Version
as at 1 July 2026

Fair Trading Act 1986

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Commencement	see section 1(2)

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

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

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Title *[Repealed]*

Title: repealed, on 18 December 2013, by section 4 of the Fair Trading Amendment Act 2013 (2013 No 143).

1 Short Title and commencement

(1) This Act may be cited as the Fair Trading Act 1986.

(2) Except as provided in section 49(3), this Act shall come into force on 1 March 1987.

1A Purpose

(1) The purpose of this Act is to contribute to a trading environment in which—

(a) the interests of consumers are protected; and

(b) businesses compete effectively; and

(c) consumers and businesses participate confidently.

(2) To this end, the Act—

(a) prohibits certain unfair conduct and practices in relation to trade; and

(b) promotes fair conduct and practices in relation to trade; and

(c) provides for the disclosure of consumer information relating to the supply of goods and services; and

(d) promotes safety in respect of goods and services.

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

2 Interpretation

(1) In this Act, unless the context otherwise requires,—

acquire,—

(a) in relation to goods, includes obtain by way of gift, purchase, or exchange; and also includes take on lease, hire, or hire purchase:

(b) in relation to services, includes accept:

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

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

auction has the meaning given in section 36X

business means any undertaking—

(a) that is carried on whether for gain or reward or not; or

(b) in the course of which—

(i) goods or services are acquired or supplied; or

(ii) any interest in land is acquired or disposed of—

whether free of charge or not

chief executive means the chief executive of the Ministry

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

consumer means a person who—

(a) acquires from a supplier goods or services of a kind ordinarily acquired for personal, domestic, or household use or consumption; and

(b) does not acquire the goods or services, or hold himself or herself out as acquiring the goods or services, for the purpose of—

(i) resupplying them in trade; or

(ii) consuming them in the course of a process of production or manufacture; or

(iii) in the case of goods, repairing or treating, in trade, other goods or fixtures on land

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

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

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

(a) any writing on any material:

(b) any information recorded or stored by means of any tape recorder, computer, or other device; and any material subsequently derived from information so recorded or stored:

(c) any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means:

(d) any book, map, plan, graph, or drawing:

(e) any photograph, film, negative, tape, or other device in which 1 or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced

extended warranty agreement has the meaning given in section 36T

goods—

(a) means personal property of every kind (whether tangible or intangible); and

(b) includes—

(i) ships, aircraft, and vehicles:

(ii) animals, including fish:

(iii) minerals, trees, and crops, whether on, under, or attached to land or not:

(iv) gas and electricity:

(v) to avoid doubt, water and computer software

grocery supply contract has the meaning given in section 26C

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

layby sale agreement has the meaning given in section 36B

local authority includes every local authority and every public body or other authority created by or pursuant to any public Act or local Act

Minister means the Minister of Consumer Affairs

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

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

official standard means—

(a) a New Zealand Standard within the meaning of section 4(1) of the Standards and Accreditation Act 2015; or

(b) a standard specification prescribed by a body, organisation, or association having or performing similar functions to those of the NZ Standards Organisation (as that term is defined in the Standards and Accreditation Act 2015)

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

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

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

residential premises means a building, or part of a building, that is a house, flat, town house, home unit, or similar dwelling erected, or currently used, mainly as a residence, and any land, improvements, or appurtenances belonging to the dwelling or usually enjoyed with it

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

(a) a contract for, or in relation to,—

(i) the performance of work (including work of a professional nature), whether with or without the supply of goods; or

(ii) the provision of, or the use or enjoyment of facilities for, accommodation, amusement, the care of persons or animals or things, entertainment, instruction, parking, or recreation; or

(iii) the conferring of rights, benefits, or privileges for which remuneration is payable in the form of a royalty, tribute, levy, or similar exaction:

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

(b) a contract of insurance, including life assurance, and life reassurance:

(c) a contract between a bank and a customer of the bank:

(d) any contract for, or in relation to, the lending of money or granting of credit, or the making of arrangements for the lending of money or granting of credit, or the buying or discounting of a credit instrument, or the acceptance of deposits;—

but does not include rights or benefits in the form of the supply of goods or the performance of work under a contract of service

small trade contract has the meaning given in section 26C

specified trade contract has the meaning given in section 26C

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

standard form trade contract means a specified trade 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

supply—

(a) in relation to goods, includes supply (or resupply) by way of gift, sale, exchange, lease, hire, or hire purchase; and

(b) in relation to services, includes provide, grant, or confer;—

and **supply** as a noun, **supplied**, and **supplier** have corresponding meanings

trade means any trade, business, industry, profession, occupation, activity of commerce, or undertaking relating to the supply or acquisition of goods or services or to the disposition or acquisition of any interest in land

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 or specified trade 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).

(2) In this Act, a reference to engaging in conduct shall be read as a reference to doing or refusing to do an act, and includes,—

(a) omitting to do an act; or

(b) making it known that an act will or, as the case may be, will not be done.

(3) In this Act—

(a) a reference to the acquisition of goods includes a reference to the acquisition of property in, or rights in relation to, goods, in pursuance of a supply of the goods:

(b) a reference to the supply or acquisition of goods or services includes a reference to agreeing to supply or acquire goods or services:

(c) a reference to the supply or acquisition of goods includes a reference to the supply or acquisition of goods together with other property or services or both:

(d) a reference to the supply or acquisition of services includes a reference to the supply or acquisition of services together with property or other services or both:

(e) a reference to the resupply of goods acquired from a person includes a reference to—

(i) a supply of goods to another person in an altered form or condition; and

(ii) a supply to another person of other goods in which the goods have been incorporated.

Section 2(1) **auction**: inserted, on 17 June 2014, by section 6(3) of the Fair Trading Amendment Act 2013 (2013 No 143).

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

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

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

Section 2(1) **consumer contract**: inserted, on 17 June 2014, by section 6(3) of the Fair Trading Amendment Act 2013 (2013 No 143).

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

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

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

Section 2(1) **grocery supply contract**: inserted, on 10 July 2023, by section 203(2) of the Grocery Industry Competition Act 2023 (2023 No 31).

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

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

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

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

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

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

Section 2(1) **official standard** paragraph (a): amended, on 1 March 2016, by section 45(1) of the Standards and Accreditation Act 2015 (2015 No 91).

Section 2(1) **official standard** paragraph (b): amended, on 1 March 2016, by section 45(1) of the Standards and Accreditation Act 2015 (2015 No 91).

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

Section 2(1) **residential premises**: inserted, on 16 August 2022, by section 4(1) of the Fair Trading Amendment Act 2021 (2021 No 32).

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

Section 2(1) **small trade contract**: inserted, on 16 August 2022, by section 4(1) of the Fair Trading Amendment Act 2021 (2021 No 32).

Section 2(1) **specified trade contract**: inserted, on 10 July 2023, by section 203(2) of the Grocery Industry Competition Act 2023 (2023 No 31).

Section 2(1) **standard form consumer contract**: inserted, on 17 June 2014, by section 6(3) of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 2(1) **standard form small trade contract**: repealed, on 10 July 2023, by section 203(1) of the Grocery Industry Competition Act 2023 (2023 No 31).

Section 2(1) **standard form trade contract**: inserted, on 10 July 2023, by section 203(2) of the Grocery Industry Competition Act 2023 (2023 No 31).

Section 2(1) **transparent**: inserted, on 17 June 2014, by section 6(3) of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 2(1) **unfair contract term**: inserted, on 17 June 2014, by section 6(3) of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 2(1) **unfair contract term**: amended, on 10 July 2023, by section 203(3) of the Grocery Industry Competition Act 2023 (2023 No 31).

Section 2(1) **unfair contract term**: amended, on 16 August 2022, by section 4(2) of the Fair Trading Amendment Act 2021 (2021 No 32).

Section 2(1) **uninvited direct sale agreement**: inserted, on 17 June 2014, by section 6(3) of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 2(1) **unsolicited goods**: inserted, on 17 June 2014, by section 6(3) of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 2(1) **unsolicited services**: inserted, on 17 June 2014, by section 6(3) of the Fair Trading Amendment Act 2013 (2013 No 143).

2A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

Section 2A: inserted, on 16 August 2022, by section 5 of the Fair Trading Amendment Act 2021 (2021 No 32).

3 Application of Act to conduct outside New Zealand

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

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

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

4 Application of Act to the Crown

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

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

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

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

5 Application of Act to Crown corporations

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

(2) Notwithstanding any enactment or rule of law, proceedings under Part 5 may be brought against a body corporate referred to in subsection (1).

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

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

[Repealed]

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

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

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

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

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.

Section 5C: inserted, on 17 June 2014, by section 8 of the Fair Trading Amendment Act 2013 (2013 No 143).

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 subpart 3 of Part 2 of the Contract and Commercial Law Act 2017.

Section 5D: inserted, on 17 June 2014, by section 8 of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 5D(5)(b): amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

6 Functions of Commission in relation to dissemination of information

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

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

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

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

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

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

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

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

[Repealed]

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

8 Annual report

[Repealed]

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

Part 1
Unfair conduct

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

Unconscionable conduct

Heading: inserted, on 16 August 2022, by section 6 of the Fair Trading Amendment Act 2021 (2021 No 32).

7 Unconscionable conduct

(1) A person must not, in trade, engage in conduct that is unconscionable.

(2) This section applies whether or not—

(a) there is a system or pattern of unconscionable conduct; or

(b) a particular individual is identified as disadvantaged, or likely to be disadvantaged, by the conduct; or

(c) a contract is entered into.

(3) This section is not limited by any rule of law or equity relating to unconscionable conduct.

Section 7: inserted, on 16 August 2022, by section 6 of the Fair Trading Amendment Act 2021 (2021 No 32).

8 Court may have regard to certain matters

(1) When assessing under section 7 whether a person's conduct is unconscionable, a court may have regard to 1 or more of the following:

(a) the relative bargaining power of the person engaging in the conduct (the **trader**) and any person (whether or not an identified individual) who is disadvantaged, or likely to be disadvantaged, by the conduct (an **affected person**):

(b) the extent to which the trader and an affected person acted in good faith:

(c) whether, taking account of the particular characteristics and circumstances of an affected person, the affected person or the affected person's representative was reasonably able to protect the affected person's interests:

(d) whether an affected person was able to understand any documents provided by the trader:

(e) whether the trader subjected an affected person to unfair pressure or tactics or otherwise unduly influenced an affected person:

(f) whether the trader unreasonably failed to disclose to an affected person—

(i) any intended conduct of the trader that might adversely affect the affected person's interests:

(ii) any risk to the affected person's interests arising from the trader's intended conduct, if the trader should have foreseen that the risk would not be apparent to the affected person:

(g) if there is a contract to which the conduct relates, anything listed in subsection (2):

(h) any other circumstance that the court considers relevant.

(2) If the conduct involves a contract between the trader and an affected person, the court may also have regard to—

(a) the circumstances in which the contract was entered into, including—

(i) any inducement to enter into it:

(ii) the extent to which the affected person had an effective opportunity to negotiate the terms:

(b) whether the affected person obtained independent legal advice, or other independent professional advice, about the contract before entering into it:

(c) the terms of the contract:

(d) the form of the contract, including, in the case of a written contract, whether its terms are transparent:

(e) whether the terms of the contract allow the affected person to be reasonably able to meet their obligations under it:

(f) whether the affected person's obligations under the contract are reasonably necessary for the protection of the trader's legitimate interests:

(g) the conduct of the trader and affected person in complying with the terms of the contract:

(h) the length of time the affected person has to remedy any breach:

(i) whether any action by the trader in relation to enforcement of the contract was lawful:

(j) any other conduct of the trader or affected person, after the contract was entered into, in connection with their relationship.

(3) To the extent (if any) that no particular individual is identified as disadvantaged or likely to be disadvantaged by the conduct, this section applies with all necessary modifications as if—

(a) references to an affected person were references to the type of person likely to be disadvantaged by the conduct; and

(b) references to the existence of a particular circumstance were references to the likely existence of that circumstance in relation to that type of person.

Section 8: inserted, on 16 August 2022, by section 6 of the Fair Trading Amendment Act 2021 (2021 No 32).

Misleading and deceptive conduct

9 Misleading and deceptive conduct generally

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

Compare: Trade Practices Act 1974 s 52 (Aust)

10 Misleading conduct in relation to goods

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

Compare: Trade Practices Act 1974 s 55 (Aust)

11 Misleading conduct in relation to services

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

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

12 Misleading conduct in relation to employment

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

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

Unsubstantiated representations

Heading: inserted, on 17 June 2014, by section 10 of the Fair Trading Amendment Act 2013 (2013 No 143).

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.

Section 12A: inserted, on 17 June 2014, by section 10 of the Fair Trading Amendment Act 2013 (2013 No 143).

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.

Section 12B: inserted, on 17 June 2014, by section 10 of the Fair Trading Amendment Act 2013 (2013 No 143).

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.

Section 12C: inserted, on 17 June 2014, by section 10 of the Fair Trading Amendment Act 2013 (2013 No 143).

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.

Section 12D: inserted, on 17 June 2014, by section 10 of the Fair Trading Amendment Act 2013 (2013 No 143).

False representations

13 False or misleading representations

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

(a) make a false or misleading representation that goods are of a particular kind, standard, quality, grade, quantity, composition, style, or model, or have had a particular history or particular previous use; or

(b) make a false or misleading representation that services are of a particular kind, standard, quality, or quantity, or that they are supplied by any particular person or by any person of a particular trade, qualification, or skill, or by a person who has other particular characteristics; or

(c) make a false or misleading representation that a particular person has agreed to acquire goods or services; or

(d) make a false or misleading representation that goods are new, or that they are reconditioned, or that they were manufactured, produced, processed, or reconditioned at a particular time; or

(e) make a false or misleading representation that goods or services have any sponsorship, approval, endorsement, performance characteristics, accessories, uses, or benefits; or

(f) make a false or misleading representation that a person has any sponsorship, approval, endorsement, or affiliation; or

(g) make a false or misleading representation with respect to the price of any goods or services; or

(h) make a false or misleading representation concerning the need for any goods or services; or

(i) make a false or misleading representation concerning the existence, exclusion, or effect of any condition, warranty, guarantee, right, or remedy, including (to avoid doubt) in relation to any guarantee, right, or remedy available under the Consumer Guarantees Act 1993; or

(j) make a false or misleading representation concerning the place of origin of goods or services.

Compare: Trade Practices Act 1974 s 53 (Aust)

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

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

Section 13(b): amended, on 17 June 2014, by section 11(1) of the Fair Trading Amendment Act 2013 (2013 No 143).

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

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

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

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

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

Section 13(i): amended, on 17 June 2014, by section 11(2) of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 13(j): amended, on 17 June 2014, by section 11(3) of the Fair Trading Amendment Act 2013 (2013 No 143).

14 False representations and other misleading conduct in relation to land

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

(a) make a false or misleading representation that a person has any sponsorship, approval, endorsement, or affiliation; or

(b) make a false or misleading representation concerning the nature of the interest in the land, the price payable for the land, the location of the land, the characteristics of the land, the use to which the land is capable of being put or may lawfully be put, or the existence or availability of facilities associated with the land.

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

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

(a) a right of occupancy of the land, or of a building or part of a building erected on the land, arising by virtue of the holding of shares, or by virtue of a contract to purchase shares, in a company that owns the land or building; or

(b) a right, power, or privilege, over, or in connection with, the land.

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

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

14A When vendor bids are misrepresentations

(1) This section applies where property (being goods, services, or an interest in land) is offered for sale—

(a) by auction (as defined in section 36X); or

(b) by any other bidding process in which all bids are disclosed.

(2) The vendor of the property makes a false or misleading representation with respect to the price of the property if the vendor, or any agent acting on behalf of the vendor, makes a vendor bid for the property.

(3) However, subsection (2) does not apply if—

(a) there is a reserve price for the property; and

(b) the bid is made before the reserve price is reached and is clearly identified as a vendor bid.

(4) If property is unsold at the end of an auction or other bidding process referred to in subsection (1), any subsequent reference to a particular bid as being the amount at which the property was passed in is a false or misleading representation with respect to the price of the property if the bid was a vendor bid.

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

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

15 Limited application of sections 9 to 14 to news media

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

(a) the publication of an advertisement; or

(b) the publication of any information or matter relating to the supply or possible supply or the promotion of the supply or use of goods or services or the sale or grant or the possible sale or grant or the promotion of the sale or grant of an interest in land by—

(i) that publisher or, where that publisher is a body corporate, by any interconnected body corporate; or

(ii) any person who is a party to any contract, arrangement, or understanding with that publisher relating to the content, nature or tenor of the information or matter.

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

(a) the broadcasting of an advertisement; or

(b) the broadcasting of any information or matter relating to the supply or possible supply or the promotion of the supply or use of goods or services or the sale or grant or the possible sale or grant or the promotion of the sale or grant of an interest in land by—

(i) that broadcaster, or where that broadcaster is a body corporate, by any interconnected body corporate; or

(ii) any person who is a party to any contract, arrangement, or understanding with that broadcaster relating to the content, nature or tenor of the information or matter.

(3) For the purposes of this section—

(a) **broadcasting** and **broadcaster** have the same meanings as in section 2(1) of the Broadcasting Act 1989:

(b) **newspaper** has the meaning given to that term by section 2 of the Films, Videos, and Publications Classification Act 1993:

(ba) **publisher**, in relation to a newspaper, means its proprietor:

(c) any 2 or more bodies corporate are to be treated as interconnected if one of them is a body corporate of which the other is a subsidiary (within the meaning of section 5 of the Companies Act 1993), or if both of them are subsidiaries (within the meaning of that section) of one and the same body corporate; and **interconnected body corporate** shall be construed accordingly.

Section 15(2): amended, on 30 May 2017, by section 40(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 15(2)(b)(i): amended, on 30 May 2017, by section 40(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 15(2)(b)(ii): amended, on 30 May 2017, by section 40(1) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 15(3)(a): replaced, on 30 May 2017, by section 40(2) of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

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

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

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

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

16 Certain conduct in relation to trade marks prohibited

(1) No person shall, in trade,—

(a) forge any trade mark; or

(b) falsely apply to any goods any trade mark or sign so nearly resembling a trade mark as to be likely to mislead or deceive; or

(c) falsely use in relation to the provision of services any trade mark or sign so nearly resembling a trade mark as to be likely to mislead or deceive.

(2) For the purposes of this section a person shall be deemed to forge a trade mark if that person—

(a) without the consent of the proprietor of the trade mark, makes that trade mark or a sign so nearly resembling that trade mark as to be likely to mislead or deceive; or

(b) falsifies any genuine trade mark, whether by alteration, effacement or otherwise.

(3) For the purposes of this Part—

sign includes—

(a) a brand, colour, device, heading, label, letter, name, numeral, signature, smell, sound, taste, ticket, or word; and

(b) any combination of signs

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

(a) in the case of goods, any sign used upon or in connection with the goods for the purpose of indicating that they are—

(i) goods of the proprietor of the sign by virtue of manufacture, selection, certification, dealing with, or offering to supply; or

(ii) goods of a member of a body of persons that is the proprietor of the sign; or

(iii) goods certified by the proprietor of the sign in respect of origin, material, mode of manufacture, quality, accuracy, or other characteristic; and

(b) in the case of services, any sign used in connection with the provision of the services for the purpose of indicating that they are—

(i) services of the proprietor of the sign; or

(ii) services of a member of a body of persons that is the proprietor of the sign.

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

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

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

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

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

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

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

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

Unfair practices

17 Offering gifts and prizes

No person shall,—

(a) in connection with the supply or possible supply of goods or services or with the promotion by any means of the supply or use of goods or services; or

(b) in connection with the sale or grant or the possible sale or grant of an interest in land or with the promotion by any means of the sale or grant of an interest in land,—

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

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

18 Trading stamp schemes prohibited

[Repealed]

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

19 Bait advertising

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

(a) does not intend to offer for supply; or

(b) does not have reasonable grounds for believing can be supplied by that person—

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

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

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

(a) he offered to supply, or to procure another person to supply, goods or services of the kind advertised to the customer within a reasonable time, in a reasonable quantity, and at the advertised price and where the offer was accepted by the customer, the person has so supplied or procured another person to supply the goods or services; or

(b) he offered to supply immediately, or to procure another person to supply within a reasonable time, equivalent goods or services to the customer in a reasonable quantity and at the price at which the first-mentioned goods or services were advertised, and, where the offer was accepted by

the customer, the person has so supplied, or procured another person to supply, such equivalent goods or services.

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

20 Referral selling

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

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

Compare: Trade Practices Act 1974 s 57 (Aust)

21 Demanding or accepting payment without intending to supply as ordered

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

(a) does not intend to supply the goods or services; or

(b) intends to supply goods or services materially different from the goods or services in respect of which the payment or other consideration is demanded or accepted; or

(c) does not have reasonable grounds to believe that that person will be able to supply the goods or services within any specified period; or if no period is specified, within a reasonable time.

Compare: Trade Practices Act 1974 s 58 (Aust)

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.

Section 21A: inserted, on 17 June 2014, by section 13 of the Fair Trading Amendment Act 2013 (2013 No 143).

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.

Section 21B: inserted, on 17 June 2014, by section 13 of the Fair Trading Amendment Act 2013 (2013 No 143).

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.

Section 21C: inserted, on 17 June 2014, by section 13 of the Fair Trading Amendment Act 2013 (2013 No 143).

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.

(4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 21D: inserted, on 17 June 2014, by section 13 of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 21D(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

22 Misleading representations about certain business activities

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

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

(a) the performance by the persons concerned of work; or

(b) the investment of money by the persons concerned and the performance by them of work associated with the investment—

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

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

23 Harassment and coercion

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

Compare: Trade Practices Act 1974 s 60 (Aust)

24 Pyramid selling schemes

(1) No person shall promote or operate a pyramid selling scheme.

(2) For the purposes of this section, the term **pyramid selling scheme** means—

(a) a scheme—

(i) that provides for the supply of goods or services or both for reward; and

(ii) that, to many participants in the scheme, constitutes primarily an opportunity to buy or sell an investment opportunity, whether

personally or through an agent, rather than an opportunity to buy or supply goods or services; and

(iii) that is or is likely to be unfair to many of the participants in the scheme in that—

(A) the financial rewards of many of those participants are dependent on the recruitment of additional participants (whether or not at successively lower levels); and

(B) the number of additional participants in the scheme that must be recruited to produce reasonable financial rewards to participants in the scheme is not attainable or is not likely to be attainable by many of the participants in the scheme:

(b) a scheme of the type commonly known as a chain letter scheme (whether or not it provides for the supply of goods or services or both) that is likely to be unfair to many of the participants in the scheme, in that—

(i) the financial rewards of many of those participants are dependent on the recruitment of additional participants; and

(ii) the number of additional participants in the scheme that must be recruited to produce reasonable financial rewards to participants in the scheme is not attainable or is not likely to be attainable by many of the participants in the scheme.

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

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

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

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

26 Importation of goods bearing false trade description

(1) This section applies to any goods to which a false trade description is applied.

(2) All goods to which this section applies are hereby prohibited to be imported into New Zealand, and shall be deemed to be included among goods prohibited to be imported under section 96 of the Customs and Excise Act 2018 and the provisions of that Act shall apply to such goods accordingly.

(3) In this section, **false trade description** means any representation which if made in connection with the supply or possible supply of goods or with the promotion by any means of the supply or use of goods would constitute a contravention of section 13(a), (d), or (j).

(4) For the purposes of subsection (1), a false trade description shall be deemed to be applied to goods if—

(a) it is woven in, impressed on, worked into, or annexed or affixed to the goods; or

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

(5) For the purposes of this section, a trade mark is not a representation.

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

Section 26(2): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Unfair contract terms

Heading: inserted, on 17 March 2015, by section 14 of the Fair Trading Amendment Act 2013 (2013 No 143).

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.

Section 26A: inserted, on 17 March 2015, by section 14 of the Fair Trading Amendment Act 2013 (2013 No 143).

26B Unfair contract terms in standard form trade contracts

If a court has declared, under section 46I, that a term in a standard form trade 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.

Section 26B heading: amended, on 10 July 2023, by section 204(1) of the Grocery Industry Competition Act 2023 (2023 No 31).

Section 26B: amended, on 10 July 2023, by section 204(2) of the Grocery Industry Competition Act 2023 (2023 No 31).

Section 26B: inserted, on 16 August 2022, by section 7 of the Fair Trading Amendment Act 2021 (2021 No 32).

26C Definition of specified trade contract

(1) In this Act, unless the context otherwise requires, a contract is a **specified trade contract** if subsection (2) or (3) applies to the contract.

(2) This subsection applies to a contract (a **small trade contract**) if—

(a) each party to it is engaged in trade; and

(b) it is not a consumer contract; and

(c) it does not comprise or form part of a trading relationship that exceeds the annual value threshold when the relationship first arises.

(3) This subsection applies to a contract (a **grocery supply contract**) if—

(a) each party to it is engaged in trade; and

(b) it is not a consumer contract; and

(c) it is a contract between—

(i) at least 1 regulated grocery retailer (within the meaning of Part 2 of the Grocery Industry Competition Act 2023); and

(ii) at least 1 supplier; and

(d) it relates to the acquisition of goods in respect of which the end-user is a consumer; and

(e) it does not comprise or form part of a trading relationship that exceeds the annual value threshold when the relationship first arises.

(4) If a party to a proceeding alleges that a contract is a specified trade contract, the contract is presumed to be a specified trade contract unless any other party to the proceeding proves otherwise.

(5) This section is subject to section 26E.

Section 26C: replaced, on 10 July 2023, by section 205 of the Grocery Industry Competition Act 2023 (2023 No 31).

26D Specified trade contracts: trading relationship, annual value threshold, and other definitions

(1) This section applies for the purposes of section 26C.

(2) **Trading relationship**, in relation to a contract, means a relationship consisting of—

(a) that contract; and

(b) any other contract (whether current or prospective) between the same parties on the same or substantially similar terms.

(3) A trading relationship—

(a) **first arises** when the first or only contract of the relationship is entered into; and

(b) **exceeds an annual value threshold when the relationship first arises**, in relation to the specified amount, if, at that time,—

(i) it includes a transparent term or transparent terms providing for consideration (including GST, if applicable) of at least the specified amount to be paid under it, in relation to any annual period, for the goods, services, or interest in land concerned; or

(ii) consideration (including GST, if applicable) of at least the specified amount is more likely than not to become payable under the relationship, in relation to any annual period, for the goods, services, or interest in land concerned.

(4) In this section,—

(a) the following must be disregarded when determining whether contracts are on the same or substantially similar terms:

(i) the main subject matter of the contracts; and

(ii) any upfront price (within the meaning of section 46K(2)) payable under the contracts; and

(b) **annual period**, in relation to a trading relationship, means a period—

(i) beginning with the date on which the relationship first arises or an anniversary of that date; and

(ii) ending 12 months later; and

(c) **GST** means goods and services tax payable under the Goods and Services Tax Act 1985; and

(d) **specified amount**,—

(i) in relation to a small trade contract, means $250,000; and

(ii) in relation to a grocery supply contract, means $1 million.

Example 1

A and B enter into a contract on 1 December 2022. The contract includes a transparent term under which A is to pay B $253,000 ($220,000 plus GST) for services to be provided before 1 December 2023. On 1 November 2023, A and B enter into a contract on substantially similar terms. The second contract includes a transparent term for A to pay B $57,500 ($50,000 plus GST) for services to be provided in 2024.

Neither contract is a small trade contract because the annual value threshold of $250,000 is exceeded when the trading relationship first arises.

Example 2

C and D are both engaged in trade. They enter into 2 contracts for C to buy fruit from D. The contracts are on the same terms except that the first contract relates to grapes and is entered into on 1 January 2023, and the second contract relates to apples and is entered into a year later, on 1 January 2024. Neither contract is a consumer contract and there are no other contracts in the trading relationship.

The parties' expectation when entering into the first contract is that C will spend approximately $120,000 per year under it and that from 2024 it will also spend $180,000 per year under the second contract.

Neither contract is a small trade contract because, despite the different subject matter, they form part of the same trading relationship and the annual value threshold of $250,000 is exceeded when the trading relationship first arises.

Example 3

On 1 May 2024, E and F, who are both engaged in trade, enter into an open-ended contract for E to supply stationery to F. The contract is not a consumer contract and the trading relationship contains no other contracts.

The contract does not include transparent terms setting out the consideration to be paid, but based on their previous interactions the parties expect that F will spend $100,000 under it each year. However, after several years F is purchasing significantly more stationery than originally anticipated. E is now supplying $300,000 worth of stationery to F each year. There has been no variation of the contract.

The contract starts as and remains a small trade contract because the annual value threshold of $250,000 is not exceeded when the trading relationship first arises.

Section 26D: inserted, on 16 August 2022, by section 7 of the Fair Trading Amendment Act 2021 (2021 No 32).

Section 26D heading: amended, on 10 July 2023, by section 206(1) of the Grocery Industry Competition Act 2023 (2023 No 31).

Section 26D(1): amended, on 10 July 2023, by section 206(2) of the Grocery Industry Competition Act 2023 (2023 No 31).

Section 26D(3)(b): replaced, on 10 July 2023, by section 206(3) of the Grocery Industry Competition Act 2023 (2023 No 31).

Section 26D(4)(d): inserted, on 10 July 2023, by section 206(4) of the Grocery Industry Competition Act 2023 (2023 No 31).

Section 26D(4) example 1: amended, on 10 July 2023, by section 206(5) of the Grocery Industry Competition Act 2023 (2023 No 31).

Section 26D(4) example 2: amended, on 10 July 2023, by section 206(5) of the Grocery Industry Competition Act 2023 (2023 No 31).

Section 26D(4) example 3: amended, on 10 July 2023, by section 206(5) of the Grocery Industry Competition Act 2023 (2023 No 31).

26E Regulations relating to definition of specified trade contract

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

(a) providing for any class of contract that is not a consumer contract and that is between parties engaged in trade to be treated as a small trade contract or grocery supply contract under section 26C; or

(b) excluding any class of contract from being a small trade contract or grocery supply contract under section 26C, and prescribing the terms and conditions (if any) applying to the exclusion.

(2) The Minister must not make a recommendation unless—

(a) 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

(b) the Minister has considered those comments; and

(c) in the case of regulations under subsection (1)(a), the Minister is satisfied that the regulations are necessary or desirable in order to promote the purpose of this Act; and

(d) in the case of regulations under subsection (1)(b), the Minister has had regard to the purpose of the Act and is satisfied that the requirements of section 26B would be unduly onerous in relation to the excluded class of contract.

(3) A failure to comply with subsection (2)(a) or (b) does not affect the validity of any regulations made under this section.

(4) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 26E: inserted, on 16 August 2022, by section 7 of the Fair Trading Amendment Act 2021 (2021 No 32).

Section 26E heading: amended, on 10 July 2023, by section 207(1) of the Grocery Industry Competition Act 2023 (2023 No 31).

Section 26E(1)(a): amended, on 10 July 2023, by section 207(2) of the Grocery Industry Competition Act 2023 (2023 No 31).

Section 26E(1)(b): amended, on 10 July 2023, by section 207(2) of the Grocery Industry Competition Act 2023 (2023 No 31).

Part 2
Consumer information

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

27 Consumer information standards

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

(1A) A consumer information standard may—

(a) require the disclosure of information relating to the kind, grade, quantity, origin, performance, care, composition, contents, design, construction, use, price, finish, packaging, promotion, or supply of the goods or services; and

(b) specify how that information must be obtained or verified before it is disclosed; and

(c) specify the form and manner in which that information must be disclosed on or in relation to—

(i) the supply or possible supply of the goods or services; or

(ii) the resupply or possible resupply of the goods or services; or

(iii) the promotion by any means of 1 or more of the matters described in subparagraphs (i) and (ii).

(2) The Governor-General may, from time to time, on the recommendation of the Minister, by Order in Council, make regulations declaring that:

(a) an official standard or an official standard with such additions or variations as are specified in the regulations is a consumer information standard:

(b) a specified part or parts of an official standard or of an official standard with such additions or variations as are specified in the regulations is a consumer information standard:

(c) 2 or more official standards or 2 or more official standards with such additions or variations as are specified in the regulations are consumer information standards:

(d) specified parts of 2 or more official standards or of 2 or more official standards with such additions or variations as are specified in the regulations are consumer information standards.

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

(a) the Minister has consulted with such persons or representatives of such persons as the Minister considers will be substantially affected by any

Order in Council made in accordance with the recommendation and those persons have had the opportunity to comment to the Minister; and

(b) the Minister has considered any such comments.

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

(5) No Order in Council may be made under this section in respect of any medicine or related product, within the meaning of the Medicines Act 1981, except in relation to the price of the medicine or related product.

(6) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

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

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

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

Section 27(6): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

28 Compliance with consumer information standards

(1) If a consumer information standard in respect of goods or services relates to a matter specified in section 27(1A), a person must not supply, or offer to supply, or advertise to supply those goods or services unless that person complies with that consumer information standard.

(2) If 2 or more consumer information standards in respect of goods or services relate to a matter specified in section 27(1A), a person must not supply, or offer to supply, or advertise to supply those goods or services unless that person complies with one of those consumer information standards.

(3) Nothing in subsection (1) or subsection (2) applies to goods that are intended for use outside New Zealand if there is applied to the goods—

(a) a statement that the goods are for export only; or

(b) a statement indicating, by the use of words authorised by regulations made under this section, that the goods are intended to be used outside New Zealand,—

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

(4) For the purposes of subsection (3), a statement is deemed to be applied to goods if the statement is—

(a) woven in, impressed on, worked into, or annexed or affixed to the goods; or

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

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

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

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

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

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister in accordance with subsection (2), make regulations, in relation to fund-raisers making requests for charitable purposes, for all or any of the following purposes:

(a) prescribing requirements for the disclosure of information about—

(i) the fund-raiser, the charitable organisation, and the relationship between those parties:

(ii) the financial benefits that the fund-raiser or any person other than the charitable organisation has received, or will or may receive, (whether directly or indirectly) as a result of making requests:

(iii) the amount of any donation included in the price of goods or services:

(b) prescribing the manner of disclosure, including—

(i) by whom, and to whom, disclosure must be made:

(ii) when and how disclosure must be made, including any particular words required:

(c) prescribing how the financial benefit must be calculated and expressed:

(d) specifying any financial benefit that the fund-raiser is not required to disclose.

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

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

(b) the Minister has considered any such comments.

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

(4) If regulations made under this section require a fund-raiser to disclose information, that fund-raiser must comply with the regulations.

(5) In this section,—

charitable entity has the meaning given to it in section 4(1) of the Charities Act 2005

charitable organisation—

(a) means—

(i) a charitable entity; or

(ii) any other person or organisation whose purpose, or predominant purpose, is a charitable purpose; and

(b) includes a person or organisation that holds itself out as being a charitable organisation, whether or not that person or organisation would otherwise be a charitable organisation within the meaning given in paragraph (a)

charitable purpose includes every charitable purpose, whether it relates to the relief of poverty, the advancement of education or religion, or any other matter beneficial to the community

fund-raiser—

(a) means a person who, in business, makes requests for donations for charitable purposes; and

(b) includes that person's employer or principal; but

(c) does not include—

(i) the charitable organisation concerned or an employee of that organisation; or

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

requests includes—

(a) soliciting for donations for a charitable purpose; and

(b) canvassing for subscriptions for a charitable purpose; and

(c) requests, by suppliers of goods or services, for donations that are included as part of the price of goods or services.

(6) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)

Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

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

Section 28A(6): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

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).

Section 28B: inserted, on 17 June 2014, by section 17 of the Fair Trading Amendment Act 2013 (2013 No 143).

Part 3
Product safety

29 Product safety standards

(1) The Governor-General may, from time to time, on the recommendation of the Minister, by Order in Council, make regulations in respect of goods of any description or any class or classes of goods, prescribing for the purpose of preventing or reducing the risk of injury to any person, a product safety standard or 2 or more product safety standards relating to all or any of the following matters—

(a) the performance, composition, contents, manufacture, processing, design, construction, finish or packaging of the goods:

(b) the testing of the goods during or after manufacture or processing:

(c) the form and content of markings, warnings, or instructions to accompany the goods.

(2) The Governor-General may, from time to time, on the recommendation of the Minister, by Order in Council, make regulations declaring that:

(a) an official standard or an official standard with such additions or variations as are specified in the regulations is a product safety standard:

(b) a specified part or parts of an official standard or of an official standard with such additions or variations as are specified in the regulations is a product safety standard:

(c) 2 or more official standards or 2 or more official standards with such additions or variations as are specified in the regulations are product safety standards:

(d) specified parts of 2 or more official standards or of 2 or more official standards with such additions or variations as are specified in the regulations are product safety standards.

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

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

(b) the Minister has considered any such comments.

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

(5) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

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

Section 29(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

30 Compliance with product safety standards

(1) If a product safety standard in respect of goods relates to a matter specified in section 29(1), a person must not supply, or offer to supply, or advertise to supply those goods unless that product safety standard is complied with in respect of those goods.

(2) If 2 or more product safety standards in respect of goods relate to a matter specified in section 29(1), a person must not supply, or offer to supply, or advertise to supply those goods unless one of those product safety standards is complied with in respect of those goods.

(3) Nothing in subsection (1) or subsection (2) applies to goods that are intended for use outside New Zealand if there is applied to the goods—

(a) a statement that the goods are for export only; or

(b) a statement indicating, by the use of words authorised by regulations made under this section, that the goods are intended to be used outside New Zealand,—

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

(4) For the purposes of subsection (3), a statement is deemed to be applied to goods if the statement is—

(a) woven in, impressed on, worked into, or annexed or affixed to the goods; or

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

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

Section 30(1): amended, on 13 January 2020, by section 37(1) of the Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62).

Section 30(2): amended, on 13 January 2020, by section 37(2) of the Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62).

30A Product safety policy statements

(1) The Minister may, if the Minister considers it necessary or desirable, issue a product safety policy statement that—

(a) relates to goods of any description or any class or classes of goods; and

(b) provides guidance on the safety of those goods to consumers, retailers, and manufacturers.

(2) The Minister may, at any time, amend, revoke, or replace a product safety policy statement.

(3) However, the Minister must not issue, amend, revoke, or replace a product safety policy statement unless—

(a) the Minister has consulted such persons or representatives of such persons as the Minister considers will be substantially affected by the proposed statement, and those persons have had the opportunity to comment to the Minister; and

(b) the Minister has considered any such comments.

(4) The chief executive—

(a) must ensure that a copy of every statement issued, amended, or replaced under this section or under section 30B is available to the public, at all reasonable times, on an Internet site maintained by or on behalf of the Ministry; and

(b) may make copies of statements available in any other way that the chief executive considers appropriate in the circumstances.

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

30B Review of product safety policy statements

(1) The Ministry must—

(a) review a product safety policy statement issued under section 30A within 5 years after its issue or (in the case of a subsequent review) within 5 years after the last review; and

(b) immediately following the review, prepare a report on the review for the Minister.

(2) The report must include recommendations to the Minister on whether the statement should be continued, amended, revoked, or replaced.

(3) However, the Ministry must not prepare a report under this section unless—

(a) the Ministry has consulted such persons or representatives of such persons as the Ministry considers will be substantially affected by the proposed recommendations, and those persons have had the opportunity to comment to the Ministry; and

(b) the Ministry has considered any such comments.

(4) As soon as practicable after receiving the report, the Minister must—

(a) consider the recommendations and any comments received by the Ministry under subsection (3)(a); and

(b) decide whether to continue, amend, revoke, or replace the statement; and

(c) ensure that the Minister's decision is available to the public, at all reasonable times, on an Internet site maintained by or on behalf of the Ministry.

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

31 Unsafe goods

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

(1A) The Minister may also, by notice, declare goods of any description or any class or classes of goods to be unsafe goods if it appears to the Minister that a reasonably foreseeable use (including misuse) of the goods will, or may, cause injury to any person.

(1B) In deciding whether to make a declaration under subsection (1A), the Minister must have regard to all the circumstances, including—

(a) the likelihood of an injury occurring to a person as a result of the reasonably foreseeable use or misuse of the goods:

(b) the seriousness of the injury likely to be suffered by the user of the goods or any other person:

(c) whether such injury is likely to be a frequent occurrence:

(d) any steps that the supplier or manufacturer of the goods has taken to mitigate the risk of injury:

(e) whether, taking into account the ordinary and intended use of the goods, the public interest favours making a declaration.

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

(3) Where—

(a) a period of 18 months has elapsed after the date of publication of a notice pursuant to subsection (1) or (1A) declaring goods to be unsafe goods; and

(b) a product safety standard has not been prescribed pursuant to section 29 in respect of the goods,—

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

(3A) The Minister must not issue a notice under subsection (3) unless—

(a) the Minister has consulted such persons or representatives of such persons as the Minister considers will be substantially affected by the proposed notice and those persons have had the opportunity to comment to the Minister; and

(b) the Minister has considered any such comments.

(3B) A failure to comply with subsection (3A) does not affect the validity of any notice given under this section, except where there has been a complete failure to consult.

(4) A notice made pursuant to subsection (3) may be amended or revoked at any time by the Minister by notice.

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

(a) in respect of which there is in force a notice declaring the goods to be unsafe goods; or

(b) in respect of which there is in force a notice under subsection (3).

(6) A notice under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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

Legislation Act 2019 requirements for secondary legislation made under this section

Publication The maker must publish it in the *Gazette* LA19 ss 73, 74(1)(a), Sch 1 cl 14

	The Ministry of Foreign Affairs and Trade considers that the secondary legislation may have international transparency obligations under the CPTPP. As a result the maker may also have to comply with s 75 of the Legislation Act 2019	LA19 ss 74(2), 75
Presentation	It is not required to be presented to the House of Representatives because a transitional exemption applies under Schedule 1 of the Legislation Act 2019	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 LA19 ss 115, 116

This note is not part of the Act.

Section 31(1): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

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

Section 31(1A): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

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

Section 31(2): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 31(3): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 31(3)(a): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

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

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

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

Section 31(4): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 31(6): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

31A Voluntary product recall

(1) This section applies if—

(a) a supplier voluntarily recalls goods because—

(i) the goods will, or may, cause injury to any person; or

(ii) a reasonably foreseeable use (including misuse) of the goods will, or may, cause injury to any person; or

(iii) the goods do not comply with a product safety standard; and

(b) there is no other requirement, under any other enactment, for a supplier in those circumstances to—

(i) report to a government agency; or

(ii) do any other thing in relation to goods of a kind referred to in paragraph (a) (for example, to have in place a process for the voluntary recall of goods of that kind).

(2) The supplier must, within 2 working days after recalling the goods, notify the chief executive of the recall.

(3) A notice under subsection (2) must be expressed in plain language and must contain the following information:

(a) a description of the goods, with sufficient detail to enable a consumer to readily identify the goods to which the notice relates; and

(b) a description of the danger (including the risk of damage or harm occurring as a result of that danger) that led to the goods being recalled; and

(c) details of what a consumer needs to do in response to the recall, including, as the case may be,—

(i) any precautions the consumer should take to avoid or reduce the risk of injury from the goods:

(ii) how to rectify the issue that led to the goods being recalled:

(iii) where to take the goods for repair, replacement, or refund; and

(d) the supplier's name, street address, telephone number, and email address.

(4) The chief executive—

(a) must ensure that a copy of every notice under this section is available to the public, at all reasonable times, on an Internet site maintained by or on behalf of the Ministry, for at least 2 years after the date on which the voluntary recall was notified to the chief executive in accordance with subsection (2); and

(b) may make copies of notices available in any other way that the chief executive considers appropriate in the circumstances.

(5) In subsection (1)(b), **government agency** means a department or Crown entity.

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

32 Compulsory product recall

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

(a) do not comply with a product safety standard prescribed in respect of the goods; or

(b) are goods of a kind which will or may cause injury to any person—

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

(1A) The Minister may also, by notice to the supplier, require the supplier to take the action specified in subsection (3) if it appears to the Minister that a reasonably foreseeable use (including misuse) of the goods supplied by the supplier will, or may, cause injury to any person.

(1B) In deciding whether to issue a notice under subsection (1A), the Minister must have regard to all the circumstances, including—

(a) the likelihood of an injury occurring to a person as a result of the reasonably foreseeable use or misuse of the goods:

(b) the seriousness of the injury likely to be suffered by the user of the goods or any other person:

(c) whether such injury is likely to be a frequent occurrence:

(d) any steps that the supplier or manufacturer of the goods has taken to mitigate the risk of injury:

(e) whether, taking into account the ordinary and intended use of the goods, the public interest favours the issuing of a compulsory product recall notice.

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

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

(a) recall the goods:

(b) disclose to the public information relating to—

(i) the characteristics of the goods which render them unsafe; or

(ii) the circumstances in which use of the goods is unsafe; or

(iii) any other matters relating to the goods or the use of the goods as may be specified:

(c) repair or replace the goods or refund to any person to whom the goods were supplied or resupplied the price paid for the goods or any lesser amount as may be reasonable having regard to the use that person has had of the goods.

(4) Where a notice is given to a supplier under this section, that supplier shall comply in all respects with the notice.

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

(a) where the notice identifies a defect in, or a dangerous characteristic of the goods, supply goods of a kind to which the notice relates which contain that defect or have that characteristic; or

(b) in any other case, supply goods of a kind to which the notice relates.

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

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

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

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

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

33 Importation of certain goods prohibited

All goods the supply of which would constitute a contravention of this Part are hereby prohibited to be imported into New Zealand and shall be deemed to be included among goods prohibited to be imported under section 96 of the Customs and Excise Act 2018 and the provisions of that Act shall apply to such goods accordingly.

Section 33: amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Product safety officers

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

33A Appointment of product safety officers

(1) The chief executive may appoint as a product safety officer any person who has passed such examinations as the chief executive requires to test the person's knowledge of this Act and the functions and powers of product safety officers.

(2) The chief executive may appoint a person as a trainee product safety officer, whether or not the person has passed the examinations referred to in subsection (1).

(3) For the purposes of this Act, a trainee product safety officer acting under the supervision of a product safety officer is deemed to be a product safety officer.

Compare: 1987 No 15 s 26

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

33B Certificates of appointment

(1) Every product safety officer, and every trainee product safety officer, must be issued with a certificate as evidence of that person's appointment under section 33A.

(2) The certificate must be in a form determined by the chief executive and set out—

(a) the full name of the appointee; and

(b) a statement that the person is appointed under section 33A of this Act; and

(c) a reference to the powers of the appointee under sections 33C and 33D; and

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

Compare: 1987 No 15 s 27

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

33C Powers of product safety officers

(1) A product safety officer may enter and inspect a place (not being a dwelling-house) without a warrant if—

(a) the product safety officer believes on reasonable grounds that—

(i) certain goods are unsafe (**suspect goods**); and

(ii) the suspect goods are supplied at, or dispatched from, the place; and

(b) the entry and inspection is for the purpose of ascertaining, or taking steps to ascertain, whether the suspect goods are in fact unsafe.

(2) While at the place, a product safety officer may, for the purpose described in subsection (1), do any of the following:

(a) with respect to any goods at the place that are available to consumers for supply or are dispatched for supply to consumers, inspect the goods, photograph them, and purchase them at the price for which they are currently offered for sale:

(b) require the person who appears at the time to be in charge of the supply or dispatch of goods at the place (the **person in charge**) to give his or her name and show to the product safety officer identification sufficient to confirm that the name given is correct:

(c) require the person in charge to identify the person from whom the suspect goods were acquired:

(d) if suspect goods have, within a specified period, been supplied in trade to another person other than by retail, require the person in charge to identify the person or persons to whom they have been supplied during that period:

(e) require any person by whom suspect goods are carried for delivery pursuant to, or in connection with, a contract of sale to give—

(i) his or her name and address; and

(ii) the name and address of his or her employer (if any); and

(iii) the name and address of the owner of the goods, if known.

(3) If a product safety officer enters a dwellinghouse with the permission of the occupier or under a warrant issued under subsection (4), the product safety officer may, for the purpose described in subsection (1)(b), exercise the powers listed in subsection (2).

(4) An issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012) may issue a warrant authorising a product safety officer to enter a dwellinghouse if the issuing officer is satisfied, on application made in accordance with subsection (5), that there are reasonable grounds for believing that it is necessary for the product safety officer to enter the dwellinghouse for the purpose of ascertaining—

(a) whether there are any suspect goods at the dwellinghouse that are or may be available to consumers for supply, or are or may be being dispatched for supply to consumers; and

(b) if there are, whether the goods are unsafe.

(5) The application for a warrant must be made in writing in the manner provided for an application for a search warrant in subpart 3 of Part 4 of the Search and Surveillance Act 2012.

(6) Part 4 of the Search and Surveillance Act 2012 (except sections 118 and 119) applies.

Compare: 1987 No 15 s 28

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

33D Suspension of supply notices

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

(a) either—

(i) knows that the goods, or goods of that description or class, have been implicated in serious injury or death; or

(ii) has good reason to suspect that the goods, or goods of that description or class, may be unsafe; and

(b) believes on reasonable grounds that—

(i) the supply of the goods may lead to a person suffering serious harm; and

(ii) the order is necessary to prevent the supply of the goods pending further investigation into their safety.

(2) A **suspension of supply notice** is a notice prohibiting the person or persons identified in the notice from supplying the goods identified in the notice during the period before the expiry of the notice.

(3) Every suspension of supply notice must be in the form prescribed by the chief executive, and must clearly set out—

(a) the goods, or the description or class of goods, to which the notice relates; and

(b) when the notice expires, which must be no later than 5 pm on the third working day after the day on which the notice is issued; and

(c) the person or persons to whom the notice applies, who may be any of the following:

(i) the person in charge:

(ii) any employee or agent of that person:

(iii) any employer or manager of that person:

(iv) any employee or agent of that person's employer or manager; and

(d) the name of the product safety officer who issues the notice.

(4) A person to whom a suspension of supply notice applies must not supply the goods identified in the notice at any time before the notice expires.

(5) A product safety officer may, with the approval of the chief executive, renew a suspension of supply notice before its expiry, but—

(a) may do so not more than twice; and

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

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

Part 4
Safety of services

34 Meaning of services

For the purposes of this Part **services** means the performance of work by way of—

(a) the maintenance, repair, treatment, processing, installation, assembly, cleaning or alteration of goods:

(b) the construction, maintenance, repair, cleaning or alteration of any building or other fixture on land:

(c) the development of land:

(d) the transportation of goods.

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

35 Safety standards in respect of services

(1) The Governor-General may, from time to time, on the recommendation of the Minister, by Order in Council, make regulations in respect of services of any description or any class or classes of services, prescribing for the purpose of preventing or reducing the risk of injury to any person, a services safety standard or 2 or more services safety standards relating to the performance of those services.

(2) The Governor-General may, from time to time, on the recommendation of the Minister, by Order in Council, make regulations declaring that:

(a) an official standard or an official standard with such additions or variations as are specified in the regulations is a services safety standard:

(b) a specified part or parts of an official standard or of an official standard with such additions or variations as are specified in the regulations is a services safety standard:

(c) 2 or more official standards or 2 or more official standards with such additions or variations as are specified in the regulations are services safety standards:

(d) specified parts of 2 or more official standards or of 2 or more official standards with such additions or variations as are specified in the regulations are services safety standards.

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

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

(b) the Minister has considered any such comments.

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

(5) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

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

Section 35(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

36 Compliance with services safety standards

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

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

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

Part 4A
Consumer transactions and auctions

Part 4A: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

36A Purpose of Part

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

(a) layby sale agreements; and

(b) uninvited direct sale agreements; and

(c) extended warranty agreements; and

(ca) gift card expiry dates; and

(d) auctions.

Section 36A: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 36A(ca): inserted, on 16 March 2026, by section 4 of the Fair Trading (Gift Card Expiry) Amendment Act 2024 (2024 No 35).

Subpart 1—Layby sales

Subpart 1: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

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 $60,000 or, if greater, the amount specified in section 10(1A)(b) of the Disputes Tribunal Act 1988.

(3) For the purposes of subsection (1)(b), a deposit paid by the consumer for the goods is an instalment.

(4) *[Repealed]*

(5) *[Repealed]*

Section 36B: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 36B(2): amended, on 24 January 2026, by section 10 of the Disputes Tribunal Amendment Act 2025 (2025 No 60).

Section 36B(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 36B(4): repealed, on 1 June 2020, by section 57 of the Credit Contracts Legislation Amendment Act 2019 (2019 No 81).

Section 36B(5): repealed, on 1 June 2020, by section 57 of the Credit Contracts Legislation Amendment Act 2019 (2019 No 81).

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.

(3) This section and section 36D do not apply to a layby sale agreement that is a consumer credit contract to which subpart 2 of Part 2 of the Credit Contracts and Consumer Finance Act 2003 applies (which relates to required disclosure).

Section 36C: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 36C(3): inserted, on 1 June 2020, by section 58 of the Credit Contracts Legislation Amendment Act 2019 (2019 No 81).

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.

Section 36D: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

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 148 of the Contract and Commercial Law Act 2017.

Section 36E: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 36E(2): amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

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).

Section 36F: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

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)).

Section 36G: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

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).

Section 36H: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

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).

Section 36I: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

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.

Section 36J: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

Subpart 2—Uninvited direct sales

Subpart 2: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

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.

Section 36K: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

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 subsections (1) to (3) and sections 36M to 36R; 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, subsections (1) to (3) and sections 36M to 36R continue to apply to every part of the agreement that is not a consumer credit contract.

Section 36L: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 36L(4)(a): amended, on 16 August 2022, by section 8(1) of the Fair Trading Amendment Act 2021 (2021 No 32).

Section 36L(6): amended, on 16 August 2022, by section 8(2) of the Fair Trading Amendment Act 2021 (2021 No 32).

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.

Section 36M: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

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.

Section 36N: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

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.

Section 36O: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

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.

Section 36P: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

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.

Section 36Q: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

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.

Section 36R: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

36RA Directions to leave premises or not enter premises

(1) This section applies to a person who, for the purpose of negotiating an uninvited direct sale agreement,—

(a) is about to enter residential premises; or

(b) has entered residential premises.

(2) The person must not enter the premises if directed not to enter by anyone who—

(a) resides at the premises; or

(b) is acting with the actual or apparent authority of someone residing at the premises.

(3) The person must leave the premises as soon as possible if directed to leave by anyone who—

(a) resides at the premises; or

(b) is acting with the actual or apparent authority of someone residing at the premises.

(4) A direction under subsection (2) or (3)—

(a) may be verbal or in written or other visual form; and

(b) must be audible or visible; and

(c) may be a general standing direction (for example, a notice on a gate or front door directing salespeople not to call) or a specific direction (for example, a face-to-face spoken direction).

(5) If the direction is a specific one, the person must not, for the purpose of negotiating an uninvited direct sale agreement, enter or re-enter the premises within 2 years after the direction is given.

Section 36RA: inserted, on 16 August 2022, by section 9 of the Fair Trading Amendment Act 2021 (2021 No 32).

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).

(5) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 36S: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 36S(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Subpart 3—Extended warranties

Subpart 3: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

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.

Section 36T: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

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—

(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 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 after the date on which the consumer receives a copy of the agreement; and

(b) how the consumer may cancel the agreement.

Section 36U: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 36U(1)(b): replaced, on 17 August 2021, by section 10(1) of the Fair Trading Amendment Act 2021 (2021 No 32).

Section 36U(3)(a): amended, on 17 August 2021, by section 10(2) of the Fair Trading Amendment Act 2021 (2021 No 32).

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 condition 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.

Section 36V: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

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.

(4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 36W: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 36W(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Subpart 3A—Gift card expiry dates

Subpart 3A: inserted, on 16 March 2026, by section 5 of the Fair Trading (Gift Card Expiry) Amendment Act 2024 (2024 No 35).

36WA Definitions

In this subpart, unless the context otherwise requires,—

expiry date, in relation to a gift card, means the date on which the gift card ceases to be redeemable

gift card means a card or voucher (in whatever form) that is redeemable for goods or services, but does not include—

(a) a card or voucher supplied in substitution for goods returned to the supplier of the goods; or

(b) a prepaid card or voucher redeemable only for telecommunication services, public transport, or electricity, gas, or water services; or

(c) a debit card, credit card, prepaid travel card, or other similar card that allows cash withdrawals; or

(d) a card or voucher supplied as part of a customer loyalty programme (other than a card or voucher supplied in exchange for a reduction in customer loyalty points); or

(e) a card or voucher redeemable only for goods or services available at a time-limited event (such as a festival, concert, or similar event); or

(f) a card or voucher sold principally to raise funds for a charitable purpose.

Section 36WA: inserted, on 16 March 2026, by section 5 of the Fair Trading (Gift Card Expiry) Amendment Act 2024 (2024 No 35).

36WB Gift card expiry date must not be less than 3 years

(1) A person must not, in trade, sell to a consumer a gift card with an expiry date that is less than 3 years after the date of sale of the gift card.

(2) A term or condition of a gift card sold to a consumer is void to the extent that it contravenes subsection (1).

(3) If the expiry date of a gift card is void because of subsection (2), the expiry date is taken to be 3 years after the date of sale of the gift card.

Section 36WB: inserted, on 16 March 2026, by section 5 of the Fair Trading (Gift Card Expiry) Amendment Act 2024 (2024 No 35).

36WC Expiry date must appear prominently on gift card

A person must not, in trade, sell to a consumer a gift card unless the card states prominently when it ceases to be redeemable by reference to one of the following:

(a) the expiry date:

(b) the month and year the gift card ceases to be redeemable:

(c) the date the gift card is sold and a statement that identifies the period during which the gift card is redeemable:

(d) the words “no expiry date” or words to that effect.

Section 36WC: inserted, on 16 March 2026, by section 5 of the Fair Trading (Gift Card Expiry) Amendment Act 2024 (2024 No 35).

Subpart 4—Auctions

Subpart 4: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

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.

Section 36X: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

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.

Section 36Y: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

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

Section 36Z: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

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

Section 36ZA: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

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.

Section 36ZB: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

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.

Section 36ZC: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

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

Section 36ZD: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

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

Section 36ZE: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

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 an agent, a branch manager, or a salesperson, licensed under the Real Estate Agents Act 2008, and the provisions of that Act apply instead.

Compare: 1928 No 29 s 31

Section 36ZF: inserted, on 17 June 2014, by section 23 of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 36ZF(4): amended, on 8 September 2018, by section 88(2) of the Statutes Amendment Act 2018 (2018 No 27).

Part 5
Enforcement and remedies

Jurisdiction of courts

37 Jurisdiction of High Court

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

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

(ab) appeals from proceedings in the District Court for orders under section 40A:

(b) applications for injunctions under section 41:

(c) applications for orders under sections 42 and 43:

(d) applications for orders under section 46B to enforce an undertaking involving a sum that, in total, exceeds $350,000 or, if greater, the amount specified in section 74 of the District Court Act 2016:

(e) appeals from any order of the District Court under section 46B:

(f) appeals from any order or decision of the District Court under section 46C or 46G:

(g) applications for a declaration under section 46I.

(2) *See also* section 100A of the Commerce Act 1986, under which the Commission may state a case for the opinion of the High Court on any question of law arising in any matter before it under this Act.

Section 37(1)(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

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

Section 37(1)(ab): inserted, on 8 July 2003, by section 6(2) of the Fair Trading Amendment Act 2003 (2003 No 31).

Section 37(1)(ab): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 37(1)(d): replaced, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 37(1)(e): inserted, on 18 December 2013, by section 24 of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 37(1)(e): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 37(1)(f): inserted, on 18 December 2013, by section 24 of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 37(1)(f): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 37(1)(g): inserted, on 18 December 2013, by section 24 of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 37(1)(g): amended, on 10 July 2023, by section 208 of the Grocery Industry Competition Act 2023 (2023 No 31).

Section 37(2): inserted, on 17 August 2021, by section 11 of the Fair Trading Amendment Act 2021 (2021 No 32).

38 Jurisdiction of District Court

(1) In accordance with this Part, the District Court shall hear and determine the following matters—

(a) proceedings for offences against sections 40 and 47J:

(b) applications for orders under sections 40A, 42, and 43:

(c) applications for orders under section 46B to enforce an undertaking involving a sum that, in total, does not exceed $350,000 or, if greater, the amount specified in section 74 of the District Court Act 2016:

(d) applications under sections 46C and 46G:

(e) applications for a declaration under section 46I.

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

Section 38 heading: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 38(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

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

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

Section 38(1)(c): replaced, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

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

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

Section 38(1)(e): amended, on 10 July 2023, by section 209 of the Grocery Industry Competition Act 2023 (2023 No 31).

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

39 Jurisdiction of Disputes Tribunal

(1) In accordance with this Part, the Disputes Tribunal established under section 4 of the Disputes Tribunal Act 1988 has jurisdiction to hear and determine applications for orders under section 43.

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

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

Section 39 heading: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 39(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

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

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

Offences

40 Contraventions of provisions of Parts 1 to 4A an offence

(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.

(1A) Every person who contravenes section 24 commits an offence and is liable on conviction to a fine not exceeding $600,000.

(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.

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

(3) *[Repealed]*

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

Section 40 heading: amended, on 17 June 2014, by section 27(1) of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 40(1): replaced, on 17 June 2014, by section 27(2) of the Fair Trading Amendment Act 2013 (2013 No 143).

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

Section 40(1A): amended, on 17 June 2014, by section 27(3) of the Fair Trading Amendment Act 2013 (2013 No 143).

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

Section 40(1B): inserted, on 17 June 2014, by section 27(4) of the Fair Trading Amendment Act 2013 (2013 No 143).

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

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

(1) If a person is convicted of an offence under section 40(1A) , the court may, on the application of the Commission, in addition to any penalty that the court may impose under that subsection, order that person to pay an amount not exceeding the value of any commercial gain resulting from the contravention if the court is satisfied that the contravention occurred in the course of producing a commercial gain.

(2) The value of any gain must be assessed by the court, and any amount ordered to be paid is recoverable in the same manner as a fine.

(3) The standard of proof in proceedings under this section is the standard of proof that applies in civil proceedings.

(4) *[Repealed]*

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

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

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):

(v) section 36WB (gift card expiry date must not be less than 3 years):

(vi) section 36WC (expiry date must appear prominently on gift card).

Section 40B: inserted, on 17 June 2014, by section 29 of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 40B **infringement offence** paragraph (d)(v): inserted, on 16 March 2026, by section 6 of the Fair Trading (Gift Card Expiry) Amendment Act 2024 (2024 No 35).

Section 40B **infringement offence** paragraph (d)(vi): inserted, on 16 March 2026, by section 6 of the Fair Trading (Gift Card Expiry) Amendment Act 2024 (2024 No 35).

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

Section 40C: inserted, on 17 June 2014, by section 29 of the Fair Trading Amendment Act 2013 (2013 No 143).

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 person 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

Section 40D: inserted, on 17 June 2014, by section 29 of the Fair Trading Amendment Act 2013 (2013 No 143).

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

Section 40E: inserted, on 17 June 2014, by section 29 of the Fair Trading Amendment Act 2013 (2013 No 143).

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

Section 40F: inserted, on 17 June 2014, by section 29 of the Fair Trading Amendment Act 2013 (2013 No 143).

40G Effect of infringement notice

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

Section 40G: inserted, on 17 June 2014, by section 29 of the Fair Trading Amendment Act 2013 (2013 No 143).

40H Regulations relating to infringement offences

(1) 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.

(2) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 40H: inserted, on 17 June 2014, by section 29 of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 40H(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Civil proceedings

41 Injunctions may be granted by court for contravention of specified provisions

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

(a) a contravention of any of the provisions of Parts 1 to 4 or section 36WB or 36WC:

(b) any attempt to contravene such a provision:

(c) aiding, abetting, counselling, or procuring any other person to contravene such a provision:

(d) inducing, or attempting to induce, any other person, whether by threats, promises or otherwise, to contravene such a provision:

(e) being in any way directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of such a provision:

(f) conspiring with any other person to contravene such a provision.

(2) The court may at any time rescind or vary an injunction granted under this section.

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

(a) if it is satisfied that the person has engaged in conduct of that kind, grant an injunction restraining the person from engaging in conduct of that kind; or

(b) if in the opinion of the court it is desirable to do so, grant an interim injunction restraining the person from engaging in conduct of that kind,—

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

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

(a) if it appears to the court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind, grant an injunction restraining the person from engaging in conduct of that kind; or

(b) if in the opinion of the court it is desirable to do so, grant an interim injunction restraining the person from engaging in conduct of that kind,—

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

(5) If the Commission applies to the court for the grant of an interim injunction, the court must not, as a condition of granting an interim injunction, require the Commission to give an undertaking as to damages.

(6) However, in determining the Commission's application for the grant of an interim injunction, the court must not take into account that the Commission is not required to give an undertaking as to damages.

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

Section 41 heading: amended, on 16 March 2026, by section 7(1) of the Fair Trading (Gift Card Expiry) Amendment Act 2024 (2024 No 35).

Section 41(1)(a): amended, on 16 March 2026, by section 7(2) of the Fair Trading (Gift Card Expiry) Amendment Act 2024 (2024 No 35).

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

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

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

42 Order to disclose information or publish advertisement

(1) Where, on the application of the Commission, the court is satisfied that a person has engaged in conduct constituting a contravention of any of the provisions of Parts 1 to 4 or section 36WB or 36WC, the court may (whether or not that person has previously engaged in such conduct), make either or both of the following orders:

(a) an order requiring that person, or any other person involved in the contravention, to disclose, at that person's own expense, to the public, or to a particular person or to persons included in a particular class of persons, in such manner as is specified in the order, such information, or information of such a kind, as is so specified, being information that is in the possession of the person to whom the order is directed or to which that person has access:

(b) an order requiring that person, or any other person involved in the contravention, to publish, at that person's own expense, in such manner and at such times as are specified in the order, corrective statements the terms of which are specified in, or are to be determined in accordance with, the order.

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

(3) *[Repealed]*

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

Section 42(1): amended, on 16 March 2026, by section 8 of the Fair Trading (Gift Card Expiry) Amendment Act 2024 (2024 No 35).

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

Section 42(3): repealed, on 18 December 2013, by section 31 of the Fair Trading Amendment Act 2013 (2013 No 143).

43 Other orders

(1) This section applies if, in proceedings under this Part or on the application of any person, a court or the 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) subpart 5 of Part 2 of the Contract and Commercial Law Act 2017; or

(b) section 317 of the Accident Compensation Act 2001.

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

Section 43(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 43(6)(a): amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

43A Application for order under section 43

A person may apply to a court or the Disputes Tribunal for an order under section 43 at any time within 3 years after the date on which the loss or damage, or the likelihood of loss or damage, was discovered or ought reasonably to have been discovered.

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

Section 43A: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

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

(1) The District Court must not make an order under section 43 if a value or amount described in subsection (3) exceeds $350,000 or, if greater, the amount specified in section 74 of the District Court Act 2016.

(2) The 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) $60,000:

(b) the amount specified in section 10(1A)(b) of the Disputes Tribunal Act 1988.

(c) *[Repealed]*

(3) The values and amounts are as follows:

(a) in the case of an order under section 43(3)(a) or (c), the value of the consideration for the promise or act of any party to the contract or collateral arrangement referred to in that paragraph:

(b) in the case of an order under section 43(3)(e) directing a person to refund money or return property, the amount of money or the value of the property:

(c) in the case of an order under section 43(3)(f) requiring a person to pay an amount, that amount:

(d) in the case of an order under section 43(3)(g) directing a person to repair goods or to provide parts for goods, the value of the work required to repair the goods, or the value of the parts, as the case may be:

(e) in the case of an order under section 43(3)(h) directing a person to supply services, the value of the services.

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

Section 43B(1): replaced, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 43B(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 43B(2)(a): amended, on 24 January 2026, by section 10 of the Disputes Tribunal Amendment Act 2025 (2025 No 60).

Section 43B(2)(b): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 43B(2)(c): repealed, on 29 October 2019, by section 340(2) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

44 Defences

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

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

(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

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

(c) that—

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

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

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

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

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

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

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

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

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

(5) Subject to subsection (6), it is a defence to a prosecution for an offence against section 40, or to any other proceedings under this Part, in relation to a contravention of section 28, if the defendant proves—

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

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

defendant acquired the goods that a consumer information standard had not been prescribed for those goods.

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

(7) It is a defence to a prosecution of an offence under section 40, or to any other proceedings under this Part, in relation to a contravention of section 36RA, if the defendant proves that—

(a) the person who gave the direction under section 36RA(2) or (3), or with whose actual or apparent authority it was given, no longer resided at the premises at the time of the contravening conduct; or

(b) the contravening conduct was with the permission (given after the direction under section 36RA(2) or (3) but before the conduct) of someone who—

(i) resided at the premises; or

(ii) was acting with the actual or apparent authority of someone residing at the premises.

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

Section 44(1)(ab): inserted, on 17 June 2014, by section 33 of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 44(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

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

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

Section 44(7): inserted, on 16 August 2022, by section 12 of the Fair Trading Amendment Act 2021 (2021 No 32).

45 Conduct by servants or agents

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

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

(a) by a director, servant, or agent of the body corporate, acting within the scope of that person's actual or apparent authority; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant, or agent of the body corporate, given within the scope of the actual or apparent authority of the director, servant or agent—

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

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

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

(a) by a servant or agent of the person acting within the scope of that person's actual or apparent authority; or

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

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

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

Compare: Trade Practices Act 1974 s 84 (Aust)

46 Finding in proceedings to be evidence

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

Compare: Trade Practices Act 1974 s 83 (Aust)

Section 46: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 46: amended, on 18 December 2013, by section 34 of the Fair Trading Amendment Act 2013 (2013 No 143).

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

Enforceable undertakings

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

46A Commission may accept undertakings

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

(2) The person may withdraw or vary the undertaking with the consent of the Commission.

Compare: 1978 No 103 s 69J

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

46AA Matters included in undertakings

(1) An undertaking under section 46A may, without limitation, include either or both of the following:

(a) an undertaking to pay compensation to any person or otherwise take action to avoid, remedy, or mitigate any actual or likely adverse effects arising from a contravention, or possible contravention, of this Act:

(b) an undertaking to pay to the Commission all or part of the Commission's costs incurred in investigating, or bringing proceedings in relation to, a contravention, or possible contravention, of this Act.

(2) If the Commission accepts an undertaking that involves payment of compensation to any person, or payment of the Commission's costs, the Commission must make the following information publicly available:

(a) the amount of the compensation, or of the Commission's costs, that has been undertaken to be paid; and

(b) a brief description of the circumstances and nature of the contravention, or possible contravention, of this Act to which the undertaking relates.

(3) In this section, **contravention** means any of the following:

(a) an actual contravention:

(b) aiding, abetting, counselling, or procuring a contravention:

(c) inducing a contravention, whether by threats, promises, or otherwise:

(d) being in any way, directly or indirectly, knowingly concerned in, or party to, a contravention:

(e) conspiring with any other person in a contravention.

Section 46AA: inserted, on 17 August 2021, by section 13 of the Fair Trading Amendment Act 2021 (2021 No 32).

46B Enforcement of undertakings

(1) If the Commission considers that a person who has given an undertaking under section 46A has breached a term of that undertaking, the Commission may apply to the court for an order under subsection (2).

(2) The court may make any of the following orders if it is satisfied that the person has breached a term of the undertaking:

(a) an order directing the person to comply with the term:

(b) an order directing the person to pay to the Crown an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach:

(c) any order that the court thinks appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach:

(d) an order for any consequential relief that the court thinks appropriate.

Compare: 1978 No 103 s 69K

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

Management banning orders

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

46C Management banning orders

(1) The 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 or is amended), done either or both of the following:

(i) committed an offence against section 40(1) or (1A):

(ii) been a director of, or concerned in the management of, an incorporated or unincorporated body when it committed an offence against section 40(1) or (1A); or

(b) *[Repealed]*

(c) has been prohibited by an overseas jurisdiction, in connection with the contravention of any law relating to fair trading, from carrying on activities that are substantially similar to those referred to in section 46D.

(2) The court may make the order only if it is satisfied that the order is necessary to protect the public from the risk that the person, or any incorporated or unincorporated body of which the person is a director, or the management of which the person is concerned in, will commit further offences against section 40(1) or (1A).

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

Section 46C(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 46C(1)(a): replaced, on 17 August 2021, by section 14 of the Fair Trading Amendment Act 2021 (2021 No 32).

Section 46C(1)(b): repealed, on 17 August 2021, by section 14 of the Fair Trading Amendment Act 2021 (2021 No 32).

46D Terms of management banning orders

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

Compare: 1978 No 103 s 60B

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

Section 46D: amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

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 conviction to a fine not exceeding $60,000.

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

Section 46E: amended, on 1 July 2015, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2015 (LI 2015/104).

46F Procedures relating to management banning order

(1) An application for a management banning order may be made only by the Commission.

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

(3) A copy of every management banning order must be given to—

(a) the person concerned; and

(b) the Commission; and

(c) the Registrar of Companies.

(4) The Commission must publish every management banning order made under section 46C in the *Gazette* as soon as practicable after it is made.

Compare: 1978 No 103 s 60F

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

46G Seeking leave of court

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

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

Compare: 1978 No 103 s 60F

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

Section 46G(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Declaration of unfair contract terms

Heading: inserted, on 17 March 2015, by section 36 of the Fair Trading Amendment Act 2013 (2013 No 143).

46H Application for declaration of unfair contract term

(1) The Commission may apply to the High Court or the District Court (at the choice of the Commission) for a declaration under section 46I that a term in a standard form consumer contract or standard form trade 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.

(3) Any person may apply to the High Court or the District Court (at their choice) for a declaration under section 46I that a term in a grocery supply contract that is a standard form trade contract is an unfair contract term.

Section 46H: inserted, on 17 March 2015, by section 36 of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 46H heading: amended, on 10 July 2023, by section 210(1) of the Grocery Industry Competition Act 2023 (2023 No 31).

Section 46H(1): amended, on 10 July 2023, by section 210(2) of the Grocery Industry Competition Act 2023 (2023 No 31).

Section 46H(1): amended, on 16 August 2022, by section 15 of the Fair Trading Amendment Act 2021 (2021 No 32).

Section 46H(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 46H(3): inserted, on 10 July 2023, by section 210(3) of the Grocery Industry Competition Act 2023 (2023 No 31).

46I Declaration of unfair contract terms

(1) The High Court or the District Court may,—

(a) on application by the Commission, declare that a term in a standard form consumer contract or standard form trade contract is an unfair contract term; or

(b) on application by any person, declare that a term in a grocery supply contract that is a standard form trade 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 or specified trade contract; and

(b) the consumer contract or specified trade 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.

Section 46I: inserted, on 17 March 2015, by section 36 of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 46I(1): replaced, on 10 July 2023, by section 211(1) of the Grocery Industry Competition Act 2023 (2023 No 31).

Section 46I(2)(a): amended, on 10 July 2023, by section 211(2) of the Grocery Industry Competition Act 2023 (2023 No 31).

Section 46I(2)(a): amended, on 16 August 2022, by section 16(2) of the Fair Trading Amendment Act 2021 (2021 No 32).

Section 46I(2)(b): amended, on 10 July 2023, by section 211(2) of the Grocery Industry Competition Act 2023 (2023 No 31).

Section 46I(2)(b): amended, on 16 August 2022, by section 16(3) of the Fair Trading Amendment Act 2021 (2021 No 32).

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.

Section 46J: inserted, on 17 March 2015, by section 36 of the Fair Trading Amendment Act 2013 (2013 No 143).

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 or standard form trade 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.

Section 46K: inserted, on 17 March 2015, by section 36 of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 46K(1): amended, on 10 July 2023, by section 212 of the Grocery Industry Competition Act 2023 (2023 No 31).

Section 46K(1): amended, on 16 August 2022, by section 17 of the Fair Trading Amendment Act 2021 (2021 No 32).

46L When term in consumer contract or specified trade contract is unfair

(1) A term in a consumer contract or specified trade 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 or specified trade 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 or specified trade 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.

Section 46L: inserted, on 17 March 2015, by section 36 of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 46L heading: amended, on 10 July 2023, by section 213(1) of the Grocery Industry Competition Act 2023 (2023 No 31).

Section 46L heading: amended, on 16 August 2022, by section 18(1) of the Fair Trading Amendment Act 2021 (2021 No 32).

Section 46L(1): amended, on 10 July 2023, by section 213(2) of the Grocery Industry Competition Act 2023 (2023 No 31).

Section 46L(1): amended, on 16 August 2022, by section 18(2) of the Fair Trading Amendment Act 2021 (2021 No 32).

Section 46L(2): amended, on 10 July 2023, by section 213(2) of the Grocery Industry Competition Act 2023 (2023 No 31).

Section 46L(2): amended, on 16 August 2022, by section 18(3) of the Fair Trading Amendment Act 2021 (2021 No 32).

Section 46L(3): amended, on 10 July 2023, by section 213(2) of the Grocery Industry Competition Act 2023 (2023 No 31).

Section 46L(3): amended, on 16 August 2022, by section 18(4) of the Fair Trading Amendment Act 2021 (2021 No 32).

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 or specified trade 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.

Section 46M: inserted, on 17 March 2015, by section 36 of the Fair Trading Amendment Act 2013 (2013 No 143).

Section 46M: amended, on 10 July 2023, by section 214 of the Grocery Industry Competition Act 2023 (2023 No 31).

Section 46M: amended, on 16 August 2022, by section 19 of the Fair Trading Amendment Act 2021 (2021 No 32).

Part 6
Miscellaneous provisions

47 Power to search

(1) The Commission may, from time to time, authorise an employee of the Commission to search, under a warrant issued under subsection (2), any place named in the warrant for any of the purposes set out in that subsection.

(2) An issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012) may, by warrant, authorise a person who is authorised under subsection (1) to search a place specified in the warrant if he or she is satisfied on application made in the manner provided for an application for a search warrant in subpart 3 of Part 4 of that Act by that employee that there are reasonable grounds to believe that a search is necessary for the purpose of—

(a) investigating—

(i) whether a person has engaged in, or is engaging in, conduct that constitutes, or may constitute, a contravention of this Act; or

(ii) the nature or extent of any conduct that constitutes, or may constitute, a contravention of this Act; or

(b) gathering, obtaining, or recovering evidence of—

(i) conduct that constitutes, or may constitute, a contravention of this Act; or

(ii) the nature or extent of any conduct that constitutes, or may constitute, a contravention of this Act.

(3) Part 4 of the Search and Surveillance Act 2012 (except sections 118 and 119) applies.

(4) For the purpose of allowing the Commission to provide, under section 48I, compulsorily acquired information and investigative assistance to a recognised overseas regulator, every reference in this section to a contravention of this Act must be taken to include a reference to a contravention of any foreign enactment that is identified (as required by section 48G(1)(b)) in the co-operation arrangement concerning that recognised overseas regulator.

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

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

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

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

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

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

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

47A Powers conferred by warrant

[Repealed]

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

47B Warrant to be produced

[Repealed]

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

47C Other duties of person who executes a warrant

[Repealed]

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

47D Duty to assist

[Repealed]

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

47E Power to inspect documents and goods

[Repealed]

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

47F Offence to resist, obstruct, or delay

(1) Every person commits an offence who resists, obstructs, or delays—

(a) any product safety officer exercising a power under section 33C or 33D; or

(b) any authorised person acting pursuant to a warrant issued under section 47; or

(c) any authorised employee exercising a power under section 47L.

(2) A person who commits an offence against this section is liable on conviction to a fine not exceeding $10,000 in the case of an individual, or $30,000 in the case of a body corporate.

Section 47F: replaced, on 18 December 2013, by section 37 of the Fair Trading Amendment Act 2013 (2013 No 143).

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

(1) If the Commission considers it necessary or desirable for the purposes of carrying out its functions and exercising its powers under this Act, the Commission may, by notice in writing served on any person, require that person—

(a) to supply to the Commission, by writing signed by that person or, in the case of a body corporate, by a director or competent employee or agent of the body corporate, within the time and in the manner specified in the notice, any information or class of information specified in the notice; or

(b) to supply to the Commission, or to a person specified in the notice acting on its behalf in accordance with the notice, any document or class of documents specified in the notice; or

(c) to appear before the Commission at a time and place specified in the notice to give evidence, either orally or in writing, and supply any document or class of documents specified in the notice.

(1A) A person may appear before the Commission under subsection (1)(c) by audio link or audiovisual link if the Commission and the person agree.

(2) Every person who is required to supply information or documents to the Commission has the same privileges in relation to the supply of the information or documents as witnesses have in any court.

(3) No person is excused from complying with a requirement to supply information or documents, or to appear before the Commission, on the ground that to do so might tend to incriminate the person.

(4) A statement made by a person in answer to a question put by or before the Commission is not admissible against the person in criminal proceedings other than proceedings for a charge of perjury against the maker of the statement or in proceedings on a charge of an offence against section 47J.

(5) Subsections (3) and (4) prevail over subsection (2).

(6) In this section,—

audio link means facilities (for example, telephone facilities) that enable audio communication between the Commission and a person when either or both of them are not physically present at the place specified in the notice

audiovisual link means facilities that enable audio and visual communication between the Commission and a person when either or both of them are not physically present at the place specified in the notice.

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

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

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

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

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

Section 47G(1A): inserted, on 16 December 2017, by section 63(1) of the Electronic Interactions Reform Act 2017 (2017 No 50).

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

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

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

Section 47G(6): inserted, on 16 December 2017, by section 63(2) of the Electronic Interactions Reform Act 2017 (2017 No 50).

47H Notices

(1) Any notice given by the Commission under section 47G is sufficiently given if—

(a) it is in writing; and

(b) it is—

(i) under the seal of the Commission; or

(ii) signed by the Chairman of the Commission; or

(iii) signed by 1 or more of the members of the Commission; or

(iv) signed by any person purporting to act by direction of the Commission; and

(c) it is served in accordance with section 47I on the person or persons primarily concerned or on any person or organisation considered by the Commission to represent the person or persons primarily concerned.

(2) In all courts and in all proceedings under this Act, notices given under section 47G that purport to be signed by, or on behalf of, the Commission or to be sealed with the seal of the Commission must be treated as having been signed or sealed with due authority in accordance with subsection (1)(b) unless the contrary is proved.

Compare: 1986 No 5 s 101

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

47I Service of notices

(1) Any notice that is authorised to be served on, or given to, any person for the purposes of section 47G may be served or given by—

(a) delivering it to that person; or

(b) leaving it at—

(i) his or her usual or last known place of residence or business; or

(ii) at the address specified by him or her in any notice, application, or other document made, given, or tendered to the Commission under this Act; or

(c) posting it by letter addressed to him or her at that place of residence or business or at that address; or

(d) emailing it to the person at an email address that is used by the person.

(2) If any notice is sent to any person by a service that records delivery, then,—

(a) unless the contrary is proved, the notice must be treated as having been delivered to him or her when it would have been delivered in the ordinary course of business for that service; and

(b) in proving the delivery, it is sufficient to prove that the notice was properly addressed and provided to the service.

(2A) In the absence of proof to the contrary, a notice that is emailed to a person must be treated as received by the person on the second working day after the date on which it is emailed, and, in proving that the notice was emailed, it is sufficient to prove that the notice was properly addressed and sent to the email address.

(3) If the notice is required to be served on an association or body of persons,—

(a) the notice may be served on the secretary, executive officer, manager, or other officer holding a similar position in the association or body; and

(b) service on the association or body must, unless otherwise directed by the Commission, be treated as service on all persons who are members of the association or body, or who are represented on the association or body by those members.

Compare: 1986 No 5 s 102

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

Section 47I(1)(c): amended, on 16 December 2017, by section 64(1) of the Electronic Interactions Reform Act 2017 (2017 No 50).

Section 47I(1)(d): inserted, on 16 December 2017, by section 64(2) of the Electronic Interactions Reform Act 2017 (2017 No 50).

Section 47I(2): amended, on 16 December 2017, by section 64(3) of the Electronic Interactions Reform Act 2017 (2017 No 50).

Section 47I(2)(a): amended, on 16 December 2017, by section 64(4) of the Electronic Interactions Reform Act 2017 (2017 No 50).

Section 47I(2)(b): amended, on 16 December 2017, by section 64(5) of the Electronic Interactions Reform Act 2017 (2017 No 50).

Section 47I(2A): inserted, on 16 December 2017, by section 64(6) of the Electronic Interactions Reform Act 2017 (2017 No 50).

47J Offence to contravene section 47G

(1) No person may,—

(a) without reasonable excuse, refuse or fail to comply with a notice under section 47G; or

(b) in purported compliance with the notice, supply information, or supply a document, knowing it to be false or misleading.

(2) Every person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding $10,000 in the case of an individual, or $30,000 in the case of a body corporate.

(3) *[Repealed]*

Compare: 1986 No 5 s 103

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

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

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

47K Commission may authorise employees for monitoring and enforcement purposes

(1) The Commission may authorise any employee (an **authorised employee**) to monitor and enforce compliance with any or all of the following:

(a) consumer information standards:

(b) product safety standards:

(c) unsafe goods notices:

(d) suspension of supply notices:

(e) services safety standards.

(2) Every employee so authorised must be issued with a certificate as evidence of the person's appointment.

(3) The certificate must be in a form determined by the Commission and contain—

(a) a reference to this section; and

(b) the full name of the authorised employee; and

(c) a reference to the powers conferred on the authorised employee under section 47L; and

(d) a statement of the powers (if any) of the authorised employee under the Search and Surveillance Act 2012.

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

47L Powers of authorised employees

(1) In this section,—

place means any place that an authorised employee believes on reasonable grounds is a place at which consumers have access to relevant goods or services, or from which relevant goods are dispatched to consumers

relevant goods or services means goods or services to which any consumer information standards, product safety standards, unsafe goods notices, suspension of supply notices, or services safety standards apply.

(2) An authorised employee may enter and inspect a place (not being a dwellinghouse), without a warrant, for the purpose of monitoring or enforcing compliance with any consumer information standards, product safety standards, unsafe goods notices, suspension of supply notices, or services safety standards that apply to any relevant goods.

(3) While at the place, an authorised employee may, for the purpose described in subsection (2), do any of the following:

(a) with respect to any goods at the place that are available to consumers for supply or that are dispatched for supply, inspect the goods, photograph them, and purchase them at the price for which they are currently offered for sale:

(b) require the person at the place who appears to be in charge of the supply or dispatch of relevant goods or services at the time (the **person in charge**) to give his or her name and show to the authorised employee identification sufficient to confirm that the name given is correct:

(c) require the person in charge to give the authorised employee any information about the goods or services that is normally disclosed to a consumer to whom the goods or services are supplied or dispatched:

(d) require the person in charge to identify the person from whom relevant goods were acquired:

(e) if relevant goods have, within a specified period, been supplied in trade to another person other than by retail, require the person in charge to identify the person or persons to whom they have been supplied during that period:

(f) require any person by whom any relevant goods are carried for delivery pursuant to, or in connection with, a contract for sale, to give—

(i) his or her name and address; and

(ii) the name and address of his or her employer (if any); and

(iii) the name and address of the owner of the goods, if known:

(g) issue an infringement notice, on behalf of the Commission, under section 40D.

(4) If an authorised employee enters a dwellinghouse with the permission of the occupier or under a warrant issued under subsection (5), the authorised employee may, for the purpose described in subsection (2), exercise the powers listed in subsection (3).

(5) An issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012) may, by warrant, authorise an authorised employee to enter and inspect a dwellinghouse or any other place specified in the warrant if the issuing officer is satisfied, on application made in accordance with subsection (6), that there are reasonable grounds to believe that a search of the place is necessary for the purpose described in subsection (2).

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

(7) Part 4 of the Search and Surveillance Act 2012 (except sections 118 and 119) applies.

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

48 Proceedings privileged

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

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

(3) Nothing in subsections (1) and (2) applies in respect of proceedings for—

(a) an offence against section 78 or section 78AAA or section 78AAB or section 78AA or section 78A or section 105 or section 105A of the Crimes Act 1961; or

(b) the offence of conspiring to commit an offence against section 78 or section 78AAA or section 78AAB or section 78AA or section 78A or section 105 or section 105A of the Crimes Act 1961; or

(c) the offence of attempting to commit an offence against section 78 or section 78AAA or section 78AAB or section 78AA or section 78A or section 105 or section 105A of the Crimes Act 1961.

(4) Section 59(3) of the Crown Entities Act 2004 (which provides that a statutory entity may bring an action against a member for breach of an individual duty) does not apply, unless it is shown by the Commission that the person acted in bad faith.

(5) Sections 122 to 126 of the Crown Entities Act 2004 apply as if the conduct for which a person may be indemnified or insured under those sections were conduct that is covered by the protection from liability in this section.

(6) This section contains an exception to section 121 of the Crown Entities Act 2004.

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

Section 48(3)(a): amended, on 27 November 2025, by section 17 of the Crimes (Countering Foreign Interference) Amendment Act 2025 (2025 No 71).

Section 48(3)(b): amended, on 27 November 2025, by section 17 of the Crimes (Countering Foreign Interference) Amendment Act 2025 (2025 No 71).

Section 48(3)(c): amended, on 27 November 2025, by section 17 of the Crimes (Countering Foreign Interference) Amendment Act 2025 (2025 No 71).

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

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

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

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

[Repealed]

Section 48A: repealed, on 5 May 2022, by section 45(2) of the Commerce Amendment Act 2022 (2022 No 11).

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

The purpose of sections 48C to 48O is—

(a) to provide for when and how the Commission may provide compulsorily acquired information and investigative assistance to overseas regulators; and

(b) to clarify other matters relating to sharing other kinds of information with overseas regulators.

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

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

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

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

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

(b) the provision by the overseas regulator of information and investigative assistance to the Commission

compulsorily acquired information means information that—

(a) is acquired by the Commission, whether before or after this section comes into force, as a result of, or in relation to, the exercise by the Commission of any of its powers under section 47 or 47G, or any power incidental to those powers; and

(b) is not in the public domain

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

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

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

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

48D Restrictions on providing compulsorily acquired information and investigative assistance

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

(a) to a recognised overseas regulator in accordance with a co-operation arrangement; and

(b) in accordance with sections 48I to 48K.

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

48E Government-to-government co-operation arrangements

(1) The Minister may, on behalf of the Government of New Zealand, enter into a co-operation arrangement concerning an overseas regulator with—

(a) the government of the country in which the overseas regulator is established; or

(b) if the overseas regulator is established by an international body, the governing body of that international body.

(2) Before entering into a co-operation arrangement concerning an overseas regulator, the Minister must—

(a) have regard to the legal framework relating to the use of compulsorily acquired information in the jurisdiction of the overseas regulator; and

(b) have regard to the potential consequences for New Zealand consumers and businesses of providing compulsorily acquired information or investigative assistance to the overseas regulator; and

(c) consult with the Privacy Commissioner on any privacy issues arising from the proposed co-operation arrangement.

(3) The Minister must not enter into a co-operation arrangement unless he or she is satisfied that entering into the arrangement is not inconsistent with any of New Zealand's obligations under international agreements, conventions, or treaties.

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

48F Regulator-to-regulator co-operation arrangements

(1) The Commission may, with the prior written approval of the Minister, enter into a co-operation arrangement with an overseas regulator.

(2) The Minister may not give approval to a co-operation arrangement under this section unless the Minister—

(a) has had regard to the matters specified in section 48E(2)(a) and (b) and has consulted as specified in section 48E(2)(c); and

(b) is satisfied of the matter specified in section 48E(3).

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

48G Content of co-operation arrangements

(1) Every co-operation arrangement must—

(a) identify the overseas regulator that it concerns; and

(b) identify the foreign enactments in connection with which the recognised overseas regulator may seek compulsorily acquired information and investigative assistance from the Commission; and

(c) set out how any compulsorily acquired information that is provided may be used by the overseas regulator, and how it is to be kept secure.

(2) A co-operation arrangement may also—

(a) provide for the reimbursement of the Commission for costs incurred in providing the information or assistance; and

(b) include other conditions on the provision of compulsorily acquired information or investigative assistance.

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

48H Procedures relating to co-operation arrangements

(1) Every co-operation arrangement must be in writing and be signed by,—

(a) in the case of a government-to-government co-operation arrangement entered into under section 48E, the Minister and the person occupying, with respect to the overseas regulator, an equivalent position to that of the Minister, or any other person that the relevant government or governing body considers appropriate:

(b) in the case of a regulator-to-regulator co-operation arrangement entered into under section 48F, the chairperson of the Commission and the person occupying the equivalent position in relation to the overseas regulator.

(2) No later than 15 working days after a co-operation arrangement is entered into,—

(a) the Minister or the Commission, as appropriate, must publish a notice in the *Gazette* that—

(i) states that the arrangement has been entered into; and

(ii) identifies the overseas regulator concerned; and

(iii) identifies the parties to the arrangement; and

(iv) states when the arrangement comes into effect; and

(b) the Commission must publish a copy of the co-operation arrangement on its Internet site, and must keep it there while the arrangement continues in force.

(3) Subsections (1) and (2) apply with all necessary modifications to every amendment to a co-operation arrangement.

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

48I Providing compulsorily acquired information and investigative assistance

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

(a) provide compulsorily acquired information to the recognised overseas regulator:

(b) provide investigative assistance to the recognised overseas regulator.

(2) Before providing compulsorily acquired information or investigative assistance under subsection (1), the Commission must be satisfied that—

(a) providing the information or assistance will, or is likely to, assist the recognised overseas regulator in performing its functions or exercising its powers in relation to fair trading law; and

(b) the provision of the information or assistance will not be inconsistent with the co-operation arrangement; and

(c) the provision of the information or assistance will not significantly prejudice New Zealand's international trade interests.

(3) If the Commission considers, after consultation with the Ministry of Foreign Affairs and Trade, that a request for compulsorily acquired information or investigative assistance may have significant trade consequences for New Zealand, the Commission must refer the matter to the Minister of Trade.

(4) If a request is referred to the Minister of Trade, the Commission is deemed to be satisfied for the purpose of subsection (2)(c) only if the Minister of Trade states, in writing, that he or she is satisfied that the provision of the information or assistance will not significantly prejudice New Zealand's international trade interests.

(5) In considering whether to provide information or investigative assistance under a co-operation arrangement, the Commission must also consider—

(a) whether complying with the request will substantially affect the Commission's ability to perform its other functions under this Act or any other enactment; and

(b) whether the recognised overseas regulator could more conveniently obtain the information or assistance from another source; and

(c) whether the request would, in the opinion of the Commission, be more appropriately dealt with under the Mutual Assistance in Criminal Matters Act 1992.

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

48J Conditions on providing compulsorily acquired information and investigative assistance

(1) If the Commission provides compulsorily acquired information or investigative assistance to a recognised overseas regulator, the Commission may impose conditions on such provision, including conditions relating to—

(a) maintaining the confidentiality of information; and

(b) the storage or use of, or access to, anything provided; and

(c) the copying, returning, or disposal of copies of anything provided; and

(d) the payment of costs incurred by the Commission in providing anything or in otherwise complying with a request for information or investigative assistance.

(2) The Commission must not provide compulsorily acquired information that was given by a person whom the information might tend to incriminate unless the recognised overseas regulator gives a written undertaking—

(a) that it will not use the information as evidence—

(i) in criminal proceedings against the person (other than in proceedings in respect of the falsity of the person's testimony); or

(ii) in proceedings against the person for a pecuniary penalty or any equivalent proceedings; and

(b) that, to the extent that it is within the ability of the overseas regulator to do so, it will ensure that the information is not used by any other person, authority, or agency as evidence in proceedings referred to in paragraph (a).

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

48K Notice to persons affected by provision of information

(1) If the Commission provides any compulsorily acquired information to a recognised overseas regulator, the Commission must, as soon as practicable after providing the information, notify the following people that the information has been provided:

(a) the person from whom the information was acquired:

(b) every person to whom the information relates.

(2) However, the Commission need not notify a person as required by subsection (1) if—

(a) giving notice might compromise any investigation conducted, or to be conducted, by the Commission or any overseas regulator; or

(b) giving notice would prejudice the maintenance of the law (including the prevention, investigation, and detection of offences, and the right to a fair trial) in New Zealand or elsewhere; or

(c) it is not practicable in the circumstances to give notice to the person.

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

48L Reporting on use of co-operation arrangements

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

(a) the number and general nature of requests for information and investigative assistance received from recognised overseas regulators; and

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

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

48M Sharing of non-compulsorily acquired information not affected

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

(a) sections 48B to 48L; or

(b) whether or not the overseas regulator is a recognised overseas regulator.

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

48N Information provided by consent

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

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

48O Maintenance of privilege

(1) If the Commission provides to an overseas regulator, for the purpose of assisting the overseas regulator to perform its fair trading law functions, a communication or information in respect of which the Commission has any privilege referred to in section 54, 56, or 57 of the Evidence Act 2006, the Commission is not to be taken as having waived its privilege in relation to that communication or information merely by providing it to the overseas regulator.

(2) If the Commission receives from an overseas regulator, for the purpose of assisting the Commission to perform its fair trading law functions under this Act, a communication or information that, under the law of the country of the overseas regulator is subject to a privilege analogous to a privilege of a kind referred to in section 54, 56, or 57 of the Evidence Act 2006, that communication or information is subject to the analogous privilege in New Zealand, and the Evidence Act 2006 applies accordingly.

(3) The Commission must not provide a communication or information that is subject to the privilege referred to in section 57 of the Evidence Act 2006 (which relates to settlement negotiation and mediation) to an overseas regulator unless every other party that has a privilege in relation to that communication or information consents to the Commission providing the communication or information to the overseas regulator.

(4) To avoid doubt, this section applies whether or not a communication or information is provided under a co-operation arrangement.

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

48P Proceedings relating to financial products or financial services

(1) This section applies if—

(a) the Commission is considering commencing civil or criminal proceedings in relation to conduct that constitutes, or may constitute, a contravention of any of sections 9 to 13; and

(b) the Commission considers that that conduct is in relation to a financial product or a financial service.

(2) The Commission must, before commencing those proceedings, obtain the consent of the Financial Markets Authority (the **FMA**).

(3) However, a failure to obtain consent under subsection (2) does not affect any proceedings commenced by the Commission.

(4) The FMA, when considering whether to give its consent, must have regard to the following matters to the extent that the FMA considers that those matters are relevant:

(a) the purposes of the Financial Markets Conduct Act 2013 specified in sections 3 and 4 of that Act:

(b) any warning, report, or guideline issued, or comment or statement made, under section 9(1)(a)(ii) or (v) of the Financial Markets Authority Act 2011:

(c) any undertaking accepted under section 46 of the Financial Markets Authority Act 2011:

(d) any exemption granted under the Financial Markets Conduct Act 2013:

(e) any other action that the FMA has taken, or intends to take, in relation to the conduct:

(f) any other matters that the FMA considers relevant.

(5) The FMA's consent may relate to particular conduct or a class of conduct (whether or not the conduct has already occurred).

(6) In this section,—

financial product—

(a) has the same meaning as in section 7 of the Financial Markets Conduct Act 2013; and

(b) includes, in relation to any provision of sections 9 to 13,—

(i) any class or classes of financial advice product declared by regulations made under section 548(1)(a) of that Act to be a financial

product for the purposes of the provision of Part 2 of that Act that corresponds to that provision of this Act; and

(ii) any security of a kind referred to in section 6(6)(c) of that Act (being a security that is used to generate a financial benchmark)

financial service—

(a) has the same meaning as in section 5 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008; and

(b) includes a financial service within the meaning of section 6(1) of the Financial Markets Conduct Act 2013; but

(c) does not include, in relation to any provision of sections 9 to 13, any class or classes of services declared by regulations made under section 548(1)(d)(ii) of the Financial Markets Conduct Act 2013 not to be financial services for the purposes of the provision of Part 2 of that Act that corresponds to that provision of this Act.

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

Section 48P(6) **financial product** paragraph (b): replaced, on 14 March 2021, by section 52 of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46).

Section 48P(6) **financial service**: replaced, on 30 May 2017, by section 41 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12).

Section 48P(6) **financial service** paragraph (b): replaced, on 1 July 2026, by section 78(1) of the Credit Contracts and Consumer Finance Amendment Act 2026 (2026 No 29).

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

(1) A person cannot be ordered to pay a pecuniary penalty, or be liable for a fine, under the Financial Markets Conduct Act 2013 and be liable for a fine under this Act for the same conduct.

(2) A person that has, in respect of certain conduct, paid an amount in lieu of a pecuniary penalty under section 46A(1)(b) of the Financial Markets Authority Act 2011 is not liable for a fine under this Act for the same conduct.

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

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

(1) The provision of this Act that corresponds to section 23 of the Financial Markets Conduct Act 2013 does not apply to a representation made in a disclosure document or a register entry.

(2) In this section, **disclosure document** and **register entry** have the same meanings as in section 6(1) of the Financial Markets Conduct Act 2013.

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

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

(1) Conduct that contravenes section 82, 99, 262, 265, or 427 or clause 27 of Schedule 1 of the Financial Markets Conduct Act 2013 does not contravene any of sections 9 to 13 of this Act.

(2) For the purpose of this section, conduct must be treated as contravening section 82, 99, 262, 265, or 427 or clause 27 of Schedule 1 of the Financial Markets Conduct Act 2013 even if the conduct does not constitute an offence, or does not lead to any liability, because of the availability of a defence.

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

48T Powers of Commission to prohibit disclosure of information, documents, and evidence

Section 100 of the Commerce Act 1986 (powers of Commission to prohibit disclosure of information, documents, and evidence) applies, with all necessary modifications, in relation to an investigation or inquiry by the Commission under this Act as it applies in relation to an investigation or inquiry under the Commerce Act 1986.

Section 48T: inserted, on 17 August 2021, by section 20 of the Fair Trading Amendment Act 2021 (2021 No 32).

49 Repeals and consequential amendments

(1) The enactment specified in Schedule 1 is hereby amended in the manner indicated in that schedule.

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

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

(4) The orders and notices specified in Schedule 3 are hereby revoked.

50 Saving of other laws

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

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

(3) However, subsection (1) does not apply in relation to any provision in Part 4A that limits or affects the operation of subpart 3 of Part 2 or Part 3 of the Contract and Commercial Law Act 2017.

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

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

Section 50(3): amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

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

(1) This Act applies to conduct or representations relating to goods that are, or may be, exported from New Zealand pursuant to the Conformity Cooperation Agreement in the same way as this Act applies to goods supplied within New Zealand as follows:

(a) section 10 applies to conduct relating to goods that are, or may be, exported from New Zealand for supply to China:

(b) section 13 applies to representations relating to goods that are, or may be, exported from New Zealand for supply to China:

(c) a contravention of section 10 or 13 is an offence under section 40 and may authorise a warrant being issued in New Zealand under section 47(2) to search a place in New Zealand if the contravention relates to goods that are, or may be, exported from New Zealand for supply to China.

(2) In this section, **Conformity Cooperation Agreement** means the Agreement between the Government of New Zealand and the Government of the People's Republic of China on Cooperation in the Field of Conformity Assessment in Relation to Electrical and Electronic Equipment and Components, which is Annex 14 of the Free Trade Agreement between the Government of New Zealand and the Government of the People's Republic of China done at Beijing on 7 April 2008.

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

Schedule 1AA
Transitional, savings, and related provisions

s 2A

Schedule 1AA: inserted, on 16 August 2022, by section 21 of the Fair Trading Amendment Act 2021 (2021 No 32).

Part 1
Provision relating to Fair Trading Amendment Act 2021

Schedule 1AA Part 1: inserted, on 16 August 2022, by section 21 of the Fair Trading Amendment Act 2021 (2021 No 32).

1 Unfair contract terms in standard form small trade contracts

(1) Sections 26B to 26E do not apply to the following contracts (which, accordingly, are not small trade contracts and must be disregarded when determining which contracts form part of a trading relationship for the purposes of those sections):

(a) a contract entered into before the commencement date and not varied or renewed on or after that date:

(b) a relevant insurance agreement.

(2) If a contract entered into before the commencement date is varied or renewed on or after that date and is not a relevant insurance agreement, the contract (as varied or renewed) must be treated for the purposes of sections 26B to 26E as a new contract entered into on the date of the variation or renewal.

(3) In this clause,—

commencement date means the date on which sections 26B to 26E come into force

relevant insurance agreement means—

(a) a contract of insurance (as defined in section 7 of the Insurance (Prudential Supervision) Act 2010) entered into before the specified date, including as varied or renewed at any time; or

(b) a new contract that has the effect of operating as a renewal of a contract described in paragraph (a) or this paragraph, including as varied or renewed at any time

specified date means—

(a) the date that is the third anniversary of Royal assent of the Contracts of Insurance (Repeals and Amendments) Act 2024; or

(b) if an earlier date is specified under subclause (4), that date.

(4) The Governor-General may, by Order in Council, specify a date for the purposes of paragraph (b) of the definition of specified date in subclause (3).

(5) An Order in Council made under subclause (4) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this clause		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Schedule 1AA clause 1: inserted, on 16 August 2022, by section 21 of the Fair Trading Amendment Act 2021 (2021 No 32).

Schedule 1AA clause 1(3) **specified date** paragraph (a): replaced, on 16 November 2024, by section 12(1) of the Contracts of Insurance (Repeals and Amendments) Act 2024 (2024 No 47).

Part 2
Provision relating to Grocery Industry Competition Act 2023

Schedule 1AA Part 2: inserted, on 10 July 2023, by section 215(a) of the Grocery Industry Competition Act 2023 (2023 No 31).

2 Unfair contract terms in standard form trade contracts

(1) New sections 26B to 26E do not apply to the following contracts:

(a) a contract entered into before the commencement date and not varied or renewed on or after that date:

(b) a relevant insurance agreement.

(2) In addition, old sections 26B to 26E continue to apply to a contract if those sections applied to the contract immediately before the commencement date.

(3) If a contract entered into before the commencement date is varied or renewed on or after that date and is not a relevant insurance agreement, the contract (as varied or renewed) must be treated for the purposes of new sections 26B to 26E as a new contract entered into on the date of the variation or renewal.

(4) In this clause,—

commencement date means the date on which sections 202 to 215 of the Grocery Industry Competition Act 2023 come into force

new, in relation to a provision of this Act, means the provision as in force on and after the commencement date

old, in relation to a provision of this Act, means the provision as in force immediately before the commencement date

relevant insurance agreement has the same meaning as in clause 1 of this schedule.

Schedule 1AA clause 2: inserted, on 10 July 2023, by section 215(a) of the Grocery Industry Competition Act 2023 (2023 No 31).

Part 3
Provision relating to Fair Trading (Gift Card Expiry) Amendment Act 2024

Schedule 1AA Part 3: inserted, on 16 March 2026, by section 9(a) of the Fair Trading (Gift Card Expiry) Amendment Act 2024 (2024 No 35).

3 Amendments do not apply to existing gift cards

The amendments made by the Fair Trading (Gift Card Expiry) Amendment Act 2024 do not apply to a gift card sold before the commencement of that Act.

Schedule 1AA clause 3: inserted, on 16 March 2026, by section 9(a) of the Fair Trading (Gift Card Expiry) Amendment Act 2024 (2024 No 35).

Schedule 1
Enactment amended

[Repealed]

s 49(1)

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

Schedule 2
Enactments repealed

s 49(2), (3)

Part A

Commerce Act 1986 (1986 No 5)
Amendment(s) incorporated in the Act(s).

Consumer Information Act 1969 (1969 No 12)

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

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

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

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

Fertilisers Act 1982 (1982 No 134)
Amendment(s) incorporated in the Act(s).

Labour Department Act 1954 (1954 No 71)
Amendment(s) incorporated in the Act(s).

Medicines Act 1981 (1981 No 118)
Amendment(s) incorporated in the Act(s).

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

Unsolicited Goods and Services Act 1975 (1975 No 46)
Amendment(s) incorporated in the Act(s).

Part B

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

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

Schedule 3
Orders and notices revoked

s 49(4)

Clothing Marking Order 1956 (SR 1956/118)

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

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

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

Footwear Marking Order 1955 (SR 1955/208)

Financial Markets (Repeals and Amendments) Act 2013

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

1 Title

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

2 Commencement

(1) Sections 4(2) to (4), 91, 101(3), (6), and (7), 105, and 107 come into force on the day after the date on which this Act receives the Royal assent.

(2) The rest of this Act comes into force on a date appointed by the Governor-General by Order in Council; and 1 or more orders may be made appointing different dates for different provisions and for different purposes.

(3) To the extent that it is not previously brought into force under subsection (1) or (2), the rest of this Act comes into force on 1 April 2017.

(4) In this section, **provision** includes any item, or any part of an item, in the Schedule.

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

Section 2(2): the remaining provisions that have not earlier been brought into force, except the amendment in Part 1 of the Schedule repealing section 3(1)(h) to (i) of the Financial Transactions Reporting Act 1996, brought into force, on 1 December 2014, by clause 3 of the Financial Markets Legislation (Phase 2) Commencement Order 2014 (LI 2014/325).

Amendments to Fair Trading Act 1986

9 Transitional provision for existing offences and contraventions

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

(2) The principal Act continues to have effect as if it had not been amended by sections 7 and 8 for the purpose of—

(a) investigating an offence or a contravention to which this section applies:

(b) commencing or completing proceedings for an offence or a contravention to which this section applies:

(c) imposing a penalty or other remedy, or making an order, in relation to an offence or a contravention to which this section applies.

Notes

1 General

This is a consolidation of the Fair Trading Act 1986 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 Legal status

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 Editorial and format changes

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 Amendments incorporated in this consolidation

Credit Contracts and Consumer Finance Amendment Act 2026 (2026 No 29): section 78(1)

Crimes (Countering Foreign Interference) Amendment Act 2025 (2025 No 71): section 17

Disputes Tribunal Amendment Act 2025 (2025 No 60): section 10

Contracts of Insurance (Repeals and Amendments) Act 2024 (2024 No 47): section 12(1)

Fair Trading (Gift Card Expiry) Amendment Act 2024 (2024 No 35)

Grocery Industry Competition Act 2023 (2023 No 31): sections 203–215

Commerce Amendment Act 2022 (2022 No 11): section 45

Fair Trading Amendment Act 2021 (2021 No 32)

Secondary Legislation Act 2021 (2021 No 7): section 3

Credit Contracts Legislation Amendment Act 2019 (2019 No 81): Part 2 subpart 1

Regulatory Systems (Economic Development) Amendment Act 2019 (2019 No 62): Part 5

Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (2019 No 46): section 52

Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51): section 340(2)

Statutes Amendment Act 2018 (2018 No 27): section 88

Customs and Excise Act 2018 (2018 No 4): section 443(3)

Electronic Interactions Reform Act 2017 (2017 No 50): Part 3 subpart 6

Regulatory Systems (Commercial Matters) Amendment Act 2017 (2017 No 12): Part 1 subpart 4

Contract and Commercial Law Act 2017 (2017 No 5): section 347

District Court Act 2016 (2016 No 49): section 261

Standards and Accreditation Act 2015 (2015 No 91): section 45(1)
Criminal Procedure (Consequential Amendments) Regulations 2015 (LI 2015/104): regulation 3(1)
Fair Trading Amendment Act 2013 (2013 No 143)
Companies Amendment Act 2013 (2013 No 111): section 14
Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): sections 7, 8
Fair Trading (International Co-operation) Amendment Act 2012 (2012 No 86)
Fair Trading (Soliciting on Behalf of Charities) Amendment Act 2012 (2012 No 48)
Search and Surveillance Act 2012 (2012 No 24): section 316
Criminal Procedure Act 2011 (2011 No 81): section 413
Fair Trading Amendment Act 2008 (2008 No 52)
Fair Trading Amendment Act 2006 (2006 No 49)
Crown Entities Act 2004 (2004 No 115): section 200
Fair Trading Amendment Act (No 2) 2003 (2003 No 34)
Fair Trading Amendment Act 2003 (2003 No 31)
Trade Marks Act 2002 (2002 No 49): section 201
Fair Trading Amendment Act 2000 (2000 No 64)
Trade Marks Amendment Act 1999 (1999 No 121): section 8(1)
Fair Trading Amendment Act 1997 (1997 No 43)
Newspapers and Printers Act Repeal Act 1995 (1995 No 13): section 4(3)
Fair Trading Amendment Act 1994 (1994 No 124)
Company Law Reform (Transitional Provisions) Act 1994 (1994 No 16): section 2
Health and Safety in Employment Act 1992 (1992 No 96): section 62(1)
Fair Trading Amendment Act 1990 (1990 No 42)
Disputes Tribunals Act 1988 (1988 No 110): section 82(2)
Trade Marks Amendment Act 1987 (1987 No 156): section 33(1)

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