

# Fair Trading Amendment Act 2003

Public Act 2003 No 31  
Date of assent 7 July 2003

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

- (1) This Act is the Fair Trading Amendment Act 2003.
- (2) In this Act, the Fair Trading Act 1986 is called “the principal Act”.

**Part 1**

**Preliminary provision**

**2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

**Part 2**

**Amendments to principal Act and miscellaneous provision**

**3 False representations and other misleading conduct in relation to land**

Section 14(1)(a) of the principal Act is amended by omitting the words “Falsely represent”, and substituting the words “make a false or misleading representation”.

**4 Trading stamp schemes prohibited**

Section 18 of the principal Act is repealed.

**5 Pyramid selling schemes**

Section 24(2)(a) of the principal Act is amended by repealing subparagraph (ii), and substituting the following subparagraph:

- “(ii) that, to many participants in the scheme, constitutes primarily an opportunity to buy or sell an investment opportunity, whether personally or through an agent, rather than an opportunity to buy or supply goods or services; and”

**6 Jurisdiction of High Court**

- (1) Section 37 of the principal Act is amended by omitting from paragraph (a) the expression “section 40”, and substituting the words “sections 40 and 47J”.

- (2) Section 37 of the principal Act is amended by inserting, after paragraph (a), the following paragraph:

- “(ab) appeals from proceedings in a District Court for orders under section 40A”

**7 Jurisdiction of District Courts**

Section 38 of the principal Act is amended by—

- (a) omitting from paragraph (a) the expression “section 40”, and substituting the words “sections 40 and 47J” ; and
- (b) omitting from paragraph (b) the expression “section 43”, and substituting the words “sections 40A, 42, and 43”.

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

- (1) Section 40(1) of the principal Act is amended—

- (a) by omitting the words “sections 9, 14(2), and 23”, and substituting the words “sections 9, 14(2), 23, and 24”:
- (b) by omitting from paragraph (a) the expression “\$30,000”, and substituting the expression “\$60,000”:
- (c) by omitting from paragraph (b) the expression “\$100,000”, and substituting the expression “\$200,000”.

- (2) Section 40 of the principal Act is amended by inserting, after subsection (1), the following subsection:

“(1A) Every person who contravenes section 24 commits an offence and is liable on summary conviction to a fine not exceeding \$200,000.”

(3) Section 40 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

“(3) Despite section 14 of the Summary Proceedings Act 1957, proceedings under this section may be commenced at any time within 3 years after the matter giving rise to the contravention was discovered or ought reasonably to have been discovered.”

#### **9 New section 40A inserted**

The principal Act is amended by inserting, after section 40, the following section:

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

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

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

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

“(4) In this section, Court includes a District Court.”

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

Section 41 of the principal Act is amended by adding the following subsections:

“(5) If the Commission applies to the Court for the grant of an interim injunction, the Court must not, as a condition of granting an interim injunction, require the Commission to give an undertaking as to damages.

“(6) However, in determining the Commission’s application for the grant of an interim injunction, the Court must not take into account that the Commission is not required to give an undertaking as to damages.”

Compare: 1986 No 5 s 88A

#### **11 Order to disclose information or publish advertisement**

Section 42 of the principal Act is amended by adding, as subsections (2) and (3), the following subsections:

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

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

#### **12 Defences**

Section 44(5) of the principal Act is amended by omitting the expression “section 27”, and substituting the expression “section 28”.

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

Section 46 of the principal Act is amended by inserting, after the words “an order under”, the words “section 40A or”.

#### **14 Power to search**

Section 47 of the principal Act is amended by repealing subsections (1) and (2), and substituting the following subsections:

“(1) The Commission may, from time to time, authorise an employee of the Commission to search, under a warrant issued under subsection (2), any place named in the warrant for any of the purposes set out in that subsection.

“(2) A District Court Judge, Justice, Community Magistrate, or Court Registrar (not being a constable) may, by warrant, authorise a person who is authorised under subsection (1) to search a place specified in the warrant if he or she is satisfied on application made on oath by that employee that there are reasonable grounds to believe that a search is necessary for the purpose of—

- “(a) investigating—
  - “(i) whether a person has engaged in, or is engaging in, conduct that constitutes, or may constitute, a contravention of this Act; or
  - “(ii) the nature or extent of any conduct that constitutes, or may constitute, a contravention of this Act; or
- “(b) gathering, obtaining, or recovering evidence of—
  - “(i) conduct that constitutes, or may constitute, a contravention of this Act; or
  - “(ii) the nature or extent of any conduct that constitutes, or may constitute, a contravention of this Act.”

#### **15 New sections 47G to 47J inserted**

The principal Act is amended by inserting, after section 47F, the following sections:

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

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

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

**“47H Notices**

- “(1) Any notice given by the Commission under section 47G is sufficiently given if—
- “(a) it is in writing; and
  - “(b) it is—
    - “(i) under the seal of the Commission; or
    - “(ii) signed by the Chairman of the Commission; or
    - “(iii) signed by 1 or more of the members of the Commission; or
    - “(iv) signed by any person purporting to act by direction of the Commission; and
  - “(c) it is served in accordance with section 471 on the person or persons primarily concerned or on any person or organisation considered by the Commission to represent the person or persons primarily concerned.
- “(2) In all courts and in all proceedings under this Act, notices given under section 47G that purport to be signed by, or on behalf of, the Commission or to be sealed with the seal of the Commission must be treated as having been signed or sealed with due authority in accordance with subsection (1)(b) unless the contrary is proved.

“Compare: 1986 No 5 s 101

**“471 Service of notices**

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

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

“Compare: 1986 No 5 s 102

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

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

“Compare: 1986 No 5 s 103”

#### 16 Provisions as to proceedings already barred and pending proceedings

Nothing in this Act—

- (a) enables any proceedings to be brought that were barred before the commencement of this Act; or



- (b) affects any proceedings commenced before the commencement of this Act.

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**Legislative history**

|                          |  |
|--------------------------|--|
| 18 December 2001         | Introduction (Bill 192-1)                        |
| 2 May 2002               | First reading and referral to Commerce Committee |
| 18 November 2002         | Reported from Commerce Committee (Bill 192-2)    |
| 1 April 2003             | Second reading                                   |
| 8, 29 April, 1 July 2003 | Committee of the whole House                     |
| 1 July 2003              | Third reading                                    |

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