

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]

House of Representatives, 16 May 1969.

Words struck out by the Committee are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

Right Hon. Mr Marshall

CONSUMER (PROTECTION) INFORMATION

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A BILL INTITULED

An Act to make provision for *(better)* informative labelling and marking of goods and for the prevention of deceptive or misleading packaging, labelling, and advertising

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

1. Short Title and commencement—(1) This Act may be cited as the Consumer (*Protection Act 1968*) Information Act
10 1969.

(2) This Act shall come into force on the 1st day of (*October*) June 1970.

2. Interpretation—In this Act, unless the context otherwise requires,—

“Advertisement” means any words, whether written, printed, or spoken, or any picture, drawing, or figure, used or appearing to be used to explain the use or notify the availability or promote the sale of any goods,— 5

(a) Inserted in any newspaper, trade journal, or other periodical publication printed, published, or distributed in New Zealand; or 10

(b) Brought to the notice of (*members of*) the public in New Zealand in any other manner whatsoever:

“Drug” has the same meaning as in the Food and Drug Act (1968) 1969: 15

“Examiner” means the Examiner of Trade Practices and Prices appointed under section 10 of the Trade Practices Act 1958:

“Food” has the same meaning as in the Food and Drug Act (1968) 1969: 20

“Goods” means any article or product of any type or class that is intended for sale to any person for use or consumption; and includes services:

“Label” means any written, printed, pictorial, or other descriptive matter that is attached to, or forms part of, or appears on the exterior of, any goods or any package containing goods, or that is visible through any transparent (*or translucent*) outer cover or wrapper enclosing such a package; and includes any band or ticket: 25 30

“Medical device” has the same meaning as in the Food and Drug Act (1968) 1969:

“Minister” means the Minister of Industries and Commerce: 35

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“Package” means any receptacle, container, or wrapping in which any goods are wholly or partially encased, covered, enclosed, contained, or packed, for the purpose of sale by retail; and, where goods are encased, covered, enclosed, contained or packed in more than one package, includes every such package; but does not include a receptacle, container, or wrapping in which goods are wholly or partially encased, covered, enclosed, contained, or packed in the presence of a person purchasing the goods; and “to package” and “packaged” have corresponding meanings: 40 45

New

“Package” means—

5 (a) The outermost receptacle, container, or wrapper in which any goods are encased, covered, enclosed, contained, or packed for the purpose of sale by retail to the public; or

10 (b) If for that purpose there is a transparent outer cover or wrapper enclosing or covering a receptacle or container or wrapper, the receptacle, container, or wrapper that is so enclosed or covered—

but does not include a receptacle, container, or wrapper in which goods are encased, covered, enclosed, contained, or packed in the presence of a person purchasing the goods; and “to package”, “packager”, and “packaged” have corresponding meanings:

New

20 “Prescribed” means prescribed by this Act or by regulations or notices for the time being in force under this Act:

25 “Quantity”, in relation to any goods, includes size, length, width, height, area, volume, weight, capacity, and number:

30 “Sale” includes barter (*and delivery by way of sample;*) and also includes offering or attempting to sell, (*or receiving for sale, or having in possession for sale,*) or exposing for sale, or sending or delivering for sale, or causing or allowing to be sold, offered, or exposed for sale; but does not include a sale of goods for consignment by the vendor to a person outside New Zealand; and “to sell” has a corresponding meaning.

Struck Out

35 **3. Particulars to be included in labels—**(1) Every packager of goods and importer of packaged goods shall, before distributing the goods, ensure that every package containing the goods bears a label that includes—

40 (a) The name and address of the packager or, if the goods have been packaged outside New Zealand, the name and address of the importer; and

(b) The quantity of the goods in the package, expressed in the most appropriate units.

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(2) A telegraphic or code address or a post office address shall not be a sufficient address for the purposes of paragraph (a) of subsection (1) of this section.

(3) Paragraph (a) of subsection (1) of this section shall not apply in respect of any packaged goods that the packager sells by retail from the premises on which they were packaged. 5

(4) If, in the Minister's opinion, doubt or confusion may arise as to the most appropriate unit to be used for the purposes of paragraph (b) of subsection (1) of this section, he may by notice in the *Gazette* specify the unit or units to be so used in respect of any goods or classes of goods specified in the notice. 10

(5) This section shall not apply to any food, drug, or medical device.

New

3. Name and address of packager to be shown on packaged goods—(1) All packagers of goods shall cause the packages to bear a label showing the name and address of the packager or the person on whose behalf the goods were packaged. 15

(2) The Minister may from time to time, by notice in the *Gazette*, prohibit importers of such packaged goods or class or classes of packaged goods as may be specified in the notice from distributing the goods unless the packages bear a label showing the name and address of the packager or the person on whose behalf the goods were packaged. 20 25

(3) Subsections (1) and (2) of this section shall not apply in respect of packages that, by virtue of their small size, cannot readily accommodate the information required by those subsections.

(4) Any notice made under subsection (2) of this section may at any time in a like manner be revoked in whole or in part or amended. 30

(5) Every notice made under subsection (2) of this section shall specify the date on which it shall come into force, being a date not earlier than six months after the date of its publication in the *Gazette*, except in the case of a notice revoking a previous notice either in whole or in respect of some of the goods to which the previous notice relates. 35

(6) A telegraphic address or code address or post office address shall not be a sufficient address for the purposes of this section. 40

(7) This section shall not apply to—

(a) Any food, drug, or medical device:

(b) Any packaged goods that the packager sells by retail from the premises on which they were packaged. 45

New

3A. Quantity of goods to be shown in respect of specified goods—(1) The Minister may from time to time, by notice in the *Gazette*, require packagers of such goods or class or

5 classes of goods as may be specified in the notice to cause the packages to bear a label showing the quantity of the goods in the package expressed in such manner as may be specified in the notice.

(2) Any notice made under subsection (1) of this section

10 may at any time in a like manner be revoked in whole or in part or amended.

(3) Every notice made under subsection (1) of this section shall specify the date on which it shall come into force, being a date not earlier than six months after the date of its publica-

15 tion in the *Gazette*, except in the case of a notice revoking a previous notice either in whole or in respect of some of the goods to which the previous notice relates.

4. Further particulars to be included in labels in respect of specified goods—(1) Without limiting the provisions of

20 section 23 of this Act, the Governor-General may from time to time, by Order in Council, make regulations requiring, packagers of such goods or class or classes of goods as may be specified in the regulations to cause the packages to bear a label showing (*in respect of packages that contain any goods*

25 *or classes of goods specified in the regulations, that they shall bear a label that includes*) such of the following particulars as the Governor-General thinks fit to prescribe:

(a) The name by which the goods are commonly known or, if there is no such name, the generic name or

30 other appropriate descriptive term:

(b) A list specifying every ingredient that equals or exceeds such percentage of the total weight or volume of the goods as may be specified in the regulations, together with the amount of each such ingredient comprised

35 in the goods expressed in descending order of magnitude as a percentage of the total weight or volume of the goods, and indicating whether the expressed percentage is by weight or volume:

(c) A list specifying the percentage by weight or volume of the total weight or volume of the goods of every ingredient in respect of which any representation

40 has been or is to be made:

- (d) Directions or information as to *(the best way)* how to use, keep, maintain, store, preserve, or clean the goods:
- (e) If the label bears any statement to the effect that the goods in the package have a specified number of applications or uses, such particulars as may be specified in the regulations relating to the purported number of uses or applications: 5
- (f) If the label bears any representation relating to the performance of the goods in the package, such particulars as may be specified in the regulations relating to the purported performance: 10
- (g) The date on which the goods were packaged or the date before which the goods should be used to ensure maximum use or effectiveness. 15

New

(1A) All regulations made under this section shall specify the date on which they shall come into force, being a date not earlier than six months after the date of their notification in the *Gazette*, except in the case of regulations revoking previous regulations either in whole or in respect of some of the goods to which the previous regulations relate. 20

(1B) Nothing in paragraph (b) or paragraph (c) of subsection (1) of this section shall require any person to show on a label, or otherwise divulge, any information that would not otherwise be available to trade competitors. 25

(2) This section shall not apply to any food, drug, or medical device.

5. Method of labelling—

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(1) Every particular required to be included in a label under section 3 of this Act or under any regulations for the time being in force under section 4 of this Act shall be printed or indelibly marked on the label in conspicuous and easily legible lettering and shall be printed or marked in a colour that contrasts with the background colour of the label. 35

New

(1) Every prescribed particular required to be included in a label in accordance with this Act shall be printed or indelibly marked on the label in easily legible lettering.

(2) Every label that includes prescribed particulars shall—

- (a) Be firmly affixed or branded to the package containing the goods to which the label relates:
- (b) Be of such a nature and material that it will not readily fade or become detached before sale by the action of light or climatic conditions:
- (c) Be of such a nature and material and in such a position that it cannot be readily defaced during normal handling and use:
- (d) Be in such a position on the package that it cannot be readily damaged, defaced, or destroyed when the package is opened for inspection by a prospective purchaser:

Struck Out

- (e) Be in such a position on the package that it cannot be obscured by any folder, pamphlet, or other label:
- (f) Be affixed or branded to the part of the package that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

New

(c) Be affixed or branded to such part or parts of the package that the particulars may be readily examined by prospective purchasers.

- (3) Without limiting the provisions of section 23 of this Act, the Governor-General may from time to time, by Order in Council, make regulations requiring prescribed particulars on labels to be printed or marked in lettering of such height as may be specified, and providing for such other matters as he thinks appropriate in relation to the method of displaying prescribed particulars on labels.

6. Deceptive or misleading labelling—(1) Where any prescribed particulars are required to be included in a label in accordance with this Act, (under section 3 of this Act or under any regulations for the time being in force under section 4 of this Act,) no person shall include in the label any comment, reference, or explanation that expressly or by implication contradicts or is inconsistent with *(qualifies, or modifies)* any prescribed particular. 5

(2) The inclusion in a label to which subsection (1) of this section applies of any descriptive term relating to the quantity of any goods to which the label relates shall constitute a breach of that subsection unless— 10

- (a) The prescribed particular relating to the quantity of the goods and the descriptive term are equally prominent; and *(is in lettering of the same height and of the same colour as the descriptive term; and)* 15
- (b) The said prescribed particular and the descriptive term are on the same panel of the label and are not contiguous. 20

Struck Out

(3) No person shall include in a label any false or misleading statement, word, brand, picture, or mark purporting to indicate the nature, suitability, quantity, quality, strength, composition, origin, age, or effects of any goods to which the label relates. 25

New

(3) No person shall include in a label any statement, word, brand, picture, or mark purporting to indicate the nature, suitability, quantity, quality, strength, composition, origin, age, or effects of any goods to which the label relates, if he knows or ought to know that the statement, word, brand, picture, or mark is false or misleading in a material respect. 30

(4) This section shall not apply to any food, drug, or medical device.

7. **Deceptive or misleading packaging**—(1) No person shall package any goods (*or import any packaged goods*) if the package is of such a size, shape, or design, or has included thereon such printed, pictorial, or other matter, that it is
5 (*likely to mislead any person*) misleading as to the nature or quantity of the goods in the package, notwithstanding that the actual quantity, (*expressed in the most appropriate units*) or the actual nature of the goods, is also shown or indicated on the package.

10 *Struck Out*

(2) Every person who packages goods or who imports packaged goods shall (if the goods are a liquid, semi-liquid, paste, cream, or powder) ensure that the goods in the package, the interior or inside lining of which is in contact with the
15 goods, occupy at least nine-tenths of the interior capacity of the package when the goods are sold by retail:

Provided that this subsection shall not apply—

- (a) If the level of the goods in the package is clearly visible without opening it; or
20 (b) If the package bears an easily distinguishable mark showing the level of the goods in the package and the goods in fact occupy the indicated space or more than that space at the time of sale by retail.

New

25 (2) Without limiting the provisions of section 23 of this Act, the Governor-General may from time to time, by Order in Council, make regulations requiring packagers of such goods or class or classes of goods as may be specified in the regulations to so fill the packages that the goods will, at such time as
30 may be specified in the regulations, occupy such percentage of the exterior volume of the package as may be specified in the regulations. Different percentages may be specified in respect of different goods or classes of goods.

(2A) For the purposes of subsection (2) of this section,
35 any normal air space between the component parts of goods in a package shall be deemed to be occupied by the goods.

(2B) No regulations made under subsection (2) of this section shall apply in respect of any packaged goods if—

- 40 (a) The level of the goods in the package is clearly visible or easily ascertainable without opening the package; or

New

(b) The package bears an easily distinguishable mark showing the level of the goods in the package and the goods in fact occupy the indicated space or more than that space at the time of sale by retail. 5

(3) Subsection (2) of this section shall not apply to any drug.

8. Deceptive or misleading advertising—

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(1) Where any 10
prescribed particulars are required to be included in a label under section 3 of this Act or under any regulations for the time being in force under section 4 of this Act, no person shall publish or cause to be published any advertisement in which 15
any goods or the goods to which the regulations apply, as the case may be, are referred to, described, or depicted if the advertisement includes any comment, reference, or explanation that expressly or by implication contradicts, qualifies, or modifies any prescribed particular. 20

New

(1) Where, in 20
accordance with this Act, any packaged goods are required to bear a label showing any prescribed particular, no person shall publish or cause to be published any advertisement in which 25
the goods are referred to, described, or depicted, if the advertisement contains any comment, reference, or explanation that expressly or by implication contradicts or is inconsistent with the prescribed particular.

(2) Without limiting the provisions of section 23 of this Act, the Governor-General may from time to time, by Order 30
in Council, make regulations requiring, in respect of any goods or class or classes of goods specified in the regulations, that any (advertisement relating to the goods) visual advertisement relating to the goods or class or classes of goods shall contain all or any of the particulars specified in (sections 3 and 4) 35
sections 3, 3A, and 4 of this Act.

(3) Every person who publishes or causes to be published any visual advertisement to which subsection (1) or subsection (2) of this section applies and in which is included any 40
descriptive term relating to the quantity of the goods in any

package to which the advertisement relates shall be deemed to have committed a breach of the said subsection (1) or the said subsection (2), as the case may be, unless—

5 (a) The prescribed particular relating to the quantity of the goods is included in the advertisement and is *(in lettering of the same height and of the same colour as)* of equal prominence with the descriptive term; and

10 (b) The said prescribed particular and the descriptive term are not contiguous.

(4) No person shall *(in an advertisement or by any other means, make any)* publish or cause to be published any advertisement that contains an express or implied representation relating to the nature, suitability, quantity, quality, strength, composition, origin, age, or effects of any goods if he knows or ought to know that the representation is false or misleading in a material respect. *(should know that the representation is in any way false, inaccurate, incomplete, or misleading.)*

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20 (5) No person shall, either expressly or by implication, represent, in an advertisement or by any other means, that any goods have been approved, endorsed, or recommended by any person whom or organisation that members of the public might reasonably expect to be qualified to give an expert opinion in respect of the goods unless the person or organisation concerned is in fact so qualified and has stated in writing that he or it in fact approves, endorses, or recommends the goods. In any prosecution for an offence against this subsection it shall be for the defendant to prove that any such person or organisation is so qualified and has stated in writing that he or it approves, endorses, or recommends the goods.

35 (6) No person shall publish or cause to be published any advertisement that purports to give any information as to the price of any goods to which the advertisement relates unless there is included in the advertisement a statement of the total amount of money that a purchaser will be required to pay for the goods, whether payment is to or may be made by instalments or not, and whether or not the goods will be delivered at one time. If the total amount of money payable would differ in different circumstances, the different circumstances and the differing total amounts of money shall be specified.

Struck Out

(7) No person shall send or deliver to another person any invoice for goods that have not been ordered or requested by the person to whom the invoice has been sent or delivered unless the words "*pro forma* invoice" appear on the face of the invoice in lettering of a height of not less than one-eighth of an inch. 5

New

(5) No person shall publish or cause to be published any advertisement that contains a representation to the effect that any goods have been approved, endorsed, or recommended by any person whom, or organisation that, members of the public might reasonably expect to be technically qualified to give an authoritative opinion in respect of the goods, unless the person or organisation is in fact so qualified and has stated that he or it in fact approves, endorses, or recommends the goods. In any prosecution for an offence against this subsection, it shall be for the defendant to prove that the person or organisation is so qualified and has stated that he or it approves, endorses, or recommends the goods. 10
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(6) No person shall send or deliver to another person any invoice, or document that has the appearance of an invoice, in respect of goods that have not been ordered or requested by the person to whom the invoice or document has been sent or delivered, unless the words "no payment due unless you buy or order" appear on the face of the invoice or document in easily legible lettering of a height of not less than one-eighth of an inch. 25

(8) Subsections (1) to (4) of this section shall not apply to any food, drug, or medical device; and subsection (5) of this section shall not apply to any drug or medical device. 30

9. Representations regarding prices—(1) No person shall include in a label any (*false or misleading*) statement, word, brand, or mark that purports to indicate the price of any goods to which the label relates, if he knows or ought to know that the statement, word, brand, or mark is false or misleading in a material respect. 35

Struck Out

(2) No person shall, in an advertisement or by any other means, make any express or implied representation relating to the price of any goods if he knows or should know that the representation is in any way false, inaccurate, incomplete, or misleading. 40

New

(2) No person shall publish or cause to be published any advertisement that contains any express or implied representation relating to the price of any goods, if he knows or ought to know that the representation is false or misleading in a material respect.

Struck Out

(3) No person shall, either expressly or by implication, represent in any advertisement or by any other means that he has goods available for sale below the normal or usual price or price rate unless in fact he has, at the time the representation is made, the goods available for sale to members of the public at the reduced price or price rate.

New

(3) No person shall, either expressly or by implication, represent in an advertisement that he has goods available for sale below the normal or usual price or price rate unless in fact he has, at the time when the goods would first be available for sale, a reasonable quantity of the goods available for sale to the public at the reduced price or price rate:

Provided that this subsection shall not apply if the advertisement states the quantity of goods available for sale and there is in fact that quantity available for sale to the public.

(4) If any person represents in an advertisement that he has goods available for sale below the normal or usual price he shall, if the reduced price per unit of the goods is more than thirty dollars, state in the advertisement the number of units available for sale to (members of) the public at the reduced price.

(5) No person shall (either expressly or by implication, represent in an advertisement or by any other means) publish or cause to be published any advertisement that contains an express or implied representation to the effect that a price advantage will be gained by a purchaser by virtue of the size of a package or the quantity of goods in a package, unless there is in fact a price advantage to be gained in purchasing the goods in the package in respect of which the representation is made instead of purchasing from the same source a smaller package containing the same kind of goods of like quality.

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(6) No person shall represent in an advertisement or by any other means that—

- (a) The price of any goods is at or below the cost price or to that effect unless the price to be charged is in fact the same as, or less than, as the case may be, the cost incurred in purchasing and obtaining delivery of the goods to the place of business from which they are intended to be sold; or 5
- (b) Any goods are worth more by a stated amount than the price to be charged, unless the goods in fact have the higher value. 10

New

(6) No person shall publish or cause to be published any advertisement that contains a representation to the effect that the price of any goods is at or below the cost price unless the price charged or to be charged is in fact the same as, or less than, as the case may be, the cost incurred in purchasing and obtaining delivery of the goods to the place of business from which they have been or are intended to be sold. 15
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10. Minister may refer matters to Trade Practices and Prices Commission—(1) The Minister may from time to time refer to the Trade Practices and Prices Commission constituted under the Trade Practices Act 1958, for investigation and report to the Minister, any matter relating to this Act or to its administration. 25

(2) For the purposes of making any investigation under this section, the Trade Practices and Prices Commission shall have all the powers conferred on it under the Trade Practices Act 1958 for the purposes of conducting an inquiry under that Act. 30

11. Advisory committees—The Minister may from time to time appoint or discharge or alter or continue or reconstitute such advisory committees, consisting of one or more persons, as he thinks fit to advise him on such matters concerning the implementation of the provisions of this Act as are referred to them by the Minister. 35

12. Powers of investigation—(1) For the purposes of this Act the Minister may conduct such investigations as he thinks fit. 40

Struck Out

(2) For the purposes of any investigation conducted under subsection (1) of this section, any person authorised either generally or specially in writing by the Minister may require any person to supply, in a form to be approved by or acceptable to the person so authorised, any information or particulars that may be required for such purposes, and may require any person to allow the authorised person to inspect any books or documents and to take copies of or extracts from them.

New

(2) For the purposes of any investigation conducted under subsection (1) of this section, any person authorised either generally or specially in writing by the Minister may require any person to produce any books or documents in his possession and allow the authorised person to inspect them and to take copies of or extracts from them.

(3) All information obtained by an authorised person under subsection (2) of this section shall be treated as confidential except for purposes connected with the administration or implementation of the provisions of this Act; and every person who, otherwise than for such purposes, directly or indirectly divulges any such information commits an offence against this Act.

13. Exemption of goods, etc., from Act—(1) The Minister may, by notice in the *Gazette*, make orders exempting, under such conditions (if any) as may be specified in the notice, any person or any specified class or classes of persons, or any goods or any specified class or classes of goods, from all or any of the provisions of this Act or of any regulations for the time being in force under this Act.

(2) Any order made under subsection (1) of this section may at any time in a like manner be revoked in whole or in part or amended.

14. Delegation of powers by Minister—For the purposes of this Act the Minister shall, in respect of the powers conferred on him by this Act, have the same powers of delegation as are conferred on him by the Industries and Commerce Act 1956; and (sections 10 and 11) section 10 of that Act shall, with the necessary modifications, apply accordingly.

15. Delegation of powers by Examiner—(1) The Examiner may from time to time, by writing under his hand, either generally or particularly, delegate to such officer or officers of the Department of Industries and Commerce as he thinks fit all or any of the powers exercisable by him under this Act, including the power to give leave for the commencement of a prosecution under subsection (1) of section 18 of this Act, but not including this present power of delegation. 5

(2) Subject to any general or special directions given or conditions attached by the Examiner, any officer to whom any powers are delegated under this section may exercise them in the same manner and with the same effect as if they had been conferred on him directly by this Act and not by delegation. 10

(3) Every person purporting to act pursuant to any delegation under this section shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary. 15

(4) Any delegation under this section may be made to a specified officer or to officers of a specified class, or may be made to the holder or holders for the time being of a specified office or class of office. 20

(5) Every delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Examiner. 25

(6) Every such delegation shall, until it is revoked, continue in force according to its tenor, notwithstanding the fact that the Examiner by whom it was made may have ceased to hold office, and shall continue to have effect as if made by the successor in office of that Examiner. 30

16. Obstructing or assaulting authorised person—Every person commits an offence against this Act and is liable on summary conviction to a fine not exceeding \$200 who—

(a) Wilfully obstructs, hinders, or deceives, or wilfully causes to be obstructed, hindered, or deceived, any person authorised to exercise any power or perform any function or duty under this Act, in the exercise or performance of any such power, function, or duty: 35

(b) Threatens (*assaults, or uses abusive language to*) or assaults any person so authorised while that person is engaged in the exercise or performance of any such power, function, or duty. 40

17. Offences and penalties—(1) Every person commits an offence against this Act who acts in contravention of or fails to comply in any respect with any provision of this Act or of any regulations or notices for the time being in force under this Act.

(2) Every person who commits an offence against this Act for which no penalty is provided elsewhere than in this section shall be liable on summary conviction to a fine not exceeding (two hundred dollars) \$200 or, if the offence is knowingly committed, to a fine not exceeding (five hundred dollars) \$500, and, if the offence is a continuing one, to a further fine not exceeding (ten dollars) \$10 for every day or part of a day during which the offence has continued.

(3) If any body corporate is convicted of an offence against this Act, every director and every officer concerned in the management of the body corporate shall be guilty of the offence if it is proved that the act or omission that constituted the offence took place with his (knowledge,) authority, permission, or consent.

(4) For the purposes of this section, the continued existence of anything in a state contrary to any provision of this Act or of any regulations for the time being in force under this Act shall be deemed to be a continuing offence.

Struck Out

(5) It shall be a defence to any charge relating to an offence against section 3, section 5, section 6, or section 7, of this Act or against any regulations for the time being in force under section 4 or section 5 of this Act if the defendant proves that the particular goods concerned were packaged before the date of the commencement of this Act or of the regulations, as the case may be.

New

(5) In any prosecution for an offence against this Act relating to a package or label, it shall be a defence if the defendant proves that the particular goods concerned were packaged or labelled before the date of commencement of this Act, or of the regulations or notice alleged to have been contravened, as the case may require.

18. Consultation procedure—

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(1) No prosecution for an offence against section 3, section 5, section 6, section 7, section 8, or section 9 of this Act or against any regulations for the time being in force under section 4, section 5, or section 8 of this Act shall be commenced except with the leave of the Examiner given in accordance with this section. 5

(2) Subject to section 19 of this Act, before the Examiner gives leave under subsection (1) of this section for the prosecution of any person, a notice in writing shall be served on that person— 10

(a) Informing him of the alleged breach or non-compliance; and

(b) Inviting him to make his views in respect of the alleged breach or non-compliance known to the Examiner by serving on the Examiner, within fourteen days after the service of the notice on that person, a written reply— 15

(i) Setting out those views; and

(ii) Stating whether or not he admits the alleged breach or non-compliance; and 20

(iii) If he admits it, stating whether or not he is prepared to confer with the Examiner for the purpose of mitigating the consequences of the offence and preventing its recurrence. 25

(3) If any such person serves a written reply in accordance with paragraph (b) of subsection (2) of this section in which he both admits the breach or non-compliance and states that he is prepared to confer with the Examiner, the Examiner shall serve on that person a notice in writing inviting him, within fourteen days after the service of the notice on him, to confer with the Examiner for the purpose of entering into an agreement whereby the consequences of the offence will be mitigated as far as is practicable and the matter in relation to which the offence was committed will be remedied. 30 35

New

(1) No prosecution for an offence against this Act relating to a package, label, or advertisement shall be commenced except with the leave of the Examiner given in accordance with this section. 40

New

(2) Subject to section 19 of this Act, before the Examiner gives leave under subsection (1) of this section for the prosecution of any person, a notice in writing shall be served on that
5 person—

(a) Informing him of the alleged offence and the facts alleged to constitute an offence; and

(b) Inviting him to make his views in respect of the alleged offence known to the Examiner by serving on the
10 Examiner, within a period to be specified in the notice (being a period of not less than fourteen days after the service of the notice on that person), a written reply—

(i) Setting out those views; and

(ii) Stating whether or not he admits that if the offence alleged was committed he is a proper
15 defendant; and

(iii) Stating whether or not he is prepared to confer with the Examiner.

(3) If any such person serves a written reply in accordance with paragraph (b) of subsection (2) of this section in which he both admits that if the offence alleged was committed he is a proper defendant and states that he is prepared to confer with the Examiner, the Examiner shall, unless he is then satisfied that it is not a proper case for a prosecution, serve on that
20 person a notice in writing inviting him, within a period to be specified in the notice (being a period of not less than fourteen days after the service of the notice on him), to confer with the Examiner for the purpose of discussing the views set out in
25 the reply and, if appropriate, entering into an agreement whereby the consequences of the offence, if any, will be mitigated as far as practicable and the repetition of the facts alleged to constitute an offence will be avoided.

(4) If any agreement entered into pursuant to subsection (3) of this section relates to an alleged offence relating to a
35 package or label and includes a condition requiring goods to be withdrawn from sale, the Examiner shall cause particulars of the agreement, of the goods, and of the (*breach or non-compliance*) facts alleged to constitute an offence to be
40 published in the *Gazette*; and thereupon that condition shall have the effect of an order under subsection (1) of section 21 of this Act and subsections (2) and (3) of that section shall apply accordingly with all necessary modifications.

(5) The Examiner may give leave under subsection (1) of this section if—

Struck Out

- (a) Any person on whom a notice has been served under subsection (2) of this section does not reply in accordance with that subsection or does not include in his reply both an admission of the offence and an offer to confer with the Examiner; or 5
- (b) Any such person fails to confer with the Examiner within fourteen days after the service of the notice under subsection (3) of this section inviting him to do so; or 10

New

- (a) Any person on whom a notice has been served under subsection (2) of this section does not— 15
- (i) Serve on the Examiner within the period specified in the notice, or within such further period as the Examiner may allow, a written reply complying with subparagraphs (i) to (iii) of paragraph (b) of that subsection; or 20
- (ii) Include in his reply both an admission that if the offence alleged was committed he is a proper defendant and an offer to confer with the Examiner; or
- (b) Any such person fails to confer with the Examiner within the period specified in the notice served on that person under subsection (3) of this section inviting him to do so, or within such further period as the Examiner may allow; or 25
- (c) After the Examiner has conferred with any person who has accepted an invitation under subsection (3) of this section, the Examiner considers that— 30
- (i) A satisfactory agreement cannot be entered into under that subsection; or
- (ii) There has been an undue delay in entering into an agreement and an agreement is not entered into within fourteen days after the Examiner has served on the person written notice of his intention to give leave for the commencement of a prosecution; or 35
- 40

New

(iii) Having regard to all the circumstances, the person should be prosecuted; or

5 (d) Any person with whom an agreement has been entered into under subsection (3) of this section has failed to comply with the terms of the agreement.

Struck Out

10 (6) In the absence of proof to the contrary, the fact that, in respect of any prosecution for an offence to which subsection (1) of this section applies, the leave of the Examiner or of his delegatee is endorsed on the information or set out in a memorandum in accordance with section 314 of the Crimes Act 1961 shall be sufficient evidence that the provisions of this section or of section 19 of this Act have been satisfied in
15 respect of that prosecution.

New

20 (6) In any proceedings involving a prosecution for an offence to which subsection (1) of this section applies, no question shall be raised as to whether any condition set out in section 19 of this Act or in subsections (2) to (5) of this section has been satisfied, or as to whether any requirement set out in that section or those subsections has been complied with; and no reference shall be made to the fact that any negotiations have or have not taken place, or to the nature
25 and content of any such negotiations, or to any admission made for the purposes of any such negotiations, or to any refusal or failure to confer with the Examiner, or to the application of any other provision of subsections (2) to (5) of this section.

30 (7) Any notice under this section may be served on any person, other than the Examiner, by delivering it personally to the person on whom it is to be served; or by leaving it, or sending it by post in a registered letter addressed to him, at his usual or last known place of abode or business in New
35 Zealand.

(8) Any notice under this section may be served on the Examiner by delivering it personally to the Examiner; or by leaving it, or sending it by post in a registered letter addressed to him, at his office.

(9) If a notice is sent by post in the manner prescribed by subsection (7) or subsection (8) of this section, it shall be deemed to be served at the time at which the letter would have been delivered in the ordinary course of post; and in proving service of any such notice it shall be sufficient to prove that it was properly directed, and that it was duly put into the post office as a registered letter. 5

19. Minister may authorise immediate prosecution—

(1) The Minister may authorise the Examiner to give leave under subsection (1) of section 18 of this Act without complying with subsections (2) and (3) of that section, if the Minister considers that an immediate prosecution is justified or necessary. 10

(2) Notwithstanding anything to the contrary in this Act or in any other Act, the Minister shall not delegate the power conferred on him by subsection (1) of this section. 15

New

19A. Innocent publication of advertisement a defence—In any prosecution for an offence relating to the publication of an advertisement, it shall be a defence if the defendant proves that— 20

- (a) He is a person whose business it is to publish advertisements; and
- (b) He received the advertisement for publication in the ordinary course of business; and 25
- (c) He did not know and had no reason to suspect that its publication would constitute an offence against this Act or against any regulations for the time being in force under this Act, as the case may be.

Struck Out

20. Employer or principal may obtain acquittal on conviction of actual offender—(1) Where an information in respect of any offence against this Act is laid against an employer or principal, the employer or principal shall be entitled, on information duly laid by him and on giving not less than three days' notice of his intention to the prosecution, to have any other person whom he charges as the actual offender brought before the Court at the time for hearing the information against the employer or principal, and if, after the commission of the offence has been proved, the employer or principal proves to the satisfaction of the Court that he has used due diligence 35 40

Struck Out

to enforce compliance with the provisions of this Act or of any regulations for the time being in force under this Act, as the case may be, and that the other person has knowingly or by
5 failure to exercise reasonable care committed the offence in question without the knowledge or consent of that employer or principal, the other person shall be convicted of the offence and the employer or principal shall be acquitted.

(2) In any such case the prosecution as well as the person
10 whom the employer or principal charges with the offence shall have the right to cross-examine the employer or principal if he gives evidence and any witnesses called by him in support of his charge, and to call rebutting evidence.

(3) In any such case the person convicted shall, in the
15 discretion of the Court, be liable to pay any costs incidental to the proceedings.

21. Court may order withdrawal of goods from circulation, etc.—

Struck Out

(1) If any person who packages goods or any importer
20 of packaged goods is convicted of an offence against this Act relating to a package or label, the Court may in its discretion order that person to withdraw from sale all goods in respect of which the offence was committed until the matter in relation to which the offence was committed has been remedied.
25

New

(1) If any packager of goods is convicted under this Act of an offence relating to a package or a label, the Court may in its discretion, if it is satisfied that the continued sale of the
30 goods would adversely affect the interests of consumers to a serious degree, order the withdrawal from sale of all goods in packages, or bearing labels, as the case may be, that are materially the same as the package or label in respect of which the offence was committed.

(2) If the Court makes an order under subsection (1) of this section *(it)* the Examiner shall cause particulars of the order and of the offence in relation to which the order was made to be published in the *Gazette*; and thereupon every distributor, trader, or retailer who has in his possession any
35 of the goods in relation to which the offence was committed shall withdraw them from sale and may—
40

- (a) Return the goods to the person who supplied them; or
 (b) Remedy the matter in relation to which the offence was committed.

(3) Every distributor, trader, or retailer who takes action in accordance with paragraph (a) or paragraph (b) of subsection (2) of this section may recover all the costs and expenses incurred by him in so acting (including, if action is taken under the said paragraph (a), the purchase price of the goods) from the person who supplied the goods as a debt due by that person to the distributor, trader, or retailer. 5 10

(4) If any person is convicted of an offence against this Act relating to a package or label, the *(Court shall)* Minister may cause particulars of the offence and a description of the goods in relation to which the offence was committed to be published in the *Gazette*; and in any such case no person shall, after the date of publication in the *Gazette*, sell *(the goods)* any goods in packages, or bearing labels, as the case may be, that are materially the same as the package or label in respect of which the offence was committed, unless the matter in relation to which the offence was committed has been remedied. 15 20

New

(5) Notwithstanding anything to the contrary in this Act or in any other Act, the Minister shall not delegate the power conferred on him by subsection (4) of this section. 25

22. Time for laying information—Notwithstanding anything in section 14 of the Summary Proceedings Act 1957, any information in respect of an offence against this Act may be laid at any time within *(three)* two years after the time when the matter of the information arose. 30

23. Regulations—The Governor-General may from time to time, by Order in Council, make regulations providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

24. **Savings**—(1) Nothing in this Act shall limit or affect the provisions of any other enactment that makes specific provision in respect of any matter included in the provisions of this Act; and, where inconsistency or conflict appears
5 between any such enactment and this Act or any regulations for the time being in force under this Act, the provisions of such enactment shall prevail.

(2) Nothing in this Act shall apply in respect of—

10 (a) Any agricultural chemical (*within the meaning of*) for the time being registered under the Agricultural Chemicals Act 1959; or

(b) Any animal remedy (*within the meaning of*) the manufacture or importation of which is for the time being licensed under the Animal Remedies Act 1967; or

15 New

(c) Any fertiliser for the time being registered under the Fertilisers Act 1960; or

(d) Any stock food within the meaning of the Stock Foods Act 1946.