

## Reprint

as at 1 August 2009

# Fair Trading Act 1986

Public Act 1986 No 121  
Date of assent 17 December 1986

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### Note

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

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

**This Act is administered in the Ministry of Commerce**

**Part 1**  
**Misleading and deceptive conduct, false representations, and unfair practices**

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**An Act to prohibit certain conduct and practices in trade, to provide for the disclosure of consumer information relating to the supply of goods and services and to promote product safety and also to repeal the Consumer Information Act 1969 and certain other enactments**

**BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:**

**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) of this Act, this Act shall come into force on the 1st day of March 1987.

**2 Interpretation**

- (1) In this Act, unless the context otherwise requires,—
  - Acquire,—**
  - (a) In relation to goods, includes obtain by way of gift, purchase, or exchange; and also includes take on lease, hire, or hire purchase:
  - (b) In relation to services, includes accept:

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

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

**Business** means any undertaking—

- (a) That is carried on whether for gain or reward or not; or  
(b) In the course of which—  
(i) Goods or services are acquired or supplied; or  
(ii) Any interest in land is acquired or disposed of—  
whether free of charge or not:

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

“Commission”: this definition was amended, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115) by omitting the words “; and includes a Division of the Commission, or a member of the Commission, performing any function of the Commission”.

**Court** means the High Court of New Zealand

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

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

- (a) Any writing on any material:  
(b) Any information recorded or stored by means of any tape-recorder, computer, or other device; and any material subsequently derived from information so recorded or stored:  
(c) Any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means:  
(d) Any book, map, plan, graph, or drawing:  
(e) Any photograph, film, negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced:

**goods** —

- (a) means personal property of every kind (whether tangible or intangible); and
- (b) includes—
  - (i) ships, aircraft, and vehicles:
  - (ii) animals, including fish:
  - (iii) minerals, trees, and crops, whether on, under, or attached to land or not:
  - (iv) gas and electricity:
  - (v) to avoid doubt, water and computer software.

goods: this definition was substituted, as from 8 July 2003, by section 3(1) Fair Trading Amendment Act (No 2) 2003 (2003 No 34).

**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

**Officer of the Commission***[Repealed]*

“Officer of the Commission”: this definition was repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

*[Repealed]*

**Official standard** means—

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

Official standard: this definition was inserted, as from 28 July 1997, by section 2 Fair Trading Amendment Act 1997 (1997 No 43).

**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

Place: this definition was inserted, as from 1 July 1990, by section 2 Fair Trading Amendment Act 1990 (1990 No 42).

**Price** includes valuable consideration in any form, whether direct or indirect; and includes any consideration that in effect relates to the acquisition or supply of goods or services or the

acquisition or disposition of any interest in land, although ostensibly relating to any other matter or thing

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

- (a) A contract for, or in relation to,—
  - (i) The performance of work (including work of a professional nature), whether with or without the supply of goods; or
  - (ii) The provision of, or the use or enjoyment of facilities for, accommodation, amusement, the care of persons or animals or things, entertainment, instruction, parking, or recreation; or
  - (iii) The conferring of rights, benefits, or privileges for which remuneration is payable in the form of a royalty, tribute, levy, or similar exaction:
  - (iv) to avoid doubt, the supply of electricity, gas, telecommunications, or water, or the removal of waste water:
- (b) A contract of insurance, including life assurance, and life reinsurance:
- (c) A contract between a bank and a customer of the bank:
- (d) Any contract for, or in relation to, the lending of money or granting of credit, or the making of arrangements for the lending of money or granting of credit, or the buying or discounting of a credit instrument, or the acceptance of deposits;—

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

services: paragraph (a)(iv) of this definition was inserted, as from 8 July 2003, by section 3(2) Fair Trading Amendment Act (No 2) 2003 (2003 No 34).

**Supply**—

- (a) In relation to goods, includes supply (or resupply) by way of gift, sale, exchange, lease, hire, or hire purchase; and
- (b) In relation to services, includes provide, grant, or confer;—

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

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

- (2) In this Act, a reference to engaging in conduct shall be read as a reference to doing or refusing to do an act, and includes,—
  - (a) Omitting to do an act; or
  - (b) Making it known that an act will or, as the case may be, will not be done.
- (3) In this Act—
  - (a) A reference to the acquisition of goods includes a reference to the acquisition of property in, or rights in relation to, goods, in pursuance of a supply of the goods:
  - (b) A reference to the supply or acquisition of goods or services includes a reference to agreeing to supply or acquire goods or services:
  - (c) A reference to the supply or acquisition of goods includes a reference to the supply or acquisition of goods together with other property or services or both:
  - (d) A reference to the supply or acquisition of services includes a reference to the supply or acquisition of services together with property or other services or both:
  - (e) A reference to the resupply of goods acquired from a person includes a reference to—
    - (i) A supply of goods to another person in an altered form or condition; and
    - (ii) A supply to another person of other goods in which the goods have been incorporated.

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

- (1) This Act extends to the engaging in conduct outside New Zealand by any person resident or carrying on business in New Zealand to the extent that such conduct relates to the supply of goods or services, or the granting of interests in land, within New Zealand.
- (2) *See* section 51 for the application of this Act in relation to an international trade instrument.

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

### **4 Application of Act to the Crown**

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

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

### **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 of this Act may be brought against a body corporate referred to in subsection (1) of this section.

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

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

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

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

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

### **5B Act does not apply to certain conduct regulated by takeovers code**

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

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

## **6 Functions of Commission in relation to dissemination of information**

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

- (a) Make available or co-operate in making available—
  - (i) For the guidance of persons engaged in trade, and other interested persons, general information with respect to their rights and obligations under this Act; and
  - (ii) For the guidance of consumers, general information with respect to the rights and obligations of persons under this Act affecting the interests of consumers; and
- (b) Undertake studies and publish reports and information regarding matters affecting the interests of consumers; and
- (c) Co-operate with and assist any association or body of persons in developing and promoting the observance of standards of conduct for the purpose of ensuring compliance with the provisions of this Act.

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

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

*[Repealed]*

Sections 7 and 8 were repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

**8 Annual report**

*[Repealed]*

Sections 7 and 8 were repealed, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

**Part 1**

**Misleading and deceptive conduct, false representations, and unfair practices**

*Misleading and deceptive conduct*

**9 Misleading and deceptive conduct generally**

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

Compare: Trade Practices Act 1974 (Aust), s 52

**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 (Aust), s 55

**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 (Aust), s 55A

**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 (Aust), s 53B

*False representations*

**13 False or misleading representations**

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

- (a) make a false or misleading representation that goods are of a particular kind, standard, quality, grade, quantity, composition, style, or model, or have had a particular history or particular previous use; or
- (b) make a false or misleading representation that services are of a particular kind, standard, quality, or quantity, or that they are supplied by any particular person or by any person of a particular trade, qualification, or skill; or
- (c) make a false or misleading representation that a particular person has agreed to acquire goods or services; or
- (d) make a false or misleading representation that goods are new, or that they are reconditioned, or that they were manufactured, produced, processed, or reconditioned at a particular time; or
- (e) make a false or misleading representation that goods or services have any sponsorship, approval, endorsement, performance characteristics, accessories, uses, or benefits; or
- (f) make a false or misleading representation that a person has any sponsorship, approval, endorsement, or affiliation; or
- (g) Make a false or misleading representation with respect to the price of any goods or services; or
- (h) Make a false or misleading representation concerning the need for any goods or services; or
- (i) Make a false or misleading representation concerning the existence, exclusion, or effect of any condition, warranty, guarantee, right, or remedy; or

- (j) Make a false or misleading representation concerning the place of origin of goods.

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

Section 13 was amended, as from 15 November 2000, by section 3(a) Fair Trading Amendment Act 2000 (2000 No 64) by substituting the words “make a false or misleading representation” for the words “Falsely represent” wherever they occur.

Section 13 heading was amended, as from 15 November, by section 3(b) Fair Trading Amendment Act 2000 (2000 No 64) by inserting the words “or misleading” after the word “False”.

#### 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 (Aust), s 53A

Subsection (1)(a) was amended, as from 8 July 2003, by section 3 Fair Trading Amendment Act 2003 (2003 No 31) by substituting the words “make a false or misleading representation” for the words “Falsely represent”. See section 16 of that Act as to proceedings already barred and pending proceedings.

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

- (1) Nothing in sections 9 to 14 of this Act 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 of this Act applies to the broadcasting of any information or matter by a broadcasting body, not being—
  - (a) The broadcasting of an advertisement; or
  - (b) The broadcasting of any information or matter relating to the supply or possible supply or the promotion of the supply or use of goods or services or the sale or grant or the possible sale or grant or the promotion of the sale or grant of an interest in land by—
    - (i) That broadcasting body, or where that broadcasting body is a body corporate, by any interconnected body corporate; or
    - (ii) Any person who is a party to any contract, arrangement, or understanding with that broadcasting body relating to the content, nature or tenor of the information or matter.
- (3) For the purposes of this section—
  - (a) The expressions **broadcasting** and **broadcasting body** shall have the same meanings as they have in section 2 of the Broadcasting Act 1976:

- (b) **Newspaper** has the meaning given to that term by section 2 of the Films, Videos, and Publications Classification Act 1993:
- (ba) **Publisher**, in relation to a newspaper, means its proprietor:
- (c) Any 2 or more bodies corporate are to be treated as interconnected if one of them is a body corporate of which the other is a subsidiary (within the meaning of sections 158 and 158A of the Companies Act 1955 or sections 5 and 6 of the Companies Act 1993, as the case may be), or if both of them are subsidiaries (within the meaning of those sections) of one and the same body corporate; and **interconnected body corporate** shall be construed accordingly.

Subsection (3)(a): The Broadcasting Act 1976 was repealed, as from 1 July 1989, by section 89(1) Broadcasting Act 1989 (1989 No 25). The new Act does not contain a definition of broadcasting body.

Subsection (3)(b) was substituted, and subsection (3)(ba) was inserted, as from 27 April 1995, by section 4(3) Newspapers and Printers Act Repeal Act 1995 (1995 No 13).

Subsection (3)(c) was substituted, as from 1 July 1994, by section 2 Company Law Reform (Transitional Provisions) 1994 (1994 No 16).

## 16 Certain conduct in relation to trade marks prohibited

- (1) No person shall, in trade,—
  - (a) Forge any trade mark; or
  - (b) Falsely apply to any goods any trade mark or sign so nearly resembling a trade mark as to be likely to mislead or deceive; or
  - (c) Falsely use in relation to the provision of services any trade mark or sign so nearly resembling a trade mark as to be likely to mislead or deceive.
- (2) For the purposes of this section a person shall be deemed to forge a trade mark if that person—
  - (a) Without the consent of the proprietor of the trade mark, makes that trade mark or a sign so nearly resembling that trade mark as to be likely to mislead or deceive; or
  - (b) Falsifies any genuine trade mark, whether by alteration, effacement or otherwise.
- (3) For the purposes of this Part of this Act—

**Certification trade mark***[Repealed]*

Subsection (3), Certification trade mark: this definition was amended, as from 1 May 1988, by section 33(2) Trade Marks Amendment Act 1987 (1987 No 156) by inserting the words “or services”.

Subsection (3), Certification trade mark: this definition was amended, as from 1 January 1995, by section 2 Fair Trading Amendment Act 1994 (1994 No 124) by substituting the word “sign” for the word “mark”. *See* clause 2 Fair Trading Amendment Act Commencement Order 1994 (SR 1994/316).

Subsection (3) Certification trade mark: this definition was repealed, as from 1 April 2000, by section 8(1) Trade Marks Amendment Act 1999 (1999 No 121).

*[Repealed]*

**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:

Subsection (3) Sign: this definition was inserted, as from 1 April 2000, by section 8(1) Trade Marks Amendment Act 1999 (1999 No 121).

**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.

Subsection (3) Trade mark: this definition was substituted, as from 1 May 1988, by section 33(3) Trade Marks Amendment Act 1987 (1987 No 156).

Subsection (3) Trade mark: paragraph (b)(ii) and (iii) was amended, as from 1 January 1995, by section 2 Fair Trading Amendment Act 1994 (1994 No 124)

by substituting the word “sign” for the word “mark”. *See* clause 2 Fair Trading Amendment Act Commencement Order 1994 (SR 1994/316).

Subsection (3) Trade mark: this definition was substituted, as from 1 April 2000, by section 8(1) Trade Marks Amendment Act 1999 (1999 No 121).

Subsection (3) Trade mark: this definition was amended, as from 20 August 2003, by section 201 Trade Marks Act 2002 (2002 No 49) by substituting the words “Trade Marks Act 2002” for the words “Trade Marks Act 1953”. *See* clause 2 Trade Marks Act 2002 Commencement Order 2003 (SR 2003/188).

Subsection (1) was substituted, as from 1 May 1988, by section 33(1) Trade Marks Amendment Act 1987 (1987 No 156).

Subsection (1)(b) and (c) was amended, as from 1 January 1995, by section 2 Fair Trading Amendment Act 1994 (1994 No 124) by substituting the word “sign” for the word “mark”. *See* regulation 2 Fair Trading Amendment Act Commencement Order 1994 (SR 1994/316).

Subsection 2(a) was amended, as from 1 January 1995, by section 2 Fair Trading Amendment Act 1994 (1994 No 124) by substituting the word “sign” for the word “mark”. *See* regulation 2 Fair Trading Amendment Act Commencement Order 1994 (SR 1994/316).

### *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 (Aust), ss 53A(1)(c), 54

#### **18 Trading stamp schemes prohibited**

*[Repealed]*

Section 18 was repealed, as from 8 July 2003, by section 4 Fair Trading Amendment Act 2003 (2003 No 31). *See* section 16 of that Act as to proceedings already barred and pending proceedings.

#### **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) of this section, 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 (Aust), s 56

## **20 Referral selling**

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

Compare: Trade Practices Act 1974 (Aust), s 57

**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 (Aust), s 58

**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 (Aust), s 59

### 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 (Aust), s 60

### 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)

Subsection (2)(a)(ii) was substituted, as from 8 July 2003, by section 5 Fair Trading Amendment Act 2003 (2003 No 31). See section 16 of that Act as to proceedings already barred and pending proceedings.

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

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

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

- (1) This section applies to any goods to which a false trade description is applied.
- (2) All goods to which this section applies are hereby prohibited to be imported into New Zealand, and shall be deemed to be included among goods prohibited to be imported under section 54 of the Customs and Excise Act 1996 and the provisions of that Act shall apply to such goods accordingly.
- (3) In this section, **false trade description** means any representation which if made in connection with the supply or possible supply of goods or with the promotion by any means of the supply or use of goods would constitute a contravention of section 13(a), (d), or (j) of this Act.
- (4) For the purposes of subsection (1) of this section, 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 was substituted, as from 1 January 1995, by section 3(1) Fair Trading Amendment Act 1994 (1994 No 124). See also section 3(2) of that Act, and regulation 2 Fair Trading Amendment Act Commencement Order 1994 (SR 1994/316).

Subsection (2) was amended, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27) by substituting the words “section 54 of the Customs and Excise Act 1996” for the words “section 48 of the Customs Act 1966”

## Part 2 Consumer information

### 27 Consumer information standards

- (1) The Governor-General may, from time to time, on the recommendation of the Minister, by Order in Council, make regulations prescribing, in respect of goods or services of any description or any class or classes of goods or services, a consumer information standard or 2 or more consumer information standards relating to all or any of the following matters:
  - (a) The disclosure of information relating to the kind, grade, quantity, origin, performance, care, composition, contents, design, construction, use, price, finish, packaging, promotion, or supply of the goods or services:
  - (b) The form and manner in which that information must be disclosed on or in relation to, or in connection with, the supply or resupply, or possible supply or resupply, or promotion of the supply of the goods or services.
- (2) The Governor-General may, from time to time, on the recommendation of the Minister, by Order in Council, make regulations declaring that:
  - (a) An official standard or an official standard with such additions or variations as are specified in the regulations is a consumer information standard:
  - (b) A specified part or parts of an official standard or of an official standard with such additions or variations as are specified in the regulations is a consumer information standard:

- (c) Two 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.

Part 2 (comprising sections 27 and 28) was substituted, as from 28 July 1997, for the former Part 2 (comprising sections 27 and 28) by section 3 Fair Trading Amendment Act 1997 (1997 No 43). *See* section 6(1) of that Act as to the transitional provisions relating to regulations made under the former sections 27 and 28 in force before 28 July 1997.

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

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

Part 2 (comprising sections 27 and 28) was substituted, as from 28 July 1997, for the former Part 2 (comprising sections 27 and 28) by section 3 Fair Trading Amendment Act 1997 (1997 No 43). *See* section 6(1) of that Act as to the transitional provisions relating to regulations made under the former sections 27 and 28 in force before 28 July 1997.

### **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) Two 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.

Sections 29 and 30 were substituted, as from 28 July 1997, by section 4 Fair Trading Amendment Act 1997 (1997 No 43). *See* section 6(2) of that Act as to the transitional provisions relating to regulations made under the former sections 29 and 30, or under both the former sections 29 and 30, in force before 28 July 1997.

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

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

- or offer to supply, or advertise to supply those goods unless that person complies with 1 of those product safety standards.
- (3) Nothing in subsection (1) or subsection (2) applies to goods that are intended for use outside New Zealand if there is applied to the goods—
- (a) A statement that the goods are for export only; or
  - (b) A statement indicating, by the use of words authorised by regulations made under this section, that the goods are intended to be used outside New Zealand,—
- and it must be presumed for the purposes of this section, unless the contrary is established, that the goods so identified are intended to be so used.
- (4) For the purposes of subsection (3), a statement is deemed to be applied to goods if the statement is—
- (a) Woven in, impressed on, worked into, or annexed or affixed to the goods; or
  - (b) Applied to a covering, label, reel, or thing in or with which the goods are supplied.

Sections 29 and 30 were substituted, as from 28 July 1997, by section 4 Fair Trading Amendment Act 1997 (1997 No 43). See section 6(2) of that Act as to the transitional provisions relating to regulations made under the former sections 29 and 30, or under both the former sections 29 and 30, in force before 28 July 1997.

### **31 Unsafe goods**

- (1) Where it appears to the Minister that goods of any description or any class or classes of goods will or may cause injury to any person, the Minister may, by notice in the *Gazette*, declare the goods to be unsafe goods.
- (2) A notice made pursuant to subsection (1) of this section shall, unless previously revoked by the Minister by notice in the *Gazette*, remain in force for 18 months after the date of publication of the notice in the *Gazette*.
- (3) Where—
- (a) A period of 18 months has elapsed after the date of publication of a notice in the *Gazette* pursuant to subsection (1) of this section declaring goods to be unsafe goods; and
  - (b) A product safety standard has not been prescribed pursuant to section 29 of this Act in respect of the goods,—

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

- (4) A notice made pursuant to subsection (3) of this section may be amended or revoked at any time by the Minister by notice in the *Gazette*.
- (5) No person shall supply, or offer to supply, or advertise to supply, goods—
  - (a) In respect of which there is in force a notice declaring the goods to be unsafe goods; or
  - (b) In respect of which there is in force a notice under subsection (3) of this section.

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

### **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) of this section.
- (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) of this Act, 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) of this section.
- (3) For the purposes of subsections (1) and (2) of this section, the Minister may require the supplier, in a manner and within a period specified and at his own expense, to do all or any of the following:
  - (a) Recall the goods:
  - (b) Disclose to the public information relating to—

- (i) The characteristics of the goods which render them unsafe; or
  - (ii) The circumstances in which use of the goods is unsafe; or
  - (iii) Any other matters relating to the goods or the use of the goods as may be specified:
- (c) Repair or replace the goods or refund to any person to whom the goods were supplied or resupplied the price paid for the goods or any lesser amount as may be reasonable having regard to the use that person has had of the goods.
- (4) Where a notice is given to a supplier under subsection (1) or subsection (2) of this section that supplier shall comply in all respects with the notice.
- (5) Where a notice is given to a supplier under subsection (1) or subsection (2) of 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.

### **33 Importation of certain goods prohibited**

All goods the supply of which would constitute a contravention of this Part of this Act are hereby prohibited to be imported into New Zealand and shall be deemed to be included among goods prohibited to be imported under section 54 of the Customs and Excise Act 1996 and the provisions of that Act shall apply to such goods accordingly.

Section 33 was amended, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27) by substituting the words “section 54 of the Customs and Excise Act 1996” for the words “section 48 of the Customs Act 1966”

## **Part 4**

### **Safety of services**

#### **34 Meaning of services**

For the purposes of this Part of this Act **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 (Aust), s 74(3)

#### **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) Two 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.

Sections 35 and 36 were substituted, as from 28 July 1997, by section 5 Fair Trading Amendment Act 1997 (1997 No 43).

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

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

Sections 35 and 36 were substituted, as from 28 July 1997, by section 5 Fair Trading Amendment Act 1997 (1997 No 43).

## **Part 5 Enforcement and remedies**

### *Jurisdiction of Courts*

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

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

- (a) Appeals from criminal proceedings in a District Court for offences against sections 40 and 47J of this Act:
- (ab) appeals from proceedings in a District Court for orders under section 40A:
- (b) Applications for injunctions under section 41 of this Act:

(c) Applications for orders under sections 42 and 43 of this Act.

Paragraph (a) was amended, as from 8 July 2003, by section 6(1) Fair Trading Amendment Act 2003 (2003 No 31) by substituting the words “sections 40 and 47J” for the expression “section 40”. See section 16 of that Act as to proceedings already barred and pending proceedings.

Paragraph (ab) was inserted, as from 8 July 2003, by section 6(2) Fair Trading Amendment Act 2003 (2003 No 31). See section 16 of that Act as to proceedings already barred and pending proceedings.

**38 Jurisdiction of District Courts**

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

- (a) Proceedings for offences against sections 40 and 47J of this Act:
- (b) Applications for orders under sections 40A, 42, and 43 of this Act.

Paragraph (a) was amended, as from 8 July 2003, by section 7(a) Fair Trading Amendment Act 2003 (2003 No 31) by substituting the words “sections 40 and 47J” for the expression “section 40”. See section 16 of that Act as to proceedings already barred and pending proceedings.

Paragraph (b) was amended, as from 8 July 2003, by section 7(b) Fair Trading Amendment Act 2003 (2003 No 31) by substituting the words “sections 40A, 42, and 43” for the expression “section 43”. See section 16 of that Act as to proceedings already barred and pending proceedings.

**39 Jurisdiction of Disputes Tribunals**

In accordance with this Part of this Act, a Disputes Tribunal established under section 4 of the Disputes Tribunals Act 1988 shall have jurisdiction to hear and determine applications for orders under section 43(2)(c) to (f) of this Act (except in respect of a contravention of section 9 of this Act).

Section 39 was substituted, as from 1 March 1989, by section 82(2) Disputes Tribunals Act 1988 (1988 No 110).

*Offences*

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

- (1) Every person who contravenes any of the provisions of Part 1 (except sections 9, 14(2), 23, and 24), or Part 2, or Part 3 or

Part 4 of this Act, commits an offence and is liable on summary conviction—

- (a) In the case of a person other than a body corporate, to a fine not exceeding \$60,000; and
  - (b) In the case of a body corporate, to a fine not exceeding \$200,000.
- (1A) Every person who contravenes section 24 commits an offence and is liable on summary conviction to a fine not exceeding \$200,000.
- (2) Where a person is convicted, whether in the same or separate proceedings, of 2 or more offences in respect of contraventions of the same provisions of this Act and those contraventions are of the same or a substantially similar nature and occurred at or about the same time, the aggregate amount of any fines imposed on that person in respect of those convictions shall not exceed the amount of the maximum fine that may be imposed in respect of a conviction for a single offence.
- (3) Despite section 14 of the Summary Proceedings Act 1957, proceedings under this section may be commenced at any time within 3 years after the matter giving rise to the contravention was discovered or ought reasonably to have been discovered.

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

Subsection (1) was amended, as from 8 July 2003, by section 8(1)(a) Fair Trading Amendment Act 2003 (2003 No 31) by substituting the words “sections 9, 14(2), 23, and 24” for the words “sections 9, 14(2), and 23”. See section 16 of that Act as to proceedings already barred and pending proceedings.

Subsection (1)(a) was amended, as from 8 July 2003, by section 8(1)(b) Fair Trading Amendment Act 2003 (2003 No 31) by substituting the expression “\$60,000” for the expression “\$30,000”. See section 16 of that Act as to proceedings already barred and pending proceedings.

Subsection (1)(b) was amended, as from 8 July 2003, by section 8(1)(c) Fair Trading Amendment Act 2003 (2003 No 31) by substituting the expression “\$200,000” for the expression “\$100,000”. See section 16 of that Act as to proceedings already barred and pending proceedings.

Subsection (1A) was inserted, as from 8 July 2003, by section 8(2) Fair Trading Amendment Act 2003 (2003 No 31). See section 16 of that Act as to proceedings already barred and pending proceedings.

Subsection (3) was substituted, as from 8 July 2003, by section 8(3) Fair Trading Amendment Act 2003 (2003 No 31). See section 16 of that Act as to proceedings already barred and pending proceedings.

**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 application of the Commission, in addition to any penalty that the Court may impose under that subsection, order that person to pay an amount not exceeding the value of any commercial gain resulting from the contravention if the Court is satisfied that the contravention occurred in the course of producing a commercial gain.
- (2) The value of any gain must be assessed by the Court, and any amount ordered to be paid is recoverable in the same manner as a fine.
- (3) The standard of proof in proceedings under this section is the standard of proof that applies in civil proceedings.
- (4) In this section, **Court** includes a District Court.

Section 40A was inserted, as from 8 July 2003, by section 9 Fair Trading Amendment Act 2003 (2003 No 31). *See* section 16 of that Act as to proceedings already barred and pending proceedings.

*Civil proceedings*

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

- (1) The Court may, on the application of the Commission or any other person, grant an injunction restraining a person from engaging in conduct that constitutes or would constitute any of the following—
  - (a) A contravention of any of the provisions of Parts 1 to 4 of this Act:
  - (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: Trade Practices Act 1974 (Aust), s 80(1)-(5)

Subsections (5) and (6) were inserted, as from 8 July 2003, by section 10 Fair Trading Amendment Act 2003 (2003 No 31). *See* section 16 of that Act as to proceedings already barred and pending proceedings.

#### **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 of this Act, the Court may (whether or not that person has previously engaged in such conduct), make either or both of the following orders:

(a) An order requiring that person, or any other person involved in the contravention, to disclose, at that person's own expense, to the public, or to a particular person or to persons included in a particular class of persons, in such manner as is specified in the order, such information, or information of such a kind, as is so specified, being information that is in the possession of the person to whom the order is directed or to which that person has access:

(b) An order requiring that person, or any other person involved in the contravention, to publish, at that person's own expense, in such manner and at such times as are specified in the order, corrective statements the terms of which are specified in, or are to be determined in accordance with, the order.

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

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

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

Subsections (2) and (3) were inserted, as from 8 July 2003, by section 11 Fair Trading Amendment Act 2003 (2003 No 31). *See* section 16 of that Act as to proceedings already barred and pending proceedings.

#### **43 Other orders**

(1) Where, in any proceedings under this Part of this Act, or on the application of any person, the Court finds that a person, whether or not that person is a party to the proceedings, has

suffered, or is likely to suffer, loss or damage by conduct of any other person that constitutes or would constitute—

- (a) A contravention of any of the provisions of Parts 1 to 4 of this Act; or
- (b) Aiding, abetting, counselling, or procuring the contravention of such a provision; or
- (c) Inducing by threats, promises, or otherwise the contravention of such a provision; or
- (d) Being in any way directly or indirectly knowingly concerned in, or party to, the contravention of such a provision; or
- (e) Conspiring with any other person in the contravention of such a provision—

the Court may (whether or not it grants an injunction or makes any other order under this Part of this Act) make all or any of the orders referred to in subsection (2) of this section.

- (2) For the purposes of subsection (1) of this section, the Court may make the following orders—
  - (a) An order declaring the whole or any part of a contract made between the person who suffered, or is likely to suffer, the loss or damage and the person who engaged in the conduct referred to in subsection (1) of this section or of a collateral arrangement relating to such a contract, to be void and, if the Court thinks fit, to have been void *ab initio* or at all times on and after such date, before the date on which the order is made, as is specified in the order:
  - (b) An order varying such a contract or arrangement in such manner as is specified in the order and, if the Court thinks fit, declaring the contract or arrangement to have had effect as so varied on and after such date, before the date on which the order is made, as is so specified:
  - (c) An order directing the person who engaged in the conduct, referred to in subsection (1) of this section to refund money or return property to the person who suffered the loss or damage:
  - (d) An order directing the person who engaged in the conduct, referred to in subsection (1) of this section to

- pay to the person who suffered the loss or damage the amount of the loss or damage:
- (e) An order directing the person who engaged in the conduct, referred to in subsection (1) of this section at that person's own expense, to repair, or provide parts for, goods that had been supplied by the person who engaged in the conduct to the person who suffered, or is likely to suffer, the loss or damage:
  - (f) An order directing the person who engaged in the conduct, referred to in subsection (1) of this section at that person's own expense, to supply specified services to the person who suffered, or is likely to suffer, the loss or damage.
- (3) In the exercise of its jurisdiction under this section a District Court shall not—
- (a) Make any order under subsection (2)(a) of this section in any case where the value of the consideration for the promise or act of any party to the contract or collateral arrangement exceeds \$200,000:
  - (b) Make an order under subsection (2)(b) of this section in any case where the value of the consideration for the promise or act of any party to the contract or arrangement exceeds \$200,000:
  - (c) Make an order under subsection (2)(c) of this section directing a person to refund money or return property where the amount of money or the value of the property exceeds \$200,000:
  - (d) Make an order under subsection (2)(d) of this section requiring a person to pay an amount exceeding \$200,000:
  - (e) Make an order under subsection (2)(e) of this section directing a person to repair goods or provide parts for goods where the value of the work required to repair the goods, or the value of the parts, as the case may be, exceeds \$200,000:
  - (f) Make an order under subsection (2)(f) of this section directing a person to supply services where the value of the services exceeds \$200,000.
- (4) Subject to subsection (4A) of this section, in the exercise of its jurisdiction under this section a Disputes Tribunal shall not—

- (a) Make an order under subsection (2)(c) of this section directing a person to refund money or return property where the amount of money or the value of the property exceeds \$15,000:
  - (b) Make an order under subsection (2)(d) of this section requiring a person to pay an amount exceeding \$15,000:
  - (c) Make an order under subsection (2)(e) of this section directing a person to repair goods or provide parts for goods where the value of the work required to repair the goods, or the value of the parts, as the case may be, exceeds \$15,000:
  - (d) Make an order under subsection (2)(f) of this section directing a person to supply services where the value of the services exceeds \$15,000.
- (4A) Where, in respect of any proceedings properly before a Disputes Tribunal, the jurisdiction of the Tribunal has been extended under an agreement made pursuant to section 13 of the Disputes Tribunals Act 1988, subsection (4) of this section shall be read as if every reference in that subsection to \$15,000 were a reference to \$20,000.
- (5) An application under subsection (1) may be made at any time within 3 years after the date on which the loss or damage, or the likelihood of loss or damage, was discovered or ought reasonably to have been discovered.
- (6) An order made under subsection (2)(a) or (b) of this section shall not prevent proceedings being instituted or commenced under this Part of this Act.
- (7) Nothing in this section limits or affects the Illegal Contracts Act 1970.
- (8) For the purposes of subsection (1) of this section, a reference to **Court** includes a reference to a District Court and a Disputes Tribunal.
- (9) Nothing in this section affects section 317 of the Injury Prevention, Rehabilitation, and Compensation Act 2001.

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

Subsection (3)(a) to (f) was amended, as from 13 November 1989, by section 10(1) Districts Courts Amendment Act 1989 (1989 No 107) by substituting the figure “\$50,000” for the figure “\$12,000”. This amount was further amended by section 19 District Courts Amendment Act 1991 (1991 No 61) by increasing the figure to “\$200,000”.

Subsection (4) was substituted, and subsection (4A) was inserted, as from 1 March 1989, by section 82(2) Disputes Tribunals Act 1988 (1988 No 110).

Subsection (4) was amended, as from 5 March 1999, by section 2(1) Fair Trading Amendment Act 1999 (1999 No 5) by substituting the expression “\$7,500” for the expression “\$3,000”.

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

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

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

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

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

Subsection (4A) was amended, as from 5 March 1999, by section 2(2) Fair Trading Amendment Act 1999 (1999 No 5) by substituting the expression “\$7,500” for the expression “\$3,000”. It was further amended by section 2(2)(b) of that Act by substituting the expression “\$12,000” for the expression “\$5,000”.

Subsection (5) was substituted, as from 3 May 2001, by section 3 Fair Trading Amendment Act 2001 (2001 No 20). *See* section 4 of that Act, which states that nothing in this Act: (a) enables any proceedings to be brought which were barred before the commencement of this Act; or (b) affects any proceedings commenced before the commencement of this Act.

Subsection (8) was amended, as from 1 March 1989, by section 82(2) Disputes Tribunals Act 1988 (1988 No 110) by substituting the words “Disputes Tribunal” for the words “Small Claims Tribunal”.

Subsection (9) was amended, as from 1 April 2000, by section 9(1) Accident Insurance Amendment Act 2000 (2000 No 6) by substituting the words “section 394 of the Accident Insurance Act 1998” for the words “section 27 of the Accident Compensation Act 1982”.

Subsection (9) was amended, as from 1 April 2002, by section 337(1) Injury Prevention, Rehabilitation, and Compensation Act 2001 (2001 No 49), by substituting the words “section 317 of the Injury Prevention, Rehabilitation, and Compensation Act 2001” for the words “section 394 of the Accident Insurance Act 1998”. *See* Part 10 of that Act for provisions relating to transition from competitive provision of workplace accident insurance. *See* Part 11 of that Act for transitional provisions relating to entitlements provided by Corporation.

#### **44 Defences**

- (1) Subject to this section, it is a defence to a prosecution for an offence against section 40 of this Act if the defendant proves—
- (a) That the contravention was due to a reasonable mistake; or
  - (b) That the contravention was due to reasonable reliance on information supplied by another person; or

- (c) That—
  - (i) The contravention was due to the act or default of another person, or to an accident or to some other cause beyond the defendant's control; and
  - (ii) The defendant took reasonable precautions and exercised due diligence to avoid the contravention.
- (2) For the purposes of subsection (1)(b) and (c) of this section, 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) of this section that the contravention was due to reasonable reliance on information supplied by another person, or by subsection (1)(c)(i) of this section that the contravention was due to the act or default of another person, unless the defendant has, not later than 7 days before the date on which the hearing of the proceedings commences, served on the informant a notice in writing identifying that person.
- (4) It is a defence to a prosecution for an offence against section 40 of this Act, or to any other proceedings under this Part of this Act, 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) of this section, it is a defence to a prosecution for an offence against section 40 of this Act, or to any other proceedings under this Part of this Act, in relation

to a contravention of section 28 of this Act, 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) of this section unless the defendant has, not later than 7 days before the date on which the hearing of the proceedings commences, served, in the case of proceedings for an offence, on the informant, and in the case of any other proceedings, on the person commencing those proceedings, a notice in writing identifying the person by whom the goods were supplied.

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

Subsection (5) was amended, as from 8 July 2003, by section 12 Fair Trading Amendment Act 2003 (2003 No 31) by substituting the expression “section 28”<sup>55</sup> for the expression “section 27”. See section 16 of that Act as to proceedings already barred and pending proceedings.

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

- (1) Where, in proceedings under this Part of this Act 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 of this Act 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 (Aust), s 84

#### **46 Finding in proceedings to be evidence**

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

section 40 of this Act, being proceedings before the High Court or a District Court in which that person was found to have engaged in conduct of the kind referred to in section 43(1)(a) to (e) of this Act is prima facie evidence of that fact and the finding may be proved by production of a document under the seal of the Court or District Court, as the case may be, in which the finding was made.

Compare: Trade Practices Act 1974 (Aust), s 83

Section 46 was amended, as from 8 July 2003, by section 13 Fair Trading Amendment Act 2003 (2003 No 31) by inserting the words “section 40A or” after the words “an order under”. See section 16 of that Act as to proceedings already barred and pending proceedings.

## **Part 6**

### **Miscellaneous provisions**

#### **47 Power to search**

- (1) The Commission may, from time to time, authorise an employee of the Commission to search, under a warrant issued under subsection (2), any place named in the warrant for any of the purposes set out in that subsection.
- (2) A District Court Judge, Justice, Community Magistrate, or Court Registrar (not being a constable) may, by warrant, authorise a person who is authorised under subsection (1) to search a place specified in the warrant if he or she is satisfied on application made on oath by that employee that there are reasonable grounds to believe that a search is necessary for the purpose of—
  - (a) investigating—
    - (i) whether a person has engaged in, or is engaging in, conduct that constitutes, or may constitute, a contravention of this Act; or
    - (ii) the nature or extent of any conduct that constitutes, or may constitute, a contravention of this Act; or
  - (b) gathering, obtaining, or recovering evidence of—
    - (i) conduct that constitutes, or may constitute, a contravention of this Act; or

- (ii) the nature or extent of any conduct that constitutes, or may constitute, a contravention of this Act.
- (3) A person who applies for a warrant shall, having made reasonable inquiries, disclose—
  - (a) Details of every previous application for a warrant to search the place that the person knows has been made within the preceding 28 days; and
  - (b) The result of the application.

Section 47 was substituted, as from 1 July 1990, by section 3 Fair Trading Amendment Act 1990 (1990 No 42).

Subsection (1) was substituted, as from 8 July 2003, by section 14 Fair Trading Amendment Act 2003 (2003 No 31). *See* section 16 of that Act as to proceedings already barred and pending proceedings.

Subsection (2) was amended, as from 30 June 1998, by section 7 District Courts Act 1998 (1998 No 76) by inserting the words “or Community Magistrate,”.

Subsection (2) was substituted, as from 8 July 2003, by section 14 Fair Trading Amendment Act 2003 (2003 No 31). *See* section 16 of that Act as to proceedings already barred and pending proceedings.

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

- (1) A warrant issued under section 47 of this Act authorises the person named in it—
  - (a) To enter and search the place specified in the warrant on one occasion within 30 days of the date of issue of the warrant at a time that is reasonable in the circumstances:
  - (b) To use such assistance as is reasonable in the circumstances:
  - (c) To use such force for gaining entry and for breaking open any article or thing as is reasonable in the circumstances:
  - (d) To search for and remove documents or any article or thing that the person executing the warrant believes on reasonable grounds may be relevant:
  - (e) To search for and remove goods that the person executing the warrant believes on reasonable grounds may be relevant:
  - (f) Where necessary, to take copies of documents, or extracts from documents, that the person executing the

warrant believes on reasonable grounds may be relevant:

- (g) Where necessary, to require a person to reproduce, or assist any person executing the warrant to reproduce, in usable form, information recorded or stored in a document.
- (2) A person assisting the person executing the warrant also has the powers referred to in paragraphs (c), (d), (e), and (f) of subsection (1) of this section.
  - (3) The warrant shall be executed in accordance with such reasonable conditions as may be specified in the warrant when it is issued.

Sections 47A to 47F were inserted, as from 1 July 1990, by section 3 Fair Trading Amendment Act 1990 (1990 No 42).

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

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

- (a) Must have the warrant with him or her; and
- (b) Must produce it on initial entry and, if requested, at any subsequent time; and
- (c) Must identify himself or herself to the owner or occupier or person in charge of the place if that person is present; and
- (d) Must produce evidence of his or her identity.

Sections 47A to 47F were inserted, as from 1 July 1990, by section 3 Fair Trading Amendment Act 1990 (1990 No 42).

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

- (1) A person who executes a warrant issued under section 47 of this Act must, before completing the search, leave in a prominent place at the place searched,—
  - (a) In the case of a search carried out at a time when the owner or occupier was not present, a written notice stating—
    - (i) The date and time when the warrant was executed; and
    - (ii) The name of the person who executed the warrant; and

- (b) In the case of a search where documents or goods were removed from the place being searched, a schedule of documents or goods that were removed during the search.
- (2) If it is not practicable to prepare a schedule before completing the search, or if the owner or occupier of the place being searched consents, the person executing the warrant—
- (a) May, instead of leaving a schedule, leave a notice stating that documents or goods have been removed during the search and that, within 7 days of the search, a schedule will be delivered, left, or sent stating what documents or goods have been removed; and
  - (b) Must, within 7 days of the search,—
    - (i) Deliver a schedule to the owner or occupier; or
    - (ii) Leave a schedule in a prominent position at the place searched; or
    - (iii) Send a schedule by mail to the owner or occupier of the place searched.
- (3) Every schedule must state—
- (a) The documents or goods that have been removed; and
  - (b) The location from where they were removed; and
  - (c) The location where they are being held.

Sections 47A to 47F were inserted, as from 1 July 1990, by section 3 Fair Trading Amendment Act 1990 (1990 No 42).

#### **47D Duty to assist**

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

Sections 47A to 47F were inserted, as from 1 July 1990, by section 3 Fair Trading Amendment Act 1990 (1990 No 42).

#### **47E Power to inspect documents and goods**

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

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

Sections 47A to 47F were inserted, as from 1 July 1990, by section 3 Fair Trading Amendment Act 1990 (1990 No 42).

#### **47F Offence**

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

Sections 47A to 47F were inserted, as from 1 July 1990, by section 3 Fair Trading Amendment Act 1990 (1990 No 42).

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

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

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

Sections 47G to 47J were inserted, as from 8 July 2003, by section 15 Fair Trading Amendment Act 2003 (2003 No 31). See section 16 of that Act as to proceedings already barred and pending proceedings.

**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

Sections 47G to 47J were inserted, as from 8 July 2003, by section 15 Fair Trading Amendment Act 2003 (2003 No 31). *See* section 16 of that Act as to proceedings already barred and pending proceedings.

**47I Service of notices**

- (1) Any notice that is authorised to be served on, or given to, any person for the purposes of section 47G may be served or given by—
- (a) delivering it to that person; or
  - (b) leaving it at—
    - (i) his or her usual or last known place of residence or business; or
    - (ii) at the address specified by him or her in any notice, application, or other document made, given, or tendered to the Commission under this Act; or
  - (c) posting it by letter addressed to him or her at that place of residence or business or at that address.

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

Compare: 1986 No 5 s 102

Sections 47G to 47J were inserted, as from 8 July 2003, by section 15 Fair Trading Amendment Act 2003 (2003 No 31). *See* section 16 of that Act as to proceedings already barred and pending proceedings.

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

- (1) No person may,—
  - (a) without reasonable excuse, refuse or fail to comply with a notice under section 47G; or
  - (b) in purported compliance with the notice, supply information, or supply a document, knowing it to be false or misleading.
- (2) Every person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 in the case of an individual, or \$30,000 in the case of a body corporate.
- (3) Proceedings for an offence against subsection (2) may be commenced within 6 months after the matter giving rise to the contravention was discovered or ought reasonably to have been discovered.

Compare: 1986 No 5 s 103

Sections 47G to 47J were inserted, as from 8 July 2003, by section 15 Fair Trading Amendment Act 2003 (2003 No 31). *See* section 16 of that Act as to proceedings already barred and pending proceedings.

**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) of this section applies in respect of proceedings for—
  - (a) An offence against section 78 or section 78A or section 105 or section 105A of the Crimes Act 1961; or
  - (b) The offence of conspiring to commit an offence against section 78 or section 78A or section 105 or section 105A of the Crimes Act 1961; or
  - (c) The offence of attempting to commit an offence against section 78 or section 78A or section 105 or section 105A of the Crimes Act 1961.
- (4) Section 59(3) of the Crown Entities Act 2004 (which provides that a statutory entity may bring an action against a member for breach of an individual duty) does not apply, unless it is shown by the Commission that the person acted in bad faith.
- (5) Sections 122 to 126 of the Crown Entities Act 2004 apply as if the conduct for which a person may be indemnified or insured under those sections were conduct that is covered by the protection from liability in this section.
- (6) This section contains an exception to section 121 of the Crown Entities Act 2004.

Subsection (2) was substituted, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

Subsections (4) to (6) were inserted, as from 25 January 2005, by section 200 Crown Entities Act 2004 (2004 No 115).

**48A Sharing of information with Securities Commission or Takeovers Panel**

- (1) The Commission may communicate to the Securities Commission or the Takeovers Panel any information that the Commission—
  - (a) holds in relation to the exercise of the Commission's powers, or the performance of its functions and duties, in respect of this Act; and
  - (b) considers may assist the Securities Commission or the Takeovers Panel in the exercise of their powers, or the performance of their functions and duties, in respect of false, misleading, or deceptive conduct under the Securities Act 1978 or the Securities Markets Act 1988 or the Takeovers Act 1993 or the takeovers code in force under that Act.
- (2) The Commission may use any information communicated to it by the Securities Commission under section 17B of the Securities Act 1978 or by the Takeovers Panel under section 15B of the Takeovers Act 1993 in the Commission's exercise of its powers, or the performance of its functions and duties, in respect of this Act.
- (3) This section applies despite anything to the contrary in any enactment, contract, deed, or document.

Section 48A was inserted, as from 25 October 2006, by section 5 Fair Trading Amendment Act 2006 (2006 No 49).

**49 Repeals and consequential amendments**

- (1) The enactment specified in Schedule 1 to this Act is hereby amended in the manner indicated in that Schedule.
- (2) The enactments specified in Part A of Schedule 2 to this Act are hereby repealed with effect from the commencement of this Act.
- (3) The enactments specified in Part B of Schedule 2 to this Act are hereby repealed with effect from the 1st day of May 1987.
- (4) The orders and notices specified in Schedule 3 to this Act are hereby revoked.

**50 Saving of other laws**

- (1) Nothing in this Act limits or affects the operation of any other Act.
- (2) Nothing in this Act limits or affects any liability that any person may incur under any rule of law or enactment other than this Act.

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

**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).

**1**

*[Repealed]*

Schedule 1 was repealed, as from 1 April 1993 by section 62 Health and Safety in Employment Act 1992 (1992 No 96).

*[Repealed]*

**Schedule 2**

Section 49(2), (3)

**Enactments repealed**

**A**

- 1908, No 174—The Employment Agents Act 1908 (RS Vol 17, p 201).
- 1954, No 43—The Merchandise Marks Act 1954 (RS Vol 10, p 113).
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- 1960, No 24—The Employment Agents Amendment Act 1960 (RS Vol 17, p 209).
- 1967, No 30—The Employment Agents Amendment Act 1967 (RS Vol 17, p 210).
- 1969, No 12—The Consumer Information Act 1969.
- 1975, No 46—The Unsolicited Goods and Services Act 1975: Section 8(4).
- 1975, No 74—The Employment Agents Amendment Act 1975 (RS Vol 17, p 211).
- 1981, No 118—The Medicines Act 1981: Section 112.
- 
- 1986, No 5—The Commerce Act 1986: Section 115.

Part A of this Schedule was amended, as from 16 October 1989, by section 2(2) Labour Department Act Repeal Act 1989 (1989 No 82) by omitting an item relating to the Labour Department Act 1954 (1954 No 71).

Part A of this Schedule was further amended, as from 2 July 2001, by section 86(1) Agricultural Compounds and Veterinary Medicines Act 1997 (1997 No 87) by omitting the item relating to the Fertilisers Act 1982. *See* Part 8 (comprising sections 87 to 122) of that Act as to the transitional provisions. *See* clause 2 Agricultural Compounds and Veterinary Medicines Act Commencement Order 2001 (SR 2001/100).

**B**

- 1949, No 41—The Wool Labelling Act 1949 (RS Vol 11, p 903).

*B—continued*

- 1977, No 87—The Safety of Children’s Night Clothes Act 1977.

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**Schedule 3**  
**Orders and notices revoked**

Section 49(4)

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Title	Statutory Regulations
The Footwear Marking Order 1955	1955/208
The Clothing Marking Order 1956	1956/118
The Dry Cell Batteries Marking Order (No 2) 1957	1957/205
The Consumer Information (Quantity) Notice 1971	1971/150
The Consumer Information (Quantity) Notice 1973	1973/139

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## **Notes**

### **1 *General***

This is an eprint of the Fair Trading Act 1986. It incorporates all the amendments to the Act as at 1 August 2009. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the Principal enactment, in chronological order.

### **2 *About this eprint***

This eprint has not been officialised. For more information about officialisation, please see “Making online legislation official” under “Status of legislation on this site” in the About section of this website.

### **3 *List of amendments incorporated in this eprint (most recent first)***

Disputes Tribunals Amendment Act 2009 (2009 No 22): section 8  
Fair Trading Amendment Act 2008 (2008 No 52)  
Fair Trading Amendment Act 2006 (2006 No 49)

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