
- (a) means—
 - (i) a charitable entity; or
 - (ii) any other person or organisation whose purpose, or predominant purpose, is a charitable purpose; and
 - (b) includes a person or organisation that holds itself out as being a charitable organisation, whether or not that person or organisation would otherwise be a charitable organisation within the meaning given in paragraph (a)
- charitable purpose** includes every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community
- fund-raiser**—
- (a) means a person who, in business, makes requests for donations for charitable purposes; and
 - (b) includes that person's employer or principal; but
 - (c) does not include—
 - (i) the charitable organisation concerned or an employee of that organisation; or

- (ii) a volunteer (being a person who does not expect to, and does not, receive any financial benefit for his or her fund-raising activities)

requests includes—

- (a) soliciting for donations for a charitable purpose; and
- (b) canvassing for subscriptions for a charitable purpose; and
- (c) requests, by suppliers of goods or services, for donations that are included as part of the price of goods or services.

Section 28A: inserted, on 30 June 2012, by section 4 of the Fair Trading (Soliciting on Behalf of Charities) Amendment Act 2012 (2012 No 48).

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 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 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).

30A Product safety policy statements

- (1) The Minister may, if the Minister considers it necessary or desirable, issue a product safety policy statement that—
- (a) relates to goods of any description or any class or classes of goods; and
 - (b) provides guidance on the safety of those goods to consumers, retailers, and manufacturers.
- (2) The Minister may, at any time, amend, revoke, or replace a product safety policy statement.
- (3) However, the Minister must not issue, amend, revoke, or replace a product safety policy statement unless—
- (a) the Minister has consulted such persons or representatives of such persons as the Minister considers will be substantially affected by the proposed statement, and those persons have had the opportunity to comment to the Minister; and
 - (b) the Minister has considered any such comments.
- (4) The chief executive—
- (a) must ensure that a copy of every statement issued, amended, or replaced under this section or under section 30B is available to the public, at all reasonable times, on an Internet site maintained by or on behalf of the Ministry; and
 - (b) may make copies of statements available in any other way that the chief executive considers appropriate in the circumstances.

Section 30A: inserted, on 18 December 2013, by section 18 of the Fair Trading Amendment Act 2013 (2013 No 143).

30B Review of product safety policy statements

- (1) The Ministry must—
 - (a) review a product safety policy statement issued under section 30A within 5 years after its issue or (in the case of a subsequent review) within 5 years after the last review; and
 - (b) immediately following the review, prepare a report on the review for the Minister.
- (2) The report must include recommendations to the Minister on whether the statement should be continued, amended, revoked, or replaced.
- (3) However, the Ministry must not prepare a report under this section unless—
 - (a) the Ministry has consulted such persons or representatives of such persons as the Ministry considers will be substantially affected by the proposed recommendations, and those persons have had the opportunity to comment to the Ministry; and
 - (b) the Ministry has considered any such comments.
- (4) As soon as practicable after receiving the report, the Minister must—
 - (a) consider the recommendations and any comments received by the Ministry under subsection (3)(a); and
 - (b) decide whether to continue, amend, revoke, or replace the statement; and
 - (c) ensure that the Minister's decision is available to the public, at all reasonable times, on an Internet site maintained by or on behalf of the Ministry.

Section 30B: inserted, on 18 December 2013, by section 18 of the Fair Trading Amendment Act 2013 (2013 No 143).

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.

- (1A) The Minister may also, by notice in the *Gazette*, declare goods of any description or any class or classes of goods to be unsafe goods if it appears to the Minister that a reasonably foreseeable use (including misuse) of the goods will, or may, cause injury to any person.
- (1B) In deciding whether to make a declaration under subsection (1A), the Minister must have regard to all the circumstances, including—
- (a) the likelihood of an injury occurring to a person as a result of the reasonably foreseeable use or misuse of the goods:
 - (b) the seriousness of the injury likely to be suffered by the user of the goods or any other person:
 - (c) whether such injury is likely to be a frequent occurrence:
 - (d) any steps that the supplier or manufacturer of the goods has taken to mitigate the risk of injury:
 - (e) whether, taking into account the ordinary and intended use of the goods, the public interest favours making a declaration.
- (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) or (1A) 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.
- (3A) The Minister must not issue a notice under subsection (3) unless—
- (a) the Minister has consulted such persons or representatives of such persons as the Minister considers will be substantially affected by the proposed notice and those

- persons have had the opportunity to comment to the Minister; and
- (b) the Minister has considered any such comments.
- (3B) A failure to comply with subsection (3A) does not affect the validity of any notice given under this section, except where there has been a complete failure to consult.
- (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)

Section 31(1A): inserted, on 18 December 2013, by section 19(1) of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 31(1B): inserted, on 18 December 2013, by section 19(1) of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 31(3)(a): amended, on 18 December 2013, by section 19(2) of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 31(3A): inserted, on 18 December 2013, by section 19(3) of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 31(3B): inserted, on 18 December 2013, by section 19(3) of the Fair Trading Amendment Act 2013 (2013 No 143).

31A Voluntary product recall

- (1) This section applies if—
- (a) a supplier voluntarily recalls goods because—
- (i) the goods will, or may, cause injury to any person; or
- (ii) a reasonably foreseeable use (including misuse) of the goods will, or may, cause injury to any person; or
- (iii) the goods do not comply with a product safety standard; and
- (b) there is no other requirement, under any other enactment, for a supplier in those circumstances to—
- (i) report to a government agency; or

- (ii) do any other thing in relation to goods of a kind referred to in paragraph (a) (for example, to have in place a process for the voluntary recall of goods of that kind).
- (2) The supplier must, within 2 working days after recalling the goods, notify the chief executive of the recall.
- (3) A notice under subsection (2) must be expressed in plain language and must contain the following information:
 - (a) a description of the goods, with sufficient detail to enable a consumer to readily identify the goods to which the notice relates; and
 - (b) a description of the danger (including the risk of damage or harm occurring as a result of that danger) that led to the goods being recalled; and
 - (c) details of what a consumer needs to do in response to the recall, including, as the case may be,—
 - (i) any precautions the consumer should take to avoid or reduce the risk of injury from the goods;
 - (ii) how to rectify the issue that led to the goods being recalled;
 - (iii) where to take the goods for repair, replacement, or refund; and
 - (d) the supplier's name, street address, telephone number, and email address.
- (4) The chief executive—
 - (a) must ensure that a copy of every notice under this section is available to the public, at all reasonable times, on an Internet site maintained by or on behalf of the Ministry, for at least 2 years after the date on which the voluntary recall was notified to the chief executive in accordance with subsection (2); and
 - (b) may make copies of notices available in any other way that the chief executive considers appropriate in the circumstances.
- (5) In subsection (1)(b), **government agency** means a department or Crown entity.

Section 31A: inserted, on 18 December 2013, by section 20 of the Fair Trading Amendment Act 2013 (2013 No 143).

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).
- (1A) The Minister may also, by notice to the supplier, require the supplier to take the action specified in subsection (3) if it appears to the Minister that a reasonably foreseeable use (including misuse) of the goods supplied by the supplier will, or may, cause injury to any person.
- (1B) In deciding whether to issue a notice under subsection (1A), the Minister must have regard to all the circumstances, including—
- (a) the likelihood of an injury occurring to a person as a result of the reasonably foreseeable use or misuse of the goods:
 - (b) the seriousness of the injury likely to be suffered by the user of the goods or any other person:
 - (c) whether such injury is likely to be a frequent occurrence:
 - (d) any steps that the supplier or manufacturer of the goods has taken to mitigate the risk of injury:
 - (e) whether, taking into account the ordinary and intended use of the goods, the public interest favours the issuing of a compulsory product recall notice.
- (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), (1A), 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 this section, that supplier shall comply in all respects with the notice.
- (5) Where a notice is given to a supplier under this section, that supplier shall not, in trade,—
- (a) where the notice identifies a defect in, or a dangerous characteristic of the goods, supply goods of a kind to which the notice relates which contain that defect or have that characteristic; or
 - (b) in any other case, supply goods of a kind to which the notice relates.

Section 32(1A): inserted, on 18 December 2013, by section 21(1) of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 32(1B): inserted, on 18 December 2013, by section 21(1) of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 32(3): amended, on 18 December 2013, by section 21(2) of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 32(4): amended, on 18 December 2013, by section 21(3) of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 32(5): amended, on 18 December 2013, by section 21(4) of the Fair Trading Amendment Act 2013 (2013 No 143).

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 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.

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

Product safety officers

Heading: inserted, on 18 December 2013, by section 22 of the Fair Trading Amendment Act 2013 (2013 No 143).

33A Appointment of product safety officers

- (1) The chief executive may appoint as a product safety officer any person who has passed such examinations as the chief executive requires to test the person's knowledge of this Act and the functions and powers of product safety officers.
- (2) The chief executive may appoint a person as a trainee product safety officer, whether or not the person has passed the examinations referred to in subsection (1).
- (3) For the purposes of this Act, a trainee product safety officer acting under the supervision of a product safety officer is deemed to be a product safety officer.

Compare: 1987 No 15 s 26

Section 33A: inserted, on 18 December 2013, by section 22 of the Fair Trading Amendment Act 2013 (2013 No 143).

33B Certificates of appointment

- (1) Every product safety officer, and every trainee product safety officer, must be issued with a certificate as evidence of that person's appointment under section 33A.
- (2) The certificate must be in a form determined by the chief executive and set out—
 - (a) the full name of the appointee; and
 - (b) a statement that the person is appointed under section 33A of this Act; and
 - (c) a reference to the powers of the appointee under sections 33C and 33D; and

- (d) a statement of the powers (if any) of the product safety officer under the Search and Surveillance Act 2012.

Compare: 1987 No 15 s 27

Section 33B: inserted, on 18 December 2013, by section 22 of the Fair Trading Amendment Act 2013 (2013 No 143).

33C Powers of product safety officers

- (1) A product safety officer may enter and inspect a place (not being a dwellinghouse) without a warrant if—
 - (a) the product safety officer believes on reasonable grounds that—
 - (i) certain goods are unsafe (**suspect goods**); and
 - (ii) the suspect goods are supplied at, or dispatched from, the place; and
 - (b) the entry and inspection is for the purpose of ascertaining, or taking steps to ascertain, whether the suspect goods are in fact unsafe.
- (2) While at the place, a product safety officer may, for the purpose described in subsection (1), do any of the following:
 - (a) with respect to any goods at the place that are available to consumers for supply or are dispatched for supply to consumers, inspect the goods, photograph them, and purchase them at the price for which they are currently offered for sale:
 - (b) require the person who appears at the time to be in charge of the supply or dispatch of goods at the place (the **person in charge**) to give his or her name and show to the product safety officer identification sufficient to confirm that the name given is correct:
 - (c) require the person in charge to identify the person from whom the suspect goods were acquired:
 - (d) if suspect goods have, within a specified period, been supplied in trade to another person other than by retail, require the person in charge to identify the person or persons to whom they have been supplied during that period:
 - (e) require any person by whom suspect goods are carried for delivery pursuant to, or in connection with, a contract of sale to give—

- (i) his or her name and address; and
 - (ii) the name and address of his or her employer (if any); and
 - (iii) the name and address of the owner of the goods, if known.
- (3) If a product safety officer enters a dwellinghouse with the permission of the occupier or under a warrant issued under subsection (4), the product safety officer may, for the purpose described in subsection (1)(b), exercise the powers listed in subsection (2).
- (4) An issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012) may issue a warrant authorising a product safety officer to enter a dwellinghouse if the issuing officer is satisfied, on application made in accordance with subsection (5), that there are reasonable grounds for believing that it is necessary for the product safety officer to enter the dwellinghouse for the purpose of ascertaining—
- (a) whether there are any suspect goods at the dwellinghouse that are or may be available to consumers for supply, or are or may be being dispatched for supply to consumers; and
 - (b) if there are, whether the goods are unsafe.
- (5) The application for a warrant must be made in writing in the manner provided for an application for a search warrant in subpart 3 of Part 4 of the Search and Surveillance Act 2012.
- (6) Part 4 of the Search and Surveillance Act 2012 (except sections 118 and 119) applies.

Compare: 1987 No 15 s 28

Section 33C: inserted, on 18 December 2013, by section 22 of the Fair Trading Amendment Act 2013 (2013 No 143).

33D Suspension of supply notices

- (1) A product safety officer may issue to a person in possession of goods a suspension of supply notice in respect of those goods, and any other goods of that description or class, if the product safety officer—
- (a) either—

- (i) knows that the goods, or goods of that description or class, have been implicated in serious injury or death; or
 - (ii) has good reason to suspect that the goods, or goods of that description or class, may be unsafe; and
 - (b) believes on reasonable grounds that—
 - (i) the supply of the goods may lead to a person suffering serious harm; and
 - (ii) the order is necessary to prevent the supply of the goods pending further investigation into their safety.
- (2) A **suspension of supply notice** is a notice prohibiting the person or persons identified in the notice from supplying the goods identified in the notice during the period before the expiry of the notice.
- (3) Every suspension of supply notice must be in the form prescribed by the chief executive, and must clearly set out—
 - (a) the goods, or the description or class of goods, to which the notice relates; and
 - (b) when the notice expires, which must be no later than 5 pm on the third working day after the day on which the notice is issued; and
 - (c) the person or persons to whom the notice applies, who may be any of the following:
 - (i) the person in charge;
 - (ii) any employee or agent of that person;
 - (iii) any employer or manager of that person;
 - (iv) any employee or agent of that person's employer or manager; and
 - (d) the name of the product safety officer who issues the notice.
- (4) A person to whom a suspension of supply notice applies must not supply the goods identified in the notice at any time before the notice expires.
- (5) A product safety officer may, with the approval of the chief executive, renew a suspension of supply notice before its expiry, but—
 - (a) may do so not more than twice; and

- (b) may not renew the notice so that the total prohibition exceeds 9 consecutive working days.

Section 33D: inserted, on 18 December 2013, by section 22 of the Fair Trading Amendment Act 2013 (2013 No 143).

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:
- (d) applications for orders under section 46B to enforce an undertaking involving a sum that, in total, exceeds \$200,000 or, if greater, the amount specified in section 29 of the District Courts Act 1947:
- (e) appeals from any order of a District Court under section 46B:
- (f) appeals from any order or decision of a District Court under section 46C or 46G:
- (g) applications by the Commission for a declaration under section 46I.

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).

Section 37(d): inserted, on 18 December 2013, by section 24 of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 37(e): inserted, on 18 December 2013, by section 24 of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 37(f): inserted, on 18 December 2013, by section 24 of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 37(g): inserted, on 18 December 2013, by section 24 of the Fair Trading Amendment Act 2013 (2013 No 143).

38 Jurisdiction of District Courts

- (1) 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:
 - (c) applications for orders under section 46B to enforce an undertaking involving a sum that, in total, does not exceed \$200,000 or, if greater, the amount specified in section 29 of the District Courts Act 1947:
 - (d) applications under sections 46C and 46G:
 - (e) applications by the Commission for a declaration under section 46I.
- (2) This section is subject to section 43B.

Section 38(1)(a): amended, on 8 July 2003, by section 7(a) of the Fair Trading Amendment Act 2003 (2003 No 31).

Section 38(1)(b): amended, on 8 July 2003, by section 7(b) of the Fair Trading Amendment Act 2003 (2003 No 31).

Section 38(1)(c): inserted, on 18 December 2013, by section 25(1) of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 38(1)(d): inserted, on 18 December 2013, by section 25(1) of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 38(1)(e): inserted, on 18 December 2013, by section 25(1) of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 38(2): inserted, on 18 December 2013, by section 25(2) of the Fair Trading Amendment Act 2013 (2013 No 143).

39 Jurisdiction of Disputes Tribunals

(1) 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) This section is subject to section 43B.

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

Section 39(1): amended, on 18 December 2013, by section 26(1) of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 39(2): inserted, on 18 December 2013, by section 26(2) of the Fair Trading Amendment Act 2013 (2013 No 143).

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 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 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) *[Repealed]*

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

Section 40(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

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(1A): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 40(3): repealed, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

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) *[Repealed]*

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

Section 40A(4): repealed, on 18 December 2013, by section 28 of the Fair Trading Amendment Act 2013 (2013 No 143).

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) *[Repealed]*

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): repealed, on 18 December 2013, by section 31 of the Fair Trading Amendment Act 2013 (2013 No 143).

43 Other orders

- (1) This section applies if, in proceedings under this Part or on the application of any person, a court or a Disputes Tribunal finds that a person (**person A**) has suffered, or is likely to suffer, loss or damage by conduct of another person (**person B**) that does or may constitute any of the following:
- (a) a contravention of a provision of Parts 1 to 4A (a **relevant provision**):
 - (b) aiding, abetting, counselling, or procuring a contravention of a relevant provision:
 - (c) inducing by threats, promises, or otherwise a contravention of a relevant provision:
 - (d) being in any way directly or indirectly knowingly concerned in, or party to, a contravention of a relevant provision:
 - (e) conspiring with any other person in the contravention of a relevant provision.
- (2) The court or the Disputes Tribunal may make 1 or more of the orders described in subsection (3)—

- (a) whether or not the court grants an injunction, or the court or the Disputes Tribunal makes any other order, under this Part; and
 - (b) whether or not person A made the application or is a party to the proceedings.
- (3) The orders are as follows:
- (a) an order declaring all or part of a contract made between person A and person B, or a collateral arrangement (for example, a collateral credit agreement) relating to such a contract,—
 - (i) to be void; and
 - (ii) if the court or the Disputes Tribunal thinks fit, to have been void at all times on and after a date specified in the order, which may be before the date on which the order is made:
 - (b) if an order described in paragraph (a) is made in respect of a contract that is associated with a collateral credit agreement, an order vesting in person B all or any of the rights and obligations of person A under the collateral credit agreement:
 - (c) an order in respect of a contract made between person A and person B, or a collateral arrangement (for example, a collateral credit agreement) relating to such a contract,—
 - (i) varying the contract or the arrangement in the manner specified in the order; and
 - (ii) if the court or the Disputes Tribunal thinks fit, declaring the varied contract or arrangement to have had effect on and after a date specified in the order, which may be before the date on which the order is made:
 - (d) if an order described in paragraph (c) is made in respect of a contract that is associated with a collateral credit agreement, and if that order results in person A no longer having property in the goods that are the subject of the contract, an order vesting in person B the rights and obligations of person A under the collateral credit agreement:

- (e) an order directing person B to refund money or return property to person A:
 - (f) an order directing person B to pay to person A the amount of the loss or damage:
 - (g) an order directing person B, at person B's own expense, to repair, or to provide parts for, goods that have been supplied by person B to person A:
 - (h) an order directing person B, at person B's own expense, to supply specified goods or services to person A.
- (4) In subsection (3)(a) to (d), **collateral credit agreement**, in relation to a contract for the supply of goods, means a contract or an agreement that—
- (a) is arranged or procured by the supplier of the goods; and
 - (b) is for the provision of credit by a person other than the supplier to enable person A to pay, or defer payment, for the goods.
- (5) An order made under subsection (3)(a) to (d) does not prevent proceedings being instituted or commenced under this Part.
- (6) This section does not limit or affect—
- (a) the Illegal Contracts Act 1970; or
 - (b) section 317 of the Accident Compensation Act 2001.

Section 43: replaced, on 18 December 2013, by section 32 of the Fair Trading Amendment Act 2013 (2013 No 143).

43A Application for order under section 43

A person may apply to a court or a Disputes Tribunal for an order under section 43 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.

Section 43A: inserted, on 18 December 2013, by section 32 of the Fair Trading Amendment Act 2013 (2013 No 143).

43B Limits on jurisdiction of District Court and Disputes Tribunal to make orders under section 43

- (1) A District Court must not make an order under section 43 if a value or amount described in subsection (3) exceeds \$200,000 or, if greater, the amount specified in section 29 of the District Courts Act 1947.

- (2) A Disputes Tribunal must not make an order under section 43 if a value or amount described in subsection (3) exceeds whichever is the greatest of the following:
- (a) \$15,000;
 - (b) the amount specified in section 10(1A)(b) of the Disputes Tribunals Act 1988;
 - (c) the amount specified in section 13(2) of the Disputes Tribunals Act 1988, if the jurisdiction of the Disputes Tribunal is extended by an agreement between the parties under section 13 of that Act.
- (3) The values and amounts are as follows:
- (a) in the case of an order under section 43(3)(a) or (c), the value of the consideration for the promise or act of any party to the contract or collateral arrangement referred to in that paragraph;
 - (b) in the case of an order under section 43(3)(e) directing a person to refund money or return property, the amount of money or the value of the property;
 - (c) in the case of an order under section 43(3)(f) requiring a person to pay an amount, that amount;
 - (d) in the case of an order under section 43(3)(g) directing a person to repair goods or to provide parts for goods, the value of the work required to repair the goods, or the value of the parts, as the case may be;
 - (e) in the case of an order under section 43(3)(h) directing a person to supply services, the value of the services.

Section 43B: inserted, on 18 December 2013, by section 32 of the Fair Trading Amendment Act 2013 (2013 No 143).

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 prosecutor 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 prosecutor, 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(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

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

Section 44(6): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

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 be-

fore 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 High Court or a 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 18 December 2013, by section 34 of the Fair Trading Amendment Act 2013 (2013 No 143).

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

Enforceable undertakings

Heading: inserted, on 18 December 2013, by section 35 of the Fair Trading Amendment Act 2013 (2013 No 143).

46A Commission may accept undertakings

- (1) The Commission may accept a written undertaking given by, or on behalf of, a person in connection with any matter relating to the enforcement of this Act.
- (2) The person may withdraw or vary the undertaking with the consent of the Commission.

Compare: 1978 No 103 s 69J

Section 46A: inserted, on 18 December 2013, by section 35 of the Fair Trading Amendment Act 2013 (2013 No 143).

46B Enforcement of undertakings

- (1) If the Commission considers that a person who has given an undertaking under section 46A has breached a term of that undertaking, the Commission may apply to the court for an order under subsection (2).
- (2) The court may make any of the following orders if it is satisfied that the person has breached a term of the undertaking:
 - (a) an order directing the person to comply with the term:
 - (b) an order directing the person to pay to the Crown an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach:

- (c) any order that the court thinks appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach:
- (d) an order for any consequential relief that the court thinks appropriate.

Compare: 1978 No 103 s 69K

Section 46B: inserted, on 18 December 2013, by section 35 of the Fair Trading Amendment Act 2013 (2013 No 143).

Management banning orders

Heading: inserted, on 18 December 2013, by section 35 of the Fair Trading Amendment Act 2013 (2013 No 143).

46C Management banning orders

- (1) A District Court may make a management banning order against an individual who—
 - (a) has, on at least 2 separate occasions within a 10-year period (whether before or after this section comes into force), committed an offence against section 40(1) or (1A); or
 - (b) is, or was at the time of the commission of the offence, a director of, or concerned in the management of, an incorporated or unincorporated body that has, on at least 2 separate occasions within a 10-year period (whether before or after this section comes into force), committed an offence against section 40(1) or (1A); or
 - (c) has been prohibited by an overseas jurisdiction, in connection with the contravention of any law relating to fair trading, from carrying on activities that are substantially similar to those referred to in section 46D.
- (2) The court may make the order only if it is satisfied that the order is necessary to protect the public from the risk that the person, or any incorporated or unincorporated body of which the person is a director, or the management of which the person is concerned in, will commit further offences against section 40(1) or (1A).

Section 46C: inserted, on 18 December 2013, by section 35 of the Fair Trading Amendment Act 2013 (2013 No 143).

46D Terms of management banning orders

A management banning order must prohibit the person to whom it applies from being, without the leave of a District Court, a director of, or being in any way (whether directly or indirectly) concerned in or taking part in the management of, an incorporated or unincorporated body that carries on business in New Zealand, for a period specified in the order, which must be no more than 10 years.

Compare: 1978 No 103 s 60B

Section 46D: inserted, on 18 December 2013, by section 35 of the Fair Trading Amendment Act 2013 (2013 No 143).

46E Offence to breach management banning order

A person who breaches a management banning order made against him or her commits an offence and is liable on summary conviction to a fine not exceeding \$60,000.

Section 46E: inserted, on 18 December 2013, by section 35 of the Fair Trading Amendment Act 2013 (2013 No 143).

46F Procedures relating to management banning order

- (1) An application for a management banning order may be made only by the Commission.
- (2) The Commission, and any other persons that the court thinks fit, may attend and be heard at the hearing of the application.
- (3) A copy of every management banning order must be given to—
 - (a) the person concerned; and
 - (b) the Commission; and
 - (c) the Registrar of Companies.
- (4) The Commission must publish every management banning order made under section 46C in the *Gazette* as soon as practicable after it is made.

Compare: 1978 No 103 s 60F

Section 46F: inserted, on 18 December 2013, by section 35 of the Fair Trading Amendment Act 2013 (2013 No 143).

46G Seeking leave of court

- (1) An application for leave of a District Court under section 46D must be by way of originating application.

- (2) The Commission, and any other persons that the court thinks fit, may attend and be heard at the hearing of the application.

Compare: 1978 No 103 s 60F

Section 46G: inserted, on 18 December 2013, by section 35 of the Fair Trading Amendment Act 2013 (2013 No 143).

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) An issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012) 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 in the manner provided for an application for a search warrant in subpart 3 of Part 4 of that Act 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) Part 4 of the Search and Surveillance Act 2012 (except sections 118 and 119) applies.
- (4) For the purpose of allowing the Commission to provide, under section 48I, compulsorily acquired information and investiga-

tive assistance to a recognised overseas regulator, every reference in this section to a contravention of this Act must be taken to include a reference to a contravention of any foreign enactment that is identified (as required by section 48G(1)(b)) in the co-operation arrangement concerning that recognised overseas regulator.

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).

Section 47(2): amended, on 1 October 2012, by section 316(2)(a) of the Search and Surveillance Act 2012 (2012 No 24).

Section 47(2): amended, on 1 October 2012, by section 316(2)(b) of the Search and Surveillance Act 2012 (2012 No 24).

Section 47(3): replaced, on 1 October 2012, by section 316(3) of the Search and Surveillance Act 2012 (2012 No 24).

Section 47(4): inserted, on 24 October 2012, by section 4 of the Fair Trading (International Co-operation) Amendment Act 2012 (2012 No 86).

47A Powers conferred by warrant

[Repealed]

Section 47A: repealed, on 1 October 2012, by section 316(4) of the Search and Surveillance Act 2012 (2012 No 24).

47B Warrant to be produced

[Repealed]

Section 47B: repealed, on 1 October 2012, by section 316(4) of the Search and Surveillance Act 2012 (2012 No 24).

47C Other duties of person who executes a warrant

[Repealed]

Section 47C: repealed, on 1 October 2012, by section 316(4) of the Search and Surveillance Act 2012 (2012 No 24).

47D Duty to assist

[Repealed]

Section 47D: repealed, on 1 October 2012, by section 316(4) of the Search and Surveillance Act 2012 (2012 No 24).

47E Power to inspect documents and goods

[Repealed]

Section 47E: repealed, on 1 October 2012, by section 316(4) of the Search and Surveillance Act 2012 (2012 No 24).

47F Offence to resist, obstruct, or delay

- (1) Every person commits an offence who resists, obstructs, or delays—
 - (a) any product safety officer exercising a power under section 33C or 33D; or
 - (b) any authorised person acting pursuant to a warrant issued under section 47; or
 - (c) any authorised employee exercising a power under section 47L.
- (2) A person who commits an offence against this section is liable on 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: replaced, on 18 December 2013, by section 37 of the Fair Trading Amendment Act 2013 (2013 No 143).

47G Commission may require person to supply information or documents or give evidence

- (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; or
 - (c) to appear before the Commission at a time and place specified in the notice to give evidence, either orally or

in writing, and supply 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.
- (3) No person is excused from complying with a requirement to supply information or documents, or to appear before the Commission, on the ground that to do so might tend to incriminate the person.
- (4) A statement made by a person in answer to a question put by or before the Commission is not admissible against the person in criminal proceedings other than proceedings for a charge of perjury against the maker of the statement or in proceedings on a charge of an offence against section 47J.
- (5) Subsections (3) and (4) prevail over subsection (2).

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).

Section 47G heading: amended, on 18 December 2013, by section 38(1) of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 47G(1)(b): amended, on 18 December 2013, by section 38(2) of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 47G(1)(c): inserted, on 18 December 2013, by section 38(2) of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 47G(3): inserted, on 18 December 2013, by section 38(3) of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 47G(4): inserted, on 18 December 2013, by section 38(3) of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 47G(5): inserted, on 18 December 2013, by section 38(3) of the Fair Trading Amendment Act 2013 (2013 No 143).

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 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) *[Repealed]*

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).

Section 47J(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 47J(3): repealed, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

47K Commission may authorise employees for monitoring and enforcement purposes

- (1) The Commission may authorise any employee (an **authorised employee**) to monitor and enforce compliance with any or all of the following:
 - (a) consumer information standards:
 - (b) product safety standards:
 - (c) unsafe goods notices:

- (d) suspension of supply notices:
- (e) services safety standards.
- (2) Every employee so authorised must be issued with a certificate as evidence of the person's appointment.
- (3) The certificate must be in a form determined by the Commission and contain—
 - (a) a reference to this section; and
 - (b) the full name of the authorised employee; and
 - (c) a reference to the powers conferred on the authorised employee under section 47L; and
 - (d) a statement of the powers (if any) of the authorised employee under the Search and Surveillance Act 2012.

Section 47K: inserted, on 18 December 2013, by section 39 of the Fair Trading Amendment Act 2013 (2013 No 143).

47L Powers of authorised employees

- (1) In this section,—
 - place** means any place that an authorised employee believes on reasonable grounds is a place at which consumers have access to relevant goods or services, or from which relevant goods are dispatched to consumers
 - relevant goods or services** means goods or services to which any consumer information standards, product safety standards, unsafe goods notices, suspension of supply notices, or services safety standards apply.
- (2) An authorised employee may enter and inspect a place (not being a dwellinghouse), without a warrant, for the purpose of monitoring or enforcing compliance with any consumer information standards, product safety standards, unsafe goods notices, suspension of supply notices, or services safety standards that apply to any relevant goods.
- (3) While at the place, an authorised employee may, for the purpose described in subsection (2), do any of the following:
 - (a) with respect to any goods at the place that are available to consumers for supply or that are dispatched for supply, inspect the goods, photograph them, and purchase them at the price for which they are currently offered for sale:

- (b) require the person at the place who appears to be in charge of the supply or dispatch of relevant goods or services at the time (the **person in charge**) to give his or her name and show to the authorised employee identification sufficient to confirm that the name given is correct:
 - (c) require the person in charge to give the authorised employee any information about the goods or services that is normally disclosed to a consumer to whom the goods or services are supplied or dispatched:
 - (d) require the person in charge to identify the person from whom relevant goods were acquired:
 - (e) if relevant goods have, within a specified period, been supplied in trade to another person other than by retail, require the person in charge to identify the person or persons to whom they have been supplied during that period:
 - (f) require any person by whom any relevant goods are carried for delivery pursuant to, or in connection with, a contract for sale, to give—
 - (i) his or her name and address; and
 - (ii) the name and address of his or her employer (if any); and
 - (iii) the name and address of the owner of the goods, if known:
 - (g) issue an infringement notice, on behalf of the Commission, under section 40D.
- (4) If an authorised employee enters a dwellinghouse with the permission of the occupier or under a warrant issued under subsection (5), the authorised employee may, for the purpose described in subsection (2), exercise the powers listed in subsection (3).
- (5) An issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012) may, by warrant, authorise an authorised employee to enter and inspect a dwellinghouse or any other place specified in the warrant if the issuing officer is satisfied, on application made in accordance with subsection (6), that there are reasonable grounds to believe that a search

of the place is necessary for the purpose described in subsection (2).

- (6) The application for a warrant must be made in writing in the manner provided for an application for a search warrant in subpart 3 of Part 4 of the Search and Surveillance Act 2012.
- (7) Part 4 of the Search and Surveillance Act 2012 (except sections 118 and 119) applies.

Section 47L: inserted, on 18 December 2013, by section 39 of the Fair Trading Amendment Act 2013 (2013 No 143).

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).

48B Purpose of sections 48C to 48O (which relate to assistance to overseas regulators)

The purpose of sections 48C to 48O is—

- (a) to provide for when and how the Commission may provide compulsorily acquired information and investigative assistance to overseas regulators; and
- (b) to clarify other matters relating to sharing other kinds of information with overseas regulators.

Section 48B: inserted, on 24 October 2012, by section 5 of the Fair Trading (International Co-operation) Amendment Act 2012 (2012 No 86).

48C Definitions of terms used in sections 48B to 48O

In sections 48B to 48O, unless the context otherwise requires,—

co-operation arrangement means an arrangement concerning the Commission and an overseas regulator that is entered into under section 48E (a government-to-government co-operation arrangement) or section 48F (a regulator-to-regulator co-operation arrangement) for—

- (a) the provision by the Commission of compulsorily acquired information and investigative assistance to the overseas regulator; and
- (b) the provision by the overseas regulator of information and investigative assistance to the Commission

compulsorily acquired information means information that—

- (a) is acquired by the Commission, whether before or after this section comes into force, as a result of, or in relation to, the exercise by the Commission of any of its powers under section 47 or 47G, or any power incidental to those powers; and
- (b) is not in the public domain

investigative assistance includes providing assistance by way of exercising any power of the Commission under, or in relation to, section 47 or 47G, and any powers incidental to those powers

overseas regulator means an overseas body that has fair trading law functions corresponding to those of the Commission under this Act

recognised overseas regulator means an overseas regulator that is the subject of a co-operation arrangement.

Section 48C: inserted, on 24 October 2012, by section 5 of the Fair Trading (International Co-operation) Amendment Act 2012 (2012 No 86).

48D Restrictions on providing compulsorily acquired information and investigative assistance

The Commission must not provide compulsorily acquired information or investigative assistance to an overseas regulator unless the information or assistance is provided—

- (a) to a recognised overseas regulator in accordance with a co-operation arrangement; and
- (b) in accordance with sections 48I to 48K.

Section 48D: inserted, on 24 October 2012, by section 5 of the Fair Trading (International Co-operation) Amendment Act 2012 (2012 No 86).

48E Government-to-government co-operation arrangements

- (1) The Minister may, on behalf of the Government of New Zealand, enter into a co-operation arrangement concerning an overseas regulator with—
 - (a) the government of the country in which the overseas regulator is established; or
 - (b) if the overseas regulator is established by an international body, the governing body of that international body.
- (2) Before entering into a co-operation arrangement concerning an overseas regulator, the Minister must—
 - (a) have regard to the legal framework relating to the use of compulsorily acquired information in the jurisdiction of the overseas regulator; and
 - (b) have regard to the potential consequences for New Zealand consumers and businesses of providing compulsorily acquired information or investigative assistance to the overseas regulator; and
 - (c) consult with the Privacy Commissioner on any privacy issues arising from the proposed co-operation arrangement.
- (3) The Minister must not enter into a co-operation arrangement unless he or she is satisfied that entering into the arrange-

ment is not inconsistent with any of New Zealand's obligations under international agreements, conventions, or treaties.

Section 48E: inserted, on 24 October 2012, by section 5 of the Fair Trading (International Co-operation) Amendment Act 2012 (2012 No 86).

48F Regulator-to-regulator co-operation arrangements

- (1) The Commission may, with the prior written approval of the Minister, enter into a co-operation arrangement with an overseas regulator.
- (2) The Minister may not give approval to a co-operation arrangement under this section unless the Minister—
 - (a) has had regard to the matters specified in section 48E(2)(a) and (b) and has consulted as specified in section 48E(2)(c); and
 - (b) is satisfied of the matter specified in section 48E(3).

Section 48F: inserted, on 24 October 2012, by section 5 of the Fair Trading (International Co-operation) Amendment Act 2012 (2012 No 86).

48G Content of co-operation arrangements

- (1) Every co-operation arrangement must—
 - (a) identify the overseas regulator that it concerns; and
 - (b) identify the foreign enactments in connection with which the recognised overseas regulator may seek compulsorily acquired information and investigative assistance from the Commission; and
 - (c) set out how any compulsorily acquired information that is provided may be used by the overseas regulator, and how it is to be kept secure.
- (2) A co-operation arrangement may also—
 - (a) provide for the reimbursement of the Commission for costs incurred in providing the information or assistance; and
 - (b) include other conditions on the provision of compulsorily acquired information or investigative assistance.

Section 48G: inserted, on 24 October 2012, by section 5 of the Fair Trading (International Co-operation) Amendment Act 2012 (2012 No 86).

48H Procedures relating to co-operation arrangements

- (1) Every co-operation arrangement must be in writing and be signed by,—
 - (a) in the case of a government-to-government co-operation arrangement entered into under section 48E, the Minister and the person occupying, with respect to the overseas regulator, an equivalent position to that of the Minister, or any other person that the relevant government or governing body considers appropriate;
 - (b) in the case of a regulator-to-regulator co-operation arrangement entered into under section 48F, the chairperson of the Commission and the person occupying the equivalent position in relation to the overseas regulator.
- (2) No later than 15 working days after a co-operation arrangement is entered into,—
 - (a) the Minister or the Commission, as appropriate, must publish a notice in the *Gazette* that—
 - (i) states that the arrangement has been entered into; and
 - (ii) identifies the overseas regulator concerned; and
 - (iii) identifies the parties to the arrangement; and
 - (iv) states when the arrangement comes into effect; and
 - (b) the Commission must publish a copy of the co-operation arrangement on its Internet site, and must keep it there while the arrangement continues in force.
- (3) Subsections (1) and (2) apply with all necessary modifications to every amendment to a co-operation arrangement.

Section 48H: inserted, on 24 October 2012, by section 5 of the Fair Trading (International Co-operation) Amendment Act 2012 (2012 No 86).

48I Providing compulsorily acquired information and investigative assistance

- (1) Following a request by a recognised overseas regulator made in accordance with a co-operation arrangement, the Commission may do either or both of the following:
 - (a) provide compulsorily acquired information to the recognised overseas regulator:

- (b) provide investigative assistance to the recognised overseas regulator.
- (2) Before providing compulsorily acquired information or investigative assistance under subsection (1), the Commission must be satisfied that—
- (a) providing the information or assistance will, or is likely to, assist the recognised overseas regulator in performing its functions or exercising its powers in relation to fair trading law; and
 - (b) the provision of the information or assistance will not be inconsistent with the co-operation arrangement; and
 - (c) the provision of the information or assistance will not significantly prejudice New Zealand's international trade interests.
- (3) If the Commission considers, after consultation with the Ministry of Foreign Affairs and Trade, that a request for compulsorily acquired information or investigative assistance may have significant trade consequences for New Zealand, the Commission must refer the matter to the Minister of Trade.
- (4) If a request is referred to the Minister of Trade, the Commission is deemed to be satisfied for the purpose of subsection (2)(c) only if the Minister of Trade states, in writing, that he or she is satisfied that the provision of the information or assistance will not significantly prejudice New Zealand's international trade interests.
- (5) In considering whether to provide information or investigative assistance under a co-operation arrangement, the Commission must also consider—
- (a) whether complying with the request will substantially affect the Commission's ability to perform its other functions under this Act or any other enactment; and
 - (b) whether the recognised overseas regulator could more conveniently obtain the information or assistance from another source; and
 - (c) whether the request would, in the opinion of the Commission, be more appropriately dealt with under the Mutual Assistance in Criminal Matters Act 1992.

Section 48I: inserted, on 24 October 2012, by section 5 of the Fair Trading (International Co-operation) Amendment Act 2012 (2012 No 86).

48J Conditions on providing compulsorily acquired information and investigative assistance

- (1) If the Commission provides compulsorily acquired information or investigative assistance to a recognised overseas regulator, the Commission may impose conditions on such provision, including conditions relating to—
 - (a) maintaining the confidentiality of information; and
 - (b) the storage or use of, or access to, anything provided; and
 - (c) the copying, returning, or disposal of copies of anything provided; and
 - (d) the payment of costs incurred by the Commission in providing anything or in otherwise complying with a request for information or investigative assistance.
- (2) The Commission must not provide compulsorily acquired information that was given by a person whom the information might tend to incriminate unless the recognised overseas regulator gives a written undertaking—
 - (a) that it will not use the information as evidence—
 - (i) in criminal proceedings against the person (other than in proceedings in respect of the falsity of the person's testimony); or
 - (ii) in proceedings against the person for a pecuniary penalty or any equivalent proceedings; and
 - (b) that, to the extent that it is within the ability of the overseas regulator to do so, it will ensure that the information is not used by any other person, authority, or agency as evidence in proceedings referred to in paragraph (a).

Section 48J: inserted, on 24 October 2012, by section 5 of the Fair Trading (International Co-operation) Amendment Act 2012 (2012 No 86).

48K Notice to persons affected by provision of information

- (1) If the Commission provides any compulsorily acquired information to a recognised overseas regulator, the Commission must, as soon as practicable after providing the information, notify the following people that the information has been provided:
 - (a) the person from whom the information was acquired;
 - (b) every person to whom the information relates.

- (2) However, the Commission need not notify a person as required by subsection (1) if—
- (a) giving notice might compromise any investigation conducted, or to be conducted, by the Commission or any overseas regulator; or
 - (b) giving notice would prejudice the maintenance of the law (including the prevention, investigation, and detection of offences, and the right to a fair trial) in New Zealand or elsewhere; or
 - (c) it is not practicable in the circumstances to give notice to the person.

Section 48K: inserted, on 24 October 2012, by section 5 of the Fair Trading (International Co-operation) Amendment Act 2012 (2012 No 86).

48L Reporting on use of co-operation arrangements

The Commission's annual report must report on the use and operation of co-operation arrangements during the period covered by the report, and include information on—

- (a) the number and general nature of requests for information and investigative assistance received from recognised overseas regulators; and
- (b) the number and general nature of requests for information and investigative assistance that the Commission has made to recognised overseas regulators.

Section 48L: inserted, on 24 October 2012, by section 5 of the Fair Trading (International Co-operation) Amendment Act 2012 (2012 No 86).

48M Sharing of non-compulsorily acquired information not affected

Except to the extent that non-compulsorily acquired information is dealt with in a co-operation arrangement, the ability of the Commission to provide non-compulsorily acquired information to an overseas regulator is not affected by—

- (a) sections 48B to 48L; or
- (b) whether or not the overseas regulator is a recognised overseas regulator.

Section 48M: inserted, on 24 October 2012, by section 5 of the Fair Trading (International Co-operation) Amendment Act 2012 (2012 No 86).

48N Information provided by consent

Nothing in sections 48B to 48L or any co-operation arrangement prevents the Commission providing any information to an overseas regulator with the consent of the person who is the subject of the information.

Section 48N: inserted, on 24 October 2012, by section 5 of the Fair Trading (International Co-operation) Amendment Act 2012 (2012 No 86).

48O Maintenance of privilege

- (1) If the Commission provides to an overseas regulator, for the purpose of assisting the overseas regulator to perform its fair trading law functions, a communication or information in respect of which the Commission has any privilege referred to in section 54, 56, or 57 of the Evidence Act 2006, the Commission is not to be taken as having waived its privilege in relation to that communication or information merely by providing it to the overseas regulator.
- (2) If the Commission receives from an overseas regulator, for the purpose of assisting the Commission to perform its fair trading law functions under this Act, a communication or information that, under the law of the country of the overseas regulator is subject to a privilege analogous to a privilege of a kind referred to in section 54, 56, or 57 of the Evidence Act 2006, that communication or information is subject to the analogous privilege in New Zealand, and the Evidence Act 2006 applies accordingly.
- (3) The Commission must not provide a communication or information that is subject to the privilege referred to in section 57 of the Evidence Act 2006 (which relates to settlement negotiation and mediation) to an overseas regulator unless every other party that has a privilege in relation to that communication or information consents to the Commission providing the communication or information to the overseas regulator.
- (4) To avoid doubt, this section applies whether or not a communication or information is provided under a co-operation arrangement.

Section 48O: inserted, on 24 October 2012, by section 5 of the Fair Trading (International Co-operation) Amendment Act 2012 (2012 No 86).

48P Proceedings relating to financial products or financial services

- (1) This section applies if—
 - (a) the Commission is considering commencing civil or criminal proceedings in relation to conduct that constitutes, or may constitute, a contravention of any of sections 9 to 13; and
 - (b) the Commission considers that that conduct is in relation to a financial product or a financial service.
- (2) The Commission must, before commencing those proceedings, obtain the consent of the Financial Markets Authority (the **FMA**).
- (3) However, a failure to obtain consent under subsection (2) does not affect any proceedings commenced by the Commission.
- (4) The FMA, when considering whether to give its consent, must have regard to the following matters to the extent that the FMA considers that those matters are relevant:
 - (a) the purposes of the Financial Markets Conduct Act 2013 specified in sections 3 and 4 of that Act;
 - (b) any warning, report, or guideline issued, or comment or statement made, under section 9(1)(a)(ii) or (v) of the Financial Markets Authority Act 2011;
 - (c) any undertaking accepted under section 46 of the Financial Markets Authority Act 2011;
 - (d) any exemption granted under the Financial Markets Conduct Act 2013;
 - (e) any other action that the FMA has taken, or intends to take, in relation to the conduct;
 - (f) any other matters that the FMA considers relevant.
- (5) The FMA's consent may relate to particular conduct or a class of conduct (whether or not the conduct has already occurred).
- (6) In this section,—

financial product—

 - (a) has the same meaning as in section 7 of the Financial Markets Conduct Act 2013; and
 - (b) includes, in relation to any provision of sections 9 to 13, any class or classes of financial product declared by regulations made under section 548(1)(a) of that Act to

be a financial product for the purposes of the provision of Part 2 of that Act that corresponds to that provision of this Act

financial service has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013.

Section 48P: inserted, on 1 April 2014, by section 8 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

48Q No pecuniary penalty and fine for same conduct involving financial products or financial services

- (1) A person cannot be ordered to pay a pecuniary penalty, or be liable for a fine, under the Financial Markets Conduct Act 2013 and be liable for a fine under this Act for the same conduct.
- (2) A person that has, in respect of certain conduct, paid an amount in lieu of a pecuniary penalty under section 46A(1)(b) of the Financial Markets Authority Act 2011 is not liable for a fine under this Act for the same conduct.

Section 48Q: inserted, on 1 April 2014, by section 8 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

48R Unsubstantiated representations prohibition does not apply to financial markets disclosure

- (1) The provision of this Act that corresponds to section 23 of the Financial Markets Conduct Act 2013 does not apply to a representation made in a disclosure document or a register entry.
- (2) In this section, **disclosure document** and **register entry** have the same meanings as in section 6(1) of the Financial Markets Conduct Act 2013.

Section 48R: inserted, on 1 April 2014, by section 8 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

48S Certain conduct under Financial Markets Conduct Act 2013 does not contravene various provisions of this Act

- (1) Conduct that contravenes section 82, 99, 262, 265, or 427 or clause 27 of Schedule 1 of the Financial Markets Conduct Act 2013 does not contravene any of sections 9 to 13 of this Act.
- (2) For the purpose of this section, conduct must be treated as contravening section 82, 99, 262, 265, or 427 or clause 27 of

Schedule 1 of the Financial Markets Conduct Act 2013 even if the conduct does not constitute an offence, or does not lead to any liability, because of the availability of a defence.

Section 48S: inserted, on 1 April 2014, by section 8 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

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.
- (3) However, subsection (1) does not apply in relation to any provision in Part 4A that limits or affects the operation of the Sale of Goods Act 1908 or the Contractual Remedies Act 1979.

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

Section 50(3): inserted, on 18 December 2013, by section 40 of the Fair Trading Amendment Act 2013 (2013 No 143).

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 Government 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 Amendment Act 2008 (2008 No 52).

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).

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)

Part B—*continued*

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

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)

Financial Markets (Repeals and Amendments) Act 2013

Public Act 2013 No 70
Date of assent 13 September 2013
Commencement see section 2

1 Title

This Act is the Financial Markets (Repeals and Amendments) Act 2013.

2 Commencement

- (1) Sections 4(2) to (4), 91, 101(3), (6), and (7), 105, and 107 come into force on the day after the date on which this Act receives the Royal assent.
- (2) The rest of this Act comes into force on a date appointed by the Governor-General by Order in Council; and 1 or more orders may be made appointing different dates for different provisions and for different purposes.
- (3) To the extent that it is not previously brought into force under subsection (1) or (2), the rest of this Act comes into force on 1 April 2017.
- (4) In this section, **provision** includes any item, or any part of an item, in the Schedule.

Section 2(2): sections 6 to 9, 10, 11, 13, 35, 37 to 39, 41, 42(1) to (3), 43 to 47, 49, 52, 53, 58, and 61(2) to (10), 42(4) (other than as far as it relates to new subsection (1A)), sections 62, 64, 65, 66(1), 67 to 69, 70(1), (4), and (6), and 71, 150 (but only for the purpose of the items that are coming into force under paragraph (f)), certain items in the Schedule brought into force, on 1 April 2014, by clause 3 of the Financial Markets Legislation (Phase 1) Commencement Order 2014 (LI 2014/51).

Amendments to Fair Trading Act 1986

9 Transitional provision for existing offences and contraventions

- (1) This section applies to an offence committed under, or a contravention of, the principal Act before the commencement of section 7.

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- (2) The principal Act continues to have effect as if it had not been amended by sections 7 and 8 for the purpose of—
- (a) investigating an offence or a contravention to which this section applies:
 - (b) commencing or completing proceedings for an offence or a contravention to which this section applies:
 - (c) imposing a penalty or other remedy, or making an order, in relation to an offence or a contravention to which this section applies.
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Reprints notes

1 *General*

This is a reprint of the Fair Trading Act 1986 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Fair Trading Amendment Act 2013 (2013 No 143)
Companies Amendment Act 2013 (2013 No 111): section 14
Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): sections 7, 8
Fair Trading (International Co-operation) Amendment Act 2012 (2012 No 86)
Fair Trading (Soliciting on Behalf of Charities) Amendment Act 2012 (2012 No 48)
Search and Surveillance Act 2012 (2012 No 24): section 316
Criminal Procedure Act 2011 (2011 No 81): section 413
Financial Markets Authority Act 2011 (2011 No 5): section 82
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
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)
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)
