



Fair Trading Amendment Act 2013

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Commencement see section 2

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Fair Trading Amendment Act 2013.

2 Commencement

- (1) This Act, except the provisions specified in subsections (2) and (3), comes into force on the day after the date on which it receives the Royal assent.
- (2) Sections 6(3), 8, 10, 11, 13, 17, 23, 27, 29, 30, 33, 41, and 42 come into force on the day that is 6 months after the date on which this Act receives the Royal assent.
- (3) Sections 14 and 36 come into force on the day that is 15 months after the date on which this Act receives the Royal assent.

3 Principal Act amended

This Act amends the Fair Trading Act 1986.

Purpose

4 Long Title repealed

The Long Title is repealed.

5 New section 1A inserted

The following section is inserted after section 1:

“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.”

Interpretation

6 Interpretation

- (1) Section 2(1) is amended by repealing the definition of **court**.
- (2) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:
 - “**chief executive** means the chief executive of the Ministry
 - “**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
 - “**extended warranty agreement** has the meaning given in section 36T
 - “**infringement fee, infringement notice, and infringement offence** have the meanings given in section 40B
 - “**layby sale agreement** has the meaning given in section 36B
 - “**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)”.

- (3) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:

“**auction** has the meaning given in section 36X

“**consumer contract** means a contract,—

“(a) in the case of a contract relating to goods or services, between—

“(i) at least 1 supplier supplying the goods or services in trade; and

“(ii) at least 1 consumer; and

“(b) in the case of a contract relating to the sale or grant of an interest in land, between—

“(i) at least 1 person disposing, in trade, of an interest in the land; and

“(ii) at least 1 person acquiring an interest in the land for personal, domestic, or residential purposes

“**standard form consumer contract** means a consumer contract that a court, in the course of proceedings for a declaration under section 46I, and in accordance with section 46J, determines is a standard form contract

“**transparent**, in relation to a term in a contract, means a term that—

“(a) is expressed in reasonably plain language; and

“(b) is legible; and

“(c) is presented clearly; and

“(d) is readily available to any party affected by the term

“**unfair contract term** means a term in a consumer contract that a court has declared, under section 46I, is an unfair contract term

“**uninvited direct sale agreement** has the meaning given in section 36K

“**unsolicited goods** has the meaning given in section 21A(7)

“**unsolicited services** has the meaning given in section 21B(2)”.

*Application of Act to the Crown***7 Application of Act to the Crown**

Section 4(2) is amended by omitting “court” in each place where it appears and substituting in each case “High Court”.

*No contracting out***8 New sections 5C and 5D inserted**

The following sections are inserted after section 5B:

“5C No contracting out: general rule

- “(1) The provisions of this Act have effect despite anything to the contrary in any agreement.
- “(2) A provision of an agreement that has the effect of overriding a provision of this Act (whether directly or indirectly) is unenforceable.
- “(3) Subsections (1) and (2) are subject to subsection (4) and section 5D.
- “(4) Nothing in subsection (1) or (2) applies in respect of a provision that—
- “(a) imposes a stricter duty on the supplier than would be imposed under this Act; or
 - “(b) provides a more advantageous remedy against the supplier than would be provided under this Act.
- “(5) In this section and section 5D, **agreement** includes any contract, arrangement, or understanding.

“5D No contracting out: exception for parties in trade

- “(1) Despite section 5C(1) and (2), if the requirements of subsection (3) are satisfied, parties to an agreement may include a provision in their agreement that will, or may (whether directly or indirectly), allow those parties to engage in conduct, or to make representations, that would otherwise contravene section 9, 12A, 13, or 14(1); and in that case,—
- “(a) the provision is enforceable; and
 - “(b) no proceedings may be brought by any party to the agreement for an order under section 43 in relation to such a contravention of section 9, 12A, 13, or 14(1).

- “(2) A provision of the kind referred to in subsection (1) includes, for example,—
- “(a) a clause commonly known as an entire agreement clause;
 - “(b) a clause that acknowledges that a party to the agreement does not rely on the representations or other conduct of another party to the agreement, whether during negotiations prior to the agreement being entered into, or at any subsequent time.
- “(3) The requirements referred to in subsection (1) are that—
- “(a) the agreement is in writing; and
 - “(b) the goods, services, or interest in land are both supplied and acquired in trade; and
 - “(c) all parties to the agreement—
 - “(i) are in trade; and
 - “(ii) agree to contract out of section 9, 12A, 13, or 14(1); and
 - “(d) it is fair and reasonable that the parties are bound by the provision in the agreement.
- “(4) If, in any case, a court is required to decide what is fair and reasonable for the purposes of subsection (3)(d), the court must take account of all the circumstances of the agreement, including—
- “(a) the subject matter of the agreement; and
 - “(b) the value of the goods, services, or interest in land; and
 - “(c) the respective bargaining power of the parties, including—
 - “(i) the extent to which a party was able to negotiate the terms of the agreement; and
 - “(ii) whether a party was required to either accept or reject the agreement on the terms and conditions presented by the other party; and
 - “(d) whether the party seeking to rely on the effectiveness of a provision of the kind referred to in subsection (1) knew that a representation made in connection with the agreement would, but for that provision, have breached section 12A, 13, or 14(1); and
 - “(e) whether all or any of the parties received advice from, or were represented by, a lawyer, either at the time of

the negotiations leading to the agreement or at any other relevant time.

- “(5) To avoid doubt, nothing in this section—
- “(a) prevents the Commission from bringing proceedings for an offence under this Act (including an offence under section 12A, 13, or 14(1)) against a party to the agreement referred to in subsection (1):
 - “(b) limits the application of the Contractual Remedies Act 1979.”

9 Heading to Part 1 substituted

The heading to Part 1 is omitted and the following heading substituted: “**Unfair conduct**”.

Unsubstantiated representations

10 New heading and sections 12A to 12D inserted

The following heading and sections are inserted after section 12:

“Unsubstantiated representations

“12A Unsubstantiated representations

- “(1) A person must not, in trade, make an unsubstantiated representation.
- “(2) A representation is **unsubstantiated** if the person making the representation does not, when the representation is made, have reasonable grounds for the representation, irrespective of whether the representation is false or misleading.
- “(3) This section does not apply to a representation that a reasonable person would not expect to be substantiated.
- “(4) In this section and sections 12B to 12D, **representation** means a representation that is made—
- “(a) in respect of goods, services, or an interest in land; and
 - “(b) in connection with—
 - “(i) the supply or possible supply of the goods or services; or
 - “(ii) the sale or grant or possible sale or grant of the interest in land; or

- “(iii) the promotion by any means of the supply or use of the goods or services or the sale or grant of the interest in land.

“12B Court must have regard to certain matters

“(1) In proceedings concerning a contravention of section 12A, and in assessing whether a person had reasonable grounds for a representation, a court must have regard to all of the circumstances, including—

- “(a) the nature of the goods, services, or interest in land in respect of which the representation was made:
- “(b) the nature of the representation (for example, whether it was a representation about quality or quantity):
- “(c) any research or other steps taken by or on behalf of the person before the person made the representation:
- “(d) the nature and source of any information that the person relied on to make the representation:
- “(e) the extent to which the person making the representation complied with the requirements of any standards, codes, or practices relating to the grounds on which such a representation may be made, and the nature of those requirements:
- “(f) the actual or potential effects of the representation on any person.

“(2) Subsection (1) does not limit section 44.

“12C Limitation on commencement of proceedings in relation to unsubstantiated representations

Despite anything to the contrary in Part 5, only the Commission may commence proceedings, apply for an order, or apply for an injunction in relation to a contravention of section 12A.

“12D Section 12A subject to other enactments

Section 12A does not apply to a representation made by a person in a particular trade, business, industry, profession, occupation, activity of commerce, or undertaking if, when the representation is made,—

- “(a) another enactment sets out requirements relating to the grounds on which representations may be made

- by a person in that trade, business, industry, profession, occupation, activity of commerce, or undertaking (whether more or less onerous than section 12A); and
- “(b) the person complies with those requirements.”

False or misleading representations

11 False or misleading representations

- (1) Section 13(b) is amended by inserting “, or by a person who has other particular characteristics” after “person of a particular trade, qualification, or skill”.
- (2) Section 13(i) is amended by inserting “, including (to avoid doubt) in relation to any guarantee, right, or remedy available under the Consumer Guarantees Act 1993” after “or remedy”.
- (3) Section 13(j) is amended by adding “or services”.

12 New section 14A inserted

The following section is inserted after section 14:

“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.”

Unsolicited goods and services

13 New sections 21A to 21D inserted

The following sections are inserted after section 21:

“21A Liability of recipient of unsolicited goods

- “(1) If a person (the **sender**) sends or delivers unsolicited goods to another person (the **recipient**), the recipient—
- “(a) is not liable—
 - “(i) to pay for the goods; or
 - “(ii) for any loss of, or damage to, the goods, unless the loss or damage resulted from a deliberate act by the recipient; but
 - “(b) must, at any reasonable time during the period of 10 working days after the day on which the recipient receives those goods, make those goods available for collection by, or on behalf of, the sender.
- “(2) If the sender is in trade, the sender must, at the time the goods are delivered (whether by the sender or by any other person on behalf of the sender), inform the recipient of the recipient’s rights and obligations under subsection (1).
- “(3) Subsection (4) applies if—
- “(a) the period referred to in subsection (1)(b) has expired; or
 - “(b) a sender has failed to comply with subsection (2) (whether or not the period referred to in subsection (1)(b) has expired).
- “(4) If this subsection applies,—
- “(a) the recipient takes the goods as an unconditional gift; and
 - “(b) all interests that any other person had in the goods are extinguished; and
 - “(c) no action may be taken by any person for the recovery of the goods from the recipient.
- “(5) However, subsection (4) does not apply if the recipient—

- “(a) has failed, without reasonable excuse, to comply with subsection (1)(b); or
- “(b) knew, or ought reasonably to have known, that—
 - “(i) the goods were not intended for the recipient; or
 - “(ii) the sender had no right to send or deliver, or arrange for the delivery of, those goods to the recipient.
- “(6) To avoid doubt,—
 - “(a) a recipient does not commit an offence by failing to comply with subsection (1)(b); but
 - “(b) the consequence of such failure is that the recipient is unable to rely on subsection (4).
- “(7) In this section and section 21C, **unsolicited goods**—
 - “(a) means goods that have been sent or delivered to a recipient without any request for those goods having been made by, or on behalf of, that recipient; but
 - “(b) does not include reticulated gas or electricity.

“21B Liability of recipient of unsolicited services

- “(1) If a person, in trade, provides unsolicited services to another person (the **recipient**), the recipient is not liable—
 - “(a) to pay for the services; or
 - “(b) for any loss or damage resulting from the provision of those services, unless the loss or damage resulted from a deliberate act by the recipient.
- “(2) In this section and section 21C, **unsolicited services**—
 - “(a) means services that have been provided to a recipient without any request for those services having been made by, or on behalf of, that recipient; but
 - “(b) does not include reticulated gas or electricity.

“21C Prohibition on asserting right to payment in respect of unsolicited goods or unsolicited services

- “(1) A person must not, in trade,—
 - “(a) assert, or appear to assert, that the person has a right to payment from another person for unsolicited goods or unsolicited services; or
 - “(b) send or deliver to another person an invoice or other document that states the amount of a payment for, or

sets out the charge for supplying, unsolicited goods or unsolicited services, unless that invoice or document complies with subsection (2).

- “(2) The invoice or other document referred to in subsection (1)(b) must—
- “(a) contain a statement in the form prescribed in regulations made under section 21D; or
 - “(b) if no regulations have been made, clearly inform the recipient that the recipient is under no obligation to make any payment for the goods or services.

“21D Regulations

- “(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 unsolicited goods or unsolicited services or both, for all or any of the following purposes:
- “(a) prescribing a statement for the purposes of section 21C(2)(a), including the size of the lettering of the words in, and the format of, the statement;
 - “(b) prescribing how, when, and to whom a statement prescribed under paragraph (a) must be provided.
- “(2) The Minister must not make a recommendation under this section unless—
- “(a) the Minister has consulted 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 regulations made under this section.”

14 New heading and section 26A inserted

The following heading and section are inserted after section 26:

*“Unfair contract terms***“26A Unfair contract terms in standard form consumer contracts**

- “(1) If a court has declared, under section 46I, that a term in a standard form consumer contract is an unfair contract term, a person must not—
- “(a) include the unfair contract term in a standard form contract (unless the term is included in a way that complies with the terms (if any) of the decision of the court); or
 - “(b) apply, enforce, or rely on the unfair contract term in a standard form contract.
- “(2) The prohibitions in subsection (1) do not apply to any contract entered into before this section comes into force; but if the contract is varied or renewed on or after this section comes into force, the contract must be treated as a new contract for the purposes of subsection (1).
- “(3) However, in the case only of a contract of insurance (as defined in section 7 of the Insurance (Prudential Supervision) Act 2010) entered into before this section comes into force, the prohibitions in subsection (1) do not apply to—
- “(a) the contract; or
 - “(b) any variation of the contract; or
 - “(c) any new contract that has the effect of operating as a renewal of the contract, and any subsequent renewal.”

*Consumer information standards***15 Consumer information standards**

Section 27 is amended by repealing subsection (1) and substituting the following subsections:

- “(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).”

16 Compliance with consumer information standards

Section 28 is amended by omitting “section 27(1)” in each place where it appears and substituting in each case “section 27(1A)”.

Disclosure of trader status

17 New section 28B inserted

The following section is inserted after section 28A:

“28B Disclosure of trader status on Internet

“(1) This section applies when—

“(a) goods or services are offered for sale to consumers on the Internet; and

“(b) the offer is able to be accepted via the Internet.

“(2) If the vendor of the goods or services is in trade, the person making the offer must make it clear to potential purchasers that the vendor is a person in trade.

“(3) If the offer and any resulting sale are managed by an intermediary that is not party to the sale (such as an intermediary that operates an online bidding process), the intermediary must take reasonable steps to ensure that the person offering the goods or services for sale complies with subsection (2).”

Product safety

18 New sections 30A and 30B inserted

The following sections are inserted after section 30:

“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.

“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.”

Declaring goods unsafe

19 Unsafe goods

- (1) Section 31 is amended by inserting the following subsections after subsection (1):
- “(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) Section 31(3)(a) is amended by omitting “subsection (1) of this section” and substituting “subsection (1) or (1A)”.
- (3) Section 31 is amended by inserting the following subsections after subsection (3):
 - “(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.”

Product recall

20 New section 31A inserted

The following section is inserted after section 31:

“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.”

21 Compulsory product recall

(1) Section 32 is amended by inserting the following subsections after subsection (1):

“(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) Section 32(3) is amended by omitting “subsections (1) and (2) of this section” and substituting “subsections (1), (1A), and (2)”.

(3) Section 32(4) is amended by omitting “subsection (1) or subsection (2) of this section” and substituting “this section,”.

(4) Section 32(5) is amended by omitting “subsection (1) or subsection (2) of this section” and substituting “this section,”.

Product safety officers

22 New heading and sections 33A to 33D inserted

The following heading and sections are inserted after section 33:

*“Product safety officers***“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

“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

“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 accord-

ance 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

“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.”

New Part 4A inserted

23 New Part 4A inserted

The following Part is inserted after Part 4:

“Part 4A

“Consumer transactions and auctions

“36A Purpose of Part

The purpose of this Part is to set out in 1 place the rules applying to—

- “(a) layby sale agreements; and
- “(b) uninvited direct sale agreements; and
- “(c) extended warranty agreements; and
- “(d) auctions.

“Subpart 1—Layby sales

“**36B Meaning of layby sale agreement**

- “(1) In this subpart, **layby sale agreement** means an agreement (whether or not described as a layby sale agreement) between a supplier and a consumer for the supply of goods on terms (whether express or implied) that provide that—
- “(a) the consumer will not take possession of the goods until all or a specified portion of the total price of the goods has been paid; and
 - “(b) the price of the goods is to be paid by—
 - “(i) 3 or more instalments; or
 - “(ii) if the agreement specifies that it is a layby sale agreement, 2 or more instalments.
- “(2) However, a layby sale agreement does not include an agreement for the supply of goods that have a purchase price that is more than \$15,000 or, if greater, the amount specified in section 10(1A)(b) of the Disputes Tribunals Act 1988.
- “(3) For the purposes of subsection (1)(b), a deposit paid by the consumer for the goods is an instalment.
- “(4) Despite section 7 of the Credit Contracts and Consumer Finance Act 2003, a layby sale agreement is not a credit contract for the purposes of that Act.

“**36C Disclosure requirements relating to layby sale agreement**

- “(1) A supplier must ensure that—
- “(a) every layby sale agreement entered into by that supplier—
 - “(i) is in writing; and
 - “(ii) is expressed in plain language; and
 - “(iii) is legible; and
 - “(iv) is presented clearly; and
 - “(v) complies with the requirements of subsection (2); and
 - “(b) a copy of the agreement is given to the consumer at the time the agreement is entered into.
- “(2) The requirements referred to in subsection (1)(a)(v) are that—
- “(a) the following information is set out on the front page of the agreement:

- “(i) a clear description of the goods to be supplied under the agreement; and
- “(ii) a summary of the consumer’s right to cancel the agreement under section 36F(1); and
- “(iii) whether or not a cancellation charge will be imposed; and
- “(iv) if a cancellation charge is to be imposed, either the amount of the charge (if a fixed charge is to be imposed) or a clear description of how the charge will be calculated; and
- “(v) the supplier’s name, street address, telephone number, and email address; and
- “(b) the total price payable under the agreement is disclosed in the agreement; and
- “(c) the agreement is dated.

“36D Further disclosure if requested by consumer

- “(1) In addition to the requirements of section 36C, the supplier must, if requested by the consumer (either at the time that the layby sale agreement is entered into, or at any later time), provide the consumer with a written statement that clearly sets out—
 - “(a) the total purchase price that is, or (if the agreement has been cancelled) was, payable under the agreement; and
 - “(b) the amount paid by the consumer as at the date of the statement; and
 - “(c) the amount of the cancellation charge (if any) that, as at the date of the statement, the consumer—
 - “(i) is required to pay to the supplier (if the agreement has been cancelled); or
 - “(ii) would be required to pay to the supplier (if the consumer were to cancel the agreement); and
 - “(d) the outstanding amount (if any) that the consumer is required to pay to the supplier under the agreement, and when and how that amount is to be paid.
- “(2) The supplier must provide the statement to the consumer—
 - “(a) within 5 working days after receiving a request; and
 - “(b) free of charge.

“36E Risk in goods

- “(1) Goods to which a layby sale agreement relates remain at the supplier’s risk until property in the goods is transferred to the consumer and the consumer takes possession of those goods.
- “(2) To avoid doubt, this section overrides section 22 of the Sale of Goods Act 1908.

“36F Cancellation of layby sale agreement by consumer

- “(1) A consumer may cancel a layby sale agreement—
- “(a) at any time before the consumer takes possession of the goods to which the agreement relates; and
 - “(b) in any way (including oral or written) that shows the intention of the consumer to cancel or withdraw from the agreement.
- “(2) For the purposes of subsection (1)(b), the consumer must communicate with the supplier—
- “(a) by way of the contact details provided in accordance with section 36C(2)(a)(v); or
 - “(b) in any other way agreed to by the consumer and the supplier.
- “(3) A supplier must not require the consumer to pay a charge for the cancellation of the agreement (a **cancellation charge**) unless—
- “(a) the agreement is cancelled—
 - “(i) by the consumer under subsection (1); or
 - “(ii) by the supplier, because the consumer has breached a material term of the agreement (*see* section 36G(a)); and
 - “(b) the agreement provides that a cancellation charge is payable; and
 - “(c) the supplier has not breached the agreement.
- “(4) A supplier must not impose a cancellation charge that is more than the supplier’s reasonable costs arising directly from the agreement.
- “(5) In subsection (4), **reasonable costs arising directly from the agreement** includes, for example,—

- “(a) the loss in value of the goods between the date of the agreement and the date of the cancellation of the agreement;
- “(b) the reasonable costs incurred in storing and insuring the goods while the agreement was in force;
- “(c) the reasonable administration costs of the agreement (for example, office expenses, salaries, or wages directly attributable to the agreement).

“36G Cancellation of layby sale agreement by supplier

A supplier may cancel a layby sale agreement only if—

- “(a) the consumer has breached a material term of the agreement; or
- “(b) owing to circumstances beyond the control of the supplier,—
 - “(i) the goods to which the agreement relates are no longer available; and
 - “(ii) no satisfactory substitute goods can be reasonably obtained; or
- “(c) the supplier has ceased trading (other than in the circumstances described in section 36I(1)).

“36H Effect of cancellation of layby sale agreement

If a layby sale agreement is cancelled under section 36F or 36G, the supplier—

- “(a) must immediately repay to the consumer all money paid to the supplier under the agreement, less (in the case of cancellation under section 36F or 36G(a)) any cancellation charge that is payable; and
- “(b) is, if the amounts paid by the consumer under the agreement are insufficient to cover the cancellation charge (if any), entitled to recover the balance of that charge from the consumer as a debt; and
- “(c) is not entitled to damages, or to enforce any other remedy, in relation to the cancellation, except as provided for in paragraphs (a) and (b).

“36I Bankruptcy, receivership, liquidation, or voluntary administration of supplier: completion of layby sale agreement

- “(1) This section applies if—
- “(a) a supplier of goods under a layby sale agreement—
 - “(i) is adjudicated bankrupt; or
 - “(ii) has a receiver or statutory manager or similar person appointed in respect of it or of all or any of its assets; or
 - “(iii) is put into liquidation; or
 - “(iv) is in voluntary administration under Part 15A of the Companies Act 1993; and
 - “(b) the goods to which the agreement relates are part of the assets in the bankruptcy, receivership, liquidation, or administration, as the case may be.
- “(2) If this section applies, the consumer acquiring the goods is entitled, on payment of the balance (if any) of the price specified in the agreement and within a reasonable time, to—
- “(a) complete the agreement; and
 - “(b) have property in the goods to which the agreement relates transferred to him or her; and
 - “(c) take possession of those goods.
- “(3) However, if there are insufficient goods to enable all consumers to complete their agreements in accordance with subsection (2), the agreements must be completed in the same order as they were entered into.
- “(4) Subsections (2) and (3) do not apply to a consumer who has, in breach of the agreement, made no payments to the supplier during the 3 months immediately before the relevant event described in subsection (1)(a).
- “(5) If a consumer makes a payment under the agreement after an event described in subsection (1), the consumer is entitled to have that payment refunded in full.
- “(6) To avoid doubt, subsection (5) does not apply if the agreement is completed in accordance with subsection (2) or (3).

**“36J Bankruptcy, receivership, or liquidation of supplier:
consumer priority**

- “(1) This section applies if—
- “(a) an event described in section 36I(1)(a)(i) to (iii) has occurred; and
 - “(b) the consumer described in section 36I(2)—
 - “(i) is entitled to a refund under section 36H(a); or
 - “(ii) has been unable to complete the layby sale agreement in accordance with section 36I(2) or (3), as the case may be.
- “(2) If this section applies, the consumer—
- “(a) is a creditor in the bankruptcy, receivership, or liquidation, to the extent of the payments made to the supplier in accordance with the layby sale agreement; and
 - “(b) is entitled to recover a sum equal to those payments with priority over—
 - “(i) all other unsecured creditors; and
 - “(ii) all creditors secured by a security interest of the kind described in subsection (3).
- “(3) The kind of security interest referred to in subsection (2)(b)(ii) is a security interest that is over all or any part of the supplier’s accounts receivable and inventory, or all or part of either of them, other than—
- “(a) a purchase money security interest that has been perfected at the time specified in section 74 of the Personal Property Securities Act 1999; or
 - “(b) a security interest that—
 - “(i) has been perfected under the Personal Property Securities Act 1999 at the date of the event described in section 36I(1)(a)(i) to (iii); and
 - “(ii) arises from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation).
- “(4) Debts to which priority is given by subsection (2)(b) must be paid in accordance with—

- “(a) section 274(3) of the Insolvency Act 2006 (in the case of bankruptcies); or
 - “(b) section 30 of the Receiverships Act 1993 (in the case of receiverships); or
 - “(c) section 312 and Schedule 7 of the Companies Act 1993 (in the case of liquidations).
- “(5) To avoid doubt, this section does not apply in relation to—
- “(a) a consumer referred to in section 36I(4); or
 - “(b) a payment refunded under section 36I(5).
- “(6) In this section, **account receivable**, **inventory**, **new value**, **purchase money security interest**, and **security interest** have the meanings given to them in section 16 of the Personal Property Securities Act 1999.

“Subpart 2—Uninvited direct sales

“36K Meaning of uninvited direct sale agreement

- “(1) In this subpart, **uninvited direct sale agreement** means an agreement for the supply, in trade, of goods or services to a consumer—
- “(a) that is made as a result of negotiations (whether or not they are the only negotiations that precede the making of the agreement) between a supplier and the consumer in a situation described in either subsection (2) or (3); and
 - “(b) where the price paid or payable by the consumer under the agreement—
 - “(i) is more than \$100; or
 - “(ii) cannot be ascertained at the time of supply (regardless of whether the price ultimately paid or payable is \$100 or less).
- “(2) The first situation is where the negotiations take place between the consumer and the supplier, in each other’s presence, in the consumer’s home or workplace, where the consumer did not invite the supplier to come to that place for the purposes of entering into negotiations relating to the supply of those goods or services (whether or not the consumer made such an invitation in relation to a different supply).

- “(3) The other situation is where the negotiations take place by telephone, where the consumer did not invite the supplier to make the telephone call for the purposes of entering into negotiations relating to the supply of those goods or services (whether or not the consumer made such an invitation in relation to a different supply).
- “(4) However, **uninvited direct sale agreement** does not include a renewal agreement.
- “(5) For the purposes of this section, a consumer has not invited a supplier to—
- “(a) come to the home or workplace, or to make a telephone call, merely because the consumer has—
 - “(i) given his or her name or contact details to the supplier other than for the predominant purpose of entering into negotiations relating to the supply of goods or services; or
 - “(ii) contacted the supplier in connection with an unsuccessful attempt by the supplier to contact the consumer:
 - “(b) enter into negotiations for a supply merely because the supplier has provided an unsolicited quote or estimate.
- “(6) In subsection (4), **renewal agreement** means a new agreement that replaces an existing agreement between a supplier and consumer where—
- “(a) the existing agreement—
 - “(i) involves the supply, in trade, of goods or services to the consumer by the supplier; and
 - “(ii) is in force at the time the negotiations for the new agreement occur; and
 - “(b) the new agreement involves the supply, in trade, of goods or services—
 - “(i) of the same, or of a similar, kind as those supplied under the existing agreement; and
 - “(ii) by the same supplier to the same consumer (being the parties to the existing agreement); and
 - “(iii) on the same, or similar, terms and conditions as those in the existing agreement.

“36L Disclosure requirements relating to uninvited direct sale agreements

- “(1) A supplier must ensure that—
- “(a) every uninvited direct sale agreement entered into by that supplier—
 - “(i) is in writing; and
 - “(ii) is expressed in plain language; and
 - “(iii) is legible; and
 - “(iv) is presented clearly; and
 - “(v) complies with the requirements of subsection (2); and
 - “(b) a copy of the agreement is given to the consumer—
 - “(i) at the time the agreement is entered into; or
 - “(ii) in the case of an agreement entered into over the telephone, within 5 working days after the date on which the agreement was entered into.
- “(2) The requirements referred to in subsection (1)(a)(v) are that—
- “(a) the following information is set out on the front page of the agreement:
 - “(i) a clear description of the goods or services to be supplied under the agreement; and
 - “(ii) a summary of the consumer’s right to cancel the agreement under section 36M(1); and
 - “(iii) the supplier’s name, street address, telephone number, and email address; and
 - “(iv) the consumer’s name and street address; and
 - “(b) either—
 - “(i) the total price payable, and any other consideration to be given, under the agreement is disclosed in the agreement; or
 - “(ii) if the total price or consideration is not ascertainable at the time at which the agreement is entered into, the method by which the total price or consideration will be calculated is disclosed in the agreement; and
 - “(c) the agreement is dated.
- “(3) The supplier must give the consumer oral notice, before the agreement is entered into, of—

- “(a) the consumer’s right to cancel the agreement within 5 working days after the date on which the consumer receives a copy of the agreement; and
 - “(b) how the consumer may cancel the agreement.
- “(4) However, if an uninvited direct sale agreement is, or includes, a consumer credit contract (as defined in section 11 of the Credit Contracts and Consumer Finance Act 2003), in relation to that consumer credit contract only,—
- “(a) Part 2 of that Act applies in place of this subpart; and
 - “(b) the supplier must give the consumer oral notice, before the agreement is entered into, of—
 - “(i) the consumer’s rights to cancel the agreement under that Act; and
 - “(ii) how the consumer may cancel the agreement under that Act.
- “(5) For the purposes of subsection (4), a consumer credit contract is included in an uninvited direct sale agreement if that contract was entered into for the purpose of financing the purchase of the goods or services that are the subject of the uninvited direct sale agreement.
- “(6) To avoid doubt, where an uninvited direct sale agreement includes a consumer credit contract, this subpart continues to apply to every part of the agreement that is not a consumer credit contract.

“36M Cancellation of uninvited direct sale agreement by consumer

- “(1) A consumer may cancel an uninvited direct sale agreement by giving notice of the cancellation to the supplier—
- “(a) within 5 working days after the date on which the consumer receives a copy of the agreement; or
 - “(b) if the supplier has failed to comply with section 36L (except to the extent provided for in section 36N(2)), at any time.
- “(2) Notice of cancellation may be expressed in any way (including oral or written) that shows the intention of the consumer to cancel or withdraw from the agreement.

- “(3) For the purposes of subsection (2), the consumer must communicate with the supplier—
- “(a) by way of the contact details provided in accordance with section 36L(2)(a)(iii); or
 - “(b) in any other way agreed to by the consumer and the supplier.

“36N Enforcement of uninvited direct sale agreement by supplier

- “(1) An uninvited direct sale agreement is not enforceable by a supplier unless—
- “(a) the supplier has complied with section 36L; and
 - “(b) the time during which the consumer may cancel the agreement under section 36M has expired, and the consumer has not given notice of cancellation within that time.
- “(2) However, subsection (1)(a) does not apply if the failure to comply with section 36L is minor (for example, where a supplier has provided an agreement at a time later than the time specified in section 36L(1)(b)) and does not materially prejudice the consumer.

“36O Effect of cancellation of uninvited direct sale agreement

If an uninvited direct sale agreement is cancelled by a consumer (*see* section 36M),—

- “(a) the agreement (including any security or guarantee given by any person in connection with that agreement) and any collateral agreement (including any consumer credit contract referred to in section 36L(4)) are, in relation to the consumer’s rights under this Act,—
 - “(i) to be treated as if they had never had effect; and
 - “(ii) not enforceable; and
- “(b) the supplier must comply with section 36P; and
- “(c) the consumer must comply with section 36Q; and
- “(d) compensation (if any) is payable in accordance with section 36R.

“36P Supplier’s obligations on cancellation of uninvited direct sale agreement

On cancellation of an uninvited direct sale agreement in accordance with section 36M, the supplier must immediately repay to the consumer all money paid to the supplier under the agreement.

“36Q Consumer’s obligations on cancellation of uninvited direct sale agreement

- “(1) On cancellation of an uninvited direct sale agreement in accordance with section 36M, the consumer must,—
- “(a) if the supplier has complied with section 36P, permit the supplier to take possession of any goods that have been provided to the consumer under the agreement—
 - “(i) from the address provided by the consumer in the agreement; and
 - “(ii) at any reasonable time requested by the supplier; and
 - “(b) take reasonable care of those goods, from the time that the consumer took possession of the goods until the end of 10 working days beginning with the date on which notice was given in accordance with section 36M.
- “(2) However, if, during the 10 working days referred to in subsection (1)(b), the consumer unreasonably refuses or fails to permit the supplier to take possession of the goods, the consumer’s obligation to take reasonable care of the goods continues until the consumer has given the supplier a reasonable opportunity to take possession of the goods.
- “(3) Despite subsection (1), a consumer may, at the supplier’s expense (if the supplier requests the consumer to return the goods and arranges for the goods to be collected from the consumer) or at the consumer’s expense (if the consumer chooses to return the goods without a request being made by the supplier), return the goods to the supplier, in which case the consumer’s obligation to take care of the goods ceases when the goods are collected from the consumer, or when the consumer sends the goods to the supplier, as the case may be.
- “(4) However, the consumer is under an obligation to take reasonable care to ensure that the goods will not be damaged in transit

and, if the consumer chooses to return the goods without a request being made by the supplier, to also take reasonable care to ensure that the goods will be delivered to the supplier.

- “(5) To avoid doubt, a consumer is under no obligation—
- “(a) to permit the supplier to take possession of the goods if the supplier has failed to comply with section 36P; or
 - “(b) to deliver, or to arrange delivery of, the goods to the supplier; or
 - “(c) to care for the goods other than as required under this section.

“36R Compensation on cancellation of uninvited direct sale agreement

- “(1) On cancellation of an uninvited direct sale agreement under section 36M, the consumer is liable to pay compensation to the supplier for any loss of, or damage to, the goods that occurs while they are in the custody of the consumer, other than loss or damage—
- “(a) arising from the normal use of the goods; or
 - “(b) owing to circumstances beyond the consumer’s control.
- “(2) Subsection (1) applies only in relation to the period of custody beginning when the consumer takes delivery of the goods and ending—
- “(a) at the end of 10 working days after the date on which notice was given in accordance with section 36M; or
 - “(b) if section 36Q(2) applies, when the consumer has given the supplier a reasonable opportunity to take possession of the goods.
- “(3) If a supplier provided services under the agreement before it was cancelled,—
- “(a) the supplier is not entitled to any compensation for those services; and
 - “(b) if the services have resulted in the alteration of, or damage to, the consumer’s property, the supplier must, if required by the consumer and at the supplier’s expense, return the property to the condition it was in (or as close as is reasonably practicable to that condition) immediately before the services were provided.

“(4) A supplier is not entitled to damages, or to enforce any other remedy, in relation to the cancellation of an uninvited direct sale agreement under section 36M, except as provided for in this section.

“**36S Regulations**

“(1) The Governor-General may, by Order in Council made on the recommendation of the Minister in accordance with subsection (2), make regulations for the following purposes:

“(a) exempting classes of agreement for the issue or sale of a financial product from 1 or more provisions of this subpart:

“(b) prescribing terms and conditions to which an exemption described in paragraph (a) is subject.

“(2) The Minister must not make a recommendation under this section unless—

“(a) the Minister is satisfied that the exemption is not broader than is reasonably necessary to address the matters that gave rise to the regulations; and

“(b) the Minister has consulted the persons or representatives of the persons that 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

“(c) the Minister has considered those comments.

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

“(4) In this section, **agreement for the issue or sale of a financial product** means an agreement, resulting from an offer described in section 34(2) of the Financial Markets Conduct Act 2013, for the issue or sale of a financial product (within the meaning of that section).

“Subpart 3—Extended warranties

“**36T Meaning of extended warranty agreement and related definitions**

In this subpart,—

“**extended warranty agreement** means an agreement—

- “(a) that is entered into—
 - “(i) between a consumer and a warrantor in relation to the purchase by the consumer of goods or services; and
 - “(ii) at, or at about, the same time as those goods or services are purchased; and
- “(b) under which the warrantor provides specific warranties, guarantees, or undertakings (either directly or through a third person) in relation to those goods or services; and
- “(c) for which the consumer pays a price that is separate from, or additional to, the price at which the goods or services are offered for sale

“**warrantor** means both—

- “(a) the supplier, if that person arranges or provides the extended warranty agreement; and
- “(b) if the extended warranty agreement is entered into directly between the consumer and a person other than the supplier (for example, an insurer or manufacturer), that other person.

“**36U Disclosure requirements relating to extended warranty agreements**

- “(1) A warrantor must ensure that—
 - “(a) every extended warranty agreement—
 - “(i) is in writing; and
 - “(ii) is expressed in plain language; and
 - “(iii) is legible; and
 - “(iv) is presented clearly; and
 - “(v) complies with the requirements of subsection (2); and
 - “(b) a copy of the agreement is given to the consumer at the time the consumer purchases the extended warranty.
- “(2) The requirements referred to in subsection (1)(a)(v) are that—
 - “(a) the following information is set out on the front page of the agreement:
 - “(i) a summarised comparison between the relevant Consumer Guarantees Act 1993 guarantees and

- the protections provided by the extended warranty agreement; and
- “(ii) a summary of the consumer’s rights and remedies under the Consumer Guarantees Act 1993; and
 - “(iii) a summary of the consumer’s right to cancel the agreement under section 36V; and
 - “(iv) the warrantor’s name, street address, telephone number, and email address; and
- “(b) all the terms and conditions of the agreement are included in the agreement, including—
- “(i) the rights and obligations of the warrantor and the consumer; and
 - “(ii) the duration and expiry date of the agreement (including whether or not the agreement expires when a claim is made); and
- “(c) the total price payable under the agreement is disclosed in the agreement; and
- “(d) the agreement is dated.
- “(3) In addition to the requirements for written disclosure under subsections (1) and (2), the warrantor must, where reasonably practicable (for example, where the agreement is entered into between a warrantor and consumer in each other’s presence or by telephone), give the consumer oral notice, before the agreement is entered into, of—
- “(a) the consumer’s right to cancel the agreement within 5 working days; and
 - “(b) how the consumer may cancel the agreement.

“36V Cancellation of extended warranty agreement

- “(1) A consumer may cancel an extended warranty agreement by giving notice of the cancellation to the warrantor—
- “(a) within 5 working days after the date on which the consumer receives a copy of the agreement; or
 - “(b) if the warrantor has failed to comply with section 36U (except to the extent provided for in subsection (2)(b)), at any time.
- “(2) However,—
- “(a) subsection (1) does not apply in relation to an extended warranty agreement that has been entered into as a con-

dition of a consumer credit contract (as defined in section 11 of the Credit Contracts and Consumer Finance Act 2003); and

- “(b) subsection (1)(b) does not apply if the failure to comply with section 36U is minor (for example, where a warrantor has provided an agreement at a time later than the time specified in section 36U(1)(b)) and does not materially prejudice the consumer.
- “(3) Notice of cancellation may be expressed in any way (including oral or written) that shows the intention of the consumer to cancel or withdraw from the agreement.
- “(4) For the purposes of subsection (3), the consumer must communicate with the warrantor—
 - “(a) by way of the contact details provided in accordance with section 36U(2)(a)(iv); or
 - “(b) in any other way agreed to by the consumer and the warrantor.
- “(5) On cancellation of an agreement in accordance with subsections (1) to (3), the supplier must immediately repay all additional consideration, in full and without any deductions, to the consumer.
- “(6) To avoid doubt, nothing in this section entitles a consumer to cancel any other agreement relating to the goods or services that are the subject of the extended warranty agreement.

“36W Regulations

- “(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 extended warranty agreements, for all or any of the following purposes:
 - “(a) prescribing a statement for the purposes of providing the information specified in section 36U(2), including the size of the lettering of the words in, and the format of, the statement;
 - “(b) prescribing how, when, and to whom a statement prescribed under paragraph (a) must be provided.
- “(2) The Minister must not make a recommendation under this section unless—

- “(a) the Minister has consulted such persons or representatives of such persons as the Minister considers will be substantially affected by any regulations 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 regulations made under this section.

“Subpart 4—Auctions

“36X Definitions

- “(1) In this subpart, unless the context otherwise requires,—
- “**auction** means a process in which property of any kind (including goods, services, and interests in land) is offered for sale by an auctioneer on behalf of a vendor, and—
- “(a) bids for the property are placed with the auctioneer in real time, whether in person, by telephone, via the Internet, or by any other means; and
 - “(b) the property is sold when the auctioneer so indicates
- “**registered auctioneer** means an auctioneer registered as an auctioneer under the Auctioneers Act 2013
- “**vendor** means the person whose property is offered for sale at an auction by an auctioneer.
- “(2) To avoid doubt, a process of selling property is not necessarily an auction for the purpose of this subpart just because it is described as an auction. For example, a process described as an Internet auction, but that provides that any contract of sale resulting from the process is a contract directly between the winner of the bidding and the seller of the property, is not an auction for the purpose of this subpart.

“36Y Application of subpart

This subpart applies to auctions conducted by or on behalf of—

- “(a) a registered auctioneer; or
- “(b) any other person who carries on business as an auctioneer (within the meaning given in section 5(3) of the

Auctioneers Act 2013), whether or not a registered auctioneer.

“36Z Each lot is separate contract of sale

If property is offered for sale by auction in lots,—

- “(a) the offer of each lot is a separate auction; and
- “(b) each lot sold is subject to a separate contract of sale.

“Compare: 1908 No 168 s 59; 2007 No 91 s 42

“36ZA Start and end of auction

“(1) An auction starts when the auctioneer invites the first bid from potential participants.

“(2) An auction ends when the auctioneer makes it clear that bidding is closed.

“(3) However, property that is offered for sale by auction must be treated as having been sold at auction, even if the bidding ceased without the property being sold, if—

- “(a) the auctioneer accepts a subsequent offer from a person who attended the auction; and
- “(b) that offer is accepted before the end of the first working day following the day of the auction.

“Compare: 1908 No 168 s 59; 2007 No 91 s 42

“36ZB Notice to participants

“(1) Before and during any auction, notice of the terms of the auction must be readily available to view by all participants and potential participants in the auction, which means—

- “(a) for participants attending an auction in person, the notice must be displayed and readily available to view by all participants; and
- “(b) in any other case, the notice must be available to view, before and during the auction, on a readily accessible Internet site.

“(2) The notice of terms must include notice of the following:

- “(a) in the case of an auction of goods of a kind ordinarily acquired for personal, domestic, or household use or consumption, whether the vendor of the goods is selling

the goods in trade as a supplier (within the meaning of the Consumer Guarantees Act 1993):

“(b) whether the sale is subject to a reserve price:

“(c) whether vendor bids are permitted.

“(3) If different terms apply with respect to different lots, the notice, or the auctioneer before starting the auction of each lot, must identify which terms apply.

“(4) The person responsible for complying with the requirements of subsections (1) to (3) is,—

“(a) if the auction is conducted by or on behalf of a registered auctioneer, the registered auctioneer; or

“(b) in any other case, the auctioneer conducting the auction.

“36ZC Vendors selling in trade

The Consumer Guarantees Act 1993 does not apply to goods sold at auction if—

“(a) the goods are goods that are ordinarily acquired for personal, domestic, or household use; and

“(b) the vendor is selling the goods in trade as a supplier (within the meaning of the Consumer Guarantees Act 1993); and

“(c) the goods are acquired in trade; and

“(d) the notice of the terms of the auction specifies that in the circumstances described in paragraphs (a) to (c) the Consumer Guarantees Act 1993 does not apply as between the vendor and the purchaser.

“36ZD Vendor bids

“(1) An auctioneer must not accept a vendor bid unless—

“(a) the terms of the auction specify that vendor bids are permitted; and

“(b) the auctioneer identifies each vendor bid as it is given; and

“(c) the property is offered for sale with a reserve price and the vendor bid is less than the reserve price.

“(2) In this section, **vendor bid** means a bid made by the vendor or any person (including an auctioneer) acting as agent for the vendor.

“Compare: 1908 No 168 s 59; 2007 No 91 s 42

“36ZE Bids may be withdrawn until end of auction

Any bid at an auction may be withdrawn before the end of the auction.

“Compare: 2007 No 91 s 42

“36ZF Account and payment of proceeds

“(1) Within 10 working days after the sale by auction of property, the auctioneer must provide to the vendor—

“(a) the balance of the proceeds of the sale payable to the vendor; and

“(b) an account of the sale, which must set out, at a minimum, the bid accepted from the purchaser, the amount of any tax, auctioneer’s commission or other deductions, and the amount payable to the vendor.

“(2) However, unless the vendor and auctioneer have agreed otherwise, if the vendor requests an auctioneer to provide the balance of the proceeds and an account of the sale sooner than 10 working days after the sale, the auctioneer must comply with the request within 5 working days after the request is made.

“(3) An auctioneer need not comply with subsection (1) if—

“(a) the vendor—

“(i) is in trade; or

“(ii) is selling goods other than goods of a kind ordinarily acquired for personal, domestic, or household use or consumption; and

“(b) the vendor agrees (expressly or impliedly) that subsection (1) need not apply.

“(4) This section does not apply to a sale by auction of land or an interest in land conducted by a licensed real estate agent, and the provisions of the Real Estate Agents Act 2008 apply instead.

“Compare: 1928 No 29 s 31”.

*Jurisdiction***24 Jurisdiction of High Court**

Section 37 is amended by adding the following paragraphs:

“(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.”

25 Jurisdiction of District Courts

- (1) Section 38 is amended by adding the following paragraphs:
 - “(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) Section 38 is amended by adding the following subsection as subsection (2):
 - “(2) This section is subject to section 43B.”

26 Jurisdiction of Disputes Tribunals

- (1) Section 39 is amended by omitting “section 43(2)(c) to (f) of this Act (except in respect of a contravention of section 9 of this Act)” and substituting “section 43”.
- (2) Section 39 is amended by adding the following subsection as subsection (2):
 - “(2) This section is subject to section 43B.”

Offences and orders

27 Contraventions of provisions of Part 1, Part 2, Part 3, and Part 4 an offence

- (1) The heading to section 40 is amended by omitting “**Part 1, Part 2, Part 3, and Part 4**” and substituting “**Parts 1 to 4A**”.
- (2) Section 40 is amended by repealing subsection (1) and substituting the following subsection:

- “(1) Every person who contravenes a provision of Part 1 (except sections 9, 14(2), 23, or 24), Part 3, or Part 4 commits an offence and is liable on conviction,—
- “(a) in the case of an individual, to a fine not exceeding \$200,000; and
- “(b) in the case of a body corporate, to a fine not exceeding \$600,000.”
- (3) Section 40(1A) is amended by omitting “\$200,000” and substituting “\$600,000”.
- (4) Section 40 is amended by inserting the following subsection after subsection (1A):
- “(1B) Every person who contravenes a provision of Part 2 or Part 4A commits an offence and is liable on conviction,—
- “(a) in the case of an individual, to a fine not exceeding \$10,000; and
- “(b) in the case of a body corporate, to a fine not exceeding \$30,000.”

28 Additional penalty for contravention of section 24 involving commercial gain
Section 40A(4) is repealed.

29 New sections 40B to 40H inserted
The following sections are inserted after section 40A:

- “40B Infringement offence, etc, defined**
In this Act, unless the context otherwise requires,—
- “**infringement fee** means the amount, not exceeding \$2,000, that is prescribed by regulations made under section 40H as the amount payable in respect of an infringement offence for which an infringement notice has been issued
- “**infringement notice** means a notice, in the form prescribed by regulations made under section 40H and issued under section 40D, in respect of an infringement offence
- “**infringement offence** means any of the following:
- “(a) an offence against section 40(1) of failing to comply with a suspension of supply notice issued under section 33D:

- “(b) an offence against section 40(1B) involving the contravention of section 28 (consumer information standards):
- “(c) an offence against section 40(1B) of failing to comply with section 28B(2) or (3) (disclosure of trader status on Internet):
- “(d) an offence against section 40(1B) involving the contravention of any of the following provisions of Part 4A:
 - “(i) section 36C (layby disclosure requirements):
 - “(ii) section 36D (further layby disclosure requirements):
 - “(iii) section 36L (uninvited direct sale disclosure requirements):
 - “(iv) section 36U (extended warranty disclosure requirements).

“40C Infringement offence alleged

- “(1) If a person is alleged to have committed an infringement offence, the person may either—
 - “(a) be proceeded against by filing a charging document under section 14 of the Criminal Procedure Act 2011; or
 - “(b) be served with an infringement notice.
- “(2) Despite section 21 of the Summary Proceedings Act 1957, leave of a District Court Judge or Registrar to file a charging document is not necessary if the Commission commences proceedings for an infringement offence by filing a charging document under the Criminal Procedure Act 2011.

“Compare: 1992 No 122 s 165A

“40D Issue of infringement notice

- “(1) The Commission may issue an infringement notice to a person if—
 - “(a) the Commission believes on reasonable grounds that the person is committing, or has committed, an infringement offence; and
 - “(b) no information for that offence has been laid against, and no infringement notice has been issued to, the per-

son in relation to the conduct alleged to be an infringement offence.

- “(2) The Commission may revoke an infringement notice before the infringement fee is paid, or before an order for payment of a fine is made or deemed to be made by a court under section 21 of the Summary Proceedings Act 1957.
- “(3) An infringement notice is revoked by giving written notice to the person to whom it was issued that the notice is revoked.
“Compare: 1992 No 122 s 165B

“**40E Procedural requirements for infringement notices**

- “(1) An infringement notice may be served on a person (a **recipient**) who is alleged to have committed an infringement offence—
- “(a) by delivering it, or a copy of it, personally to the recipient; or
 - “(b) by sending it, or a copy of it, by post, addressed to the recipient at the recipient’s last known place of residence or business.
- “(2) For the purposes of the Summary Proceedings Act 1957, an infringement notice sent under subsection (1)(b) must be treated as having been served on the recipient on the date it was posted.
- “(3) An infringement notice must be in the form prescribed by regulations made under section 40H and must contain—
- “(a) details of the alleged infringement offence that are sufficient to fully and fairly inform the recipient of the time, place, and nature of the alleged infringement offence; and
 - “(b) the amount of the infringement fee; and
 - “(c) an address at which the infringement fee may be paid; and
 - “(d) the time within which the infringement fee must be paid; and
 - “(e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and
 - “(f) a statement that the recipient has a right to request a hearing; and

- “(g) a statement of what will happen if the recipient does not pay the fee and does not request a hearing; and
 - “(h) any other prescribed matters.
- “(4) If an infringement notice has been issued, proceedings in respect of the infringement offence to which the notice relates may be commenced in accordance with section 21 of the Summary Proceedings Act 1957; and in that case, section 21 of the Summary Proceedings Act 1957 applies, with all necessary modifications.
- “(5) Reminder notices must be prescribed by regulations made under section 40H and must contain the information referred to in subsection (3).
- “Compare: 1992 No 122 s 165C

“**40F What Commission does with infringement fees**

The Commission must pay all infringement fees received into a Crown Bank Account.

“Compare: 1992 No 122 s 165D

“**40G Effect of infringement notice**

If an infringement notice is issued, a criminal record must not be created in respect of the infringement offence.

“**40H Regulations relating to infringement offences**

The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for the following purposes:

- “(a) prescribing the form of infringement notices and reminder notices:
- “(b) prescribing any matters that must be included in those notices:
- “(c) prescribing the amount of the infringement fee.”

30 Summary Proceedings Act 1957 consequentially amended

- (1) This section amends the Summary Proceedings Act 1957.
- (2) The definition of **infringement notice** in section 2(1) is amended by inserting the following paragraph after paragraph (fa):

“(fb) section 40D of the Fair Trading Act 1986; or”.

31 Order to disclose information or publish advertisement

Section 42(3) is repealed.

32 New sections 43 to 43B substituted

Section 43 is repealed and the following sections are substituted:

“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.

“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.

“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.”

33 Defences

Section 44(1) is amended by inserting the following paragraph after paragraph (a):

- “(ab) that, in the case of an offence under section 40(1) in relation to a contravention of section 21C(1), the defendant reasonably believed that there was a right to payment or other consideration; or”.

34 Finding in proceedings to be evidence

Section 46 is amended by omitting “the court or” and substituting “the High Court or a”.

Enforceable undertakings and management banning orders

35 New headings and sections 46A to 46G inserted

The following headings and sections are inserted after section 46:

“Enforceable undertakings

“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

“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

*“Management banning orders***“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).

“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

“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.

“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

“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”

36 New heading and sections 46H to 46M inserted

The following heading and sections are inserted after section 46G:

“Declaration of unfair contract terms

“46H Application by Commission for declaration of unfair contract term

- “(1) The Commission may apply to the High Court or a District Court (at the choice of the Commission) for a declaration under section 46I that a term in a standard form consumer contract is an unfair contract term.
- “(2) Any person may ask the Commission to apply to a court for a declaration under section 46I in relation to a contract to which the person is a party.

“46I Declaration of unfair contract terms

- “(1) The High Court or a District Court may, on application by the Commission, declare that a term in a standard form consumer contract is an unfair contract term.
- “(2) The court may make the declaration only if it is satisfied that—
- “(a) the term is in a contract that is a consumer contract; and
 - “(b) the consumer contract is a standard form contract (as determined in accordance with section 46J); and
 - “(c) the declaration is not prohibited by section 46K(1); and
 - “(d) the term is unfair in the sense described in section 46L.
- “(3) A declaration under this section—
- “(a) must identify the contract to which it applies by reference to at least 1 of the parties to the contract; and
 - “(b) may describe the context or conditions in which the term’s inclusion in a standard form contract means that the term is an unfair contract term.

“46J Standard form contracts

- “(1) A court may determine that any contract in which the terms (other than terms referred to in section 46K) have not been

subject to effective negotiation between the parties is a standard form contract.

- “(2) In determining whether a contract is a standard form contract, the court must (without limitation) take into account the following:
- “(a) whether one of the parties has all or most of the bargaining power relating to the transaction:
 - “(b) whether the contract was prepared by one or more parties before any discussion relating to the transaction occurred with the other party or parties:
 - “(c) whether 1 or more of the parties was, in effect, required either to accept or reject the terms of the contract (other than terms referred to in section 46K) in the form in which they were presented:
 - “(d) the extent to which the parties had an effective opportunity to negotiate the terms (other than terms referred to in section 46K) of the contract:
 - “(e) the extent to which the terms of the contract take into account the specific characteristics of any party to the contract.
- “(3) If a party to a proceeding alleges that a contract is a standard form contract, the contract is presumed to be a standard form contract unless any other party to the proceedings proves otherwise.

“**46K Terms that may not be declared to be unfair contract terms**

- “(1) A court may not declare a term in a standard form consumer contract to be an unfair contract term to the extent that the term—
- “(a) defines the main subject matter of the contract; or
 - “(b) sets the upfront price payable under the contract; or
 - “(c) is a term required or expressly permitted by any enactment.
- “(2) In this section, **upfront price** means the consideration (including any consideration that is contingent upon the occurrence or non-occurrence of a particular event) payable under the contract, but only to the extent that the consideration is set out in a term that is transparent.

“46L When term in consumer contract is unfair

- “(1) A term in a consumer contract is unfair if the court is satisfied that the term—
- “(a) would cause a significant imbalance in the parties’ rights and obligations arising under the contract; and
 - “(b) is not reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term; and
 - “(c) would cause detriment (whether financial or otherwise) to a party if it were applied, enforced, or relied on.
- “(2) In determining whether a term of a consumer contract is unfair, the court may take into account any matters it thinks relevant, but must take into account—
- “(a) the extent to which the term is transparent; and
 - “(b) the contract as a whole.
- “(3) For the purpose of subsection (1)(b), a term in a consumer contract must be presumed not to be reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term, unless that party proves otherwise.
- “(4) For the purpose of subsection (1)(b), and despite anything in section 46M, in relation to contracts of insurance only, the following terms must be taken to be terms that are reasonably necessary in order to protect the legitimate interests of the insurer:
- “(a) a term that identifies the uncertain event or that otherwise specifies the subject matter insured or the risk insured against:
 - “(b) a term that specifies the sum or sums insured or assured:
 - “(c) a term that excludes or limits the liability of the insurer to indemnify the insured on the happening of certain events or on the existence of certain circumstances:
 - “(d) a term that describes the basis on which claims may be settled or that specifies any contributory sum due from, or amount to be borne by, an insured in the event of a claim under the contract of insurance:
 - “(e) a term that provides for the payment of the premium:
 - “(f) a term relating to the duty of utmost good faith that applies to parties to a contract of insurance:

- “(g) a term specifying requirements for disclosure, or relating to the effect of non-disclosure or misrepresentation, by the insured.
- “(5) In subsection (4),—
- “**contract of insurance** has the meaning given in section 7 of the Insurance (Prudential Supervision) Act 2010
- “**premium** has the meaning given in section 6 of the Insurance (Prudential Supervision) Act 2010
- “**uncertain event** has the meaning given in section 7 of the Insurance (Prudential Supervision) Act 2010.

“**46M Examples of unfair contract terms**

Without limiting section 46I, the following are examples of the kind of terms that, if in a consumer contract, may be unfair contract terms:

- “(a) a term that permits, or has the effect of permitting, one party (but not another party) to avoid or limit performance of the contract:
- “(b) a term that permits, or has the effect of permitting, one party (but not another party) to terminate the contract:
- “(c) a term that penalises, or has the effect of penalising, one party (but not another party) for a breach or termination of the contract:
- “(d) a term that permits, or has the effect of permitting, one party (but not another party) to vary the terms of the contract:
- “(e) a term that permits, or has the effect of permitting, one party (but not another party) to renew or not renew the contract:
- “(f) a term that permits, or has the effect of permitting, one party to vary the upfront price (as defined in section 46K(2)) payable under the contract without the right of another party to terminate the contract:
- “(g) a term that permits, or has the effect of permitting, one party unilaterally to vary the characteristics of the goods or services to be supplied, or the interest in land to be sold or granted, under the contract:

- “(h) a term that permits, or has the effect of permitting, one party unilaterally to determine whether a contract has been breached or to interpret its meaning:
- “(i) a term that limits, or has the effect of limiting, one party’s vicarious liability for its agents:
- “(j) a term that permits, or has the effect of permitting, one party to assign the contract to the detriment of another party without that other party’s consent:
- “(k) a term that limits, or has the effect of limiting, one party’s right to sue another party:
- “(l) a term that limits, or has the effect of limiting, the evidence one party can adduce in proceedings relating to the contract:
- “(m) a term that imposes, or has the effect of imposing, the evidential burden on one party in proceedings relating to the contract.”

Offences (consequential)

37 New section 47F substituted

Section 47F is repealed and the following section substituted:

“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.”

38 Commission may require person to supply information or documents

- (1) The heading to section 47G is amended by adding “**or give evidence**”.

- (2) Section 47G(1) is amended by adding “; or” and also by adding the following paragraph:
- “(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.”
- (3) Section 47G is amended by adding the following subsections:
- “(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).”

Authorised employees

39 New sections 47K and 47L inserted

The following sections are inserted after section 47J:

“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.

“**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.”

Consequential amendments, repeals, and savings

40 Saving of other laws

Section 50 is amended by adding the following subsection:

- “(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.”

41 Consequential repeals and amendments

- (1) The following Acts are repealed:
- (a) Door to Door Sales Act 1967 (1967 No 126);
 - (b) Unsolicited Goods and Services Act 1975 (1975 No 46).
- (2) The enactments specified in the Schedule are consequentially amended as set out in that schedule.

42 Repeal and savings relating to Layby Sales Act 1971

- (1) The Layby Sales Act 1971 (1971 No 80) is repealed.
- (2) Despite subsection (1), the Layby Sales Act 1971 continues to apply in relation to a layby sale entered into before the commencement of this section.
- (3) In subsection (2), **layby sale** has the meaning given to it by section 3 of the Layby Sales Act 1971.
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Schedule

s 41(2)

**Consequential amendments arising from
amendments to Fair Trading Act 1986****Part 1****Amendments to Acts****Companies Act 1993 (1993 No 105)**

Clause 1(3) of Schedule 7: omit “section 11 of the Layby Sales Act 1971” and substitute “section 36J of the Fair Trading Act 1986”.

Clause 1(3)(b) of Schedule 7: omit “section 9 of the Layby Sales Act 1971” and substitute “section 36H of the Fair Trading Act 1986”.

Electronic Transactions Act 2002 (2002 No 35)

Item relating to the Door to Door Sales Act 1967 in Part 2 of the Schedule: omit.

Goods and Services Tax Act 1985 (1985 No 141)

Section 5(4): omit “the Door to Door Sales Act 1967” and substitute “subpart 2 of Part 4A of the Fair Trading Act 1986” and omit “section 7” and substitute “section 36M”.

Section 5(5): omit “the Layby Sales Act 1971” and substitute “subpart 1 of Part 4A of the Fair Trading Act 1986”.

Section 5(5)(a): omit “the Layby Sales Act 1971” and substitute “section 36F or 36G of the Fair Trading Act 1986”.

Section 5(5)(b)(i): omit “selling costs” and substitute “cancellation charge”.

Section 5(5)(b): omit “section 9(1)(b) of the Layby Sales Act 1971” and substitute “section 36H(b) and (c) of the Fair Trading Act 1986”.

Section 9(2)(b): omit “section 7 of the Door to Door Sales Act 1967” and substitute “section 36M of the Fair Trading Act 1986”.

Section 9(2)(c): omit “the Layby Sales Act 1971” and substitute “section 36F or 36G of the Fair Trading Act 1986”.

Section 78AA(6): omit “the Layby Sales Act 1971” and substitute “subpart 1 of Part 4A of the Fair Trading Act 1986”.

Part 1—*continued***Insolvency Act 2006 (2006 No 55)**

Section 274(3): omit “section 11 of the Layby Sales Act 1971” and substitute “section 36J of the Fair Trading Act 1986”.

Section 274(3)(b): omit “section 9 of the Layby Sales Act 1971” and substitute “section 36H of the Fair Trading Act 1986”.

Mercantile Law Act 1908 (1908 No 117)

Section 44: repeal.

Private Security Personnel and Private Investigators Act 2010 (2010 No 115)

Section 62(f)(iii): insert “12A,” after “11,”.

Section 63(1)(a)(i): insert “12A,” after “12,”.

Real Estate Agents Act 2008 (2008 No 66)

Section 37(1)(b): insert “12A,” after “sections”.

Search and Surveillance Act 2012 (2012 No 24)

Schedule: replace item relating to Fair Trading Act 1986 with:

| | | | |
|-----------------------|-------|--|-----------------------------------|
| Fair Trading Act 1986 | 33C | Product safety officers may obtain and execute search warrant for purposes associated with unsafe goods | All (except sections 118 and 119) |
| | 47(2) | Authorised employee may obtain and execute search warrant to investigate breaches of Fair Trading Act 1986 | All (except sections 118 and 119) |
| | 47L | Authorised employee may obtain and execute search warrant to monitor and enforce compliance with certain standards and notices | All (except sections 118 and 119) |

Part 2

Amendments to regulations

District Courts Rules 2009 (SR 2009/257)

Rule 6.1.1(p): revoke.

Private Security Personnel and Private Investigators (Forms) Regulations 2011 (SR 2011/73)

Schedule: amend form 1 by omitting “section 10, 11, 13, 16, 19, 21, 24, 47F, or 47J of the Fair Trading Act 1986” and substituting “section 10, 11, 12A, 13, 16, 19, 21, 24, 47F, or 47J of the Fair Trading Act 1986”.

Schedule: amend form 2 by omitting “section 10, 11, 12, 16, 19, 21, 24, 47F, or 47J of the Fair Trading Act 1986” and substituting “section 10, 11, 12, 12A, 16, 19, 21, 24, 47F, or 47J of the Fair Trading Act 1986”.

Schedule: amend form 2 by omitting “section 10, 11, 13, 16, 19, 21, 24, 47F, or 47J of the Fair Trading Act 1986” and substituting “section 10, 11, 12A, 13, 16, 19, 21, 24, 47F, or 47J of the Fair Trading Act 1986”.

Schedule: amend form 6 by omitting “section 10, 11, 13, 16, 19, 21, 24, 47F, or 47J of the Fair Trading Act 1986” and substituting “section 10, 11, 12A, 13, 16, 19, 21, 24, 47F, or 47J of the Fair Trading Act 1986”.

Schedule: amend form 7 by omitting “section 10, 11, 13, 16, 19, 21, 24, 47F, or 47J of the Fair Trading Act 1986” and substituting “section 10, 11, 12A, 13, 16, 19, 21, 24, 47F, or 47J of the Fair Trading Act 1986”.

Summary Proceedings (Orders of Reparation) Order 2011 (SR 2011/401)

Schedule: omit the item relating to the Door to Door Sales Act 1967.

Schedule: amend the item relating to the Fair Trading Act 1986 by omitting “Section 43(2)(d)” and substituting “Section 43(3)(f)”.

Legislative history

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|------------------|---|
| 3 December 2013 | Divided from Consumer Law Reform Bill (Bill 287–2) by committee of the whole House as Bill 287–3A |
| 10 December 2013 | Third reading |
| 17 December 2013 | Royal assent |

This Act is administered by the Ministry of Business, Innovation, and Employment.
