

Consumer Law Reform Bill

Government Bill

As reported from the Commerce Committee

Commentary

Recommendation

The Commerce Committee has examined the Consumer Law Reform Bill, and recommends that it be passed with the amendments shown.

Introduction

The Consumer Law Reform Bill is an omnibus bill. It aims to modernise New Zealand's consumer law and improve its alignment with the Australian Consumer Law. It proposes amendments to

- the Fair Trading Act 1986
- the Consumer Guarantees Act 1993
- the Weights and Measures Act 1987
- the Carriage of Goods Act 1979
- the Sale of Goods Act 1908
- the Secondhand Dealers and Pawnbrokers Act 2004.

The bill also seeks to repeal the Auctioneers Act 1928, the Door to Door Sales Act 1967, the Layby Sales Act 1971, and the Unsolicited Goods and Services Act 1975. The matters covered by the four Acts being repealed are incorporated into the amended Fair Trading Act and a new Auctioneers Act.

This commentary covers the key amendments that we recommend to the bill. It does not cover a number of minor or technical amendments proposed to improve workability, drafting, clarity, and legal efficacy.

Purpose clauses

The bill as introduced proposes amendments to the Fair Trading Act, the Consumer Guarantees Act, and the Weights and Measures Act, to provide for new standardised purpose clauses for these Acts. We recommend amendments to these new purpose clauses inserted by clauses 5, 34, and 46, to ensure that the wording is appropriate and clear, and to highlight the importance of consumer protection.

Fair Trading Act

No contracting out

Clause 7 would insert new section 5D into the Fair Trading Act, describing the terms under which parties in trade might contract out of some of the terms of the Fair Trading Act. New subsection 5D(4) sets out the list of considerations for a court to take into account when deciding whether contracting-out behaviour was fair and reasonable. We recommend expanding the guidance in this section on what is fair and reasonable, adding three considerations to this list: whether each party was given sufficient opportunity to negotiate the terms of the agreement, whether one party was required to accept or reject the terms of the agreement in the form in which they were presented, and whether one party knew that if it were not for their agreement to contract out, a representation made in connection with their agreement would have breached section 12A, 13, or 14(1). These amendments would strengthen the fair and reasonable test protection for weaker parties such as franchisees contracting out of the Fair Trading Act.

Unsubstantiated representations

The proposed new provisions on unsubstantiated representations are intended to target traders who make representations without reasonable grounds. We recommend adding new subsection 12A(2A) (inserted by clause 9) to make it clear that the provision does not include representations that a reasonable person would not expect to be substantiated, so that creativity in advertising would not be stifled. We

also recommend deleting the words “or of fact or opinion” from new paragraph 12A(3)(c).

Under the existing scheme the Commerce Commission must disprove such representations, which can be difficult and costly. No direct harm may necessarily occur from representations that are true but nonetheless unsubstantiated, but there can be indirect harm. Traders that incur the costs of undertaking relevant research before making claims are disadvantaged relative to traders willing to make unsubstantiated claims. There can also be indirect harm to consumers, such as paying a premium for goods when additional benefits are not substantiated, or buying goods in the expectation they will deliver particular outcomes that are not substantiated. New subsection 12A(3) lists the circumstances a court must have regard to when assessing whether a person had reasonable grounds for a representation. We recommend adding two further considerations to this list to provide for steps a seller may take to verify a representation. In addition, we recommend adding new section 12B so that the unsubstantiated representation provisions in section 12A would not apply to representations already covered by industry-specific legislation.

False or misleading representations

To align the bill with the Financial Markets Conduct Bill, we recommend inserting clause 10(1) to add to section 13(b) of the Fair Trading Act “a person who has other particular characteristics”, to make it clear it is a misrepresentation to claim, for example, that a person is licensed or registered. We recommend also inserting clause 10(3) to add “or services” to section 13(j) of the Fair Trading Act, so that it would be an offence to mislead a consumer about the place from which services were supplied.

Unsolicited goods and services

To ensure that museums could still treat anonymous goods left with them as gifts, rather than as goods left under their care which they are obliged to try to return, we recommend removing the words “in trade” from new subsection 21A(1) inserted by clause 11, and inserting new subsection 21A(1A) to provide for cases where the sender is in trade. We also recommend amending new subsection 21A(3) to prevent the unintended consequence of the gifting of stolen goods.

We accept that sending unsolicited goods is a legitimate form of marketing, provided that there is no obligation for the recipient of the goods (the consumer) to pay for them if they are not used or wanted. The principle of the law is to protect recipients from demands for payment for unsolicited goods and services, and to provide that such goods become the property of the recipient after a period of time.

We also recommend amending the unsolicited goods provisions in clause 11 to require traders to advise a recipient of unsolicited goods of their obligation to make the goods available for collection. If a trader did not inform the recipient at the time the goods were delivered, and on any invoice for the goods, of this obligation, then none of these obligations would apply. To ensure that it would not be an offence for a consumer not to make goods available for collection under new section 21A(1)(b), we recommend adding new subsection 21A(3A) (inserted by clause 11).

Further, we recommend specifying in subsection 21A(4) and 21B(2) that the unsolicited goods and services provisions do not apply to gas and electricity. We consider that the practice of leaving gas and electricity supplies connected for new owners would complicate the status of these supplies as “unsolicited goods”. It is also impractical to require the return of unsolicited electricity or gas used by new homeowners or tenants.

Unfair contract terms

We recommend the addition of new clause 11A, which would insert a new section 26A in Part 1 of the Fair Trading Act. New section 26A would prohibit the use of unfair contract terms in standard form contracts. Contravention of this prohibition would give rise to the remedies described in Part 5 of the Fair Trading Act.

A term is an unfair contract term only if it is declared to be such by the High Court or a District Court, on the application of the Commerce Commission. This process would ensure that the Commerce Commission was given control of the enforcement of unfair contract terms. To provide for this process, we recommend inserting new clause 26A, which would insert new sections 46H to 46M. These provisions set out the power of a court to declare a term in a standard form consumer contract to be unfair, and the basis for such a declaration. These provisions reflect the essential features of the Australian

Consumer Law provisions relating to unfair contract terms. A “grey list” of examples of unfair contract terms is included in new section 46M, replicating the list in the Australian Consumer Law.

Internet sales sites

We recommend that the bill require under clause 12B (inserting new section 28B) that internet sites facilitating sales between traders and consumers must require traders to identify themselves as such if selling goods or services covered by the Consumer Guarantees Act. We consider that failure of traders to do so on such sites should be an infringement offence under the Fair Trading Act. The provisions of the Consumer Guarantees Act are contingent on whether the seller is in trade, so this is important information for consumers. We recommend inserting subsection 28B(2) to provide that the person operating the internet site must take all practicable steps to ensure that persons offering goods or services for sale on the site comply with this provision.

Product safety

We recommend amending clause 14 (which amends section 31 of the Fair Trading Act) to require the Minister of Consumer Affairs to consult people who would be substantially affected before declaring that an unsafe goods notice will apply indefinitely. This would ensure consistency with other parts of the Fair Trading Act, which require similar consultation. However, we recommend providing that if the Minister issued a notice without consultation, this would not affect the validity of the notice.

In addition, we recommend amending clause 15 by inserting new paragraph 31A(1)(b) so that where a supplier was required under other legislation to report a product safety recall to a government agency, that supplier would not be required to notify the chief executive of the Ministry of Consumer Affairs, as the intention is not to duplicate product safety recalls required under other specific legislation.

In order to align the bill with the Search and Surveillance Act 2012, we recommend amending clause 17 (inserting new sections 33A to 33D).

New Part 4A of the Fair Trading Act

The bill as introduced seeks to amend the Fair Trading Act to insert a new Part 4A, “Consumer Transactions and Auctions”. This new part, inserted by clause 18, covers layby sales, uninvited direct selling, extended warranties, and auctions.

Layby agreements

We recommend inserting new subsection 36F(1A) to allow the cancellation of layby agreements to be communicated in any way using the supplier’s contact details provided in the agreement, as detailed in section 36C(2)(a)(iv), or in any other way as agreed to by the supplier and consumer. We believe that this would ensure clarity between parties when agreements were being cancelled, and provide protection for retailers. We also recommend aligning new sections 36M(2A) and 36U(3A), relating to uninvited direct sales and extended warranties, with this provision.

Completion of layby agreement

New sections 36I and 36J set out comprehensive provisions for cancellation of a layby agreement if a supplier undergoes bankruptcy, receivership, or liquidation, but there are no provisions for the simple closing of a business. We therefore recommend amending new section 36G to include circumstances where the supplier has stopped trading, other than those covered by new section 36I.

Uninvited direct sales

The intention of the uninvited direct sales provisions is to protect consumers from personal, unexpected sales pressure. We propose a number of amendments to clarify the application of these provisions. We recommend specifying separately the descriptions in new section 36K of the circumstances in which a consumer most clearly would not reasonably expect sales pressure, which are in the consumer’s home or workplace, or over the telephone.

We recommend inserting 36K(1)(ab) to provide that the uninvited direct sales rules apply where the value of the agreement is more than \$100, or if the price payable over time is not ascertainable at the time of the supply of goods or services. This would be relevant to,

for example, energy or telephone contracts sold door to door or over the telephone.

We recommend also inserting new section 36K(1C) to exclude renewal agreements (as defined in 36K(3)) from the meaning of uninvited direct sale. The uninvited direct selling provisions should not apply to renewal of an agreement by an existing customer for the supply of the same kind of goods or services.

To eliminate duplication of provisions, we recommend amending new section 36L, so that only the provisions of the Credit Contracts and Consumer Finance Act for disclosure, cooling-off periods, and cancellation would apply to uninvited direct sales of consumer credit contracts. The provisions regarding the oral notice of cancellation rights should remain because there is no provision for this in the Credit Contracts and Consumer Finance Act.

We recommend amending new section 36O to extend provision for cancellation of uninvited direct sales during the cooling off period to cover collateral agreements, including collateral credit agreements.

New section 36Q provides that consumers have no obligation to return goods to a supplier upon cancellation of a sales contract. We recommend that this provision be amended so that suppliers could request the consumer to return goods if the supplier provided the means and bore the cost.

In addition, we recommend inserting new subsection 36Q(3A) to require consumers returning goods to take reasonable care to ensure that they will not be damaged in transit.

Extended warranties

The bill addresses pressure applied by suppliers in trade when selling extended warranties to consumers. A consumer who has just made a purchase may be persuaded easily to take out an extended warranty in haste. They may do so without proper consideration of their existing rights under the Consumer Guarantees Act.

To make it clear that these provisions cover only extended warranty agreements for goods covered by the Consumer Guarantees Act, we recommend amending the definition of “extended warranty” under new section 36S. We also recommend amendments to these provisions to simplify and clarify definitions.

We recommend that the summary of consumer rights set out in subsection 36T(2) include for consumers' information remedies available under the Consumer Guarantees Act, and a comparison between the relevant Consumer Guarantees Act protections and those provided by the extended warranty. We consider that this would help consumers to decide whether the additional protections provided by the extended warranty represented value for money.

We also recommend amending new section 36U so that a consumer's right to cancel an extended warranty agreement within the cooling-off period would not apply if the warranty were a condition of a consumer credit contract, such as a payment protection insurance agreement in respect of a hire purchase agreement. Finance companies would not usually be willing to extend finance to cover goods not covered by such insurance.

We recommend adding a regulation-making power by inserting new section 36UA, to provide for the regulation of the summary of consumer rights under the Consumer Guarantees Act, should the Minister consider it necessary. This would allow disclosure obligations to be made clearer, and would ensure consistency with the approach taken for the proposed regulation-making power regarding unsolicited goods and services. We recommend also requiring the Minister to consult first with people who would be substantially affected by a change in regulations. This would align with the current regulation-making powers in the Fair Trading Act.

Auctions

We recommend amending new subsection 36Y(3) to allow an unfinished auction sale to continue until the end of the next working day. The amendment would clarify that goods that are unsold when bidding closes could be treated as sold at auction if they were sold by negotiation within one working day following the auction.

We also recommend substituting a new section 36Z to require notice of the terms of an auction to be available in an appropriate form (including via the internet), for example in the sale catalogue or in a separate publication of auction terms. This would avoid the need for multiple announcements.

We also recommend amending the requirement for announcing whether the vendor is in trade to apply only to goods covered by

the Consumer Guarantees Act, as this information is otherwise unnecessary.

We recommend amending new section 36ZA to provide expressly that vendor bids may be made by an auctioneer, but only if the terms of the auction specify that vendor bids are permitted, the auctioneer identifies each vendor bid as it is made, and during the auction each bid from the vendor is made by only one person.

In addition, we recommend providing in new section 36ZC for a vendor in trade with multiple auction sales or with a running account to contract with the auctioneer their own requirements for accounting for the proceeds of sale. We consider such vendors to be sufficiently sophisticated to safely contract out of the protections of this section.

Jurisdiction and penalties

Under the District Courts Act 1947, the jurisdiction of the District Court is capped at \$200,000. The High Court has jurisdiction to deal with claims above this amount. We therefore recommend amending clause 19 (which seeks to amend section 37 of the Fair Trading Act) to clarify how these monetary limits apply with regard to enforceable undertakings.

We recommend amending clause 22 (which would amend section 40 of the Fair Trading Act) to increase the fines for contravention of Parts 1, 3, and 4A of the Fair Trading Act from \$60,000 to \$200,000 for individuals, and from \$200,000 to \$600,000 for bodies corporate. We consider that increasing the penalties would act as a deterrent and bring the penalty regime closer to that of comparable consumer laws and the Australian Consumer Law.

The bill as introduced seeks to establish a new regime of infringement notices for certain clear, low-level offences under the Fair Trading Act, such as inappropriate disclosure relating to layby agreements and extended warranties. We recommend increasing the maximum infringement fee provided for in new section 40B from \$1,000 to \$2,000. Several New Zealand infringement regimes provide for fines larger than \$1,000. We believe that the possibility of a harsher fine would discourage large traders from factoring in small fines as a cost of doing business and continuing to offend.

We also recommend delaying the commencement of the infringement offence regime until the same date on which the amendments made by clause 18 come into force.

Commerce Commission interview powers

We recommend inserting new clause 27A (amending section 47G) to include compulsory interview powers for the Commerce Commission, similar to the power provided by section 98(c) of the Commerce Act 1986. We consider that compulsory interview powers would make investigations more efficient, and save time and money. We intend this power to apply only to investigations of the serious offences set out in Part 1 of the Fair Trading Act. We also recommend including subclauses 27A(3) and 27A(4), which reflect equivalent provisions in the Commerce Act relating to self-incrimination and include a use-immunity provision.

Powers of authorised employees of the Commerce Commission

We recommend amending clause 28 (which inserts new section 47L(2)) to give authorised employees of the Commerce Commission equivalent powers to those set out for product safety officers under new section 33C(2)(d) to 33C(2)(f). This would allow the Commerce Commission to monitor more effectively or enforce compliance with consumer information standards, product safety standards, unsafe goods notices, suspension of supply notices, and service safety standards. We also recommend other changes to align the bill with the Search and Surveillance Act 2012.

Consumer Guarantees Act

Gas and electricity

Clause 35 of the bill provides that the supply of gas and electricity is neither a good nor a service under the Consumer Guarantees Act. We recommend amending clause 35 (which would amend section 2(1) of the Act), because as introduced it would unintentionally mean that no goods and services related to the supply of electricity or gas would benefit from the normal Consumer Guarantees Act protections. This amends the definition of supplier to ensure that the supply of gas and electricity is subject to a specific guarantee of acceptable quality. It

also makes clear that associated services such as metering are subject to the normal services guarantees under the Consumer Guarantees Act.

We also recommend clarifying under clause 41 (which inserts new section 46A(1)(ca)) that Transpower in its capacity as system operator would not be included in the indemnity. Transpower is accountable to the Electricity Authority for its system operator function, and there is no indication that these arrangements are inadequate.

We heard from a number of submitters that the provisions in clause 41 (inserting new section 46A) should not be included, as the Electricity Authority already provides for an optional indemnity. We consider it appropriate to include these provisions in statute as the provisions would ensure that all sectors of the industry were covered, including Transpower and the gas industry.

Carriage of goods

There was general opposition from submitters to the changes to the Carriage of Goods Act proposed in the bill as introduced. The current rights of consumers under the Consumer Guarantees Act against the suppliers of goods do not generally apply when consumers receive goods from suppliers under the Carriage of Goods Act. In some circumstances consumers are well protected by the Carriage of Goods Act, but there are other circumstances where (especially when they are receiving goods) they have no protection under either the Carriage of Goods Act or the Consumer Guarantees Act.

As introduced, the bill would have applied the Consumer Guarantees Act to the Carriage of Goods Act. However, submitters were concerned, and we agreed, that there would be unintended consequences (including additional costs to consumers) from this change.

We recommend inserting into new clause 35A a new section 5A of the Consumer Guarantees Act as a more precisely focused way of increasing protection to consumers. This section would provide a new delivery guarantee, to the effect that when a supplier delivered or arranged delivery of goods to a consumer, the goods would have to be received by the consumer when agreed (or in a reasonable time), and the acceptable quality guarantee in section 6 of the Consumer Guarantees Act would apply at and from the time when the goods were actually received by the consumer.

Collateral credit agreements

We recommend inserting new clause 37A (which would insert new section 39A) to apply provisions for services equivalent to the provisions for goods under clause 37. If a contract for the supply of goods or services were cancelled because of a failure of the goods or services under a Consumer Guarantees Act guarantee, a court or disputes tribunal could order all or any of the rights and obligations of a consumer under a collateral credit contract used to purchase the goods or services to be vested in the supplier.

Acceptable quality guarantee

We recommend inserting clause 35B (amending section 7 of the Consumer Guarantees Act) to include in the consideration of what counts as acceptable quality a requirement that the consumer have regard to the information they are given about the nature of the supplier and the context in which the supplier came to have the goods.

We believe that the guarantee of acceptable quality is flexible and reasonable enough to apply to all goods. We therefore recommend omitting clause 40 (inserting new section 41A), which would have excluded from the guarantee of acceptable quality second-hand goods and used motor vehicles sold by traders at auction.

The acceptable quality guarantee is not a guarantee that goods will be perfect; it is a guarantee that the goods are of a quality that a reasonable consumer would consider acceptable when taking into account the circumstances of the transaction. In particular, new goods could reasonably be expected to be in perfect condition, while second-hand goods could reasonably be expected to show signs of use and potentially be less durable than new goods. Because it is based on the assumption of a reasonable consumer, the acceptable quality guarantee does not hold traders to a standard that would be unrealistic for the type of goods sold. The flexibility of the reasonableness test is intended to protect consumers and suppliers, and to deliver reasonable results to both parties.

On this basis, there is a good case for all sales by traders of goods and services to consumers to come under the Consumer Guarantees Act. The guarantee of acceptable quality is sufficiently flexible that vendors selling goods by auction (particularly vendors such as the New Zealand Police, the New Zealand Customs Service, repossession-

sion agents, liquidators, and insurers) would not be held to unrealistic standards of quality, provided that they are upfront about the goods.

Contracting out

We recommend inserting new clause 40A (which amends section 43) to align the rules for contracting out of the Consumer Guarantees Act in the case of consumers acquiring goods or services for the purpose of a business with the contracting out rules proposed for the Fair Trading Act.

Weights and Measures Act

Infringement regime

The proposed changes to the Weights and Measures Act are to recognise new technology and ways of selling goods. We recommend amending clause 47(2) to reclassify breaches of sections 8 and 18 more appropriately, as infringement offences rather than summary offences. To modernise the infringement regime of the Act and ensure that it is consistent with those to be included in the Fair Trading Act, we recommend inserting new clauses 53A to 53C. We recommend also inserting new clause 53D to align penalty levels for all offences with changes to penalties in the Fair Trading Act.

We recommend inserting new clause 55A (which would insert new section 41B) to provide for a regulation-making power to set infringement fee levels. This would bring the way fees are set under the Weights and Measures Act into line with Cabinet guidelines relating to infringement offences.

Auctioneers Act

Disqualification from registration as an auctioneer

Part 2 of the bill as introduced sets out provisions that will become a new Auctioneers Act, replacing the Auctioneers Act 1928. We recommend amending the new provisions for disqualification from registration as an auctioneer under clause 67(1)(f) to change as a reason for disqualification convictions under the Fair Trading Act Part 1 and subpart 4 of Part 4A. We consider it appropriate to limit Fair Trading Act breaches as a reason for disqualification to those specifically relevant to auctioneer registration. These offences include

false or misleading representations in the supply of goods and services, and breaches of the new provisions relating to auctions conduct.

We recommend inserting new clause 67A, which would ensure that a person who would be disqualified from becoming a registered auctioneer could not conduct auctions on behalf of a registered auctioneer. We recommend also inserting clause 74(1)(f) so that a registered auctioneer's registration could be cancelled if they engage a disqualified person to conduct an auction on their behalf.

Appeals against decision of Registrar

We recommend amending clause 82 to allow an appeal from the District Court to the High Court against a decision of the Registrar of Auctioneers on a point of law only. The bill as introduced allows only one level of appeal, whereas the usual provision is for two levels. We recommend also amending the clause so that the decision of the High Court on any such appeal would be final.

Unconscionable conduct

Unconscionability applies where courts consider it unfair or inequitable (or "against good conscience") to allow a party to enforce its contractual rights against another party who is detrimentally affected by an oppressive bargain. The Minister of Consumer Affairs invited the Commerce Committee and those making submissions on the bill to consider whether protections regarding unconscionable conduct should be added to Part 1 of the Fair Trading Act. The Australian Consumer Law includes unconscionable conduct protections, which have encountered some technical problems. We believe it is prudent to wait until Australia has developed a body of authoritative case law on the matter before following suit. We consider that implementing unconscionability provisions could lead to a period of uncertainty while the provisions were tested by the courts in Australia and New Zealand. The committee considers that it is desirable in principle to address this issue. We recommend that the position is reviewed once the Australian courts have had the chance to consider the Australian provisions.

Appendix

Committee process

The Consumer Law Reform Bill was referred to the committee on 9 February 2012. The closing date for submissions was 29 March 2012. We received and considered 90 submissions from interested groups and individuals. We heard 60 submissions, which included holding hearings in Auckland.

We received advice from the Ministry of Business, Innovation and Employment.

Committee membership

Jonathan Young (Chairperson)

Kanwaljit Singh Bakshi

Hon Chester Borrows

Hon Clayton Cosgrove (Deputy Chairperson)

Hon David Cunliffe

Clare Curran

Peseta Sam Lotu-Iiga

Mojo Mathers

Mark Mitchell

Consumer Law Reform Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Simon Bridges

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Government Bill

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Auctioneers**

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Consumer Law Reform Act **2011**.

2 Commencement

- (1) This Act, except the provisions specified in **subsection (2)**, comes into force on the day after the date on which it receives the Royal assent. 5
- (2) The following provisions come into force on the day that is 6 months after the date on which this Act receives the Royal assent: 10
- (a) in **Part 1, sections 6(3), 9, 10, 11, 11A, 12B, 18, 22, 23, 23A, 25, 26A, 30, 31, 35, 36, 38, 39, 40, 41, 43, and 59 to 63 59, and 63** (relating generally to unsubstantiated representations, unsolicited goods and services, unfair contract terms, disclosing trader status, layby sales, uninvited direct sales, extended warranties, 15

- auctions, infringement offences, carriage of goods, and gas and electricity); and
- (b) **Part 2** (relating to auctioneers).

Part 1

Amendments to consumer laws

5

Subpart 1—Fair Trading Act 1986

3 Principal Act amended

This **subpart** amends the Fair Trading Act 1986.

Purpose

4 Long Title repealed

10

The Long Title is repealed.

5 New section 1A inserted

The following section is inserted after section 1:

“1A Purpose

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

“(a) ~~trading is fair; and~~

“(b) ~~there is effective competition; and~~

“(a) the interests of consumers are protected; and

“(b) businesses compete effectively; and

“(c) consumers and businesses participate confidently.

20

“(2) To this end, the Act—

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

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

25

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

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

Interpretation

30

6 Interpretation

(1) Section 2(1) is amended by repealing the definition of **court**.

- (2) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:
- “**chief executive** means the chief executive of the Ministry
- “**consumer** means a person who—
- “**(a)** acquires from a supplier goods or services of a kind ordinarily acquired for personal, domestic, or household use or consumption; and 5
- “**(b)** does not acquire the goods or services, or hold himself or herself out as acquiring the goods or services, for the purpose of— 10
- “**(i)** resupplying them in trade; or
- “**(ii)** consuming them in the course of a process of production or manufacture; or
- “**(iii)** in the case of goods, repairing or treating, in trade, other goods or fixtures on land 15
- “**extended warranty agreement** has the meaning given to it in **section 36S**
- “**infringement fee, infringement notice, and infringement offence** each have the meanings given in **section 40B**
- “**layby sale agreement** has the meaning given to it in **section 36B** 20
- “**Ministry** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act
- “**negotiation**, in relation to an agreement or a proposed agreement, includes any discussion or dealing directed towards making the agreement or proposed agreement (whether or not the terms of the agreement or proposed agreement are open to any discussion or dealing). 25
- “**uninvited direct sale agreement** has the meaning given to it in **section 36K**”.
- (3) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:
- “**auction** has the meaning given in **section 36V**
- “**consumer contract** means a contract,— 35
- “**(a)** in the case of a contract relating to goods or services, between—

- “(i) at least 1 supplier supplying the goods or services in trade; and
- “(ii) at least 1 consumer; and
- “(b) in the case of a contract relating to the sale or grant of an interest in land, between— 5
- “(i) at least 1 person disposing, in trade, of an interest in the land; and
- “(ii) at least 1 person acquiring an interest in the land for personal, domestic, or residential purposes
- “**standard form consumer contract** means a consumer contract that a court, in the course of proceedings for a declaration under **section 46I**, and in accordance with **section 46J**, determines is a standard form contract 10
- “**transparent**, when used to describe a term in a contract, describes the extent to which the term is— 15
- “(a) expressed in reasonably plain language; and
- “(b) legible; and
- “(c) presented clearly; and
- “(d) readily available to any party affected by the term
- “**unfair contract term** means a term in a consumer contract that a court has declared, under **section 46I**, is an unfair contract term 20
- “**unsolicited goods** has the meaning given in **section 21A(4)**
- “**unsolicited services** has the meaning given in **section 21B(2)** 25
- “**uninvited direct sale agreement** has the meaning given in **section 36K**.”

Application of Act to the Crown

- 6A** **Application of Act to the Crown** 30
- Section 4(2) is amended by omitting “court” in each place where it appears and substituting in each case “High Court”.

No contracting out

- 7** **New sections 5C and 5D inserted**
- The following sections are inserted after section 5B:

“5C No contracting out: general rule

“(1) The provisions of this Act have effect despite anything to the contrary in any agreement.

“(2) A provision of an agreement that has the effect of overriding a provision of this Act (whether directly or indirectly) is unenforceable. 5

“(3) **Subsections (1) and (2)** are subject to **subsection (4)** and **section 5D**.

“(4) Nothing in **subsection (1) or (2)** applies in respect of a provision that— 10

“(a) imposes a stricter duty on the supplier than would be imposed under this Act; or

“(b) provides a more advantageous remedy against the supplier than would be provided under this Act.

“(5) In this section and **section 5D**, **agreement** includes any contract, arrangement, or understanding. 15

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

“(1) Despite **section 5C(1) and (2)**,—

“(a) parties to an agreement may include a provision in their agreement that will, or may, (whether directly or indirectly) allow those parties to engage in conduct, or make representations, that would otherwise contravene section 9, **12A**, 13, or 14(1); and 20

“(b) provided that the requirements of **subsection (3)** are satisfied,— 25

“(i) that provision is enforceable; and

“(ii) no proceedings may be brought, by any party to the agreement, for an order under **section 43(3)** in relation to such a contravention of section 9, **12A**, 13, or 14(1). 30

“(2) A provision of the kind referred to in **subsection (1)** includes, for example,—

“(a) a clause commonly known as an entire agreement clause:

“(b) a clause that acknowledges that a party to the agreement does not rely on the representations or other conduct of another party to the agreement, whether during negoti- 35

- ations prior to the agreement being entered into, or at any subsequent time.
- “(3) The requirements referred to in **subsection (1)(b)** are that—
- “(a) the agreement is in writing; and
 - “(b) the goods, services, or interest in land are both supplied 5
and acquired in trade; and
 - “(c) all parties to the agreement—
 - “(i) are in trade; and
 - “(ii) agree to contract out of ~~the provisions of this Act~~
section 9, **12A**, 13, or 14(1); and 10
 - “(d) it is fair and reasonable that the parties are bound by the provision in the agreement.
- “(4) If, in any case, a court is required to decide what is fair and reasonable for the purposes of **subsection (3)(d)**, the court must take account of all the circumstances of the agreement, 15 including—
- “(a) the subject matter of the agreement; and
 - “(b) the value of the goods, services, or interest in land; and
 - “(c) the respective bargaining power of the parties; ~~and, in-~~
cluding— 20
 - “(i) the extent to which a party was able to negotiate the terms of the agreement; and
 - “(ii) whether a party was required to either accept or reject the agreement on the terms and conditions presented by the other party; and 25
 - “(ca) whether the party seeking to rely on the effectiveness of a provision of the kind referred to in **subsection (1)** knew that a representation made in connection with the agreement would, but for that provision, have breached **section 12A**, 13, or 14(1); and 30
 - “(d) whether all or any of the parties received advice from, or were represented by, a lawyer, either at the time of the negotiations leading to the agreement or at any other relevant time.
- “(5) To avoid doubt, nothing in this section— 35
- “(a) prevents the Commission from bringing proceedings for an offence under this Act (including an offence under section **12A**, 13, or 14(1)) against a party to the agreement referred to in **subsection (1)**:

“(b) limits the application of the Contractual Remedies Act 1979.”

8 Heading to Part 1 substituted

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

5

Unsubstantiated representations

9 New heading and section 12A inserted

The following heading and section are inserted after section 12:

“Unsubstantiated representations

10

“12A Unsubstantiated representations

“(1) A person must not, in trade, make an unsubstantiated representation.

“(2) ~~In this section,—~~

~~“representation means a representation that is made—~~

15

~~“(a) in respect of goods, services, or an interest in land; and~~

~~“(b) in connection with—~~

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

~~“(ii) the sale or grant or possible sale or grant of the interest in land; or~~

20

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

~~“unsubstantiated representation means a representation made by a person who does not, at the time of making the representation, have reasonable grounds for the representation, irrespective of whether or not the representation is in fact false or misleading.~~

25

“(2) A representation is **unsubstantiated** if the person making the representation does not, when the representation is made, have reasonable grounds for the representation, irrespective of whether the representation is false or misleading.

30

“(2A) This section does not apply to a representation that a reasonable person would not expect to be substantiated.

- “(3) In proceedings concerning a contravention of this section, and in assessing whether a person had reasonable grounds for a representation, a court must have regard to all of the circumstances, including—
- “(a) ~~the research or other steps taken by a person before making the representation;~~ 5
 - “(b) the nature of the goods, services, or interest in land in respect of which the representation was made;
 - “(c) the nature of the representation (for example, whether it was a representation ~~of~~ about quality or quantity, ~~or of fact or opinion~~): 10
 - “(ca) any research or other steps taken by or on behalf of the person before the person made the representation;
 - “(cb) the nature and source of any information that the person relied on to make the representation; 15
 - “(cc) the extent to which the person making the representation complied with the requirements of any standards, codes, or practices relating to the grounds on which such a representation may be made, and the nature of those requirements; 20
 - “(d) the actual or potential effects of the representation on any person.
 - “(e) ~~the purpose of this Act.~~
- “(3A) **Subsection (3)** does not affect section 44.
- “(4) Despite anything to the contrary in Part 5, only the Commission may commence proceedings, apply for an order, or apply for an injunction in relation to conduct that may constitute a contravention of this section. 25
- “(5) In this section, **representation** means a representation that is made— 30
- “(a) in respect of goods, services, or an interest in land; and
 - “(b) in connection with—
 - “(i) the supply or possible supply of the goods or services; or
 - “(ii) the sale or grant or possible sale or grant of the interest in land; or 35
 - “(iii) the promotion by any means of 1 or more of the matters described in **subparagraphs (i) and (ii)**.

“12B Section 12A subject to other enactments

Section 12A does not apply to a representation made by a person in a particular industry or profession if, when the representation is made,—

- “(a) another enactment sets out requirements relating to the grounds on which representations may be made by a person in that industry or profession (whether more or less onerous than **section 12A**); and 5
- “(b) the person complies with those requirements.”

*Relationship with Consumer Guarantees Act**1993 False or misleading representations*

10

10 False or misleading representations

(1) Section 13(b) is amended by inserting “, or by a person who has other particular characteristics” after “person of a particular trade, qualification, or skill”. 15

(2) Section 13(i) is amended by inserting “, including (to avoid doubt) in relation to any guarantee, right, or remedy available under the Consumer Guarantees Act 1993” after “or remedy”.

(3) Section 13(j) is amended by adding “or services”.

Unsolicited goods and services

20

11 New sections 21A to 21D inserted

The following sections are inserted after section 21:

“21A Liability of recipient of unsolicited goods

“(1) If a person, in trade, sends or delivers unsolicited goods to another person (**person A**), ~~person A~~—(the **sender**) sends or delivers unsolicited goods to another person (the **recipient**), the recipient— 25

“(a) is not liable—

“(i) to pay for the goods; or

“(ii) for any loss of, or damage to, the goods, unless the loss or damage resulted from a deliberate act by ~~person A~~ the recipient; but 30

“(b) must, at any reasonable time during the period of 10 working days after the day on which ~~person A~~ the recipient receives those goods, make those goods avail- 35

able for collection by, or on behalf of, the ~~person who sent or delivered them~~ sender.

“(1A) If the sender is in trade, the sender must, at the time the goods are delivered (whether by the sender or by any other person on behalf of the sender), inform the recipient of the recipient’s rights and obligations under **subsection (1)**. 5

“(1B) **Subsection (2)** applies if—

“(a) the period referred to in **subsection (1)(b)** has expired; or

“(b) a sender has failed to comply with **subsection (1A)** (whether or not the period referred to in **subsection (1)(b)** has expired). 10

“(2) After the period referred to in **subsection (1)(b)** If this subsection applies,—

“(a) ~~person A~~ the recipient takes the goods as an unconditional gift; and 15

“(b) all interests that any other person had in the goods are extinguished; and

“(c) no action may be taken by any person for the recovery of the goods from ~~person A~~ the recipient. 20

“(3) However, **subsection (2)** does not apply if ~~person A~~ the recipient—

“(a) has failed, without reasonable excuse, to comply with **subsection (1)(b)**; or

“(b) knew, or ought reasonably to have known, that ~~the goods were not intended for person A~~— 25

“(i) ~~the goods were not intended for the recipient; or~~

“(ii) ~~the sender had no right to send or deliver, or arrange for the delivery of, those goods to the recipient.~~ 30

“(3A) To avoid doubt,—

“(a) a recipient does not commit an offence by failing to comply with **subsection (1)(b)**; but

“(b) the consequence of such failure is that the recipient is unable to rely on **subsection (2)**. 35

“(4) In this section and **section 21C**, **unsolicited goods** means goods that have been sent or delivered to ~~person A~~ without

any request for those goods having been made by, or on behalf of, ~~person A.~~—

“(a) means goods that have been sent or delivered to a recipient without any request for those goods having been made by, or on behalf of, that recipient; but

“(b) does not include reticulated gas or electricity.

5

“**21B Liability of recipient of unsolicited services**

“(1) If a person, in trade, provides unsolicited services to another person (~~person A~~), person A (the recipient), the recipient is not liable—

10

“(a) to pay for the services; or

“(b) for any loss or damage resulting from the provision of those services, unless the loss or damage resulted from a deliberate act by ~~person A~~ the recipient.

“(2) In this section and **section 21C**, **unsolicited services means** ~~services that have been provided to person A without a request for those services having been made by, or on behalf of, person A.~~—

15

“(a) means services that have been provided to a recipient without any request for those services having been made by, or on behalf of, that recipient; but

20

“(b) does not include reticulated gas or electricity.

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

“(1) A person must not, in trade,—

25

“(a) assert, or appear to assert, that the person has a right to payment from another person for unsolicited goods or unsolicited services; or

“(b) send or deliver to another person an invoice or other document that states the amount of a payment for, or sets out the charge for supplying, unsolicited goods or unsolicited services, unless that invoice or document complies with **subsection (2)**.

30

“(2) The invoice or other document referred to in **subsection (1)(b)** must—

35

“(a) contain a statement in the form prescribed in regulations made under **section 21D**; or

- “(b) if no regulations have been made, clearly inform the recipient that the recipient is under no obligation to make any payment for the goods or services.

“21D Regulations

- “(1) The Governor-General may, by Order in Council made on the recommendation of the Minister in accordance with **subsection (2)**, make regulations, in relation to unsolicited goods or unsolicited services or both, for all or any of the following purposes:
- “(a) prescribing a statement for the purposes of **section 21C(2)(a)**, including the size of the lettering of the words in, and the format of, the statement: 10
- “(b) prescribing how, when, and to whom a statement prescribed under **paragraph (a)** must be provided.
- “(2) The Minister must not make a recommendation under this section unless— 15
- “(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 20
- “(b) the Minister has considered any such comments.
- “(3) A failure to comply with **subsection (2)** does not affect the validity of any Order in Council made under this section.” 25

11A New heading and section 26A inserted

The following heading and section are inserted after section 26:

“Unfair contract terms

- “26A Unfair contract terms in standard form consumer contracts** 30
- A person must not, in trade,—
- “(a) include an unfair contract term in a standard form consumer contract; or
- “(b) apply, enforce, or rely on an unfair contract term in a standard form consumer contract.” 35

*Consumer information standards***12 Consumer information standards**

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

- “(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing consumer information standards in respect of goods or services of any description or any class or classes of goods or services. 5
- “(1A) A consumer information standard may— 10
- “(a) require the disclosure of information relating to the kind, grade, quantity, origin, performance, care, composition, contents, design, construction, use, price, finish, packaging, promotion, or supply of the goods or services; and 15
- “(b) specify how that information must be obtained or verified before it is disclosed; and
- “(c) specify the form and manner in which that information must be disclosed on or in relation to—
- “(i) the supply or possible supply of the goods or services; or 20
- “(ii) the resupply or possible resupply of the goods or services; or
- “(iii) the promotion of the supply of the goods or services by any means of 1 or more of the matters described in subparagraphs (i) and (ii).” 25

12A Compliance with consumer information standards

Section 28 is amended by omitting “section 27(1)” in each place where it appears and substituting in each case “**section 27(1A)**”. 30

*Disclosure of trader status***12B New section 28B inserted**

The following section is inserted after section 28A:

“28B Disclosure of trader status on Internet

“(1) No person may, in trade, offer goods or services for sale to consumers on an Internet site unless it is made clear to potential purchasers that the offer is made by a person in trade.

“(2) Every person operating an Internet site on which goods or services are offered for sale to consumers must take all practicable steps to ensure that persons offering goods or services for sale on the Internet site comply with **subsection (1).”** 5

*Product safety***13 New sections 30A and 30B inserted** 10

The following sections are inserted after section 30:

“30A Product safety policy statements

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

“(a) relates to goods of any description or any class or classes of goods; and 15

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

“(2) The Minister may, at any time, amend, revoke, or replace a product safety policy statement. 20

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

“(a) the Minister has consulted such persons or representatives of such persons as the Minister considers will be substantially affected by the proposed statement, and those persons have had the opportunity to comment to the Minister; and 25

“(b) the Minister has considered any such comments.

“(4) The chief executive—

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

“(b) may make copies of statements available in any other way that the chief executive considers appropriate in the circumstances. 35

“30B Review of product safety policy statements

- “(1) The Ministry must—
- “(a) review a product safety policy statement issued under **section 30A** within 5 years after its issue or (in the case of a subsequent review) within 5 years after the last review; and 5
 - “(b) immediately following the review, prepare a report on the review for the Minister.
- “(2) The report must include recommendations to the Minister on whether the statement should be continued, amended, revoked, or replaced. 10
- “(3) However, the Ministry must not prepare a report under this section unless—
- “(a) the Ministry has consulted such persons or representatives of such persons as the Ministry considers will be substantially affected by the proposed recommendations, and those persons have had the opportunity to comment to the Ministry; and 15
 - “(b) the Ministry has considered any such comments.
- “(4) As soon as practicable after receiving the report, the Minister must— 20
- “(a) consider the recommendations and any comments received by the Ministry under **subsection (3)(a)**; and
 - “(b) decide whether to continue, amend, revoke, or replace the statement; and 25
 - “(c) ensure that the Minister’s decision is available to the public, at all reasonable times, on an Internet site maintained by or on behalf of the Ministry.”

Declaring goods unsafe

- 14 Unsafe goods** 30
- (1) Section 31 is amended by inserting the following subsections after subsection (1):
- “(1A) The Minister may also, by notice in the *Gazette*, declare goods of any description or any class or classes of goods to be unsafe goods if it appears to the Minister that a reasonably foreseeable use (including misuse) of the goods will, or may, cause injury to any person. 35

- “(1B) In deciding whether to make a declaration under **subsection (1A)**, the Minister must have regard to all the circumstances, including—
- “(a) the likelihood of an injury occurring to a person as a result of the reasonably foreseeable use or misuse of the goods: 5
 - “(b) the seriousness of the injury likely to be suffered by the user of the goods or any other person:
 - “(c) whether such injury is likely to be a frequent occurrence: 10
 - “(d) any steps that the supplier or manufacturer of the goods has taken to mitigate the risk of injury:
 - “(e) whether, taking into account the ordinary and intended use of the goods, the public interest favours making a declaration.” 15
- (2) Section 31(3)(a) is amended by omitting “subsection (1) of this section” and substituting “subsection (1) or **(1A)**”.
- (3) Section 31 is amended by inserting the following subsections after subsection (3):
- “(3A) The Minister must not issue a notice under subsection (3) unless— 20
- “(a) the Minister has consulted such persons or representatives of such persons as the Minister considers will be substantially affected by the proposed notice and those persons have had the opportunity to comment to the Minister; and 25
 - “(b) the Minister has considered any such comments.
- “(3B) A failure to comply with **subsection (3A)** does not affect the validity of any notice given under this section, except where there has been a complete failure to consult.” 30

Product recall

15 New section 31A inserted

The following section is inserted after section 31:

“31A Voluntary product recall

- “(1) This section applies if a supplier voluntarily takes action to recall goods because— 35
- “(a) the goods will, or may, cause injury to any person; or

- ~~“(b) a reasonably foreseeable use (including misuse) of the goods will, or may, cause injury to any person; or~~
- ~~“(c) the goods do not comply with a product safety standard.~~
- “(1) This section applies if—
- “(a) a supplier voluntarily recalls goods because— 5
- “(i) the goods will, or may, cause injury to any person; or
- “(ii) a reasonably foreseeable use (including misuse) of the goods will, or may, cause injury to any person; or 10
- “(iii) the goods do not comply with a product safety standard; and
- “(b) there is no other requirement, under any other enactment, for a supplier in those circumstances to report to a government agency. 15
- “(2) The supplier must, within 2 working days after recalling the goods, notify the chief executive of the recall.
- “(3) A notice under **subsection (2)** must be expressed in plain language and must contain the following information:
- “(a) a description of the goods, with sufficient detail to enable a consumer to readily identify the goods to which the notice relates; and 20
- “(b) a description of the danger (including the risk of damage or harm occurring as a result of that danger) that led to the goods being recalled; and 25
- “(c) details of what a consumer needs to do in response to the recall, including, as the case may be,—
- “(i) any precautions the consumer should take to avoid or reduce the risk of injury from the goods:
- “(ii) how to rectify the issue that led to the goods being recalled: 30
- “(iii) where to take the goods for repair, replacement, or refund; and
- “(d) the supplier’s name, street address, telephone number, and email address. 35
- “(4) The chief executive—
- “(a) must ensure that a copy of every notice under this section is available to the public, at all reasonable times, on an Internet site maintained by or on behalf of the

Ministry, for at least 2 years after the date on which the voluntary recall was notified to the chief executive in accordance with **subsection (2)**; and

“(b) may make copies of notices available in any other way that the chief executive considers appropriate in the circumstances. 5

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

16 Compulsory product recall

(1) Section 32 is amended by inserting the following subsections after subsection (1): 10

“(1A) The Minister may also, by notice to the supplier, require the supplier to take the action specified in subsection (3) if it appears to the Minister that a reasonably foreseeable use (including misuse) of the goods supplied by the supplier will, or may, cause injury to any person. 15

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

“(a) the likelihood of an injury occurring to a person as a result of the reasonably foreseeable use or misuse of the goods: 20

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

“(c) whether such injury is likely to be a frequent occurrence: 25

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

“(e) whether, taking into account the ordinary and intended use of the goods, the public interest favours the issuing of a compulsory product recall notice.” 30

(2) Section 32(3) is amended by omitting “subsections (1) and (2) of this section” and substituting “subsections (1), **(1A)**, and (2)”. 35

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

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

Product safety officers

17 New heading and sections 33A to 33D inserted

The following heading and sections are inserted after section 33: 5

“Product safety officers

“33A Appointment of product safety officers

“(1) The chief executive may appoint as a product safety officer any person who has passed such examinations as the chief executive requires to test the person’s knowledge of this Act and the functions and powers of product safety officers. 10

“(2) The chief executive may appoint a person as a trainee product safety officer, whether or not the person has passed the examinations referred to in **subsection (1)**. 15

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

“Compare: 1987 No 15 s 26

“33B Certificates of appointment 20

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

“(2) The certificate must be in a form determined by the chief executive and set out— 25

“(a) the full name of the appointee; and

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

“(c) a reference to the powers of the appointee under **sections 33C and 33D**; and 30

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

“(3) Every product safety officer or trainee product safety officer must produce the certificate when entering any place for the purpose of exercising his or her powers, and at any subsequent 35

time if required to do so by the owner or occupier of the place or by that person's representative, agent, or employee.

“Compare: 1987 No 15 s 27

“33C Powers of product safety officers

- ~~“(1) A product safety officer may, at any reasonable time, do any of the things in **subsection (2)**, but only—~~ 5
- ~~“(a) if the product safety officer believes on reasonable grounds that goods supplied or dispatched from a place are unsafe (**suspect goods**); and~~
- ~~“(b) for the purpose of ascertaining, or taking steps to ascertain, whether the suspect goods are in fact unsafe.~~ 10
- “(1) A product safety officer may enter and inspect a place (not being a dwellinghouse) without a warrant if—
- “(a) the product safety officer believes on reasonable grounds that— 15
- “(i) certain goods are unsafe (**suspect goods**); and
- “(ii) the suspect goods are supplied at, or dispatched from, the place; and
- “(b) the entry and inspection is for the purpose of ascertaining, or taking steps to ascertain, whether the suspect goods are in fact unsafe. 20
- “(2) A product safety officer may While at the place, a product safety officer may, for the purpose described in **subsection (1)**, do any of the following:
- ~~“(a) enter any place at which the product safety officer believes on reasonable grounds that suspect goods are available to consumers for supply, or are dispatched for supply to consumers:~~ 25
- ~~“(b) remain at the place and, with respect to any goods at the place that are available to consumers for supply or are dispatched for supply to consumers, inspect the goods, photograph them, and purchase them at the price for which they are currently offered for sale:~~ 30
- ~~“(c) require the person who appears at the time to be in charge of the supply or dispatch of goods at the place (the **person in charge**) to give his or her name and show to the product safety officer identification sufficient to confirm that the name given is correct:~~ 35

- “(d) require the person in charge to identify the person from whom the suspect goods were acquired:
- “(e) if suspect goods have, within a specified period, been supplied in trade to another person other than by retail, require the person in charge to identify the person or persons to whom they have been supplied during that period: 5
- “(f) require any person by whom suspect goods are carried for delivery pursuant to, or in connection with, a contract of sale to give— 10
- “(i) his or her name and address; and
- “(ii) the name and address of his or her employer (if any); and
- “(iii) the name and address of the owner of the goods, if known. 15
- ~~“(3) A product safety officer may not enter a dwellinghouse for the purpose of exercising any powers conferred by this section or **section 33B** except—~~
- ~~“(a) with the permission of the occupier of the dwellinghouse; or 20~~
- ~~“(b) pursuant to a warrant issued under **subsection (4)**.~~
- “(3) If a product safety officer enters a dwellinghouse with the permission of the occupier or under a warrant issued under **subsection (4)**, the product safety officer may, for the purpose described in **subsection (1)(a)**, exercise the powers listed in **subsection (2)**. 25
- ~~“(4) Any District Court Judge, Justice, Community Magistrate, or Registrar (not being a constable) An issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012) may issue a warrant authorising a product safety officer to enter a dwellinghouse if he or she if the issuing officer is satisfied, on application in writing made on oath made in accordance with **subsection (5)**, that there are reasonable grounds for believing that it is necessary for the product safety officer to enter the dwellinghouse for the purpose of ascertaining— 30~~
- ~~“(a) whether there are any suspect goods at the dwellinghouse that are or may be available to consumers for supply, or are or may be being dispatched for supply to consumers; and 35~~

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

“(5) ~~A warrant issued under this section continues in force for 1 month, or until the purpose for which it was granted is satisfied, whichever occurs first.~~

“(6) ~~Sections 47A to 47D apply in relation to a warrant issued under this section in the same way as they would apply in relation to a warrant issued under section 47(2).~~ 5

“(5) The application for a warrant must be made in writing in the manner provided for an application for a search warrant in subpart 3 of Part 4 of the Search and Surveillance Act 2012. 10

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

“Compare: 1987 No 15 s 28

“33D Suspension of supply notices

“(1) A product safety officer may issue to a person in possession of goods a suspension of supply notice in respect of those goods, and any other goods of that description or class, if the product safety officer— 15

“(a) either—

“(i) knows that the goods, or goods of that description or class, have been implicated in serious injury or death; or 20

“(ii) has good reason to suspect that the goods, or goods of that description or class, may be unsafe; and 25

“(b) believes on reasonable grounds that—

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

“(ii) the order is necessary to prevent the supply of the goods pending further investigation into their safety. 30

“(2) A **suspension of supply notice** is a notice prohibiting the person or persons identified in the notice from supplying the goods identified in the notice during the period before the expiry of the notice. 35

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

- “(a) the goods, or the description or class of goods, to which the notice relates; and
- “(b) when the notice expires, which must be no later than 5 pm on the third working day after the day on which the notice is issued; and 5
- “(c) the person or persons to whom the notice applies, who may be any of the following:
- “(i) the person in charge:
- “(ii) any employee or agent of that person:
- “(iii) any employer or manager of that person: 10
- “(iv) any employee or agent of that person’s employer or manager; and
- “(d) the name of the product safety officer who issues the notice.
- “(4) A person to whom a suspension of supply notice applies must not supply the goods identified in the notice at any time before the notice expires. 15
- “(5) A product safety officer may, with the approval of the chief executive, renew a suspension of supply notice before its expiry, but— 20
- “(a) may do so not more than twice; and
- “(b) may not renew the notice so that the total prohibition exceeds 9 consecutive working days.”

New Part 4A inserted

- 18 New Part 4A inserted** 25
- The following Part is inserted after Part 4:

“Part 4A

“Consumer transactions and auctions

- “36A Purpose of Part**
- The purpose of this Part is to set out in 1 place the rules applying to— 30
- “(a) layby sale agreements; and
- “(b) uninvited direct sale agreements; and
- “(c) extended warranty agreements; and
- “(d) auctions. 35

“Subpart 1—Layby sales

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

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

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

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

- “(i) a clear description of the goods to be supplied under the agreement; and
- “(ii) a summary of the consumer’s right to cancel the agreement under **section 36F(1)**; and
- “(iii) whether or not a cancellation charge will be imposed; and 5
- “(iiia) if a cancellation charge is to be imposed, either the amount of the charge (if a fixed charge is to be imposed) or a clear description of how the charge will be calculated; and 10
- “(iv) the supplier’s name, street address, telephone number, and email address; and
- “(b) the total price payable under the agreement is disclosed in the agreement; and
- “(c) the agreement is dated. 15
- “36D Further disclosure if requested by consumer**
- “(1) In addition to the requirements of **section 36C**, the supplier must, if requested by the consumer (either at the time that the layby sale agreement is entered into, or at any later time), provide the consumer with a written statement that clearly sets out— 20
- “(a) the total purchase price that is, or (if the agreement has been cancelled) was, payable under the agreement; and
- “(b) the amount paid by the consumer as at the date of the statement; and 25
- “(c) the amount of the cancellation charge (if any) that, as at the date of the statement, the consumer—
- “(i) is required to pay to the supplier (if the agreement has been cancelled); or
- “(ii) would be required to pay to the supplier (if the consumer were to cancel the agreement); and 30
- “(d) the outstanding amount (if any) that the consumer is required to pay to the supplier under the agreement, and when and how that amount is to be paid.
- “(2) The supplier must provide the statement to the consumer— 35
- “(a) within 5 working days after receiving a request; and
- “(b) free of charge.

“36E Risk in goods

- “(1) Goods to which a layby sale agreement relates remain at the supplier’s risk until property in the goods is transferred to the consumer and the consumer takes possession of those goods.
- “(2) To avoid doubt, this section overrides section 22 of the Sale of Goods Act 1908. 5

“36F Cancellation of layby sale agreement by consumer

- “(1) A consumer may cancel a layby sale agreement—
- “(a) at any time before the consumer takes possession of the goods to which the agreement relates; and 10
- “(b) in any way (including oral or written) that shows the intention of the consumer to cancel or withdraw from the agreement.
- “(1A) For the purposes of **subsection (1)(b)**, the consumer must communicate with the supplier— 15
- “(a) by way of the contact details provided in accordance with **section 36C(2)(a)(iv)**; or
- “(b) in any other way agreed to by the consumer and the supplier.
- “(2) A supplier must not require the consumer to pay a charge for the cancellation of the agreement (a **cancellation charge**) unless— 20
- “(a) the agreement is cancelled—
- “(i) by the consumer under **subsection (1)**; or
- “(ii) by the supplier, because the consumer has breached a material term of the agreement (*see **section 36G(a)***); and 25
- “(b) the agreement provides that a cancellation charge is payable; and
- “(c) the supplier has not breached the agreement. 30
- “(3) A supplier must not impose a cancellation charge that is more than the supplier’s reasonable costs arising directly from the agreement.
- “(4) In **subsection (3)**, reasonable costs arising directly from the agreement includes, for example,— 35

- “(a) ~~a~~ the loss in value of the goods between the date of the agreement and the date of the cancellation of the agreement:
- “(b) the reasonable costs incurred in storing and insuring the goods while the agreement was in force: 5
- “(c) the reasonable administration costs of the agreement (for example, office expenses, salaries, or wages directly attributable to the agreement).

“36G Cancellation of layby sale agreement by supplier

A supplier may cancel a layby sale agreement only if— 10

- “(a) the consumer has breached a material term of the agreement; or
- “(b) owing to circumstances beyond the control of the supplier,—
- “(i) the goods to which the agreement relates are no longer available; and 15
- “(ii) no satisfactory substitute goods can be reasonably obtained; ~~or~~
- “(c) the supplier has ceased trading (other than in the circumstances described in **section 36I(1)**). 20

“36H Effect of cancellation of layby sale agreement

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

- “(a) must immediately repay to the consumer all money paid to the supplier under the agreement, less (in the case of cancellation under **section 36F or 36G(a)**) any cancellation charge that is payable; and 25
- “(b) is, if the amounts paid by the consumer under the agreement are insufficient to cover the cancellation charge (if any), entitled to recover the balance of that charge from the consumer as a debt; and 30
- “(c) is not entitled to damages, or to enforce any other remedy, in relation to the cancellation, except as provided for in **paragraphs (a) and (b)**.

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

- “(1) This section applies if—
- “(a) a supplier of goods under a layby sale agreement— 5
 - “(i) is adjudicated bankrupt; or
 - “(ii) has a receiver or statutory manager or similar person appointed in respect of it or of all or any of its assets; or
 - “(iii) is put into liquidation; or 10
 - “(iv) is in voluntary administration under Part 15A of the Companies Act 1993; and
 - “(b) the goods to which the agreement relates are part of the assets in the bankruptcy, receivership, liquidation, or administration, as the case may be. 15
- “(2) If this section applies, the consumer acquiring the goods is entitled, on payment of the balance (if any) of the price specified in the agreement and within a reasonable time, to—
- “(a) complete the agreement; and
 - “(b) have property in the goods to which the agreement relates transferred to him or her; and 20
 - “(c) take possession of those goods.
- “(3) However, if there are insufficient goods to enable all consumers to complete their agreements in accordance with **subsection (2)**, the agreements must be completed in the same order as they were entered into. 25
- “(4) **Subsections (2) and (3)** do not apply to a consumer who has, in breach of the agreement, made no payments to the supplier during the 3 months immediately before the relevant event described in **subsection (1)(a)**. 30
- “(5) If a consumer makes a payment under the agreement after an event described in **subsection (1)**, the consumer is entitled to have that payment refunded in full.
- “(6) To avoid doubt, **subsection (5)** does not apply if the agreement is completed in accordance with **subsection (2) or (3)**. 35

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

- “(1) This section applies if—
- “(a) an event described in **section 36I(1)(a)(i) to (iii)** has occurred; and 5
 - “(b) the consumer described in **section 36I(2)**—
 - “(i) is entitled to a refund under **section 36H(a)**; or
 - “(ii) has been unable to complete the layby sale agreement in accordance with **section 36I(2) or (3)**, as the case may be. 10
- “(2) If this section applies, the consumer—
- “(a) is a creditor in the bankruptcy, receivership, or liquidation, to the extent of the payments made to the supplier in accordance with the layby sale agreement; and
 - “(b) is entitled to recover a sum equal to those payments with priority over— 15
 - “(i) all other unsecured creditors; and
 - “(ii) all creditors secured by a security interest of the kind described in **subsection (3)**.
- “(3) The kind of security interest referred to in **subsection (2)(b)(ii)** is a security interest that is over all or any part of the supplier’s accounts receivable and inventory, or all or part of either of them, other than— 20
- “(a) a purchase money security interest that has been perfected at the time specified in section 74 of the Personal Property Securities Act 1999; or 25
 - “(b) a security interest that—
 - “(i) has been perfected under the Personal Property Securities Act 1999 at the date of the event described in **section 36I(1)(a)(i) to (iii)**; and 30
 - “(ii) arises from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation). 35
- “(4) Debts to which priority is given by **subsection (2)(b)** must be paid in accordance with—

- “(a) section 274(3) of the Insolvency Act 2006 (in the case of bankruptcies); or
- “(b) section 30 of the Receiverships Act 1993 (in the case of receiverships); or
- “(c) section 312 and Schedule 7 of the Companies Act 1993 5
(in the case of liquidations).
- “(5) To avoid doubt, this section does not apply in relation to—
- “(a) a consumer referred to in **section 36I(4)**; or
- “(b) a payment refunded under **section 36I(5)**.
- “(6) In this section, **account receivable**, **inventory**, **new value**, 10
purchase money security interest, and **security interest** have the meanings given to them in section 16 of the Personal Property Securities Act 1999.

“Subpart 2—Uninvited direct sales

- “**36K Meaning of uninvited direct sale agreement** 15
- “(1) In this subpart, **uninvited direct sale agreement** means an agreement for the supply, in trade, of goods or services to a consumer—
- “(a) for the supply, in trade, of goods or services to a consumer; and 20
- “(aa) that is made as a result of negotiations (whether or not they are the only negotiations that precede the making of the agreement) between a supplier and the consumer in a situation described in either **subsection (1A) or (1B)**; and 25
- “(ab) where the price paid or payable by the consumer under the agreement—
- “(i) is more than \$100; or
- “(ii) cannot be ascertained at the time of supply (regardless of whether the price ultimately paid or payable is \$100 or less). 30
- “(b) made as a result of negotiations (whether or not they are the only negotiations that precede the making of the agreement) between a supplier and the consumer—
- “(i) in each other’s presence at a place other than the supplier’s usual place of business or trade; or 35
- “(ii) by telephone; and

- “(c) where the consumer did not invite the supplier to come to that place, or to make a telephone call, for the purposes of entering into negotiations relating to the supply of those goods or services (whether or not the consumer made such an invitation in relation to a different supply); and 5
- “(d) where the price paid or payable by the consumer under the agreement is more than \$100.
- “(1A) The first situation is where the negotiations take place between the consumer and the supplier, in each other’s presence, in the consumer’s home or workplace, where the consumer did not invite the supplier to come to that place for the purposes of entering into negotiations relating to the supply of those goods or services (whether or not the consumer made such an invitation in relation to a different supply). 10 15
- “(1B) The other situation is where the negotiations take place by telephone, where the consumer did not invite the supplier to make the telephone call for the purposes of entering into negotiations relating to the supply of those goods or services (whether or not the consumer made such an invitation in relation to a different supply). 20
- “(1C) However, **uninvited direct sale agreement** does not include a renewal agreement.
- “(2) For the purposes of **subsection (1)(c)** this section, a consumer has not invited a supplier to— 25
- “(a) come to ~~that place~~ the home or workplace, or to make a telephone call, merely because the consumer has—
- “(i) given his or her name or contact details to the supplier other than for the predominant purpose of entering into negotiations relating to the supply of the goods or services referred to in **subsection (1)**; or 30
- “(ii) contacted the supplier in connection with an unsuccessful attempt by the supplier to contact the consumer: 35
- “(b) enter into negotiations for a supply merely because ~~the consumer has invited the supplier to quote or estimate a price for a supply;~~ the supplier has provided an unsolicited quote or estimate.

- “(3) In **subsection (1C)**, **renewal agreement** means a new agreement that replaces an existing agreement between a supplier and consumer where—
- “(a) the existing agreement—
- “(i) involves the supply, in trade, of goods or services to the consumer by the supplier; and 5
- “(ii) is in force at the time the negotiations for the new agreement occur; and
- “(b) the new agreement involves the supply, in trade, of goods or services— 10
- “(i) of the same, or of a similar, kind as those supplied under the existing agreement; and
- “(ii) by the same supplier to the same consumer (being the parties to the existing agreement); and
- “(iii) on the same, or similar, terms and conditions as those in the existing agreement. 15

“36L Disclosure requirements relating to uninvited direct sale agreements

- “(1) A supplier must ensure that—
- “(a) every uninvited direct sale agreement entered into by that supplier— 20
- “(i) is in writing; and
- “(ii) is expressed in plain language; and
- “(iii) is legible; and
- “(iv) is presented clearly; and 25
- “(v) complies with the requirements of **subsection (2)**; and
- “(b) a copy of the agreement is given to the consumer—
- “(i) at the time the agreement is entered into; or
- “(ii) in the case of an agreement entered into over the telephone, within 5 working days after the date on which the agreement was entered into. 30
- “(2) The requirements referred to in **subsection (1)(a)(v)** are that—
- “(a) the following information is set out on the front page of the agreement: 35
- “(i) a clear description of the goods or services to be supplied under the agreement; and

- “(ii) a summary of the consumer’s right to cancel the agreement under **section 36M(1)**; and
- “(iii) the supplier’s name, street address, telephone number, and email address; and
- “(iv) the consumer’s name and street address; and 5
- “(b) the total price payable, and any other consideration to be given, under the agreement is disclosed in the agreement; and
- “(c) the agreement is dated.
- “(3) The supplier must give the consumer oral notice, before the agreement is entered into, of— 10
- “(a) the consumer’s right to cancel the agreement within 5 working days after the date on which the consumer receives a copy of the agreement; and
- “(b) how the consumer may cancel the agreement. 15
- “(4) However, if an uninvited direct sale agreement is, or includes, a consumer credit contract (as defined in section 11 of the Credit Contracts and Consumer Finance Act 2003), in relation to that consumer credit contract only,—
- “(a) Part 2 of that Act applies in place of this subpart; and 20
- “(b) the supplier must give the consumer oral notice, before the agreement is entered into, of—
- “(i) the consumer’s rights to cancel the agreement under that Act; and
- “(ii) how the consumer may cancel the agreement under that Act. 25
- “(5) For the purposes of **subsection (4)**, a consumer credit contract is included in an uninvited direct sale agreement if that contract was entered into for the purpose of financing the purchase of the goods or services that are the subject of the uninvited direct sale agreement. 30
- “(6) To avoid doubt, where an uninvited direct sale agreement includes a consumer credit contract, this subpart continues to apply to every part of the agreement that is not a consumer credit contract. 35

“36M Cancellation of uninvited direct sale agreement by consumer

- “(1) A consumer may cancel an uninvited direct sale agreement by giving notice of the cancellation to the supplier—
- “(a) within 5 working days after the date on which the consumer receives a copy of the agreement; or 5
 - “(b) if the supplier has failed to comply with **section 36L** (except to the extent provided for in **section 36N(2)**), at any time.
- “(2) Notice of cancellation may be expressed in any way (including oral or written) that shows the intention of the consumer to cancel or withdraw from the agreement. 10
- “(2A) For the purposes of **subsection (2)**, the consumer must communicate with the supplier—
- “(a) by way of the contact details provided in accordance with **section 36L(2)(a)(iii)**; or 15
 - “(b) in any other way agreed to by the consumer and the supplier.

“36N Enforcement of uninvited direct sale agreement by supplier

- “(1) An uninvited direct sale agreement is not enforceable by a supplier unless— 20
- “(a) the supplier has complied with **section 36L**; and
 - “(b) the time during which the consumer may cancel the agreement under **section 36M** has expired, and the consumer has not given notice of cancellation within that time. 25
- “(2) However, **subsection (1)(a)** does not apply if the failure to comply with **section 36L** is minor (for example, where a supplier has provided an agreement at a time later than the time specified in **section 36L(1)(b)**) and does not materially prejudice the consumer. 30

“36O Effect of cancellation of uninvited direct sale agreement

- If an uninvited direct sale agreement is cancelled by a consumer (*see* **section 36M**),— 35
- “(a) the agreement (including any security or guarantee given by any person in connection with that agreement)

and any collateral agreement (including any consumer credit contract referred to in **section 36L(4)**) are, in relation to the consumer's rights under this Act,—

- “(i) ~~is~~ to be treated as if ~~it~~ they had never had effect; and 5
- “(ii) ~~is~~ not enforceable; and
- “(b) the supplier must comply with **section 36P**; and
- “(c) the consumer must comply with **section 36Q**; and
- “(d) compensation (if any) is payable in accordance with **section 36R**. 10

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

On cancellation of an uninvited direct sale agreement in accordance with **section 36M**, the supplier must immediately repay to the consumer all money paid to the supplier under the agreement. 15

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

- “(1) On cancellation of an uninvited direct sale agreement in accordance with **section 36M**, the consumer must,— 20
 - “(a) if the supplier has complied with **section 36P**, permit the supplier to take possession of any goods that have been provided to the consumer under the agreement—
 - “(i) from the address provided by the consumer in the agreement; and 25
 - “(ii) at any reasonable time requested by the supplier; and
 - “(b) take reasonable care of those goods, from the time that the consumer took possession of the goods until the end of 10 working days beginning with the date on which notice was given in accordance with **section 36M**. 30
- “(2) However, if, during the 10 working days referred to in **sub-section (1)(b)**, the consumer unreasonably refuses or fails to permit the supplier to take possession of the goods, the consumer's obligation to take reasonable care of the goods continues until the consumer has given the supplier a reasonable opportunity to take possession of the goods. 35

- “(3) Despite **subsection (1)**, a consumer may, at the supplier’s expense (if the supplier requests the consumer to return the goods and arranges for the goods to be collected from the consumer) or at the consumer’s expense (if the consumer chooses to return the goods without a request being made by the supplier), return the goods to the supplier ~~(whether at the request of the supplier or otherwise)~~, in which case the consumer’s obligation to take care of the goods ceases when the goods are collected from the consumer, or when the consumer sends the goods to the supplier, as the case may be.— 5 10
- “(a) ~~the consumer is under an obligation to take reasonable care to ensure that the goods will not be damaged in transit and will be delivered to the supplier; and~~
- “(b) ~~the consumer’s obligation to take care of the goods ceases on sending the goods to the supplier.~~ 15
- “(3A) However, the consumer is under an obligation to take reasonable care to ensure that the goods will not be damaged in transit and, if the consumer chooses to return the goods without a request being made by the supplier, to also take reasonable care to ensure that the goods will be delivered to the supplier. 20
- “(4) To avoid doubt, a consumer is under no obligation—
- “(a) to permit the supplier to take possession of the goods if the supplier has failed to comply with **section 36P**; or
- “(b) to deliver, or to arrange delivery of, the goods to the supplier; or 25
- “(c) to care for the goods other than as required under this section.
- “**36R Compensation on cancellation of uninvited direct sale agreement**
- “(1) On cancellation of an uninvited direct sale agreement under **section 36M**, the consumer is liable to pay compensation to the supplier for any loss of, or damage to, the goods that occurs while they are in the custody of the consumer, other than loss or damage— 30
- “(a) arising from the normal use of the goods; or 35
- “(b) owing to circumstances beyond the consumer’s control.

- “(2) **Subsection (1)** applies only in relation to the period of custody beginning when the consumer takes delivery of the goods and ending—
- “(a) at the end of 10 working days after the date on which notice was given in accordance with **section 36M**; or 5
- “(b) if **section 36Q(2)** applies, when the consumer has given the supplier a reasonable opportunity to take possession of the goods.
- “(3) If a supplier provided services under the agreement before it was cancelled,— 10
- “(a) the supplier is not entitled to any compensation for those services; and
- “(b) if the services have resulted in the alteration of, or damage to, the consumer’s property, the supplier must, if required by the consumer and at the supplier’s expense, 15
return the property to the condition it was in (or as close as is reasonably practicable to that condition) immediately before the services were provided.
- “(4) A supplier is not entitled to damages, or to enforce any other remedy, in relation to the cancellation of an uninvited direct 20
sale agreement under **section 36M**, except as provided for in this section.

“Subpart 3—Extended warranties

- “**36S Meaning of extended warranty agreement and related definitions** 25
- “ In this subpart,—
- “**additional consideration** means the price paid or payable by the consumer for an extended warranty agreement, whether as part of the price of the goods or services or as a separate payment 30
- “**express guarantee**, in relation to goods, means an undertaking, assertion, or representation given or made in connection with the supply of the goods, or in connection with the promotion by any means of the supply or use of the goods, in relation to— 35
- “(a) the quality, performance, or characteristics of the goods; or

- “(b) the provision of services that are or may at any time be required in respect of the goods; or
- “(c) the supply of parts that are, or may at any time be, required for the goods; or
- “(d) the future availability of identical goods, or of goods 5
constituting or forming part of a set that includes the goods in relation to which the undertaking, assertion, or representation is given or made
- “extended warranty agreement—**
- “(a) means an agreement between a supplier and a consumer 10
under which the supplier agrees, for additional consideration, to repair, replace, or remedy defective goods or services; and
- “(b) includes an agreement that provides for—
- “(i) repair, replacement, or remedy in situations also 15
covered by a guarantee under the Consumer Guarantees Act 1993 or under an express guarantee given by the supplier; or
- “(ii) repair, replacement, or remedy over a longer 20
period than, or for a period commencing on the expiry of, an express guarantee referred to in **subparagraph (i)**; or
- “(iii) insurance or other cover in relation to the goods 25
(for example, cover for accidental damage, loss, theft, or assistance in setting up and operating the goods) or services
- “manufacturer** means a person that carries on the business of assembling, producing, or processing goods, and includes—
- “(a) any person that holds itself out to the public as the 30
manufacturer of the goods:
- “(b) any person that attaches its brand or mark, or causes or permits its brand or mark to be attached, to the goods:
- “(c) where goods are manufactured outside New Zealand 35
and the foreign manufacturer of the goods does not have an ordinary place of business in New Zealand, a person that imports or distributes those goods
- “supplier** includes—
- “(a) a person supplying an extended warranty; and
- “(b) the manufacturer of goods.

- “ In this subpart,—
- “**extended warranty agreement** means an agreement—
- “(a) that is entered into—
- “(i) between a consumer and a warrantor in relation to the purchase by the consumer of goods or services; and 5
- “(ii) at, or at about, the same time as those goods or services are purchased; and
- “(b) under which the warrantor provides specific warranties, guarantees, or undertakings (either directly or through a third person) in relation to those goods or services; and 10
- “(c) for which the consumer pays a price that is separate from, or additional to, the price at which the goods or services are offered for sale
- “**warrantor** means both— 15
- “(a) the supplier, if that person arranges or provides the extended warranty agreement; and
- “(b) if the extended warranty agreement is entered into directly between the consumer and a person other than the supplier (for example, an insurer or manufacturer), that other person. 20
- “**36T Disclosure requirements relating to extended warranty agreements**
- “(1) A ~~supplier~~ warrantor must ensure that—
- “(a) every extended warranty agreement— 25
- “(i) is in writing; and
- “(ii) is expressed in plain language; and
- “(iii) is legible; and
- “(iv) is presented clearly; and
- “(v) complies with the requirements of **subsection (2)**; and 30
- “(b) a copy of the agreement is given to the consumer at the time the consumer purchases the extended warranty.
- “(2) The requirements referred to in **subsection (1)(a)(v)** are that— 35
- “(a) the following information is set out on the front page of the agreement:

- “(iaa) a summarised comparison between the relevant Consumer Guarantees Act 1993 guarantees and the protections provided by the extended warranty agreement; and
- “(i) a summary of the consumer’s rights and remedies under the Consumer Guarantees Act 1993; and 5
- “(ii) a summary of the consumer’s right to cancel the agreement under **section 36U**; and
- “(iii) ~~the supplier’s~~ warrantor’s name, street address, telephone number, and email address; and 10
- “(b) all the terms and conditions of the agreement are included in the agreement, including—
- “(i) the rights and obligations of the ~~supplier~~ warrantor and the consumer; and
- “(ii) the duration and expiry date of the agreement (including whether or not the agreement expires when a claim is made); and 15
- “(c) the total price payable under the agreement is disclosed in the agreement; and
- “(d) the agreement is dated. 20
- “(3) In addition to the requirements for written disclosure under **subsections (1) and (2)**, ~~the supplier must~~ warrantor must, where reasonably practicable (for example, where the agreement is entered into between a warrantor and consumer in each other’s presence or by telephone), give the consumer oral notice, before the agreement is entered into, of— 25
- “(a) the consumer’s right to cancel the agreement within 5 working days; and
- “(b) how the consumer may cancel the agreement.
- “**36U Cancellation of extended warranty agreement** 30
- “(1) A consumer may cancel an extended warranty agreement by giving notice of the cancellation to the ~~supplier~~ warrantor—
- “(a) within 5 working days after the date on which the consumer receives a copy of the agreement; or
- “(b) if the ~~supplier~~ warrantor has failed to comply with **section 36T** (except to the extent provided for in **subsection (2) (1A)(b)**), at any time. 35
- “(1A) However,—

- “(a) **subsection (1)** does not apply in relation to an extended warranty agreement that has been entered into as a condition of a consumer credit contract (as defined in section 11 of the Credit Contracts and Consumer Finance Act 2003); and 5
- “(b) **subsection (1)(b)** does not apply if the failure to comply with **section 36T** is minor (for example, where a warrantor has provided an agreement at a time later than the time specified in **section 36T(1)(b)**) and does not materially prejudice the consumer. 10
- “(2) **Subsection (1)(b)** does not apply if the failure to comply with **section 36T** is minor (for example, where a supplier has provided an agreement at a time later than the time specified in **section 36T(1)(b)**) and does not materially prejudice the consumer. 15
- “(3) Notice of cancellation may be expressed in any way (including oral or written) that shows the intention of the consumer to cancel or withdraw from the agreement.
- “(3A) For the purposes of **subsection (3)**, the consumer must communicate with the warrantor— 20
- “(a) by way of the contact details provided in accordance with **section 36T(2)(a)(iii)**; or
- “(b) in any other way agreed to by the consumer and the warrantor.
- “(4) On cancellation of an agreement in accordance with **subsections (1) to (3)**, the supplier must immediately repay all additional consideration, in full and without any deductions, to the consumer. 25
- “(5) To avoid doubt, nothing in this section entitles a consumer to cancel any other agreement relating to the goods or services that are the subject of the extended warranty agreement. 30
- “**36UA Regulations**
- “(1) The Governor-General may, by Order in Council made on the recommendation of the Minister in accordance with **subsection (2)**, make regulations, in relation to extended warranty agreements, for all or any of the following purposes: 35

- “(a) prescribing a statement for the purposes of providing the information specified in **section 36T(2)**, including the size of the lettering of the words in, and the format of, the statement:
- “(b) prescribing how, when, and to whom a statement prescribed under **paragraph (a)** must be provided. 5
- “(2) The Minister must not make a recommendation under this section unless—
- “(a) the Minister has consulted such persons or representatives of such persons as the Minister considers will be substantially affected by any Order in Council made in accordance with the recommendation, and those persons have had the opportunity to comment to the Minister; and 10
- “(b) the Minister has considered any such comments. 15
- “(3) A failure to comply with **subsection (2)** does not affect the validity of any Order in Council made under this section.

“Subpart 4—Auctions

“36V Definitions

- “(1) In this subpart, unless the context otherwise requires,— 20
- “**auction** means a process in which property of any kind (including goods, services, and interests in land) is offered for sale by an auctioneer on behalf of a vendor, and—
- “(a) bids for the property are placed with the auctioneer in real time, whether in person, by telephone, via the Internet, or by any other means; and 25
- “(b) the property is sold when the auctioneer so indicates
- “**registered auctioneer** means an auctioneer registered as an auctioneer under **Part 2 of the Consumer Law Reform Act 2011** 30
- “**vendor** means the person whose property is offered for sale at an auction by an auctioneer.
- “(2) To avoid doubt, a process of selling property is not necessarily an auction for the purpose of this subpart just because it is described as an auction. For example, a process described as an Internet auction, but that provides that any contract of sale resulting from the process is a contract directly between the 35

winner of the bidding and the seller of the property, is not an auction for the purpose of this subpart.

“36W Application of subpart

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

- “(a) a registered auctioneer; or
- “(b) any other person who carries on business as an auctioneer (within the meaning given in **section 65 66(3)** of the **Consumer Law Reform Act 2011**), whether or not a registered auctioneer.

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“36X Each lot is separate contract of sale

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

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

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

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“36Y Start and end of auction

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

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

“(3) However, property that is offered for sale by auction ~~may~~ must be treated as having been sold at auction, even if the bidding ceased without the property being sold, if ~~the auctioneer accepts a subsequent offer, from a person who attended the auction, within 1 working day following the close of bidding.~~—

“(a) the auctioneer accepts a subsequent offer from a person who attended the auction; and

“(b) that offer is accepted before the end of the first working day following the day of the auction.

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

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“36Z Notice to participants before each auction

~~Before the start of an auction of property, the auctioneer must make it clear to all potential participants—~~

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

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

“(c) whether vendor bids are permitted.

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“Compare: 1998 No 168 s 59; 2007 No 91 s 42

“36Z Notice to participants

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

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“(a) for participants attending an auction in person, the notice must be displayed and readily available to view by all participants; and

“(b) in any other case, the notice must be available to view, before and during the auction, on a readily accessible Internet site.

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

“(a) in the case of an auction of goods of a kind ordinarily acquired for personal, domestic, or household use or consumption, whether the vendor of the goods is selling the goods in trade as a supplier (within the meaning of the Consumer Guarantees Act 1993):

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

“(c) whether vendor bids are permitted.

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

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“(4) The person responsible for complying with the requirements of **subsections (1) and (2)** is,—

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

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

“36ZAA Vendors selling in trade

The Consumer Guarantees Act 1993 does not apply to goods that are ordinarily acquired for personal, domestic, or household use if they are sold at auction and—

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- “(a) the vendor is a person referred to in **section 36Z(2)(a)**;
and
“(b) the terms of the auction provide that if such goods are
acquired from the vendor for the purpose of business,
then the Consumer Guarantees Act 1993 (subject to sec- 5
tions 40, 41, and 43A of that Act) does not apply.

“36ZA Vendor bids

- “(1) Vendor bids are permitted at an auction only if the auction-
eer—
“(a) takes all reasonable steps before the start of the auction 10
to notify potential participants that vendor bids are per-
mitted; and
“(b) clearly identifies each vendor bid as it is received; and
“(c) refuses to receive a vendor bid that is higher than the
reserve price (if any). 15
- “(2) A vendor bid may be placed only by the vendor, or by a single
person acting on behalf of the vendor.
- “(1) An auctioneer must not accept a vendor bid unless—
“(a) the terms of the auction specify that vendor bids are
permitted; and 20
“(b) the auctioneer identifies each vendor bid as it is given;
and
“(c) during the auction, each bid made by the vendor is made
by 1 only of the following:
“(i) the vendor; or 25
“(ii) the auctioneer; or
“(iii) a person who has identified himself or herself to
the auctioneer as the person acting on behalf of
the vendor at that auction.
- “(2) The auctioneer must not accept a vendor bid that is higher than 30
the reserve price (if any).
- “(3) If property is unsold at the end of an auction, and if the high-
est bid at the auction was a vendor bid, then any subsequent
reference to that bid as being the amount at which the property
was passed in is a misleading representation for the purposes 35
of section 13(g) or 14(1)(b), as the case may be.

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

“36ZB Bids may be withdrawn until end of auction

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

“Compare: 2007 No 91 s 42

“36ZC Account and payment of proceeds

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

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

“(b) an account of the sale, which must set out, at a minimum, the bid accepted from the purchaser, the amount of any tax, auctioneer’s commission or other deductions, and the amount payable to the vendor. 10

“(2) However, unless the vendor and registered auctioneer have agreed otherwise, if the vendor requests an auctioneer to provide the balance of the proceeds and an account of the sale sooner than 10 working days after the sale, the auctioneer must comply with the request within 5 working days after the request is made. 15

“(2A) An auctioneer need not comply with **subsection (1)** if— 20

“(a) the vendor is in trade; and

“(b) the vendor operates an account with the auctioneer for the purpose of multiple sales in trade; and

“(c) the vendor agrees (expressly or impliedly) that **subsection (1)** need not apply. 25

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

“Compare: 1928 No 29 s 31”. 30

*Jurisdiction***19 Jurisdiction of High Court**

Section 37 is amended by adding the following paragraphs:

“(ca) applications for orders under **section 46B** to enforce an undertaking involving a sum that, in total, exceeds 35

- \$200,000 or, if greater, the amount specified in section 29 of the District Courts Act 1947:
- “(d) appeals from any order of a District Court under **section 46B** enforcing an enforceable undertaking:
- “(e) appeals from any order of a District Court under **section 46C or 46G** (relating to management banning orders): 5
- “(f) applications by the Commission for a declaration under section 46I.”
- 20 Jurisdiction of District Courts** 10
- (1) Section 38 is amended by adding the following paragraphs:
- “(c) applications for orders under **section 46B** to enforce an enforceable undertaking involving a sum that, in total, does not exceed \$200,000 or, if greater, the amount specified in section 29 of the District Courts Act 1947: 15
- “(d) applications under **sections 46C and 46G** relating to management banning orders:
- “(e) applications by the Commission for a declaration under section 46I.”
- (2) Section 38 is amended by adding the following subsection as subsection (2): 20
- “(2) This section is subject to **section 43B.**”
- 21 Jurisdiction of Disputes Tribunals**
- (1) Section 39 is amended by omitting “section 43(2)(c) to (f) of this Act (except in respect of a contravention of section 9 of this Act)” and substituting “**section 43**”. 25
- (2) Section 39 is amended by adding the following subsection as subsection (2):
- “(2) This section is subject to **section 43B.**”
- Offences and orders* 30
- 22 Contraventions of provisions of Part 1, Part 2, Part 3, and Part 4 an offence**
- (1) The heading to section 40 is amended by omitting “**Part 1, Part 2, Part 3, and Part 4**” and substituting “**Parts 1 to 4A**”. 35
- (2) Section 40(1) is amended by omitting “or Part 2.”

- (2) Section 40 is amended by repealing subsection (1) and substituting the following subsection:
- “(1) Every person who contravenes a provision of Part 1 (except sections 9, 14(2), 23, or 24), Part 3, or Part 4 commits an offence and is liable on summary conviction,— 5
“(a) in the case of an individual, to a fine not exceeding \$200,000; and
“(b) in the case of a body corporate, to a fine not exceeding \$600,000.”
- (3) Section 40(1A) is amended by omitting “\$200,000” and substituting “\$600,000”. 10
- (4) Section 40 is amended by inserting the following subsection after subsection (1A):
- “(1B) Every person who contravenes ~~any of the provisions a provision~~ of Part 2 or **Part 4A** commits an offence and is liable on 15
summary conviction,—
“(a) in the case of a ~~person other than a body corporate~~ an individual, to a fine not exceeding \$10,000; and
“(b) in the case of a body corporate, to a fine not exceeding 20
\$30,000.”

22A Additional penalty for contravention of section 24 involving commercial gain
Section 40A(4) is repealed.

23 New sections 40B to 40H inserted

The following sections are inserted after section 40A: 25

“40B Infringement offence, etc, defined

In this Act, unless the context otherwise requires,—

“**infringement fee** means the amount, not exceeding ~~\$1,000~~ \$2,000, that is prescribed by regulations made under **section 40H** as the amount payable in respect of an infringement offence for which an infringement notice has been issued 30

“**infringement notice** means a notice, in the form prescribed by regulations made under **section 40H** and issued under **section 40D**, in respect of an infringement offence

“**infringement offence** means any of the following:

“(a) an offence against **section 40(1)** of failing to comply with a suspension of supply notice issued under **section 33D**:

“(b) an offence against **section 40(1B)** involving the contravention of section 28 (consumer information standards):

“(ba) an offence against **section 40(1B)** of failing to comply with **section 28B(1) or (2)** (disclosure of trader status on Internet):

“(c) an offence against **section 40(1B)** involving the contravention of any of the following provisions of **Part 4A**:

“(i) **section 36C** (layby disclosure requirements):

“(ii) **section 36D** (further layby disclosure requirements):

“(iii) **section 36L** (uninvited direct sale disclosure requirements):

“(iv) **section 36T** (extended warranty disclosure requirements).

“**40C Infringement offence alleged**

“(1) If a person is alleged to have committed an infringement offence, the person may either—

“(a) be proceeded against summarily for the alleged offence under the Summary Proceedings Act 1957; or

“(b) be served with an infringement notice.

“(2) Despite section 21 of the Summary Proceedings Act 1957, leave of a District Court Judge or Registrar to lay an information is not necessary if the Commission proceeds with an infringement offence summarily.

“Compare: 1992 No 122 s 165A

“**40D Issue of infringement notice**

“(1) The Commission may issue an infringement notice to a person if—

“(a) the Commission believes on reasonable grounds that the person is committing, or has committed, an infringement offence; and

- “(b) no information for that offence has been laid against, and no infringement notice has been issued to, the person in relation to the conduct alleged to be an infringement offence.
- “(2) The Commission may revoke an infringement notice before the infringement fee is paid, or before an order for payment of a fine is made or deemed to be made by a court under section 21 of the Summary Proceedings Act 1957. 5
- “(3) An infringement notice is revoked by giving written notice to the person to whom it was issued that the notice is revoked. 10
 “Compare: 1992 No 122 s 165B
- “40E Procedural requirements for infringement notices**
- “(1) An infringement notice may be served on a person (a **recipient**) who is alleged to have committed an infringement offence— 15
- “(a) by delivering it, or a copy of it, personally to the recipient; or
- “(b) by sending it, or a copy of it, by post, addressed to the recipient at the recipient’s last known place of residence or business. 20
- “(2) For the purposes of the Summary Proceedings Act 1957, an infringement notice sent under **subsection (1)(b)** must be treated as having been served on the recipient on the date it was posted.
- “(3) An infringement notice must be in the form prescribed by regulations made under **section 40H** and must contain— 25
- “(a) details of the alleged infringement offence that are sufficient to fully and fairly inform the recipient of the time, place, and nature of the alleged infringement offence; and 30
- “(b) the amount of the infringement fee; and
- “(c) an address at which the infringement fee may be paid; and
- “(d) the time within which the infringement fee must be paid; and 35
- “(e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and

- “(f) a statement that the recipient has a right to request a hearing; and
- “(g) a statement of what will happen if the recipient does not pay the fee and does not request a hearing; and
- “(h) any other prescribed matters. 5
- “(4) If an infringement notice has been issued, proceedings in respect of the infringement offence to which the notice relates may be commenced in accordance with section 21 of the Summary Proceedings Act 1957; and in that case, section 21 of the Summary Proceedings Act 1957 applies, with all necessary modifications. 10
- “(5) Reminder notices must be prescribed by regulations made under **section 40H** and must contain the information referred to in **subsection (3)**. 15
- “Compare: 1992 No 122 s 165C
- “**40F What Commission does with infringement fees**
- The Commission must pay all infringement fees received into a Crown Bank Account.
- “Compare: 1992 No 122 s 165D
- “**40G Effect of infringement notice** 20
- If an infringement notice is issued, a criminal record must not be created in respect of the infringement offence.
- “**40H Regulations relating to infringement offences**
- The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for the following purposes: 25
- “(a) prescribing the form of infringement notices and reminder notices:
- “(b) prescribing any matters that must be included in those notices: 30
- “(c) prescribing the amount of the infringement fee.”
- 23A Summary Proceedings Act 1957 consequentially amended**
- (1) This section amends the Summary Proceedings Act 1957.**

- (2) The definition of **infringement notice** in section 2(1) is amended by inserting the following paragraph after paragraph (fa):
“(fb) **section 40D** of the Fair Trading Act 1986; or”.
- 23B** **Order to disclose information or publish advertisement** 5
Section 42(3) is repealed.
- 24** **New sections 43 to 43B substituted**
 Section 43 is repealed and the following sections are substituted:
- “43 Other orders** 10
- “(1)** This section applies if, in proceedings under this Part or on the application of any person, ~~the~~ a court or a Disputes Tribunal finds that a person (**person A**) has suffered, or is likely to suffer, loss or damage by conduct of another person (**person B**) that does or may constitute any of the following: 15
- “(a)** a contravention of a provision of Parts 1 to **4A** (a **relevant provision**):
- “(b)** aiding, abetting, counselling, or procuring a contravention of a relevant provision:
- “(c)** inducing by threats, promises, or otherwise a contravention of a relevant provision: 20
- “(d)** being in any way directly or indirectly knowingly concerned in, or party to, a contravention of a relevant provision:
- “(e)** conspiring with any other person in the contravention of a relevant provision. 25
- “(2)** The court or the Disputes Tribunal may make 1 or more of the orders described in **subsection (3)**—
- “(a)** whether or not the court ~~or the Disputes Tribunal~~ grants an injunction ~~or,~~ or the court or the Disputes Tribunal makes any other order₂ under this Part; and 30
- “(b)** whether or not person A made the application or is a party to the proceedings.
- “(3)** The orders are as follows:
- “(a)** an order declaring all or part of a contract made between person A and person B, or a collateral arrangement (for 35

example, a collateral credit agreement) relating to such a contract,—

- “(i) to be void; and
 - “(ii) if the court or the Disputes Tribunal thinks fit, to have been void at all times on and after a date specified in the order, which may be before the date on which the order is made: 5
- “(b) if an order described in **paragraph (a)** is made in respect of a contract that is associated with a collateral credit agreement, an order vesting in person B all or any of the rights and obligations of person A under the collateral credit agreement: 10
- “(c) an order in respect of a contract made between person A and person B, or a collateral arrangement (for example, a collateral credit agreement) relating to such a contract,— 15
- “(i) varying the contract or the arrangement in the manner specified in the order; and
 - “(ii) if the court or the Disputes Tribunal thinks fit, declaring the varied contract or arrangement to have had effect on and after a date specified in the order, which may be before the date on which the order is made: 20
- “(d) if an order described in **paragraph (c)** is made in respect of a contract that is associated with a collateral credit agreement, and if that order results in person A no longer having property in the goods that are the subject of the contract, an order vesting in person B the rights and obligations of person A under the collateral credit agreement: 25 30
- “(e) an order directing person B to refund money or return property to person A:
- “(f) an order directing person B to pay to person A the amount of the loss or damage:
- “(g) an order directing person B, at person B’s own expense, to repair, or to provide parts for, goods that have been supplied by person B to person A: 35
- “(h) an order directing person B, at person B’s own expense, to supply specified goods or services to person A.

- “(4) In **subsection (3)(a) to (d), collateral credit agreement**, in relation to a contract for the supply of goods, means a contract or an agreement that—
- “(a) is arranged or procured by the supplier of the goods; and
 - “(b) is for the provision of credit by a person other than the supplier to enable person A to pay, or defer payment, for the goods. 5
- “(5) An order made under **subsection (3)(a) to (d)** does not prevent proceedings being instituted or commenced under this Part. 10
- “(6) This section does not limit or affect—
- “(a) the Illegal Contracts Act 1970; or
 - “(b) section 317 of the Accident Compensation Act 2001.
- “**43A Application for order under section 43**
- A person may apply to ~~the Court~~ a court or a Disputes Tribunal for an order under **section 43** at any time within 3 years after the date on which the loss or damage, or the likelihood of loss or damage, was discovered or ought reasonably to have been discovered. 15
- “**43B Limits on jurisdiction of District Court and Disputes Tribunal to make orders under section 43** 20
- “(1) A District Court must not make an order under **section 43** if a value or amount described in **subsection (3)** exceeds \$200,000 or, if greater, the amount specified in section 29 of the District Courts Act 1947. 25
- “(2) A Disputes Tribunal must not make an order under **section 43** if a value or amount described in **subsection (3)** exceeds whichever is the greatest of the following:
- “(a) \$15,000;
 - “(b) the amount specified in section 10(1A)(b) of the Disputes Tribunals Act 1988: 30
 - “(c) the amount specified in section 13(2) of the Disputes Tribunals Act 1988, if the jurisdiction of the Disputes Tribunal is extended by an agreement between the parties under section 13 of that Act. 35
- “(3) The values and amounts are as follows:

- “(a) in the case of an order under **section 43(3)(a) or (c)**, the value of the consideration for the promise or act of any party to the contract or collateral arrangement referred to in that paragraph:
- “(b) in the case of an order under **section 43(3)(e)** directing a person to refund money or return property, the amount of money or the value of the property: 5
- “(c) in the case of an order under **section 43(3)(f)** requiring a person to pay an amount, that amount:
- “(d) in the case of an order under **section 43(3)(g)** directing a person to repair goods or to provide parts for goods, the value of the work required to repair the goods, or the value of the parts, as the case may be: 10
- “(e) in the case of an order under **section 43(3)(h)** directing a person to supply services, the value of the services.” 15

25 Defences

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

- “(ab) that, in the case of an offence under section 40(1) in relation to a contravention of **section 21C(1)**, the defendant reasonably believed that there was a right to payment or other consideration; or” 20

25A Finding in proceedings to be evidence

Section 46 is amended by omitting “the court or” and substituting “the High Court or a”. 25

Enforceable undertakings and management banning orders

26 New headings and sections 46A to 46G inserted

The following headings and sections are inserted after section 46: 30

“Enforceable undertakings

“46A Commission may accept undertakings

- “(1) The Commission may accept a written undertaking given by, or on behalf of, a person in connection with any matter relating to the enforcement of this Act. 35

“(2) The person may withdraw or vary the undertaking with the consent of the Commission.

“Compare: 1978 No 103 s 69J

“**46B Enforcement of undertakings**

“(1) If the Commission considers that a person who has given an undertaking under **section 46A** has breached a term of that undertaking, the Commission may apply to a ~~District Court~~ the court for an order under **subsection (2)**. 5

“(2) ~~A District Court~~ The court may make any of the following orders if it is satisfied that the person has breached a term of the undertaking: 10

“(a) an order directing the person to comply with the term:

“(b) an order directing the person to pay to the Crown an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach: 15

“(c) any order that the court thinks appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach:

“(d) an order for any consequential relief that the court thinks appropriate. 20

“Compare: 1978 No 103 s 69K

“Management banning orders

“**46C Management banning orders**

“(1) A District Court may make a management banning order against a ~~natural person~~ an individual who— 25

“(a) has, on at least 2 separate occasions within a 10-year period, committed of an offence against **section 40(1) or (1A)**; or

“(b) is, or was at the time of the commission of the offence, a director of, or concerned in the management of, an incorporated or unincorporated body that has, on at least 2 separate occasions within a 10-year period, committed an offence against **section 40(1) or (1A)**; or 30

“(c) has been prohibited by an overseas jurisdiction from carrying on activities that are substantially similar to 35

those referred to in **section 46D** in connection with the contravention of any law relating to fair trading.

- “(2) The court may make the order only if it is satisfied that the order is necessary to protect the public from the risk that the person, or any incorporated or unincorporated body of which the person is a director, or the management of which the person is concerned in, will commit further offences against **section 40(1) or (1A)**.

“**46D Terms of management banning orders**

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

“Compare: 1978 No 103 s 60B

“**46E Offence to breach management banning order**

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

“**46F Procedures relating to management banning order**

- “(1) An application for a management banning order may be made only by the Commission.

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

- “(3) A copy of every management banning order must be given to—

“(a) the person concerned; and

“(b) the Commission; and

“(c) the Registrar of Companies.

- “(4) The Commission must publish every management banning order made under **section 46C** in the *Gazette* as soon as practicable after it is made.

“Compare: 1978 No 103 s 60F

“46G Seeking leave of court

- “(1) An application for leave of a District Court under **section 46D** must be by way of originating application.
- “(2) The Commission, and any other persons that the court thinks fit, may attend and be heard at the hearing of the application. 5
 “Compare: 1978 No 103 s 60F”

26A New heading and sections 46H to 46M inserted

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

“Declaration of unfair contract terms” 10

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

- “(1) The Commission may apply to the High Court or a District Court (at the choice of the Commission) for a declaration under **section 46I** that a term in a standard form consumer contract is an unfair contract term. 15
- “(2) Any person may ask the Commission to apply to a court for a declaration under **section 46I** in relation to a contract to which the person is a party.

“46I Declaration of unfair contract terms” 20

- “(1) The High Court or a District Court may, on application by the Commission, declare that a term in a standard form consumer contract is an unfair contract term.
- “(2) The court may make the declaration only if it is satisfied that—
- “(a) the term is in a contract that is a consumer contract; and 25
 - “(b) the consumer contract is a standard form contract (as determined in accordance with **section 46J**); and
 - “(c) the term is not one that, under **section 46K**, cannot be declared to be an unfair contract term; and
 - “(d) the term is unfair in the sense described in **section 46L**. 30
- “(3) A declaration under this section—
- “(a) must identify the contract to which it applies by reference to at least 1 of the parties to the contract; and
 - “(b) may describe the context or conditions in which the term’s inclusion in a standard form contract means that the term is an unfair contract term. 35

“46J Standard form contracts

“(1) A court may determine that any contract in which the terms (other than terms referred to in **section 46K**) have not been subject to effective negotiation between the parties is a standard form contract.

5

“(2) In determining whether a contract is a standard form contract, the court must (without limitation) take into account the following:

“(a) whether one of the parties has all or most of the bargaining power relating to the transaction:

10

“(b) whether the contract was prepared by one or more parties before any discussion relating to the transaction occurred with the other party or parties:

“(c) whether 1 or more of the parties was, in effect, required either to accept or reject the terms of the contract (other than terms referred to in **section 46K**) in the form in which they were presented:

15

“(d) the extent to which the parties had an effective opportunity to negotiate the terms (other than terms referred to in **section 46K**) of the contract:

20

“(e) the extent to which the terms of the contract take into account the specific characteristics of any party to the contract.

“(3) If a party to a proceeding alleges that a contract is a standard form contract, the contract is presumed to be a standard form contract unless any other party to the proceedings proves otherwise.

25

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

“(1) A court may not declare a term in a standard form consumer contract to be an unfair contract term to the extent that the term—

30

“(a) defines the main subject matter of the contract; or

“(b) sets the upfront price payable under the contract; or

“(c) is a term required or expressly permitted by any enactment.

35

“(2) In this section, **upfront price** means the consideration (including any consideration that is contingent upon the occurrence or

non-occurrence of a particular event) payable under the contract, but only to the extent that the consideration is set out in a term that is transparent.

“46L When term in consumer contract is unfair

- “(1) A term in a consumer contract is unfair if the court is satisfied 5
that the term—
- “(a) would cause a significant imbalance in the parties’
rights and obligations arising under the contract; and
- “(b) is not reasonably necessary in order to protect the legit-
imate interests of the party who would be advantaged 10
by the term; and
- “(c) would cause detriment (whether financial or otherwise)
to a party if it were applied, enforced, or relied on.
- “(2) In determining whether a term of a consumer contract is unfair,
the court may take into account any matters it thinks relevant, 15
but must take into account—
- “(a) the extent to which the term is transparent; and
- “(b) the contract as a whole.
- “(3) For the purpose of **subsection (1)(b)**, a term in a consumer
contract must be presumed not to be reasonably necessary in 20
order to protect the legitimate interests of the party who would
be advantaged by the term, unless that party proves otherwise.

“46M Examples of unfair contract terms

- Without limiting **section 46I**, the following are examples of
the kind of terms that, if in a consumer contract, may be unfair 25
contract terms:
- “(a) a term that permits, or has the effect of permitting, one
party (but not another party) to avoid or limit perform-
ance of the contract:
- “(b) a term that permits, or has the effect of permitting, one 30
party (but not another party) to terminate the contract:
- “(c) a term that penalises, or has the effect of penalising, one
party (but not another party) for a breach or termination
of the contract:
- “(d) a term that permits, or has the effect of permitting, one 35
party (but not another party) to vary the terms of the
contract:

- “(e) a term that permits, or has the effect of permitting, one party (but not another party) to renew or not renew the contract:
- “(f) a term that permits, or has the effect of permitting, one party to vary the upfront price (as defined in **section 46K(2)**) payable under the contract without the right of another party to terminate the contract: 5
- “(g) a term that permits, or has the effect of permitting, one party unilaterally to vary the characteristics of the goods or services to be supplied, or the interest in land to be sold or granted, under the contract: 10
- “(h) a term that permits, or has the effect of permitting, one party unilaterally to determine whether a contract has been breached or to interpret its meaning:
- “(i) a term that limits, or has the effect of limiting, one party’s vicarious liability for its agents: 15
- “(j) a term that permits, or has the effect of permitting, one party to assign the contract to the detriment of another party without that other party’s consent:
- “(k) a term that limits, or has the effect of limiting, one party’s right to sue another party: 20
- “(l) a term that limits, or has the effect of limiting, the evidence one party can adduce in proceedings relating to the contract:
- “(m) a term that imposes, or has the effect of imposing, the evidential burden on one party in proceedings relating to the contract.” 25

Offences (consequential)

- 27 New section 47F substituted**
Section 47F is repealed and the following section substituted: 30
- “47F Offence to resist, obstruct, or delay**
- “(1) Every person commits an offence who resists, obstructs, or delays—**
- “(a) any product safety officer exercising a power under **section 33C or 33D**; or** 35
- “(b) any authorised person acting pursuant to a warrant issued under section 47; or**

“(c) any authorised employee exercising a power under **section 47L**.

“(2) A person who commits an offence against this section is liable on 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.” 5

27A Commission may require person to supply information or documents

(1) The heading to section 47G is amended by adding “or give evidence”. 10

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

“(c) to appear before the Commission at a time and place specified in the notice to give evidence, either orally or in writing, and supply any document or class of documents specified in the notice.” 15

(3) Section 47G is amended by adding the following subsections:

“(3) No person is excused from complying with a requirement to supply information or documents, or to appear before the Commission, on the ground that to do so might tend to incriminate the person.” 20

“(4) A statement made by a person in answer to a question put by or before the Commission is not admissible against the person in criminal proceedings other than proceedings for a charge of perjury against the maker of the statement in proceedings on a charge of an offence against **section 47F**.” 25

“(5) **Subsections (3) and (4)** prevail over subsection (2).”

Authorised employees

28 New sections 47K and 47L inserted

The following sections are inserted after section 47J: 30

“47K Commission may authorise employees for monitoring and enforcement purposes

“(1) The Commission may authorise any employee (an **authorised employee**) to monitor and enforce compliance with any or all of the following: 35

- “(a) consumer information standards:
“(b) product safety standards:
“(c) unsafe goods notices:
“(d) suspension of supply notices:
“(e) services safety standards. 5
- “(2) Every employee so authorised must be issued with a certificate as evidence of the person’s appointment.
- “(3) The certificate must be in a form determined by the Commission and contain— 10
- “(a) a reference to this section; and
“(b) the full name of the authorised employee; and
“(c) a reference to the powers conferred on the authorised employee under **section 47L**; and
“(d) a statement of the powers (if any) of the authorised employee under the Search and Surveillance Act 2012. 15
- “(4) ~~Every authorised employee must produce the certificate when entering any place for the purpose of exercising his or her powers, and at any subsequent time if required to do so by the owner or occupier of the place or by that person’s representative, agent, or employee.~~ 20
- “**47L Powers of authorised employees**
- “(1) ~~An authorised employee may, at any reasonable time, do any of the things specified in **subsection (2)**, but only for the purpose of monitoring or enforcing compliance with any consumer information standards, product safety standards, unsafe goods notices, suspension of supply notices, or services safety standards that apply to goods or services (**relevant goods or services**) supplied at, or dispatched from, the place.~~ 25
- “(1) In this section,—
- “place means any place that an authorised employee believes on reasonable grounds is a place at which consumers have access to relevant goods or services, or from which relevant goods are dispatched to consumers 30
- “relevant goods or services means goods or services to which any consumer information standards, product safety standards, unsafe goods notices, suspension of supply notices, or services safety standards apply. 35

- “(1A) An authorised employee may enter and inspect a place (not being a dwellinghouse), without a warrant, for the purpose of monitoring or enforcing compliance with any consumer information standards, product safety standards, unsafe goods notices, suspension of supply notices, or services safety standards that apply to any relevant goods. 5
- “(2) An authorised employee may While at the place, an authorised employee may, for the purpose described in **subsection (1A)**, do any of the following:
- “(a) enter any place in which the authorised employee believes on reasonable grounds that— 10
- “(i) consumers have access to relevant goods or services for supply; or
- “(ii) relevant goods or services are dispatched for supply.” 15
- “(b) remain at the place and, with respect to any goods at the place that are available to consumers for supply or that are dispatched for supply, inspect the goods, photograph them, and purchase them at the price for which they are currently offered for sale: 20
- “(c) require the person at the place who appears to be in charge of the supply or dispatch of relevant goods or services at the time (the **person in charge**) to give his or her name and show to the authorised employee identification sufficient to confirm that the name given is correct: 25
- “(d) require the person in charge to give the authorised employee any information about the goods or services that is normally disclosed to a consumer to whom the goods or services are supplied or dispatched: 30
- “(da) require the person in charge to identify the person from whom relevant goods were acquired:
- “(db) if relevant goods have, within a specified period, been supplied in trade to another person other than by retail, require the person in charge to identify the person or persons from whom they have been supplied during that period: 35

- “(dc) require any person by whom any relevant goods have been carried for delivery pursuant to, or in connection with, a contract for sale, to give—
- “(i) his or her name and address; and
- “(ii) the name and address of his or her employer (if any); and 5
- “(iii) the name and address of the owner of the goods, if known:
- “(e) issue an infringement notice, on behalf of the Commission, under **section 40D**. 10
- “(3) An authorised employee may not enter a dwellinghouse for the purpose of exercising any powers conferred by this section except—
- “(a) with the permission of the occupier of the dwellinghouse; or 15
- “(b) pursuant to a warrant issued under section 47.
- “(3) If an authorised employee enters a dwellinghouse with the permission of the occupier or under a warrant issued under **subsection (4)**, the authorised employee may, for the purpose described in **subsection (1A)**, exercise the powers listed in **subsection (2)**. 20
- “(4) An issuing officer (within the meaning of section 3 of the Search and Surveillance Act 2012) may, by warrant, authorise an authorised employee to enter and inspect a dwellinghouse or any other place specified in the warrant if the issuing officer is satisfied, on application made in accordance with **subsection (5)**, that there are reasonable grounds to believe that a search of the place is necessary for the purpose described in **subsection (1A)**. 25
- “(5) The application for a warrant must be made in writing in the manner provided for an application for a search warrant in subpart 3 of Part 4 of the Search and Surveillance Act 2012. 30
- “(6) Part 4 of the Search and Surveillance Act 2012 (except sections 118 and 119) applies.”

Consequential amendments, repeals, and savings

29 Saving of other laws

Section 50 is amended by adding the following subsection:

- “(3) However, subsection (1) does not apply in relation to any provision in **Part 4A** that limits or affects the operation of the Sale of Goods Act 1908 or the Contractual Remedies Act 1979.” 5

30 Consequential repeals and amendments in Schedule 1

- (1) The following Acts are repealed:

- (a) Door to Door Sales Act 1967 (1967 No 126): 10
 (b) Unsolicited Goods and Services Act 1975 (1975 No 46).

- (2) The enactments specified in **Schedule 1** are consequentially amended as set out in that schedule.

31 Repeal and savings relating to Layby Sales Act 1971

- (1) The Layby Sales Act 1971 (1971 No 80) is repealed. 15
 (2) Despite **subsection (1)**, the Layby Sales Act 1971 continues to apply in relation to a layby sale entered into before the commencement of this section.
 (3) In **subsection (2)**, **layby sale** has the meaning given to it by section 3 of the Layby Sales Act 1971. 20

Subpart 2—Consumer Guarantees Act 1993

32 Principal Act amended

This **subpart** amends the Consumer Guarantees Act 1993.

Purpose

- 33 Long Title repealed** 25
 The Long Title is repealed.

34 New section 1A inserted

The following section is inserted after section 1:

“**1A Purpose**

- “(1) The purpose of this Act is to contribute to a trading environment in which— 30

- “(a) ~~trading is fair~~ the interests of consumers are protected;
and
- “(b) ~~there is effective competition~~ businesses compete effectively; and
- “(c) consumers and businesses participate confidently. 5
- “(2) To this end, the Act provides that consumers have—
- “(a) certain guarantees when acquiring goods or services from a supplier, including—
- “(i) that the goods are reasonably safe and fit for purpose and are otherwise of an acceptable quality; 10
and
- “(ii) that the services are carried out with reasonable care and skill; and
- “(b) certain rights of redress against suppliers and manufacturers if goods or services fail to comply with a guarantee.” 15

Gas and electricity, and auctioneers

35 Interpretation

- (1) Paragraph (b) of the definition of **goods** in section 2(1) is amended by repealing subparagraph (v) and substituting the following subparagraph: 20
- “(v) non-reticulated gas:”.
- (1A) Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order:
- “**line function services** has,— 25
- “(a) in relation to gas, the meaning set out in section 2(1) of the Gas Act 1992; and
- “(b) in relation to electricity, the meaning set out in section 2(1) of the Electricity Act 1992”.
- (2) ~~Paragraph (b)(vi) of the definition of **services** in section 2(1) is amended by omitting “electricity, gas, telecommunications,” and substituting “telecommunications”.~~ 30
- (2) Paragraph (b) of the definition of **services** in section 2(1) is amended by repealing subparagraph (vi) and substituting the following subparagraphs: 35

- “(vi) a contract for, or in relation to, the supply of telecommunications or water, or the removal of waste water:
- “(vii) a contract relating to (but not for) the supply of gas or electricity, other than line function services; but”. 5
- (3) Paragraph (b) of the definition of **supplier** in section 2(1) is amended by repealing subparagraph (iv) and substituting the following subparagraph:
- “(iv) a person (other than an auctioneer) who, in trade, is acting as an agent for another, whether or not that other is supplying in trade”. 10
- (4) Paragraph (c) of the definition of **supplier** in section 2(1) is repealed.
- (5) Section 2 is amended by adding the following subsection: 15
- “(3) However, despite subsection (2), a guarantee under section 6 applies to the goods delivered to the consumer on and from the time at which the consumer receives the goods.”

Delivery of goods

- 35A New section 5A inserted** 20
- The following section is inserted after section 5:
- “5A Guarantee as to delivery**
- “(1) Where a supplier is responsible for delivering, or for arranging the delivery of, goods to a consumer there is a guarantee that the goods will be received by the consumer either— 25
- “(a) at a time, or within a period, agreed between the supplier and the consumer; or
- “(b) if no delivery time has been agreed, within a reasonable time.
- “(2) Part 2 (as modified by this section) gives the consumer a right of redress against the supplier where the delivery of the goods fails to comply with the guarantee under this section. 30
- “(3) Where a consumer has a right of redress, the consumer may,—
- “(a) if, and only if, the failure is of a substantial character, reject the goods under section 18(3); and 35
- “(b) in all cases, obtain damages under section 18(4) (other than damages relating to the remedies set out in sec-

tion 18(2)), whether or not the consumer also rejects the goods.

“(4) For the purposes of section 20(1)(b), an agent of the supplier includes a carrier of the goods referred to in this section.

“(5) Except as provided for in **subsection (3)**, a consumer has no rights of redress under Part 2 in relation to the guarantee under this section.” 5

35B Meaning of acceptable quality

Section 7 is amended by inserting the following paragraph after paragraph (h): 10

“(ha) the nature of the supplier and the context in which the supplier supplies the goods:”.

Gas and electricity

36 New sections 7A and 7B inserted

The following sections are inserted after section 7: 15

“7A Guarantee of acceptable quality in supply of gas and electricity

“(1) There is a guarantee that the supply of gas by a gas retailer, and the supply of electricity by an electricity retailer, to a consumer is of an acceptable quality. 20

“(2) The guarantee of acceptable quality is a guarantee that—
“(a) the supply of gas or electricity is as safe as a reasonable consumer would expect it to be; and
“(b) the supply of gas or electricity to a place is as reliable as a reasonable consumer would expect a supply to that place to be; and 25

“(c) the quality of the gas or electricity supplied is such that it can be consistently used for the things that a reasonable consumer would expect to use gas or electricity for.
“(3) When determining what a reasonable consumer would expect, it is assumed that the consumer has considered— 30

“(a) that the supply of gas or electricity may be affected by emergencies, or other events or circumstances, outside the control of the retailer or any other person involved in the supply of gas or electricity; and 35

- “(b) that the supply of gas or electricity may be interrupted for safety, maintenance, or other technical reasons; and
- “(c) that the quality of gas or electricity supplied may fluctuate, but that fluctuations are acceptable only within tolerances permitted by gas and electricity safety regulations; and 5
- “(d) that the reliability and quality of the supply of gas or electricity may vary depending on the location of the place to which the gas or electricity is supplied; and
- “(e) that reliability and quality of supply may be related to price. 10
- “(4) The supply of gas or electricity will not fail to comply with the guarantee of acceptable quality—
- “(a) if the gas or electricity has been used by the consumer in an unreasonable manner or to an unreasonable extent, and the supply of gas or electricity would have complied with the guarantee of acceptable quality if it had not been used in that manner or to that extent; or 15
- “(b) if, in a case where the quality and reliability of supply by a gas or electricity retailer to a particular consumer is likely to be significantly worse than the quality and reliability of supply that generally applies to gas or electricity supplied by the retailer,— 20
- “(i) the retailer or the person supplying line function services has specifically explained to the consumer the ways in which the supply is likely to be significantly worse; and 25
- “(ii) the consumer has accepted the supply on that basis, even if an otherwise reasonable consumer may not regard that supply as acceptable. 30
- “(5) In this section and **section 7B**,—
- “**electricity retailer** means a retailer as defined in the Electricity Industry Act 2010
- “**gas retailer** means a gas retailer as defined in the Gas Act 1992. 35
- ~~“**line function services**, in relation to gas, has the meaning set out in section 2(1) of the Gas Act 1992, and in relation to electricity has the meaning set out in section 2(1) of the Electricity Act 1992.~~

“7B Relationship of section 7A with rest of Act

- “(1) For the purposes of this Act, except as described in this section, gas (other than non-reticulated gas) and electricity are not to be treated as being goods, and the supply of gas or electricity by retailers is not to be treated as the supply of a service. 5
- “(2) If the supply of gas or electricity fails to comply with the guarantee of acceptable quality in **section 7A**, in order that Part 2 may apply to give consumers a right of redress against gas retailers and electricity retailers, that Part must be applied as if gas and electricity were goods, and as if gas retailers and electricity retailers were the suppliers of those goods. 10
- “(3) For the purpose of applying the provisions of Part 5 to the supply of gas and electricity to consumers, that Part must be applied as if gas and electricity were goods, and as if gas retailers and electricity retailers were the suppliers of those goods. 15
- “(4) To avoid doubt, the guarantee provided by **section 7A** is the only guarantee provided under this Act that relates to the supply of gas or electricity by gas retailers and electricity retailers.”

Collateral credit agreements 20**37 New section 23A inserted**

The following section is inserted after section 23:

“23A Rejection of goods Goods subject to collateral credit agreement

- “(1) This section applies if— 25
- “(a) a consumer acquires goods under a contract for the supply of goods; and
- “(b) the contract is associated with a collateral credit agreement; and
- “(c) the supplier is a party to the contract; and 30
- “(d) the consumer exercises the right to reject the goods under this Act.
- “(2) A court or a Disputes Tribunal may order that all or any of the rights and obligations of the consumer under the collateral credit agreement vest in the supplier. 35
- “(3) In this section,—

“**collateral credit agreement**, in relation to a contract for the supply of goods, means a contract or an agreement that—

“(a) is arranged or procured by the supplier of the goods; and

“(b) is for the provision of credit by a person other than the supplier to enable the consumer to pay, or defer payment, for the goods 5

“**supplier** does not include a creditor within the meaning of the Credit Contracts and Consumer Finance Act 2003 who has lent money ~~on the security of goods supplied~~ to a consumer,

if the whole or part of the price of the goods is to be paid out of the proceeds of the loan and if the loan was arranged by a person who, in trade, supplied the goods.” 10

37A New section 39A inserted

The following section is inserted after section 39:

“39A Services subject to collateral credit agreement

“(1) This section applies if—

“(a) a consumer acquires services under a contract for the supply of services; and

“(b) the contract is associated with a collateral credit agreement; and

“(c) the supplier is a party to the contract; and

“(d) the consumer exercises the right to cancel the contract for the supply of the services under this Act.

“(2) A court or a Disputes Tribunal may order that all or any of the rights and obligations of the consumer under the collateral credit agreement vest in the supplier.

“(3) In this section,—

“**collateral credit agreement**, in relation to a contract for the supply of services, means a contract or an agreement that—

“(a) is arranged or procured by the supplier of the services; and

“(b) is for the provision of credit by a person other than the supplier to enable the consumer to pay, or defer payment, for the services

“**supplier** does not include a creditor within the meaning of the Credit Contracts and Consumer Finance Act 2003 who has lent money to a consumer, if the whole or part of the price of

the services is to be paid out of the proceeds of the loan and if the loan was arranged by a person who, in trade, supplied the services.

“(4) This section does not limit section 39.”

Carriage of goods

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38 Saving

Section 40 is amended by adding the following subsection as subsection (2):

“(2) However, despite subsection (1)(c), if a conflict arises between this Part and the Carriage of Goods Act 1979, this Part prevails.”

10

Auctioneers

39 Exceptions

Section 41 is amended by repealing subsection (3).

40 New section 41A inserted

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The following section is inserted after section 41:

“41A Goods sold at auction

In relation to goods sold at auction (as defined in **section 65** of the **Consumer Law Reform Act 2014**), the guarantees in Part 1 apply to such goods if they are sold by persons selling in trade as a supplier, except that the guarantee of acceptable quality provided by section 6 does not apply to such goods if they are—

20

“(a) secondhand goods (including those sold by secondhand dealers (as defined in the Secondhand Dealers and Pawnbrokers Act 2004) at such auctions); or

25

“(b) used motor vehicles sold at auction by a car auctioneer (as defined in the Motor Vehicle Sales Act 2003).”

Contracting out for business transactions

40A No contracting out except for business transactions

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Section 43 is amended by repealing subsection (2) and substituting the following subsections:

- “(2) However, despite subsection (1), parties to an agreement may include a provision in their agreement to the effect that the provisions of this Act will not apply to that agreement, provided that—
- “(a) the agreement is in writing; and 5
 - “(b) the goods or services are both supplied and acquired in trade; and
 - “(c) all parties to the agreement—
 - “(i) are in trade; and
 - “(ii) agree to contract out of the provisions of this Act; and 10
 - “(d) it is fair and reasonable that the parties are bound by the provision in the agreement.
- “(2A) If, in any case, a court is required to decide what is fair and reasonable for the purposes of **subsection (2)(d)**, the court must take account of all the circumstances of the agreement, including—
- “(a) the subject matter of the agreement; and
 - “(b) the value of the goods or services; and
 - “(c) the respective bargaining power of the parties, including— 20
 - “(i) the extent to which a party was able to negotiate the terms of the agreement; and
 - “(ii) whether a party was required to either accept or reject the agreement on the terms and conditions presented by the other party; and 25
 - “(d) whether all or any of the parties received advice from, or were represented by, a lawyer, either at the time of the negotiations leading to the agreement or at any other relevant time.” 30

Gas and electricity

41 New section 46A inserted

The following section is inserted after section 46:

“46A Indemnification of gas and electricity retailers

- “(1) This section applies if— 35

- “(a) there has been a failure of the acceptable quality guarantee in **section 7A** in the supply of gas or electricity to a consumer by a retailer, as determined—
- “(i) by the retailer; or
 - “(ii) if the retailer does not make a determination or if the retailer’s determination is challenged, by the dispute resolution scheme following a complaint made under section 43EA of the Gas Act 1992 or under section 95 of the Electricity Industry Act 2010 (as the case requires); or
 - “(iii) by a court or a Disputes Tribunal (if a court or a Disputes Tribunal makes a determination on the issue); and
- “(b) the failure of acceptable quality was wholly or partly the result of an event, circumstance, or condition associated with—
- “(i) a gas pipeline or other equipment that was, at the time of the failure, the responsibility of a person then supplying line function services (~~as defined in the Gas Act 1992~~) (a **responsible party**); or
 - “(ii) electricity lines or other equipment that was, at the time of the failure, the responsibility of a person (including Transpower (as defined in the Electricity Industry Act 2010)) then supplying line function services (~~as defined in the Electricity Act 1992~~) or of Transpower (~~as defined in the Electricity Industry Act 2010~~) (a **responsible party**); and
- “(c) the failure was not a result of a person involved in the supply complying with a rule or order with which it was legally obliged to comply; and
- “(ca) the failure was not a result of action taken by Transpower in its capacity as system operator under the Electricity Industry Act 2010; and
- “(d) the consumer obtains a remedy under Part 2 in relation to the failure against the gas or electricity retailer; and
- “(e) that remedy is a cost to the retailer (a **remedy cost**).

- “(2) If this section applies, a retailer that has incurred remedy costs is entitled to be indemnified for those costs by the responsible party or responsible parties.
- “(3) The amount of a responsible party’s liability under the indemnity is limited to the proportion of the remedy costs that is attributable to the events, circumstances, or conditions associated with the gas pipelines, electricity lines, or other equipment that the responsible party was responsible for at the time of the failure. 5
- “(4) However,— 10
- “(a) if a responsible party pays compensation to a consumer (**payment A**) in respect of a service provided directly by the responsible party to the consumer; and
- “(b) if the retailer incurs remedy costs in relation to that consumer for a failure of acceptable quality that arose from the same event ~~or~~ circumstance, or condition that led to the payment of payment A; then 15
- “(c) the amount that the retailer would otherwise recover from the responsible party in respect of that consumer must be reduced by the amount of payment A. 20
- “(5) Disputes between gas or electricity retailers and responsible parties relating to the allocation of liability under the indemnity may be dealt with by the dispute resolution scheme referred to,—
- “(a) in the case of gas, in section 43E of the Gas Act 1992; 25
- and
- “(b) in the case of electricity, in section 95 of the Electricity Industry Act 2010.”

Collateral credit contracts
(consequential) Jurisdiction

30

42 Jurisdiction

- (1) Section 47(1) is amended by inserting “established under section 4 of the Disputes Tribunals Act 1988 and” after “Disputes Tribunal”.
- (2) Section 47 is amended by omitting “section 39” in each place where it appears and substituting in each case “**section 23A** or 39”.

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Gas and electricity

- 43 Consequential amendments in Schedule 2**
The enactments specified in **Schedule 2** are consequentially amended as set out in that schedule.
- Subpart 3—Weights and Measures Act 1987 5
- 44 Principal Act amended**
This **subpart** amends the Weights and Measures Act 1987.
- 45 Long Title repealed**
The Long Title is repealed.
- 46 New section 1A inserted** 10
The following section is inserted after section 1:
- “1A Purpose**
- “(1) The purpose of this Act is to contribute to a trading environment in which—
- “(a) ~~trading is fair~~ the interests of consumers are protected; 15
and
- “(b) ~~there is effective competition~~ businesses compete effectively; and
- “(c) consumers and businesses participate confidently.
- “(2) To this end, the Act— 20
- “(a) establishes a system of weights and measures to be used ~~in~~ for trade; and
- “(b) regulates the use of weights and measures ~~in~~ for trade.”
- 47 Interpretation**
- (1) The definition of **district standards** in section 2 is repealed. 25
- (1A) The definition of **infringement fee** in section 2 is repealed and the following definition substituted:
- “**infringement fee** means the amount prescribed by regulations made under **section 41B** as the amount payable in respect of an infringement offence for which an infringement notice has been issued”. 30
- (2) Paragraph (a) of the definition of **infringement offence** in section 2 is amended by omitting “sections 10, 14, 15, 16, 16A,

17, 21, and 24” and substituting “sections 8, 10, 14, **15, 15A,**
16, 16A, 17, 18, 21, **22B,** and 24”.

(a) inserting “**15A,**” after “15,”; and

(b) inserting “**22B,**” after “21,”.

- (3) Section 2 is amended by inserting the following definition in 5
its definitions in their appropriate alphabetical order:

“**infringement notice** means a notice, in the form prescribed
by regulations made under **section 41B** and issued under sec-
tion 32A(1)(b), in respect of an infringement offence

“**reference standards** means the standards of weights and 10
measures maintained under **section 6**”.

48 New section 6 substituted

Section 6 is repealed and the following section substituted:

“6 Reference standards

- “(1) The Secretary must nominate 1 or more Inspectors, and may 15
nominate 1 or more accredited persons, to maintain, as refer-
ence standards for the purposes of this Act,—

“(a) copies of the departmental standards; or

“(b) standards that are of the same or greater accuracy as the 20
departmental standards.

- “(2) Reference standards must be verified from time to time, at
intervals not exceeding 5 years, by reference to—

“(a) the departmental standards; or

“(b) the standards referred to in section 5(3)(a) or (b).

- “(3) Unless it is impracticable to do so, a reference standard must 25
be marked with all of the following:

“(a) a Crown and the letters NZ:

“(b) figures indicating the unit of the weight or measure and
the numerical value of that unit:

“(c) any other symbols, letters, or figures prescribed by regu- 30
lations made under **section 41(ab)**.

- “(4) The marks must, where practicable, appear on the reference
standard,—

“(a) in the case of the marks described in **subsection (3)(a)**, 35
in close proximity to each other; and

“(b) in the case of the marks described in **subsection (3)(c)**, in the form and manner (if any) prescribed by regulations made under **section 41(ac)**.”

49 Inspectors’ working standards

- (1) Section 7(1) to (2A) are amended by omitting “district standards” and substituting in each case “reference standards” 5
- (2) Section 7 is amended by repealing subsection (3) and substituting the following subsection:
- “(3) Unless it is impracticable to do so, an Inspectors’ working standard must be marked with all of the following: 10
- “(a) a Crown and either—
- “(i) the letters NZ; or
- “(ii) the letters SW (signifying standard weight) in the case of a weight or SM (signifying standard measure) in the case of a measure: 15
- “(b) figures indicating the unit of the weight or measure and the numerical value of that unit:
- “(c) any other symbols, letters, or figures prescribed by regulations made under **section 41(ab)**.
- “(4) The marks must, where practicable, appear on the Inspectors’ working standard,— 20
- “(a) in the case of the marks described in **subsection (3)(a)**, in close proximity to each other; and
- “(b) in the case of the marks described in **subsection (3)(c)**, in the form and manner (if any) prescribed by regulations made under **section 41(ac)**.” 25

50 Accredited persons’ working standards

Section 7A(2)(b) and (3)(b) are amended by omitting “district standards” and substituting in each case “reference standards”.

51 New section 13 substituted

Section 13 is repealed and the following section substituted:

“13 Obligation in respect of invoice or delivery note

- “(1) This section applies to a person who delivers to a purchaser at a place other than the premises of the seller any goods sold by weight or measure other than goods that are— 35

- “(a) weighed or measured at the premises of the purchaser in the purchaser’s presence; or
- “(b) enclosed in a package that is marked or labelled with a statement of the net weight or measure of the goods; or
- “(c) exempted from the provisions of this section by regulations made under section 41(x). 5
- “(2) The person must, as soon as practicable, deliver or send to the purchaser an invoice or delivery note that shows, in the form and manner (if any) prescribed by regulations made under **section 41(xaa)**,— 10
- “(a) the true net weight or measure of those goods; and
- “(b) the address, telephone numbers, and email address (if any) of the seller.”
- 52 New sections 15 and 15A substituted** 15
- Section 15 is repealed and the following sections are substituted:
- “15 Counting of goods sold by retail**
- “(1) This section applies if a person offers or exposes goods for retail sale by number.
- “(2) If the goods are not prepackaged when offered or exposed for sale, the person must ensure that the goods are counted— 20
- “(a) before or at the time of sale; and
- “(b) by or in the presence of the purchaser.
- “(3) If the goods are prepackaged and counted at the premises or place where they are offered or exposed for sale before they are offered or exposed for sale, the person must, at the request of the purchaser, count the goods in the presence of the purchaser. 25
- “(4) A person who contravenes this section commits an offence.
- “15A Weighing and measuring of goods sold by retail**
- “(1) This section applies if a person offers or exposes goods for retail sale by weight or measure. 30
- “(2) If the goods are not prepackaged when offered or exposed for sale, the person must ensure that the goods are weighed or measured, by or in the presence of the purchaser, in accordance with **subsection (4)**. 35

- “(3) If the goods are prepackaged and weighed or measured at the premises or place where they are offered or exposed for sale before they are offered or exposed for sale, the person must, at the request of the purchaser, weigh or measure the goods in the presence of the purchaser in accordance with **subsection (4)**. 5
- “(4) For the purposes of **subsections (2) and (3)**, the goods must be weighed or measured—
- “(a) before or at the time of sale; and
- “(b) using a weighing or measuring instrument that is situated where the purchaser can easily see that instrument, any necessary weights or measures, and the recorded or indicated weight or measurement of the goods. 10
- “(5) A person who contravenes this section commits an offence.”
- 53 New section 22B inserted** 15
- The following section is inserted after section 22A:
- “22B Certificate of accuracy required for certain weighing or measuring instruments**
- “(1) A person who uses for trade, or has in that person’s possession for use ~~in~~ for trade, a specified weighing or measuring instrument must have a current certificate of accuracy for that instrument. 20
- “(2) A person who contravenes **subsection (1)** commits an offence.
- “(3) In this section, **specified weighing or measuring instrument** means an instrument specified in regulations made under ~~section 41~~ **section 41(ba)** as a weighing or measuring instrument to which this section applies.” 25
- 53A Infringement offences**
- (1) Section 32A is amended by inserting the following subsection after subsection (1): 30
- “(1A) Despite section 21(1)(a) of the Summary Proceedings Act 1957, leave of a District Court Judge or Registrar to lay an information is not necessary if the Secretary proceeds with an infringement offence summarily.” 35
- (2) Section 32A is amended by adding the following subsections:

“(4) The Secretary may revoke an infringement notice before the infringement fee is paid, or before an order for payment of a fine is made or deemed to be made by a court under section 21 of the Summary Proceedings Act 1957.

“(5) An infringement notice is revoked by giving written notice to the person to whom it was issued that the notice is revoked.” 5

53B Form and content of infringement notice

(1) The heading to section 32B is omitted and the following heading substituted: “**Procedural requirements relating to infringement notices**”. 10

(2) Section 32B is amended by adding the following subsections:

“(3) If an infringement notice has been issued, proceedings in respect of the infringement offence to which the notice relates may be commenced in accordance with section 21 of the Summary Proceedings Act 1957; and in that case, section 21 of the Summary Proceedings Act 1957 applies, with all necessary modifications. 15

“(4) Reminder notices must be prescribed by regulations made under **section 41B** and must contain the information referred to in subsection (1).” 20

53C New section 32BA inserted

The following section is inserted after section 32B:

“32BA Effect of infringement notice

If an infringement notice is issued, a criminal record must not be created in respect of the infringement offence.” 25

53D New section 33 substituted

Section 33 is repealed and the following section substituted:

“33 Penalties

“(1) Every person who commits an infringement offence is, on being found guilty of, or on pleading guilty to, the offence, liable to a fine not exceeding \$10,000. 30

“(2) Every person who commits an offence against section 32(a) is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$10,000.

- “(3) Every person who commits any other offence against this Act is liable on summary conviction,—
- “(a) in the case of an individual, to a fine not exceeding \$10,000 and, in the case of a continuing offence, to a further fine not exceeding \$100 for every day or part of a day on which the offence has continued; and 5
- “(b) in the case of a body corporate, to a fine not exceeding \$30,000 and, in the case of a continuing offence, to a further fine not exceeding \$250 for every day or part of a day on which the offence has continued.” 10

54 Infringement fee

- (1) Section 33A(a) is amended by omitting “section 16, section 16A, section 17, or section 24” and substituting “section 16, 16A, 17, **22B**, or 24”.
- (2) Section 33A(b) is amended by omitting “section 10, section 14, section 15, section 21” and substituting “section 10, 15, 15, **15A**, or 21”.

54 Section 33A repealed

Section 33A is repealed.

55 Regulations

- (1) Section 41 is amended by inserting the following paragraphs after paragraph (a):
- “(ab) prescribing symbols, letters, or figures that must be impressed on a reference standard or an Inspectors’ working standard: 25
- “(ac) prescribing the form and manner in which marks must appear on a reference standard or an Inspectors’ working standard.”.
- (2) Section 41 is amended by inserting the following paragraph after paragraph (b): 30
- “(ba) specifying the weighing or measuring instruments, or classes of weighing or measuring instruments, that are specified weighing or measuring instruments for the purposes of **section 22B**.”.

- (3) Section 41 is amended by inserting the following paragraph after paragraph (x):
 “(xaa) prescribing the form and manner in which information must appear on an invoice or delivery note for the purposes of **section 13(2)**.” 5
- (4) Section 41(y) is amended by omitting “(including infringement notices)”.

55A New section 41B inserted

The following section is inserted after section 41A:

- “41B Regulations relating to infringement fees** 10
The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for the following purposes:
- “(a) prescribing the form of infringement notices and reminder notices: 15
- “(b) prescribing any particulars that must be included in those notices:
- “(c) prescribing the amount of an infringement fee, which must not exceed \$2,000, payable in respect of an infringement offence for which an infringement notice has been issued.” 20

Subpart 4—Secondhand Dealers and
 Pawnbrokers Act 2004

- 56 Principal Act amended**
 This **subpart** amends the Secondhand Dealers and Pawnbrokers Act 2004. 25
- 57 Interpretation**
 Paragraph (a) of the definition of **secondhand dealer** in section 4 is repealed and the following paragraph substituted:
 “(a) who buys (other than for personal use or enjoyment or as a gift), sells, exchanges, or otherwise deals in secondhand articles or scrap metal; and” 30

58 Secondhand dealers engaged in business to be licensed

Section 6 is amended by repealing subsection (3) and substituting the following subsection:

- “(3) For the purposes of this Act, a person is presumed (in the absence of evidence to the contrary) to be engaged in business as a secondhand dealer if the person—
- “(a) on 6 or more different days within a 12-month period—
- “(i) buys secondhand articles or scrap metal for purposes other than personal use or enjoyment or as a gift; or
- “(ii) sells or exchanges secondhand articles or scrap metal that was acquired by the person for purposes other than personal use or enjoyment or as a gift; or
- “(b) within a 12-month period, obtains revenue of more than \$2,000 from the sale of secondhand articles or scrap metal that was acquired by the person for purposes other than personal use or enjoyment or as a gift.”

Subpart 5—Carriage of Goods Act 1979**59 Principal Act amended**

This **subpart** amends the Carriage of Goods Act 1979.

60 Other remedies affected

Section 6 is amended by adding the following subsection as subsection (2):

- “(2) However, nothing in subsection (1) limits—
- “(a) the liability of a carrier under the Consumer Guarantees Act 1993; or
- “(b) the remedies available to a consumer under Part 4 of that Act.”

61 Contracting out

Section 7 is amended by adding the following subsections as subsections (2) to (4):

- “(2) However, except as provided in section 43 of the Consumer Guarantees Act 1993, nothing in subsection (1) entitles the parties to make terms that limit (whether expressly or im-

pliedly, or directly or indirectly) the rights of a consumer under Part 4 of that Act.

“(3) To avoid doubt,—

“(a) **subsection (2)** applies whether the consumer is—

“(i) a party to the contract (whether as the consignor, the consignee, or both); or

“(ii) the intended recipient of the consignment (the consignee), but not a party to the contract; and

“(b) a term of a contract that is entered into in breach of **subsection (2)** is unenforceable.

“(4) However, a written term of a contract, for a kind of contract of carriage referred to in **section 8A**, between a supplier and a consumer is, for the purposes of section 43(6) of the Consumer Guarantees Act 1993, deemed to be a term that—

“(a) imposes a stricter duty on the supplier than that imposed by that Act; and

“(b) provides a remedy more advantageous to the consumer than the remedies provided by that Act.”

62 New section 8A inserted

The following section is inserted after section 8:

“8A Carrier must offer contract for carriage at limited carrier’s risk or declared value risk

“(1) A carrier must, in relation to every contract for carriage, offer to enter into a contract for—

“(a) carriage at limited carrier’s risk (if the value of the goods to be carried is not more than \$2,000); or

“(b) carriage at declared value risk (if the value of the goods to be carried exceeds \$2,000 and the value to be declared in the contract is the value of the goods).

“(2) An offer referred to in **subsection (1)** must be presented by the carrier in a way that ensures, as far as is reasonably possible, that the main features (including the costs) of the contract are easy to identify and would be likely to be understood by a person being presented with the offer for the first time.”

- 63 Limitation of amount of carrier’s liability**
Section 15(1) is amended by omitting “\$1,500” and substituting “\$2,000”.

Part 2 Auctioneers

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- 64 Purpose of Part**
This Part provides for the registration of auctioneers and for related matters, and repeals the Auctioneers Act 1928.

65 Interpretation

- (1) In **this Part**, unless the context otherwise requires,— 10

auction means a process in which property of any kind (including goods, services, and interests in land) is offered for sale by an auctioneer on behalf of a vendor, and—

- (a) bids for the property are placed with the auctioneer in real time, whether in person, by telephone, via the Internet, or by any other means; and 15

(b) the property is sold when the auctioneer so indicates
chief executive means the chief executive of the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act 20

person concerned in the management of a company means—

- (a) a director of the company, as that term is defined in section 126 of the Companies Act 1993:

(b) the chief executive of the company, or any person occupying the equivalent position 25

register means the register of auctioneers maintained by the Registrar under **section 81**

registered auctioneer means an individual or a company that is registered under **this Part** as an auctioneer 30

Registrar means the Registrar of Auctioneers appointed under **section 79**

vendor, in relation to an auction, means the person whose property is offered for sale by an auctioneer.

- (2) To avoid doubt, a process of selling property is not necessarily an auction for the purpose of **this Part** just because it is described as an auction. For example, a process described as an Internet auction, but that provides that any contract of sale resulting from the process is a contract directly between the winner of the bidding and the seller of the property, is not an auction for the purpose of **this Part**.

Registration requirements

- 66 Registration of person carrying on business as auctioneer** 10
- (1) A person must not carry on business as an auctioneer unless the person is registered under **this Part** as a registered auctioneer.
- (2) **Subsection (1)** is subject to the exceptions provided in—
- (a) **section 48** of the Real Estate Agents Act 2008; and
 - (b) **section 141** of the Motor Vehicle Sales Act 2003; and
 - (c) any other enactment. 15
- (3) A person **carries on business as an auctioneer** if the person, in trade, charges a fee or commission for, or requires the payment of any part of the proceeds of, a sale by auction, other than as an employee or agent of a registered auctioneer.
- 67 Disqualification from registration** 20
- (1) A person who is an individual is disqualified from registration if he or she is—
- (a) under 18 years of age; or
 - (b) an undischarged bankrupt; or
 - (c) a person whose registration under **this Part** has been cancelled within the preceding 5 years; or 25
 - (d) prohibited from being a director of, or being concerned or taking part in the management of, an incorporated or unincorporated body under any enactment or order made under any enactment; or 30
 - (e) a person who has been convicted of a crime involving dishonesty within the preceding 5 years; or
 - (f) a person who has been convicted of an offence under **this Part** or section 40 of the Fair Trading Act 1986 within the preceding 5 years; or 35

- (f) a person who has been convicted, within the preceding 5 years, of—
- (i) an offence against section 40 of the Fair Trading Act 1986 for contravention of any provision of Part 1 or **subpart 4 of Part 4A** of that Act; or 5
- (ii) an offence against **section 84 of this Act**; or
- (g) subject to an order suspending or cancelling a licence under section 110 of the Real Estate Agents Act 2008; or
- (h) banned, or subject to a banning order, under section 68 10
or 69 of the Motor Vehicle Sales Act 2003; or
- (i) subject to a property order made under section 30 or 31
of the Protection of Personal and Property Rights Act
1988.
- (2) A company is disqualified from registration if— 15
- (a) ~~a director or any other~~ person concerned in the manage-
ment of the company is disqualified from registration
under **subsection (1)**; or
- (b) the company's registration under **this Part** has been
cancelled within the preceding 5 years; or 20
- (c) ~~the company has been convicted of an offence under
this Part or section 40 of the Fair Trading Act 1986
within the preceding 5 years; or~~
- (c) the company has been convicted, within the preceding
5 years, of— 25
- (i) an offence against section 40 of the Fair Trading
Act 1986 for a contravention of any provision of
Part 1 or **subpart 4 of Part 4A** of that Act; or
- (ii) an offence against **section 84 of this Act**; or
- (d) the company is subject to an order suspending or can- 30
celling a licence under section 110 of the Real Estate
Agents Act 2008; or
- (e) the company is banned, or subject to a banning order,
under section 68 or 69 of the Motor Vehicle Sales Act
2003; or 35
- (f) the company is in liquidation, receivership, or voluntary
administration; or

- (g) the name of the company has been removed from the register of companies kept under section 360(1)(a) of the Companies Act 1993.

Compare: 2003 No 12 ss 24, 25

Restriction on who registered auctioneers may engage as auctioneer 5

67A Restriction on who registered auctioneers may engage as auctioneer

A registered auctioneer must not engage an auctioneer to conduct a sale on the registered auctioneer's behalf if the auctioneer is a person described in **section 67(1)**. 10

Application for registration

68 Application for registration to carry on business as auctioneer

- (1) A person who wishes to carry on business as an auctioneer may apply to the Registrar, in accordance with **this Part**, for registration as a registered auctioneer. 15
- (2) Every application must—
- (a) be in the form (if any) prescribed by the Registrar; and
 - (b) include the information and material specified in **section 69**; and 20
 - (c) include the prescribed fee (if any).

Compare: 2003 No 12 s 31

69 Information and material to be included in application

- (1) Every application for registration by an individual must set out or be accompanied by the following: 25
- (a) the person's full name, residential address, and date of birth; and
 - (b) the trading name, or proposed trading name, of the applicant's auction business; and 30
 - (c) the address of the principal place at which the applicant carries on, or proposes to carry on, business as an auctioneer; and
 - (d) the applicant's address for service; and

- (e) a statement that the applicant is not disqualified from registration; and
- (f) any other prescribed information or material.
- (2) Every application for registration by a company must set out or be accompanied by the following: 5
 - (a) the name of the company; and
 - (b) the trading name, or proposed trading name, of the applicant's auction business; and
 - (c) the address of the principal place at which the applicant carries on, or proposes to carry on, business as an auctioneer; and 10
 - (d) the full name, residential address, and date of birth of each ~~director and every other~~ person concerned in the management of the company; and
 - (e) the applicant's address for service; and 15
 - (f) a statement, made by a ~~director or a~~ person concerned in the management of the company, that the company and each ~~director and other~~ person (who must be individually named) concerned in the management of the company is not disqualified from registration; and 20
 - (g) any other prescribed information or material.
- (3) The address for service of an applicant must—
 - (a) identify the place by reference to its street address; and
 - (b) include, if available, the applicant's fax number and email address; and 25
 - (c) not be that of a PO Box number, a document exchange, or a rural delivery.

Compare: 2003 No 12 ss 31, 32

70 Acceptance of application

- (1) The Registrar must accept an application for registration as an auctioneer if he or she is satisfied that the application is properly completed and,— 30
 - (a) in the case of an application by an individual, that the person is not disqualified from registration; and
 - (b) in the case of an application by a company, that the company and each ~~director and other~~ person concerned in the management of the company are not disqualified from registration. 35

- (2) If the Registrar accepts an application, he or she must, as soon as practicable, enter the applicant's name on the register as a registered auctioneer, and provide the applicant with a registration certificate containing a unique registration number and showing the date of registration. 5

Compare: 2003 No 12 ss 33, 34, 36

71 Refusal of application

- (1) If the Registrar does not accept an application for registration, he or she must give the applicant written notice of the refusal and the reasons for it within 10 working days after the decision is made. 10
- (2) The applicant has the right, under **section 82**, to appeal to a District Court against the Registrar's refusal.

Compare: 2003 No 12 s 35

Duration of registration 15

72 Registration expires after 12 months

Registration as a registered auctioneer expires 12 months from the date of registration, unless the registration is sooner—

- (a) renewed by supplying an annual confirmation under **section 73**; or 20
- (b) cancelled under **section 74**; or
- (c) surrendered by the registered auctioneer.

Compare: 2003 No 12 s 37

73 Annual confirmation

- (1) Every registered auctioneer must supply to the Registrar an annual confirmation of details relating to the registered auctioneer. 25
- (2) The annual confirmation must—
- (a) be in the form (if any) required by the Registrar and be accompanied by the prescribed fee (if any); and 30
- (b) confirm that the auctioneer is not disqualified from registration.
- (3) If a registered auctioneer does not comply with **subsection (1)** before the anniversary of the auctioneer's date of registration, the Registrar may assume the person is no longer carry- 35

ing on business as an auctioneer and may amend the register of auctioneers accordingly.

Compare: 2003 No 12 s 39

74 Cancelling registrations

- (1) The Registrar must cancel the registration of a registered auctioneer if satisfied,—
- (a) in the case of a registered auctioneer who is an individual, that the individual is disqualified from registration (otherwise than by reason of the making of a property order under section 30 of the Protection of Personal and Property Rights Act 1988 (which relates to temporary orders)); or
 - (b) in the case of a registered auctioneer that is a company, that the company, or any ~~director or other~~ person concerned in the management of the company, is disqualified from registration; or
 - (c) that the registered auctioneer was registered by reason of any false or fraudulent representation or declaration, whether made orally or in writing; or
 - (d) that any application fee for registration or annual confirmation fee has subsequently been dishonoured; or
 - (e) that the registered auctioneer has ceased to carry on business as an auctioneer; or
 - (f) that the registered auctioneer engaged a person described in **section 67(1)** as an auctioneer to conduct a sale on the registered auctioneer's behalf.
- (2) Before cancelling a registration under this section, the Registrar must notify the registered auctioneer, and the notice must—
- (a) set out the reasons for the proposed cancellation; and
 - (b) give the registered auctioneer the opportunity to make, within 20 working days after the date of the notice, written submissions as to why the registration should not be cancelled; and
 - (c) state the date (which must be a date after the last date on which submissions may be received) on which the cancellation is proposed to take effect.
- (3) The Registrar must consider any written submissions received.

- (4) If the Registrar decides to cancel a registration, the Registrar must give written notice to the registered auctioneer of the cancellation, the date on which it takes effect, and the reason for the cancellation.

Compare: 2003 No 12 ss 43–45

5

75 When registered auctioneer ceases to be registered

A registered auctioneer ceases to be registered on the date, determined by the Registrar and shown on the register, that follows the expiry, cancellation, or surrender of the auctioneer's registration.

10

Compare: 2003 No 12 ss 45, 46, 48, 49

76 Obligation to notify Registrar of changes

- (1) A registered auctioneer must notify the Registrar if—

- (a) any of the following become disqualified from registration:

15

(i) the registered auctioneer (whether an individual or a company):

(ii) ~~a director of, or person concerned in the management of, the registered auctioneer~~ in the case of a registered auctioneer that is a company, a person concerned in the management of the company:

20

- (b) the registered auctioneer knows that any details on the register are no longer correct:

- (c) the registered auctioneer ceases to carry on business as an auctioneer.

25

- (2) Notification under **subsection (1)** must be made within 10 working days after the relevant matter is known to the registered auctioneer.

- (3) If, in the case of a registered auctioneer that is a company, a new person becomes concerned in the management of the company, the registered auctioneer must, within 20 working days,—

30

- (a) notify the Registrar, in writing, of the person's full name, residential address, and date of birth; and

- (b) send to the Registrar a statement confirming that the person to whom the notice relates is not disqualified from registration.

35

- (4) An applicant for registration must notify the Registrar if the applicant becomes aware, before receiving notice of the decision on the application, that any information included in the application is not, or is no longer, true and correct.

Compare: 2003 No 12 ss 40, 40A

5

Record-keeping obligations

77 Auctioneer record

- (1) Every registered auctioneer must keep an accurate and up-to-date auctioneer record.

- (2) An auctioneer record must show the following information with respect to property offered for sale by auction by a registered auctioneer: 10

Vendor

- (a) the vendor's full name, date of birth, contact address, and contact telephone number (if any): 15
- (b) whether the vendor is selling in trade as a supplier (within the meaning of the Consumer Guarantees Act 1993) or otherwise:

Property

- (c) a description of the property: 20

Auction

- (d) the date of the auction:
- (e) if the property was auctioned by lot, the lot number:
- (f) whether the sale was subject to a reserve price:
- (g) whether vendor bids were permitted: 25
- (h) the name of the auctioneer who conducted the sale:
- (i) ~~whether a bid was accepted and, if so, what it was:~~
- (i) the highest bid, and whether it was a vendor bid:
- (ia) the price at which the property was sold:
- (j) the amount of proceeds paid to the vendor: 30
- (k) the date on which the proceeds were paid to the vendor.

- (3) The information required to be shown in an auctioneer record must be added to the record as soon as practicable after the information is available.

- (4) The information in an auctioneer record must be kept on the record for at least 3 years. 35

Compare: 2004 No 70 ss 51, 53

78 Storage and inspection of auctioneer record

- (1) Every auctioneer record must be kept available for inspection at the address of the principal place at which the registered auctioneer carries on business as an auctioneer.
- (2) The registered auctioneer must make the auctioneer record available for inspection, on request at any reasonable time, by any of the following: 5
- (a) a constable:
 - (b) an employee of the Commerce Commission authorised, in writing, to inspect auctioneer records: 10
 - (c) a vendor who has sold property through the auctioneer, but only in respect of the parts of the record that relate to the vendor and that property.
- (3) A registered auctioneer must, on request, give any person who has a right to inspect an auctioneer record a copy of any part of the record that he or she is entitled to inspect. 15

Compare: 2004 No 70 ss 53, 54

*Registrar and register***79 Registrar of Auctioneers**

- (1) The chief executive of the Ministry of Economic Development must appoint, under the State Sector Act 1988, a Registrar of Auctioneers. 20
- (2) The person holding office as the Registrar of Companies under the Companies Act 1993 immediately before the commencement of **this Part** must be treated as if that person had been appointed as the Registrar of Auctioneers in accordance with this section. 25
- (3) The functions of the Registrar are as follows:
- (a) to establish and maintain a register of registered auctioneers: 30
 - (b) to determine applications for registration:
 - (c) to issue registration certificates:
 - (d) to cancel registrations under **section 74**:
 - (e) to perform any other function conferred on the Registrar by **this Part**. 35
- (4) The Registrar may delegate any of the Registrar's functions or duties to any other person, except the power of delegation.

-
- (5) A delegation must be in writing, may be made subject to any restrictions or conditions the Registrar thinks fit, is revocable in writing at any time, and does not prevent the performance or exercise of any function or duty by the Registrar.
- (6) A person to whom any functions or duties are delegated may perform them in the same manner, and with the same effect, as if they had been conferred directly by this section. 5
- (7) A person who appears to act under a delegation is presumed to be acting in accordance with its terms in the absence of evidence to the contrary. 10
Compare: 2003 No 12 ss 60, 61, 62

80 Registrar's certificate

A certificate signed by the Registrar is sufficient evidence, in the absence of proof to the contrary, that—

- (a) a particular person was or was not registered as an auctioneer at any particular time or during any period specified in the certificate; or 15
- (b) any entry in the register is as stated in the certificate.

Compare: 2003 No 12 s 63

81 Register of auctioneers 20

- (1) The Registrar must ensure— 20
- (a) that a register of registered auctioneers, called the register of auctioneers, is established and maintained; and
- (b) that, as far as possible, the information in it is accurate and up to date. 25
- (2) The register must be in electronic form and may also be kept in any other form that the Registrar thinks fit.
- (3) The Registrar must ensure that the part of the register that contains the name, contact details, and address for service of each registered auctioneer is available to the public for inspection via the Internet at all reasonable times. 30

Compare: 2003 No 12 ss 52, 53, 55

*Appeals against decisions of Registrar***82 Appeal to District Court Appeals**

- (1) A person may appeal to a District Court against the following decisions of the Registrar:
- (a) a refusal to register the person as an auctioneer: 5
 - (b) a decision to cancel the person's registration.
- (2) An appeal must be made by giving notice of appeal no later than 20 working days after the date on which notice of the decision was communicated to the appellant or such further time as the District Court may allow. 10
- (3) In determining an appeal, a District Court may confirm or reverse the decision of the Registrar.
- ~~(4) The District Court's decision is final.~~
- (4) A person may appeal to the High Court from a decision by a District Court under this section on a question of law only. 15
- (5) However, nothing in this section affects the right of any person to apply for judicial review.

Compare: 2003 No 12 ss 64, 67

83 Interim order by District Court

- (1) At any time before the final determination of an appeal relating to a registered auctioneer, a District Court may make an interim order suspending the cancellation by the Registrar of any registration. 20
- (2) An interim order may be subject to any conditions that the District Court thinks fit. 25
- (3) If a District Court makes an interim order, the Registrar of that court must send a copy of the order to the Registrar and the Registrar must immediately amend the register so as to give effect to the order.

Compare: 2003 No 12 ss 65, 66

30

*Offences***84 Offences**

- (1) A person who fraudulently retains the proceeds of property sold at auction, or fraudulently fails to pay the correct balance to the vendor, or, with intent to defraud the vendor, gives a 35

- false account of the sale, commits an offence and is liable on conviction on indictment to,—
- (a) in the case of an individual, a term of imprisonment not exceeding 2 years; or
 - (b) in any other case, to a fine not exceeding \$200,000. 5
- (2) A person who does any of the following commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 (if an individual) or \$30,000 (in any other case):
- (a) carries on business as an auctioneer, contrary to **section 66**, while not being a registered auctioneer: 10
 - (b) holds out as being a registered auctioneer while not being a registered auctioneer:
 - (c) gives or makes any statement that is false in a material particular to the Registrar in connection with an application for registration or confirmation of registration: 15
 - (d) fails to comply with any of the obligations in **section 76** (which relate to notifying the Registrar):
 - (e) fails to comply with the requirements of **sections 77 and 78** (which relate to record-keeping).

Regulations 20

85 Regulations

The Governor-General may, by Order in Council, make regulations for the following purposes:

- (a) prescribing information and material to be included in applications for registration: 25
- (b) prescribing fees associated with the registration of auctioneers.

Transitional provisions

86 Application of this Part to existing licence holders and others 30

- (1) After the commencement of **this Part** the following persons are deemed to have been registered as auctioneers under **this Part** on the day on which **this Part** comes into force:
- (a) every person who carries on business as an auctioneer and who, immediately before the commencement of 35

- this Part**, holds a licence issued under the Auctioneers Act 1928 that has not expired:
- (b) every person who is in partnership with a person referred to in **paragraph (a)** and whose name is endorsed on the licence. 5
- (2) **This Part** applies to every person who is deemed to be a registered auctioneer, except as provided in this section.
- (3) The registration of a person who is deemed to be registered by virtue of **subsection (1)** expires 6 months after the date on which **this Part** comes into force. 10
- (4) Despite anything in the Auctioneers Act 1928, every licence issued under that Act that is in force immediately before the commencement of **this Part** expires on the date on which **this Part** comes into force.
- (5) The Registrar is not obliged to ensure that the names and other details of people to whom this section applies are entered onto the register of auctioneers, unless or until they are registered in accordance with **this Part**. 15

Consequential and other amendments

87 Amendments removing exemption from requirement to be registered 20

The enactments set out in **Part 1 of Schedule 3** are amended as set out in that schedule, for the purpose of removing certain exemptions that allow auctions in some circumstances to be conducted by a person other than a registered auctioneer. 25

88 Consequential repeal and amendments

- (1) The Auctioneers Act 1928 (1928 No 29) is repealed.
- (2) The enactments set out in **Part 2 of Schedule 3** are consequentially amended as set out in that schedule.
-

Schedule 1

s 30(2)

Consequential amendments arising from
amendments to Fair Trading Act 1986

Part 1

Amendments to Acts

5

Companies Act 1993 (1993 No 105)

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

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

10

Door to Door Sales Act 1967 (1967 No 126)

Repeat:

Electronic Transactions Act 2002 (2002 No 35)

Item relating to the Door to Door Sales Act 1967 in Part 2 of the Schedule: omit and substitute “Fair Trading Act 1986 **Section 36G**”.

15

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

Goods and Services Tax Act 1985 (1985 No 141)

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

20

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

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

25

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

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

30

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

Part 1—*continued***Goods and Services Tax Act 1985 (1985 No 141)**—*continued*

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

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

Insolvency Act 2006 (2006 No 55)

5

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

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

Mercantile Law Act 1908 (1908 No 117)

10

Section 44: repeal.

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

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

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

15

Real Estate Agents Act 2008 (2008 No 66)

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

Part 1—*continued***Search and Surveillance Act 2012 (2012 No 24)**

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

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

Unsolicited Goods and Services Act 1975 (1975 No 46)

Repeal:

Part 2

5

Amendments to regulations

District Court Rules 2009 (SR 2009/257)

Rule 6.1.1(p): revoke.

Sentencing (Orders of Reparation) Order 2006 (SR 2006/263)

Schedule: omit the item relating to the Door to Door Sales Act 1967. 10

Private Security Personnel and Private Investigators (Forms) Regulations 2011 (SR 2011/73)Schedule: amend form 1 by omitting “section 10, 11, 13, 16, 19, 21, 24, 47F, or 47J of the Fair Trading Act 1986” and substituting “section 10, 11, **12A**, 13, 16, 19, 21, 24, **47F**, or 47J of the Fair Trading Act 1986”. 15

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

Part 2—*continued***Private Security Personnel and Private Investigators (Forms) Regulations 2011 (SR 2011/73)—*continued***

tion 10, 11, 12, **12A**, 16, 19, 21, 24, **47F**, or 47J of the Fair Trading Act 1986”.

Schedule: amend form 2 by omitting “section 10, 11, 13, 16, 19, 21, 24, 47F, or 47J of the Fair Trading Act 1986” and substituting “section 10, 11, **12A**, 13, 16, 19, 21, 24, **47F**, or 47J of the Fair Trading Act 1986” 5

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

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

Summary Proceedings (Orders of Reparation) Order 2011 (SR 2011/401) 15

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

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

Schedule 2

s 43

**Consequential amendments relating to gas
and electricity arising from amendments
to Consumer Guarantees Act 1993**

| | |
|---|----|
| Electricity Industry Act 2010 (2010 No 116) | 5 |
| Insert after section 95: | |
| “ 95A Indemnity disputes | |
| The dispute resolution scheme may resolve disputes between members of the dispute resolution scheme concerning the application of the indemnity in section 46A of the Consumer Guarantees Act 1993 (an indemnity dispute).” | 10 |
| Section 96(4): add “, and the person is unlikely to be involved in indemnity disputes”. | |
| Section 97(2): omit “either or both” and substitute “any”. | |
| Section 97(2): add: | 15 |
| “(c) comply with a binding settlement determined by the scheme in an indemnity dispute.” | |
| Clause 1 of Schedule 4: insert after paragraph (a): | |
| “(aa) members have a mechanism for resolving indemnity disputes; and”. | 20 |
| Clause 2 of Schedule 4: insert in its appropriate alphabetical order: | |
| “ indemnity dispute means a dispute, referred to in section 95A of this Act and section 43EAA of the Gas Act 1992, concerning the application of the indemnity in section 46A of the Consumer Guarantees Act 1993”. | 25 |
| Clause 9(3) of Schedule 4: insert after paragraph (c): | |
| “(ca) the scheme is not, or is no longer, capable of resolving indemnity disputes:”. | |
| Clause 13(1) of Schedule 4: insert “with respect only to its function of dealing with complaints made under section 95 of this Act or section 43E of the Gas Act 1992,” after “or set out,”. | 30 |
| Clause 13 of Schedule 4: insert after subclause (1): | |
| “(1A) The rules of the approved scheme must provide for, or set out, rules and procedures for dealing with indemnity disputes.” | |

Gas Act 1992 (1992 No 124)

Insert after section 43E:

“43EAA Indemnity disputes

The dispute resolution scheme may resolve disputes between members of the dispute resolution scheme concerning the application of the indemnity in **section 46A** of the Consumer Guarantees Act 1993 (an **indemnity dispute**).” 5

Section 43EA(4): add “, and the person is unlikely to be involved in indemnity disputes”.

Section 43B(2): omit “either or both” and substitute “any”. 10

Section 43EB(2): add:

“(c) comply with a binding settlement determined by the scheme in an indemnity dispute.”

Section 43G(2)(i): add “, other than indemnity disputes (as defined in **section 43EAA**)”. 15

Schedule 3**ss 87, 88(2)****Amendments relating to auctioneers****Part 1****Amendments removing certain exemptions**

| | |
|--|----|
| Land Act 1948 (1948 No 64) | 5 |
| Section 52(4): repeal. | |
| Policing Act 2008 (2008 No 72) | |
| Section 41(6): repeal. | |
| Public Works Act 1981 (1981 No 35) | |
| Section 230: omit “any person” and substitute “a registered auctioneer”. | 10 |
| Section 230: omit “, and it shall not be necessary in any such case that the person so appointed should be the holder of an auctioneer’s licence”. | |
| Sentencing Act 2002 (2002 No 9) | 15 |
| Section 137(2): repeal. | |

Part 2**Consequential amendments**

| | |
|--|----|
| Auctioneers Act 1928 (1928 No 29) | |
| Repeal: | 20 |
| Impounding Act 1955 (1955 No 108) | |
| Section 50(2): omit “but in respect of the sale shall not be required to take out an auctioneer’s licence” and substitute “and any such auctioneer is not required to be an auctioneer registered under Part 2 of the Consumer Law Reform Act 2011 ”. | 25 |
| Judicature Act 1908 (1908 No 89) | |
| Rule 17.75(a) of Schedule 2: omit “without an auctioneer’s licence (despite anything in any Act to the contrary)” and substitute “whether or not the enforcing officer is a registered auctioneer”. | |

Part 2—*continued***Motor Vehicle Sales Act 2003 (2003 No 12)**

Section 6(1): insert in its appropriate alphabetical order:

“**auction** has the meaning in given to it in **section 65 of the Consumer Law Reform Act 2011**”.

Definition of **sales by auction** in section 6(1): repeal. 5

Heading above section 141: repeal and substitute:

*“Exemption for car auctioneers from registration requirement under **Part 2 of the Consumer Law Reform Act 2011**”.*

Section 141: repeal and substitute: 10

“**141 Exemption for car auctioneers from registration requirement under Part 2 of the Consumer Law Reform Act 2011**

“(1) If a car auctioneer who is registered as a motor vehicle trader under this Act carries on a business that is limited to conducting auctions of motor vehicles only, the car auctioneer is exempt from the requirement in **Part 2 of the Consumer Law Reform Act 2011** to be a registered auctioneer. 15

“(2) However, the car auctioneer—

“(a) must comply with the rules about the conduct of auctions as set out in **sections 36W to 36ZC** of the Fair Trading Act 1986; and 20

“(b) may apply for registration under **Part 2 of the Consumer Law Reform Act 2011** as a registered auctioneer.” 25

Property Law Act 2007 (2007 No 91)

Section 42: repeal.

Protected Objects Act 1975 (1975 No 41)

Definition of **auctioneer** in section 2(1): repeal and substitute:

“**auctioneer** means a person who is registered as an auctioneer under **Part 2 of the Consumer Law Reform Act 2011**”.

 30
Real Estate Agents Act 2008 (2008 No 66)

Section 8: repeal.

Part 2—*continued***Real Estate Agents Act 2008 (2008 No 66)**—*continued*

Section 48(2): repeal and substitute:

- “(2) An agent’s licence authorises the licensee to sell or offer to sell land by auction, and operates as an exemption from the requirement in **Part 2 of the Consumer Law Reform Act 2011** to be registered as an auctioneer. 5
- “(3) However, every licensee who conducts an auction of land must comply with the rules about the conduct of auctions set out in **sections 36W to 36ZB** (but not the rule in **section 36ZC**) of the Fair Trading Act 1986.”

Sale of Goods Act 1908 (1908 No 168) 10

Section 59: repeal.

Sale of Liquor Act 1989 (1989 No 63)

Section 52(1): repeal and substitute:

- “(1) An off-licence may be granted to a person who is registered as an auctioneer under **Part 2 of the Consumer Law Reform Act 2011**.” 15

Secondhand Dealers and Pawnbrokers Act 2004 (2004 No 70)

Definition of **public auction** in section 4: repeal and substitute:

“**public auction** means an auction conducted by a registered auctioneer in the course of the registered auctioneer’s business”. 20

Section 4: insert in its appropriate alphabetical order:

“**registered auctioneer** means a person who is registered as an auctioneer under **Part 2 of the Consumer Law Reform Act 2011**”. 25

Section 6(4)(a): repeal and substitute:

“(a) a registered auctioneer selling secondhand articles or scrap metal in the course of the registered auctioneer’s business.”

Section 43(3)(a): omit “licensed” and substitute “registered”. 30

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Part 2—continued

Summary Proceedings Act 1957 (1957 No 87)

Item relating to the Auctioneers Act 1928 in Part 2 of Schedule 1:
omit and substitute:

| Title of Act | Section of Act | Offence |
|---|----------------|---|
| Part 2 of Consumer Law Reform Act 2011 | 84(1) | Fraudulently retaining proceeds, falsely accounting |

Trustee Companies Act 1967 (1967 No 35)

Section 27: omit “licensed auctioneer” and substitute “registered auctioneer”.

Section 27: omit “not require to take out an auctioneer’s licence” and substitute “not be required to be a registered auctioneer”.

Unclaimed Money Act 1971 (1971 No 28)

Section 5(1)(g): repeal and substitute: 10

“(g) any person registered as an auctioneer under **Part 2 of the Consumer Law Reform Act 2011**:”.

Wellington Regional Water Board Act 1972 (1972 No 3 (L))

Section 46(2): omit “without being the holder of a licence under the Auctioneers Act 1928” and substitute “whether or not the forest officer is registered as an auctioneer under **Part 2 of the Consumer Law Reform Act 2011**”. 15

Legislative history

20 April 2011
9 February 2012

Introduction (Bill 287–1)
First reading and referral to Commerce Committee
