

FAIR TRADING BILL

EXPLANATORY NOTE

THIS Bill revises the law relating to consumer protection in trade in terms which are similar to the Australian legislation contained in the Trade Practices Act 1974 (Aust.).

Part I contains provisions prohibiting misleading or deceptive conduct, false representations in relation to the supply of goods and services and the sale of land, and certain trade practices.

Part II makes provision for consumer information standards to be prescribed and requires persons supplying goods or services to comply with any prescribed standard.

Part III relates to product safety and makes provision for product safety standards to be prescribed and requires suppliers of goods to comply with those standards. It also contains provisions which will allow for the prohibiting of the supply of unsafe goods and for ordering the recall or repair of such goods.

Part IV contains provisions for enforcement and remedies and permits private rights of action in cases of contravention of the Bill.

Part V contains a number of general provisions.

Clause 1 of the Bill relates to the Short Title and commencement. Except for *clause 33 (2)* of the Bill, the Bill comes into force on 1 April 1986.

Clause 2 defines certain terms used in the Bill.

Clause 3 extends the application of the Bill to conduct engaged in outside New Zealand by a person resident or carrying on business in New Zealand.

Clause 4 provides that the Bill binds the Crown except where it is alleged that the Crown has committed an offence by contravening the Bill. In such a case the Court may make a declaration.

Clause 5 provides that the Bill applies to Crown corporations.

Clause 6 confers certain functions on the Commerce Commission in relation to the Bill. The Commission is required to make available, for the guidance of persons engaged in trade, information as to their rights and obligations under the Bill, and for the guidance of consumers, information regarding the rights

and obligations of persons as they affect consumers. The Commission is also required to undertake studies and publish reports and information on matters affecting the interests of consumers.

Clause 7 relates to the appropriation of money for the purposes of the Bill.

PART I

MISLEADING AND DECEPTIVE CONDUCT, FALSE REPRESENTATIONS AND UNFAIR PRACTICES

Clause 8 prohibits misleading or deceptive conduct in trade or conduct which is likely to mislead or deceive.

Clause 9 prohibits any conduct in trade that is liable to mislead the public as to the nature, manufacturing process, characteristics, suitability for purpose or quantity of goods.

Clause 10 prohibits conduct in trade that is liable to mislead the public as to the nature, characteristics, suitability for a purpose or quantity of services.

Clause 11 prohibits conduct in relation to offers of employment that is misleading or deceptive as to the availability, nature, terms or conditions or any other matter relating to the employment.

Clause 12 prohibits in trade certain specified false or misleading representations in connection with the supply or promotion of the supply or use of goods or services. It prohibits—

- (a) False representations that goods are of a particular kind, origin, standard, quality, grade, quantity, composition, style, or model or have a particular history or previous use:
- (b) False representations that services are of a particular kind, standard, quality or quantity, or that they are supplied by a particular person or by a person of a particular trade, qualification or skill:
- (c) False representations that a particular person has agreed to acquire goods or services:
- (d) False representations that goods are new, or reconditioned, or were manufactured, produced, processed or reconditioned at a particular time:
- (e) Representations that goods have a sponsorship, approval, endorsement, performance characteristics, accessories, uses, or benefits that they do not have:
- (f) Representations that a person has a sponsorship, approval, endorsement, or affiliation that he does not have:
- (g) False or misleading representations as to the price of goods or services:
- (h) False or misleading representations concerning the need for goods or services:
- (i) False or misleading representations as to the existence, exclusion, or effect of any condition, warranty, guarantee, right or remedy.

Clause 13 prohibits, in trade, in connection with the sale or grant or the possible sale or grant of an interest in land or the promotion of the sale or grant of an interest in land,—

- (a) Representations that a person has a sponsorship, approval, endorsement or affiliation that he does not have:
- (b) False or misleading representations as to the nature of the interest, price, location, characteristics, use or existence or availability of facilities associated with the land.

It also prohibits the use of physical force, harassment or coercion in connection with the sale or grant, or possible sale or grant of an interest in land, or the payment for an interest in land.

Clause 14 prohibits the offering of gifts, prizes or other free items in connection with the supply or possible supply of goods or services, or the promotion of the supply or use of goods or services, or in connection with the sale or grant of an interest in land or the possible sale or grant of an interest in land or with the promotion of the sale or grant of such an interest with the intention of not providing them or not providing them as offered.

Clause 15 prohibits trading stamp schemes. The provision is more limited in scope than section 49A of the Commerce Act 1975 in that it applies to trading stamps which are redeemable by a person who is not the manufacturer, packer, importer or seller of goods or supplier of services in connection with which they are supplied.

Clause 16 prohibits bait advertising, that is, the advertising of goods or services at a specified price where the supplier does not intend to offer the goods or services, or has no reasonable grounds for believing the goods or services can be supplied, at that price for a period and in quantities that are reasonable having regard to the nature of the market and the advertisement. It also requires a person who advertises goods or services at a specified price to offer the goods or services at that price for a period and in quantities that are reasonable having regard to the nature of the market and the advertisement.

Clause 17 prohibits referral selling, that is, inducing a person to acquire goods or services by representing that the person will receive a rebate, commission, or other benefit in return for providing the names of prospective customers or assisting in the supply of goods or services to other users or customers, if the rebate, commission or benefit is contingent on an event occurring after the contract is made.

Clause 18 provides that no person shall demand or accept payment or other consideration for goods or services if, at the time, that person—

- (a) Does not intend to supply the goods or services; or
- (b) Intends to supply goods or services which are materially different; or
- (c) Does not have reasonable grounds to believe that he will be able to supply the goods or services within any specified period, or if no period is specified, within a reasonable time.

Clause 19 prohibits the making of false or misleading representations concerning the profitability or risk or other material aspect of any business activity that is represented as one that can be, or can be to a substantial extent, carried on from a person's residence. It also prohibits, in connection with invitations to engage or participate in a business activity requiring the performance of work, or the investment of money and the performance of work, the making of false or misleading representations regarding profitability or risk or any other material aspect of the business activity.

Clause 20 prohibits the use of physical force, harassment or coercion in connection with the supply of goods or services or the possible supply of goods or services or the payment for goods or services.

Clause 21 prohibits pyramid selling schemes and is similar to section 48A of the Commerce Act 1975.

Clause 22 provides that no provisions in *Part I* of the Bill shall limit or affect any other provision contained in *Part I*.

Clause 23 prohibits the importation of goods bearing a false trade description (as that term is defined) and declares such goods to be prohibited imports under the Customs Act 1966.

PART II

CONSUMER INFORMATION

Clause 24 enables the Governor-General by Order in Council, on the recommendation of the Minister of Consumer Affairs, to prescribe, in respect of goods or services or any class or classes of goods or services, consumer information standards relating to—

- (a) The disclosure of information relating to the kind, grade, quantity, origin, performance, composition, contents, design, construction, use, price, finish, packaging, promotion or supply of the goods or services:
- (b) The form and manner in which that information is to be disclosed on or in connection with the supply, or resupply, or possible supply or resupply, or promotion of the goods.

The clause prohibits the supply, or offering or advertising the supply of goods or services in contravention of a consumer information standard.

The clause does not apply to goods intended for use outside New Zealand if the goods are marked in the manner prescribed in the clause.

Clause 25 authorises the Governor-General by Order in Council on the recommendation of the Minister of Consumer Affairs to declare standards prescribed by the Standards Council or other specified association to be consumer information standards.

PART III

PRODUCT SAFETY

Clause 26 enables the Governor-General by Order in Council, on the recommendation of the Minister of Consumer Affairs, to prescribe, in respect of goods or any class or classes of goods, product safety standards relating to—

- (a) The performance, composition, contents, manufacture, processing, design, construction, finish or packaging of the goods:
- (b) The testing of the goods during or after manufacturing or processing:
- (c) The form and content of markings, warnings or instructions to accompany the goods.

The clause prohibits the supply or offering the supply of goods that do not comply with a prescribed product safety standard.

Clause 27 authorises the Governor-General by Order in Council, on the recommendation of the Minister of Consumer Affairs, to declare standards prescribed by the Standards Council or other specified association to be product safety standards.

Clause 28 authorises the Minister of Consumer Affairs to declare, by notice in the *Gazette*, goods, or any class or classes of goods, that will or may cause injury, to be unsafe goods. Any such notice, unless revoked, remains in force for a period of 18 months. The clause provides that if, at the end of that period, a product safety standard has not been prescribed for the goods, the Minister may, by a further notice, prohibit the supply of the goods. The clause prohibits the supply of goods in respect of which a notice is in force under the clause.

Clause 29 provides that where a supplier has supplied goods which do not comply with a prescribed product safety standard and which will or may cause injury or in respect of which a notice under *clause 28* of the Bill is in force, the Minister of Consumer Affairs may, by notice to the supplier, require the supplier to—

- (a) Recall the goods; or
- (b) Disclose publicly information relating to the characteristics of the goods which make them unsafe or the circumstances in which their use is unsafe or any other matters; or
- (c) Repair or replace the goods or make a refund to the person to whom the goods were supplied or resupplied of the price paid for the goods or any lesser amount which, having regard to the use of the goods, is reasonable.

Clause 30 prohibits the importation of goods the supply of which would constitute a contravention of Part III of the Bill and declares such goods to be prohibited imports under the Customs Act 1966.

PART IV

ENFORCEMENT AND REMEDIES

Clause 31 relates to the jurisdiction of the High Court.

Clause 32 relates to the jurisdiction of District Courts.

Clause 33 relates to the jurisdiction of Small Claims Tribunals.

Clause 34 makes it an offence to contravene any provision of *Part I* (except *clauses 8, 13 (2), and 20*), *Part II* or *Part III* of the Bill.

Clause 35 provides for the granting of injunctions by the High Court on the application of the Commission or any other person in relation to contraventions of *Part I* or *Part II* or *Part III* of the Bill.

Clause 36 empowers the High Court, a District Court and a Small Claims Tribunal to award damages in relation to contraventions of *Part I* or *Part II* or *Part III* of the Bill.

Clause 37 empowers the High Court, on the application of the Commission, in any case where a person has contravened a provision of *Part I* or *Part II* or *Part III* of the Bill, to make an order—

- (a) Requiring that person, or any other person involved in the contravention, to disclose to the public or any particular person such information as is specified in the order:
- (b) Requiring that person, or any other person involved in the contravention, to publish advertisements the terms of which are specified in the order.

Clause 38 relates to the power of the High Court, a District Court, and a Small Claims Tribunal to make certain other orders.

Clause 39 provides for certain defences in proceedings for offences and in relation to other proceedings for contravention of *Part I* or *Part II* or *Part III* of the Bill.

Clause 40 relates to conduct by servants or agents. It provides that where, in proceedings in respect of conduct of a body corporate it is necessary to establish the state of mind of the body corporate, it is sufficient to prove that a director, servant, or agent of the body corporate acting within the scope of his actual or apparent authority, had that state of mind.

The clause also provides that conduct of a director, servant, or agent of a body corporate within the scope of his actual or apparent authority or any other person acting at the direction or with the consent or agreement (whether express or implied) of a director, servant, or agent given within the scope of his actual or apparent authority is deemed to have been engaged in by that body corporate. The clause contains similar provisions in relation to individuals and the conduct of servants or agents of individuals.

Clause 41 provides that a finding of fact in proceedings under *clauses 34, 35, or 37* of the Bill, being proceedings in which a person has been found to have contravened any provision of *Part I* or *Part II* or *Part III* of the Bill, is prima facie evidence of that fact in proceedings under *clauses 36 or 38* of the Bill.

Clause 42 confers power on officers of the Commission to enter premises and obtain documents and inspect goods.

Clause 43 relates to privilege.

Clause 44 amends the enactments specified in the *First Schedule* to the Bill and repeals the enactments specified in the *Second Schedule* to the Bill.

Clause 45 is a savings provision.

Hon. Margaret Shields

FAIR TRADING

ANALYSIS

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A BILL INTITULED

**An Act to prohibit certain conduct and practices in trade,
to provide for the disclosure of consumer information
relating to the supply of goods and services and to
promote product safety and also to repeal the Consumer
Information Act 1969 and certain other enactments** 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 10
cited as the Fair Trading Act 1985.

(2) Except as provided in **section 33 (2)** of this Act, this Act shall come into force on the 1st day of April 1986.

2. Interpretation—(1) In this Act, unless the context 15
otherwise requires,—

“Acquire”,—

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

(b) In relation to services, includes accept: 20

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

“Business” means any undertaking—

(a) That is carried on whether for gain or reward or 25
not; or

(b) In the course of which—

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

(ii) Any interest in land is acquired or disposed 30
of—

whether free of charge or not:

- 5 “Commission” means the Commerce Commission established by section 8 of the Commerce Act 1985; and includes a Division of the Commission, or a member of the Commission, performing any function of the Commission:
- “Court” means the High Court of New Zealand:
- 10 “Credit instrument” means any agreement (whether in writing or not) acknowledging an obligation to pay a sum or sums of money on demand or at any future time or times:
- “Document” means a document in any form whether signed or initialled or otherwise authenticated by its maker or not; and includes—
- 15 (a) Any writing on any material:
(b) Any information recorded or stored by means of any tape-recorder, computer, or other device; and any material subsequently derived from information so recorded or stored:
- 20 (c) Any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means:
(d) Any book, map, plan, graph, or drawing:
(e) Any photograph, film, negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced:
- 25 “Goods” include—
- (a) Ships, aircraft, and vehicles:
(b) Animals, including fish:
30 (c) Minerals, trees, and crops, whether on, under, or attached to land or not:
(d) Gas and electricity:
- “Local authority” includes every local authority and every public body or other authority created by or pursuant to any public Act or local Act:
- 35 “Minister” means the Minister of Consumer Affairs:
“Officer of the Commission” means—
- (a) Any person appointed pursuant to section 18 (1) of the Commerce Act 1985:
40 (b) Any person employed or engaged under section 18 (2) of the Commerce Act 1985:
- “Person” includes a local authority, and any association of persons whether incorporated or not:

“Price” includes valuable consideration in any form, whether direct or indirect; and includes any consideration that in effect relates to the acquisition or supply of goods or services or the acquisition or disposition of any interest in land, although ostensibly relating to any other matter or thing: 5

“Services” includes any rights (including rights in relation to, and interests in, real or personal property), benefits, privileges, or facilities that are or are to be provided, granted, or conferred and, without limiting the generality of the foregoing, also includes the rights, benefits, privileges, or facilities that are or are to be provided, granted, or conferred under any of the following classes of contract: 10

(a) A contract for, or in relation to,— 15

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

(ii) The provision of, or the use or enjoyment of facilities for, accommodation, amusement, the care of persons or animals or things, entertainment, instruction, parking, or recreation; or 20

(iii) The conferring of rights, benefits, or privileges for which remuneration is payable in the form of a royalty, tribute, levy, or similar exaction: 25

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

(c) A contract between a bank and a customer of the bank: 30

(d) Any contract for, or in relation to, the lending of money or granting of credit, or the making of arrangements for the lending of money or granting of credit, or the buying or discounting of a credit instrument, or the acceptance of deposits;— 35

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

“Supply”— 40

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

- (b) In relation to services, includes provide, grant, or confer;—
and “supply” as a noun, “supplied”, and “supplier” have corresponding meanings:
- 5 “Trade” means any trade, business, industry, profession, occupation, activity of commerce, or undertaking relating to the supply or acquisition of goods or services or to the disposition or acquisition of any interest in land.
- 10 (2) In this Act, a reference to engaging in conduct shall be read as a reference to doing or refusing to do an act, and includes,—
- (a) Refraining (otherwise than inadvertently) from doing an act; or
- 15 (b) Making it known that an act will or, as the case may be, will not be done.
- (3) In this Act—
- (a) A reference to the acquisition of goods includes a reference to the acquisition of property in, or rights in relation to, goods, in pursuance of a supply of the goods:
- 20 (b) A reference to the supply or acquisition of goods or services includes a reference to agreeing to supply or acquire goods or services:
- (c) A reference to the supply or acquisition of goods includes a reference to the supply or acquisition of goods together with other property or services or both:
- 25 (d) A reference to the supply or acquisition of services includes a reference to the supply or acquisition of services together with property or other services or both:
- 30 (e) A reference to the resupply of goods acquired from a person includes a reference to—
- (i) A supply of goods to another person in an altered form or condition; and
- 35 (ii) A supply to another person of other goods in which the goods have been incorporated.

3. Application of Act to conduct outside New Zealand—

- This Act extends to the engaging in conduct outside New Zealand by any person resident or carrying on business in New Zealand to the extent that such conduct relates to the supply of goods or services, or the granting of interests in land, within New Zealand.
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4. Application of Act to the Crown—(1) Subject to this section, this Act shall bind the Crown in so far as the Crown engages in trade.

(2) The Crown shall not be liable to be prosecuted for an offence against this Act.

(3) Where it is alleged that the Crown has contravened any provision of this Act and that contravention constitutes an offence, the Commission or the person directly affected by the contravention may apply to the Court for a declaration that the Crown has contravened that provision; and, if the Court is satisfied beyond a reasonable doubt that the Crown has contravened that provision, it may make a declaration accordingly.

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

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

(2) Notwithstanding any enactment or rule of law, 20 proceedings under **Part IV** of this Act may be brought against a body corporate referred to in **subsection (1)** of this section.

Cf. 1975, No. 113, s. 20A; 1979, No. 140, s. 11

6. Functions of Commission in relation to dissemination of information—In addition to the functions conferred on the Commission by this Act, the Commission shall—

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

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

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

(b) Undertake studies and publish reports and information regarding matters affecting the interests of consumers.

Cf. Trade Practices Act 1974 (Aust.), s. 28 (1) (a), (d), (e)

7. Money to be appropriated by Parliament for purposes of this Act—All fees, salaries, wages, allowances, expenses, and other expenditure payable or incurred under or in the administration of this Act shall be payable out of money to be appropriated by Parliament for the purpose.

PART I

MISLEADING AND DECEPTIVE CONDUCT, FALSE REPRESENTATIONS AND UNFAIR PRACTICES

Misleading and Deceptive Conduct

10 **8. Misleading and deceptive conduct generally**—No person shall, in trade, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

Cf. Trade Practices Act 1974 (Aust.), s. 52

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

Cf. Trade Practices Act 1974 (Aust.), s. 55

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

Cf. Trade Practices Act 1974 (Aust.), s. 55A

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

30 Cf. Trade Practices Act 1974 (Aust.), s. 53B

False Representations

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

- 35 (a) Falsely represent that goods are of a particular kind, origin, standard, quality, grade, quantity, composition, style, or model, or have had a particular history or particular previous use; or

- (b) Falsely represent that services are of a particular kind, standard, quality, or quantity, or that they are supplied by any particular person or by any person of a particular trade, qualification, or skill; or
 - (c) Falsely represent that a particular person has agreed to acquire goods or services; or 5
 - (d) Falsely represent that goods are new, or that they are reconditioned, or that they were manufactured, produced, processed, or reconditioned at a particular time; or 10
 - (e) Represent that goods or services have any sponsorship, approval, endorsement, performance characteristics, accessories, uses, or benefits that they do not have; or
 - (f) Represent that a person has any sponsorship, approval, endorsement, or affiliation that the person does not have; or 15
 - (g) Make a false or misleading representation with respect to the price of any goods or services; or
 - (h) Make a false or misleading representation concerning the need for any goods or services; or 20
 - (i) Make a false or misleading representation concerning the existence, exclusion, or effect of any condition, warranty, guarantee, right, or remedy.
- Cf. Trade Practices Act 1974 (Aust.), s. 53 25

- 13. False representations and other misleading conduct in relation to land**—(1) No person shall, in trade, in connection with the sale or grant or possible sale or grant of an interest in land or with the promotion by any means of the sale or grant of an interest in land,— 30
- (a) Represent that a person has a sponsorship, approval, endorsement, or affiliation that the person does not have; or
 - (b) Make a false or misleading statement concerning the nature of the interest in the land, the price payable for the land, the location of the land, the characteristics of the land, the use to which the land is capable of being put or may lawfully be put, or the existence or availability of facilities associated with the land. 35 40
- (2) No person shall use physical force, harassment, or coercion in connection with the sale or grant or possible sale or grant of an interest in land, or the payment for an interest in land.

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

- 5 (a) A right of occupancy of the land, or of a building or part of a building erected on the land, arising by virtue of the holding of shares, or by virtue of a contract to purchase shares, in a company that owns the land or building; or
- (b) A right, power, or privilege, over, or in connection with, the land.

10 Cf. Trade Practices Act 1974 (Aust.), s. 53A

Unfair Practices

14. Offering gifts and prizes—No person shall,—

- 15 (a) In connection with the supply or possible supply of goods or services or with the promotion by any means of the supply or use of goods or services; or
- (b) In connection with the sale or grant or the possible sale or grant of an interest in land or with the promotion by any means of the sale or grant of an interest in land,—

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

Cf. Trade Practices Act 1974 (Aust.) ss. 53A (1) (c), 54

15. Trading stamp schemes prohibited—(1) No person shall, in trade, supply or arrange for the supply of any trading stamp, either directly or indirectly to any manufacturer, packer, importer, distributor, or seller of goods or supplier of services.

(2) In this section “trading stamp” means any coupon, stamp, token, cover, package, document or thing—

- 30 (a) That is supplied or intended to be supplied in connection with the sale of goods or services or for the purpose of promoting the sale of goods or services; and
- (b) That is redeemable by a person who is not the manufacturer, packer, importer, or seller of goods or supplier of services in connection with which it is supplied; and
- 35 (c) That entitles the holder on redemption to money, goods or services or qualifies the holder on redemption for money, goods or services.

Cf. 1975, No. 113, s. 49A; 1979, No. 140, s. 24

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

- (a) Does not intend to offer for supply; or
- (b) Does not have reasonable grounds for believing can be 5
supplied by that person—

at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement. 10

(2) Any person who has advertised goods or services for supply at a specified price shall offer such goods or services for supply at that price for a period that is, and in quantities that are, reasonable having regard to the nature of the market in which the person carries on business and the nature of the 15 advertisement.

(3) In a prosecution of any person in relation to a failure to offer goods or services to a person (in this subsection referred to as the customer) in accordance with **subsection (2)** of this section, it is a defence if the person establishes that— 20

- (a) He offered to supply, or to procure another person to supply, goods or services of the kind advertised to the customer within a reasonable time, in a reasonable quantity, and at the advertised price and where the offer was accepted by the customer, the 25 person has so supplied or procured another person to supply the goods or services; or
- (b) He offered to supply immediately, or to procure another person to supply within a reasonable time, equivalent goods or services to the customer in a reasonable 30 quantity and at the price at which the first-mentioned goods or services were advertised, and, where the offer was accepted by the customer, the person has so supplied, or procured another person to supply, such equivalent goods or services. 35

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

17. Referral selling—(1) Subject to **subsection (2)** of this section, no person shall induce another person to acquire goods or services by representing that the person acquiring the goods 40 or services will, after the contract for the acquisition of the goods or services is made, receive a rebate, commission, or other benefit in return for giving that person the names of

prospective customers or otherwise assisting that person to supply goods or services to other users or consumers, if receipt of the rebate, commission, or other benefit is contingent on an event occurring after that contract is made.

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

Cf. Trade Practices Act 1974 (Aust.), s. 57

18. Demanding or accepting payment without intending to supply as ordered—No person shall demand or accept
10 payment or other consideration for goods or services, if at the time of the demand or acceptance that person—

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

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

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

Cf. Trade Practices Act 1974 (Aust.), s. 58

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

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

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

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

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

40 Cf. 1975, No. 113, s. 48B; 1979, No. 40, s. 23; Trade Practices Act 1974 (Aust.), s. 59

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

Cf. Trade Practices Act 1974 (Aust.), s. 60

5

21. Pyramid selling schemes—(1) No person shall promote or operate a pyramid selling scheme.

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

(a) A scheme—

10

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

(ii) That, to many participants in the scheme, constitutes primarily an opportunity to sell an investment opportunity rather than an opportunity 15 to supply goods or services; and

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

(A) The financial rewards of many of those participants are dependent on the 20 recruitment of additional participants (whether or not at successively lower levels); and

(B) The number of additional participants in the scheme that must be recruited to produce 25 reasonable financial rewards to participants in the scheme is not attainable or is not likely to be attainable by many of the participants in the scheme:

(b) A scheme of the type commonly known as a chain letter 30 scheme (whether or not it provides for the supply of goods or services or both) that is likely to be unfair to many of the participants in the scheme, in that—

(i) The financial rewards of many of those participants are dependent on the recruitment of 35 additional participants; and

(ii) The number of additional participants in the scheme that must be recruited to produce reasonable financial rewards to participants in the scheme is not attainable or is not likely to be attainable by many 40 of the participants in the scheme.

Cf. 1975, No. 113, s. 48A; 1979, No. 140, s. 22 (1)

22. Provisions of this Part of this Act not limited by reference to other provisions of this Part of this Act—No provision of this Part of this Act limits or affects any other provision of this Part of this Act.

5 **23. Importation of goods bearing false trade description prohibited**—(1) All goods to which a false trade description is applied are hereby prohibited to be imported into New Zealand, and shall be deemed to be included among goods prohibited to be imported under section 48 of the Customs
10 Act 1966 and the provisions of that Act shall apply to such goods accordingly.

(2) In this section “false trade description” means any representation which if made in trade in connection with the supply or possible supply of goods or with the promotion by
15 any means of the supply or use of goods would constitute a contravention of **section 12 (a) or (d)** of this Act.

(3) For the purposes of **subsection (1)** of this section, a description shall be deemed to be applied to goods if—

- 20 (a) The representation is woven in, impressed on, worked into, or annexed or affixed to the goods; or
 (b) The representation is applied to a covering, label, reel, or thing in or with which the goods are supplied.

PART II

CONSUMER INFORMATION

25 **24. Consumer information standards**—(1) The Governor-General may from time to time, by Order in Council made on the recommendation of the Minister, prescribe, in respect of goods or services of any description or any class or classes of goods or services, a consumer information standard relating
30 to all or any of the following matters:

- (a) The disclosure of information relating to the kind, grade, quantity, origin, performance, composition, contents, design, construction, use, price, finish, packaging, promotion, or supply of the goods or services:
35 (b) The form and manner in which that information is to be disclosed on or in relation to, or in connection with, the supply or resupply, or possible supply or resupply, or promotion of the goods or services.

(2) No person shall supply, or offer to supply, or advertise
40 to supply goods or services in respect of which a consumer information standard has been prescribed, unless that person complies with that consumer information standard.

(3) Nothing in **subsection (1)** of this section applies to any goods that are intended for use outside New Zealand if there is applied to the goods—

- (a) A statement that the goods are for export only; or
- (b) A statement indicating, by the use of words authorised 5
by any order made under this section for the purposes of this subsection, that the goods are intended to be used outside New Zealand,—

and it shall be presumed for the purposes of this section, unless the contrary is established, that the goods so identified are 10 intended to be so used.

(4) For the purposes of **subsection (3)** of this section, a statement shall be deemed to be applied to goods if—

- (a) The statement is woven in, impressed on, worked into, or annexed or affixed to the goods; or 15
- (b) The statement is applied to a covering, label, reel, or thing in or with which the goods are supplied.

(5) No Order in Council may be made under this section in respect of any medicine or related product within the meaning of the Medicines Act 1981 or any food within the meaning of 20 the Food Act 1981, except in relation to the price of the medicine, related product, or food.

Cf. Trade Practices Act 1974 (Aust.) s. 63

25. Standards may be declared to be consumer information standards—(1) The Governor-General may from 25 time to time by Order in Council made on the recommendation of the Minister, declare, in respect of goods or services of any description or any class or classes of goods or services specified in the order, that—

- (a) A standard or specified part of a standard promulgated 30
by the Standards Council pursuant to the Standards Act 1965; or
- (b) A standard or specified part of a standard prescribed by any association or body specified in the order; or
- (c) A standard or specified part of a standard referred to in 35
paragraph (a) or paragraph (b) of this subsection with such additions or variations as are specified in the order—

is a consumer information standard for the purposes of **section 24** of this Act.

(2) Every standard or part of a standard referred to in the 40 order, or the standard or part of a standard so referred to as added to or varied, as the case may be, shall be deemed to be a consumer information standard for the purposes of **section 24** of this Act.

(3) No Order in Council may be made under this section prescribing a consumer information standard which is inconsistent with a consumer information standard prescribed under **section 24** of this Act.

5 Cf. Trade Practices Act 1974 (Aust.), s. 63AA

PART III

PRODUCT SAFETY

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

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

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

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

(2) No person shall supply or offer to supply goods of a kind in respect of which a product safety standard has been
25 prescribed unless those goods comply with that product safety standard.

Cf. Trade Practices Act 1974 (Aust.), s. 62 (1) (a), (2)

27. Standards may be declared to be product safety standards—(1) The Governor-General may, from time to time, by Order in Council made on the recommendation of the
30 Minister declare, in respect of goods of any description or any class or classes of goods specified in the order, that—

(a) A standard or specified part of a standard promulgated by the Standards Council pursuant to the Standards Act 1965; or

35 (b) A standard or specified part of a standard prescribed by any association or body specified in the order; or

(c) A standard or specified part of a standard referred to in **paragraph (a)** or **paragraph (b)** of this subsection with such additions or variations as are specified in the order—

40 is a product safety standard for the purposes of **section 26** of this Act.

(2) Every standard or part of a standard referred to in the order, or the standard or part of a standard so referred to as added to or varied, as the case may be, shall be deemed to be a product safety standard for the purposes of **section 26** of this Act.

5

(3) No Order in Council may be made under this section prescribing a product safety standard which is inconsistent with a product safety standard prescribed under **section 26** of this Act.

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

10

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

15

(3) Where—

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

20

(b) A product safety standard has not been prescribed pursuant to **section 26** of this Act in respect of the goods,—

25

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

(4) A notice made pursuant to **subsection (3)** of this section may be amended or revoked at any time by the Minister by notice in the *Gazette*.

30

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

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

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

35

Cf. Trade Practices Act 1974 (Aust.), s. 62 (1) (b), (2D), (2E)

29. Compulsory product recall—(1) Where a person (in this section referred to as “the supplier”) has in trade supplied goods which—

40

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

(b) Are goods of a kind which will or may cause injury to any person—
and the supplier has not recalled the goods or taken satisfactory action to recall the goods the Minister may, by notice to the
5 supplier, require the supplier to take the action specified in **subsection (3)** of this section.

(2) Where a person (in this section referred to as “the supplier”) has in trade supplied goods which are goods of a kind in relation to which there is in force a notice under **section**
10 **28 (1) or (3)** of this Act, and the supplier has not recalled the goods or taken satisfactory action to recall the goods, the Minister may by notice to the supplier require the supplier to take the action specified in **subsection (3)** of this section.

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

(a) Recall the goods:

(b) Disclose to the public information relating to—
20 (i) The characteristics of the goods which render them unsafe; or
(ii) The circumstances in which use of the goods is unsafe; or
(iii) Any other matters relating to the goods or the
25 use of the goods as may be specified:

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

(4) The Minister shall not require a supplier to disclose any information to the public pursuant to **subsection (3) (b)** of this section if the cost of disclosing that information would, or would be likely to, require the expenditure by the supplier of
35 an amount that exceeds \$50,000.

(5) Every supplier to whom a notice is given under **subsection (3)** of this section shall comply in all respects with that notice.

30. Importation of certain goods prohibited—All goods the supply of which would constitute a contravention of this
40 Part of this Act are hereby prohibited to be imported into New Zealand and shall be deemed to be included among goods prohibited to be imported under section 48 of the Customs Act 1966 and the provisions of that Act shall apply to such goods accordingly.

PART IV

ENFORCEMENT AND REMEDIES

Jurisdiction of Courts

31. Jurisdiction of High Court—In accordance with this Part of this Act, the High Court shall hear and determine the following matters— 5

- (a) Appeals from criminal proceedings in a District Court for offences against **section 34** of this Act:
- (b) Applications for injunctions under **section 35** of this Act:
- (c) Actions for damages under **section 36** of this Act: 10
- (d) Applications for orders under **sections 37 and 38** of this Act. 10

32. Jurisdiction of District Courts—In accordance with this Part of this Act, the District Courts shall hear and determine the following matters— 15

- (a) Proceedings for offences against **section 34** of this Act:
- (b) Actions for damages under **section 36** of this Act where the amount of damages claimed is not more than \$12,000:
- (c) Applications for orders under **section 38** of this Act. 20

33. Jurisdiction of Small Claims Tribunals—(1) In accordance with this Part of this Act, a Small Claims Tribunal established under section 4 of the Small Claims Tribunals Act 1976 shall have jurisdiction to hear and determine—

- (a) Actions for damages under **section 36** of this Act (except in respect of a contravention of **section 8** of this Act) where the amount of damages claimed is not more than \$1,000: 25
- (b) Applications for orders under **section 38 (2) (c) to (f)** of this Act. 30

(2) This section shall come into force on a date to be appointed for the commencement thereof by the Governor-General by Order in Council.

Offences

34. Contraventions of provisions of Part I, Part II, and Part III an offence—(1) Every person who contravenes any of the provisions of **Part I** (except **sections 8, 13 (2), and 20**), or **Part II** or **Part III** of this Act, commits an offence and is liable on summary conviction— 35

(a) In the case of a person other than a body corporate, to a fine not exceeding \$30,000; and

(b) In the case of a body corporate, to a fine not exceeding \$100,000.

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

(3) Proceedings under this section may be commenced at any
15 time within 3 years after the matter giving rise to the contravention arose.

Cf. Trade Practices Act 1974 (Aust.), s. 79 (3)

Civil Proceedings

35. Injunctions may be granted by Court for
20 **contravention of Part I, Part II, and Part III**—(1) The Court may, on the application of the Commission or any other person, grant an injunction restraining a person from engaging in conduct that constitutes or would constitute any of the following—

25 (a) A contravention of any of the provisions of **Part I or Part II, or Part III** of this Act:

(b) Any attempt to contravene such a provision:

(c) Aiding, abetting, counselling, or procuring any other person to contravene such a provision:

30 (d) Inducing, or attempting to induce, any other person, whether by threats, promises or otherwise, to contravene such a provision:

(e) Being in any way directly or indirectly, knowingly concerned in, or party to, the contravention by any
35 other person of such a provision:

(f) Conspiring with any other person to contravene such a provision.

(2) Where in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending
40 determination of an application under **subsection (1)** of this section.

(3) The Court may at any time rescind or vary an injunction granted under this section.

(4) Where an application is made to the Court under this section for the grant of an injunction restraining a person from engaging in conduct of a particular kind the Court may,—

(a) If it is satisfied that the person has engaged in conduct of that kind, grant an injunction restraining the person from engaging in conduct of that kind; or

(b) If in the opinion of the Court it is desirable to do so, grant an interim injunction restraining the person from engaging in conduct of that kind,—

whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind.

(5) Where an application is made to the Court under this section for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the Court may,—

(a) If it appears to the Court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind, grant an injunction restraining the person from engaging in conduct of that kind; or

(b) If in the opinion of the Court it is desirable to do so, grant an interim injunction restraining the person from engaging in conduct of that kind,—

whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

(6) In any proceeding under this section, the Commission, upon the order of the Court, may obtain discovery and administer interrogatories.

Cf. Trade Practices Act 1974 (Aust.), s. 80 (1)–(5)

36. Action for damages for contravention of Part I, Part II, and Part III—

(1) Every person is liable in damages for any loss or damage caused by that person engaging in conduct that constitutes any of the following—

(a) A contravention of any of the provisions of **Part I or Part II or Part III** of this Act:

(b) Aiding, abetting, counselling, or procuring the contravention of such a provision:

(c) Inducing by threats, promises, or otherwise the contravention of such a provision:

(d) Being in any way directly or indirectly, knowingly concerned in, or party to, the contravention of such a provision:

5 (e) Conspiring with any other person in the contravention of such a provision.

(2) An action under **subsection (1)** of this section may be commenced at any time within 3 years from the time when the cause of action arose.

Cf. Trade Practices Act 1974 (Aust.), s. 82

10 **37. Order to disclose information or publish advertisement**—(1) Where, on the application of the Commission, the Court is satisfied that a person has engaged in conduct constituting a contravention of any of the provisions of **Part I or Part II or Part III** of this Act, the Court may (whether
15 or not that person has previously engaged in such conduct), subject to **subsection (2)** of this section, make either or both of the following orders:

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

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

35 (2) The Court shall not, in respect of any one contravention, make an order or orders under **subsection (1)** of this section that the Court considers would, or would be likely to, require the expenditure by the person or persons to whom the order or orders is or are directed of an amount that exceeds, or of amounts that, in the aggregate, exceed, \$50,000.

Cf. Trade Practices Act 1974 (Aust.), s. 80A (1), (2)

38. Other orders—(1) Where, in any proceedings under this Part of this Act, or on the application of any person, the Court finds that a person who is a party to the proceedings, or the applicant, as the case may be, has suffered, or is likely to suffer, loss or damage—

- (a) By conduct of any other person, being conduct constituting a contravention of any of the provisions of **Part I or Part II or Part III** of this Act; or
 - (b) By any act referred to in **section 36 (1) (b) to (e)** of this Act in relation to that contravention—
- the Court may, (whether or not it grants an injunction or makes any other order under this Part of this Act) make all or any of the orders referred to in **subsection (2)** of this section.

(2) For the purposes of **subsection (1)** of this section, the Court may make the following orders—

- (a) An order declaring the whole or any part of a contract made between the person who suffered, or is likely to suffer, the loss or damage and the person who engaged in the conduct or any other person who in relation to the contravention did any act referred to in **section 36 (1) (b) to (e)** of this Act, or of a collateral arrangement relating to such a contract, to be void and, if the Court thinks fit, to have been void *ab initio* or at all times on and after such date, before the date on which the order is made, as is specified in the order:
- (b) An order varying such a contract or arrangement in such manner as is specified in the order and, if the Court thinks fit, declaring the contract or arrangement to have had effect as so varied on and after such date, before the date on which the order is made, as is so specified:
- (c) An order directing the person who engaged in the conduct, or any other person who in relation to the contravention did any act referred to in **section 36 (1) (b) to (e)** of this Act, to refund money or return property to the person who suffered the loss or damage:
- (d) An order directing the person who engaged in the conduct, or any other person who in relation to the contravention did any act referred to in **section 36 (1) (b) to (e)** of this Act, to pay to the person who suffered the loss or damage the amount of the loss or damage:

- (e) An order directing the person who engaged in the conduct, or any other person who in relation to the contravention did any act referred to in **section 36 (1) (b) to (e)** of this Act, at his own expense, to repair, or provide parts for, goods that had been supplied by the person who engaged in the conduct to the person who suffered, or is likely to suffer, the loss or damage:
- (f) An order directing the person who engaged in the conduct, or any other person who in relation to the contravention did any act referred to in **section 36 (1) (b) to (e)** of this Act, at his own expense, to supply specified services to the person who suffered, or is likely to suffer, the loss or damage.
- (3) In the exercise of its jurisdiction under this section a District Court shall not—
- (a) Make any order under **subsection (2) (a)** of this section in any case where the value of the consideration for the promise or act of any party to the contract or collateral arrangement exceeds \$12,000:
- (b) Make an order under **subsection (2) (b)** of this section in any case where the value of the consideration for the promise or act of any party to the contract or arrangement exceeds \$12,000:
- (c) Make an order under **subsection (2) (c)** of this section directing a person to refund money or return property where the amount of money or the value of the property exceeds \$12,000:
- (d) Make an order under **subsection (2) (d)** of this section requiring a person to pay an amount exceeding \$12,000:
- (e) Make an order under **subsection (2) (e)** of this section directing a person to repair goods or provide parts for goods where the value of the work required to repair the goods, or the value of the parts, as the case may be, exceeds \$12,000:
- (f) Make an order under **subsection (2) (f)** of this section directing a person to supply services where the value of the services exceeds \$12,000.
- (4) In the exercise of its jurisdiction under this section a Small Claims Tribunal shall not—
- (a) Make an order under **subsection (2) (c)** of this section directing a person to refund money or return property where the amount of money or the value of the property exceeds \$1,000:

- (b) Make an order under **subsection (2) (d)** of this section requiring a person to pay an amount exceeding \$1,000:
- (c) Make an order under **subsection (2) (e)** of this section directing a person to repair goods or provide parts for goods where the value of the work required to repair the goods, or the value of the parts, as the case may be, exceeds \$1,000: 5
- (d) Make an order under **subsection (2) (f)** of this section directing a person to supply services where the value of the services exceeds \$1,000. 10
- (5) An order made under **subsection (2) (a) or (b)** of this section shall not prevent proceedings being instituted or commenced under this Part of this Act.
- (6) Nothing in this section limits or affects the Illegal Contracts Act 1970. 15
- (7) For the purposes of **subsection (1)** of this section, a reference to “Court” includes a reference to a District Court and a Small Claims Tribunal.

Cf. Trade Practices Act 1974 (Aust.), s. 87 (1), (1A), (2) 20

39. Defences—(1) Subject to this section, it is a defence to a prosecution for an offence against **section 34** of this Act if the defendant proves—

- (a) That the contravention was due to a reasonable mistake; or 25
- (b) That the contravention was due to reasonable reliance on information supplied by another person; or
- (c) That—
 - (i) The contravention was due to the act or default of another person, or to an accident or to some other cause beyond the defendant’s control; and 30
 - (ii) The defendant took reasonable precautions and exercised due diligence to avoid the contravention.
- (2) For the purposes of **subsection (1) (b) and (c)** of this section, the term “another person” does not include— 35
 - (a) A servant or agent of the defendant; or
 - (b) Where the defendant is a body corporate, a director, servant or agent of the defendant.
- (3) A defendant is not, without the leave of the District Court, entitled to rely on the defence provided by **subsection (1) (b)** of this section that the contravention was due to reasonable reliance on information supplied by another person, or by **subsection (1) (c) (i)** of this section that the contravention was due 40

to the act or default of another person, unless the defendant has, not later than 7 days before the date on which the hearing of the proceedings commences, served on the informant a notice in writing identifying that person.

5 (4) It is a defence to a prosecution for an offence against **section 34** of this Act, or to any other proceedings under this Part of this Act, in relation to a contravention of a provision of this Act committed by the publication of an advertisement, if the defendant proves—

10 (a) That the defendant's business is publishing or arranging for the publication of advertisements; and

(b) The defendant received the advertisement in the ordinary course of that business and did not know and had no reason to suspect that its publication would constitute a contravention of the provision.

15 (5) Subject to **subsection (6)** of this section, it is a defence to a prosecution for an offence against **section 34** of this Act, or to any other proceedings under this Part of this Act, in relation to a contravention of **section 24** of this Act, if the defendant
20 proves—

(a) That the goods to which the proceedings relate were acquired by the defendant for the purpose of resupply from a person (not being an agent of a person outside
25 New Zealand) who carried on in New Zealand the business of supplying such goods; and

(b) That the defendant did not know, and could not with reasonable diligence have ascertained, that the goods did not comply with the consumer information standard or that he had not complied with that
30 standard in relation to the goods, as the case may be, or that he relied in good faith on a representation by the person from whom he acquired the goods that a consumer information standard had not been prescribed for those goods.

35 (6) A defendant is not, without the leave of the District Court, entitled to rely on any defence provided by **subsection (5)** of this section unless the defendant has, not later than 7 days before the date on which the hearing of the proceedings commences, served, in the case of proceedings for an offence,
40 on the informant, and in the case of any other proceedings, on the person commencing those proceedings, a notice in writing identifying the person by whom the goods were supplied.

Cf. Trade Practices Act 1974 (Aust.), s. 85 (1)–(5)

40. Conduct by servants or agents—(1) Where, in proceedings under this Part of this Act in respect of any conduct engaged in by a body corporate, being conduct in relation to which any of the provisions of this Act applies, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, acting within the scope of his actual or apparent authority, had that state of mind. 5

(2) Any conduct engaged in on behalf of a body corporate—

(a) By a director, servant, or agent of the body corporate, acting within the scope of his actual or apparent authority; or 10

(b) By any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant, or agent of the body corporate, given within the scope of the actual or apparent authority of the director, servant or agent— 15

shall be deemed, for the purposes of this Act, to have been engaged in also by the body corporate.

(3) Where, in a proceeding under this Part of this Act in respect of any conduct engaged in by a person other than a body corporate, being conduct in relation to which a provision of this Act applies, it is necessary to establish the state of mind of the person, it is sufficient to show that a servant or agent of the person, acting within the scope of his actual or apparent authority, had that state of mind. 20 25

(4) Any conduct engaged in on behalf of a person other than a body corporate—

(a) By a servant or agent of the person acting within the scope of his actual or apparent authority; or 30

(b) By any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first-mentioned person, given within the scope of the actual or apparent authority of the servant or agent— 35

shall be deemed, for the purposes of this Act, to have been engaged in also by the first-mentioned person.

(5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for that intention, opinion, belief or purpose. 40

Cf. Trade Practices Act 1974 (Aust.), s. 84

41. Finding in proceedings to be evidence—In any proceedings for damages against a person under **section 36** of this Act or in any application for an order against a person under **section 38** of this Act, a finding of any fact made in
5 proceedings for an injunction under **section 35** of this Act or for an order under **section 37** of this Act, or for an offence under **section 34** of this Act, being proceedings before the High Court or a District Court in which that person was found to have engaged in conduct constituting a contravention of any
10 of the provisions of **Part I** or **Part II** or **Part III** of this Act or, in relation to any such contravention, to have done any act referred to in **section 36 (1) (b) to (e)** of this Act, is prima facie evidence of that fact and the finding may be proved by production of a document under the seal of the Court or
15 District Court, as the case may be, in which the finding was made.

Cf. Trade Practices Act 1974 (Aust.), s. 83

PART V

MISCELLANEOUS PROVISIONS

42. Powers to obtain documents and inspect goods—
20 (1) Subject to this section, an officer of the Commission authorised in writing for the purpose may, for the purpose of assisting the Commission to ascertain or establish whether any person has engaged in or is engaging in conduct that constitutes
25 or may constitute a contravention of this Act, enter upon and search any premises and inspect any documents, or extracts therefrom, or any goods, in the possession of or under the control of any person.
(2) No officer of the Commission so authorised shall exercise
30 the powers conferred by **subsection (1)** of this section unless the officer obtains a warrant authorising him to exercise those powers in accordance with **subsection (3)** of this section.
(3) Where any judicial officer is satisfied, on application in
35 writing made on oath, that there is reasonable ground for believing that it is necessary for the purpose of assisting the Commission to ascertain or establish whether any person has engaged in or is engaging in conduct that constitutes or may constitute a contravention of this Act for an officer of the Commission to exercise the powers conferred by **subsection (1)**
40 of this section, he may by warrant under his hand, authorise any officer of the Commission to exercise those powers in relation to any premises specified in the warrant.

(4) Every warrant issued under **subsection (3)** of this section shall authorise the person named in the warrant at any reasonable time to enter upon and search the premises specified in the warrant and inspect any documents or extracts therefrom, or any goods, in the possession of or under the control of any person. 5

(5) Every such warrant shall continue in force until the purpose for which it was granted has been satisfied.

(6) Every officer of the Commission authorised to enter upon and search any premises pursuant to **subsection (3)** of this section shall on first entering those premises, and, if requested, at any subsequent time produce— 10

(a) Evidence of his authority to enter the premises; and

(b) Evidence of his identity.

(7) The occupier or person in charge of any premises that an authorised officer enters pursuant to **subsection (3)** of this section shall provide the authorised officer with all reasonable facilities and assistance for the effective exercise of his powers. 15

(8) The Commission, or an officer of the Commission may inspect a document obtained under this section and may make copies of, or take extracts from, the document. 20

(9) Any person who obstructs or hinders an officer of the Commission acting pursuant to a warrant issued under **subsection (3)** of this section commits an offence and is liable on summary conviction to a fine not exceeding \$4,000 in the case of a person not being a body corporate, and \$12,000 in the case of a body corporate. 25

43. Proceedings privileged—(1) No proceedings, civil or criminal, shall lie against the Commission for anything it may do or fail to do in the course of the exercise or intended exercise of its functions under this Act unless it is shown that the Commission acted without reasonable care or in bad faith. 30

(2) No proceedings, civil or criminal, shall lie against any member or associate member of the Commission, or any officer of the Commission, for anything that person may do or say or fail to do or say in the course of the operations of the Commission under this Act, unless it is shown that that person acted in bad faith. 35

(3) Nothing in **subsections (1) and (2)** of this section applies in respect of proceedings for— 40

(a) An offence against section 78 or section 78A or section 105 or section 105A of the Crimes Act 1961; or

- (b) The offence of conspiring to commit an offence against section 78 or section 78A or section 105 or section 105A of the Crimes Act 1961; or
- 5 (c) The offence of attempting to commit an offence against section 78 or section 78A or section 105 or section 105A of the Crimes Act 1961.

44. Repeals and consequential amendments—(1) The enactments specified in the **First** Schedule to this Act are hereby amended in the manner indicated in that Schedule.

10 (2) The enactments specified in the **Second** Schedule to this Act are hereby repealed.

45. Saving of other laws—(1) Except as provided in **subsection (2)** of this section, nothing in this Act limits or affects the operation of any other Act.

15 (2) Without limiting section 10 of the Crimes Act 1961, where an act or omission of a person is both an offence against **section 34** of this Act and an offence against any other enactment and that person is convicted of either of those offences, that person shall not be liable to be convicted of the

20 other of those offences.

(3) Nothing in this Act limits or affects any liability that any person may incur under any rule of law or enactment other than this Act.

25 Cf. 1978, No. 103, s. 65; Trade Practices Act 1974 (Aust.), s. 75

SCHEDULES

FIRST SCHEDULE

Section 44 (1)

ENACTMENTS AMENDED

Title of Enactment	Amendment
1953, No. 66—The Trade Marks Act 1953 (1957 Reprint, Vol. 15, p. 771)	<p>By inserting, after section 71, the following heading and sections:</p> <p><i>“Importation of Goods Infringing New Zealand Trade Marks</i></p> <p>“71A. Collector of Customs to seize imported goods infringing trade mark where prior notice given by registered proprietor or registered user—(1) In this section and sections 71B to 71D of this Act,—</p> <p>“‘Collector’ means a Collector of Customs as defined in section 2 of the Customs Act 1966:</p> <p>“‘Objector’, in relation to goods imported into New Zealand—</p> <p>“(a) If the registered proprietor of the relevant trade mark had, before the importation of the goods, given a notice of the kind referred to in subsection (3) (b) of this section in relation to that trade mark and had not, before the importation of the goods, given notice in writing to a Collector revoking that notice, means the registered proprietor; or</p> <p>“(b) In a case to which paragraph (a) of this definition does not apply, means a registered user of the relevant trade mark, who had, before the importation of the goods, given a notice of the kind referred to in subsection (3) (b) of this section in relation to that trade mark and had not, before the importation of the goods, given notice in writing to a Collector revoking that notice:</p> <p>“‘Owner’, in relation to goods imported into New Zealand, means the person whose name appears on the entry made in relation to the goods under section 19 of the Customs Act 1966 as being the owner of the goods.</p>

FIRST SCHEDULE—*continued*ENACTMENTS AMENDED—*continued*

Title of Enactment	Amendment
1953, No. 66—The Trade Marks Act 1953 (1957 Reprint, Vol. 15, p. 771)— <i>continued</i>	<p>“(2) A reference in this section to the owner of goods shall, where a notice under section 71B (1) of this Act has been given to a person who acted as agent of the owner in relation to the importation of the goods, be read as including a reference to the person to whom that notice was given.</p> <p>“(3) Where—</p> <p>“(a) Goods are imported into New Zealand and are, in accordance with section 16 of the Customs Act 1966, subject to the control of the Customs; and</p> <p>“(b) A notice in writing in the form prescribed objecting to the importation of goods infringing a trade mark registered in respect of goods (in this section referred to as the ‘relevant trade mark’) has been given to a Collector, after the commencement of this section and before the importation of the goods referred to in paragraph (a) of this subsection, being a notice that has not been revoked, by—</p> <p>“(i) The registered proprietor of the relevant trade mark; or</p> <p>“(ii) If a registered user of the relevant trade mark satisfies the Collector that he is, by virtue of subsection (5) of this section, entitled to give such a notice, that registered user; and</p> <p>“(c) The goods referred to in paragraph (a) of this subsection have applied to them a mark that, in the opinion of the Collector, is substantially identical with, or deceptively similar to, the relevant trade mark; and</p> <p>“(d) The goods referred to in paragraph (a) of this subsection are goods in respect of which the relevant trade mark is registered,—</p>

FIRST SCHEDULE—*continued*ENACTMENTS AMENDED—*continued*

Title of Enactment	Amendment
1953, No. 66—The Trade Marks Act 1953 (1957 Reprint, Vol. 15, p. 771)— <i>continued</i>	<p>the Collector shall, unless he is satisfied that there are no reasonable grounds for believing that the importation of the goods constituted an infringement of the relevant trade mark, cause the goods to be seized.</p> <p>“(4) A Collector may refuse to take any action under subsection (3) of this section in relation to goods unless he has been given by the objector, or by one or more of the objectors, security to the satisfaction of the Collector for reimbursing the Crown in respect of expenses that may be incurred by the Crown by virtue of action taken by the Collector under this section in relation to the goods.</p> <p>“(5) Subject to any agreement between a registered user of a trade mark and the registered proprietor of that trade mark, that registered user is entitled to call upon the registered proprietor to give a notice of the kind referred to in subsection (3) (b) of this section in relation to that trade mark and, if the registered proprietor refuses or neglects to do so within 2 months of being so called upon, the registered user is entitled to give such a notice.</p> <p>“(6) Goods seized under subsection (3) of this section shall be taken to such place of security as the Collector directs.</p> <p>“(7) Except as otherwise provided, Part XII of the Customs Act 1966 shall apply to any forfeiture and seizure of goods under this section or section 71B or section 71C of this Act as if this section and those sections were a Customs Act.</p> <p>Cf. Trade Marks Act 1955 (Aust.), s. 103 (1)–(6)</p> <p>“71B. Collector to notify owner and objector of seizure and may release goods on certain grounds—(1) Where goods have been seized under section 71A (3) of this Act, the Collector shall, as soon as practicable after the goods were seized,—</p>

FIRST SCHEDULE—*continued*
 ENACTMENTS AMENDED—*continued*

Title of Enactment	Amendment
<p>1953, No. 66—The Trade Marks Act 1953 (1957 Reprint, Vol. 15, p. 771)—<i>continued</i></p>	<p>“(a) Give to the owner of the goods or a person who acted as agent of the owner in relation to the importation of the goods, either personally or by post, a notice in writing in the form prescribed for the purposes of section 278 of the Customs Act 1966 identifying the goods and stating that the goods so identified have been seized under section 71A (3) of this Act; and</p> <p>“(b) Give to the objector or to each objector, either personally or by post, a notice in writing—</p> <p> “(i) Identifying the goods and stating that the goods so identified have been seized under section 71A (3) of this Act; and</p> <p> “(ii) Stating that the goods will be released to the owner unless an action or proceeding for infringement of the relevant trade mark in respect of the goods is instituted by an objector before the expiration of the period of 1 month after the giving of the notice and the objector gives notice in writing to the Collector before the expiration of that period stating that that action or proceeding has been instituted.</p> <p>“(2) Where—</p> <p>“(a) Goods have been seized under section 71A (3) of this Act; and</p> <p>“(b) The Collector is satisfied that, having regard to information that has come to his knowledge after the goods were so seized, there are no reasonable grounds for believing that the importation of the goods constituted an infringement of the relevant trade mark; and</p>

FIRST SCHEDULE—*continued*ENACTMENTS AMENDED—*continued*

Title of Enactment	Amendment
<p>1953, No. 66—The Trade Marks Act 1953 (1957 Reprint, Vol. 15, p. 771)—<i>continued</i></p>	<p>“(c) No action or proceeding for infringement of the relevant trade mark has been instituted in respect of the goods by an objector,— the Collector may release the goods to the owner.</p> <p>“(3) The owner of goods seized under section 71A (3) of this Act may, by notice in writing given to the Collector at any time before an action or proceeding for infringement of the relevant trade mark is instituted in respect of the goods by an objector, consent to the goods being forfeited to the Crown and, where the owner gives such a notice, the goods are forfeited to the Crown and may be disposed of in such manner as is prescribed or as the Comptroller of Customs directs.</p> <p>“(4) Where—</p> <p>“(a) Goods have been seized under section 71A (3) of this Act; and</p> <p>“(b) The objector or each objector gives notice in writing to the Collector stating that that objector consents to the release of the goods; and</p> <p>“(c) No action or proceeding for infringement of the relevant trade mark has been instituted by an objector in respect of the goods,— the Collector shall release the goods to the owner.</p> <p>“(5) Where goods have been seized under section 71A (3) of this Act, the Collector may, at any time before an action or proceeding for infringement of the relevant trade mark is instituted by an objector in respect of the goods, if in his opinion any possible infringement of the relevant trade mark did not occur either knowingly or negligently, release the goods to the owner upon security being given to the satisfaction of the Collector—</p>

FIRST SCHEDULE—*continued*ENACTMENTS AMENDED—*continued*

Title of Enactment	Amendment
<p>1953, No. 66—The Trade Marks Act 1953 (1957 Reprint, Vol. 15, p. 771)—<i>continued</i></p>	<p>“(a) That the improper marks will be effectually removed from the goods; or</p> <p>“(b) That such additions will be made as will render unobjectionable any mark applied to the goods; or</p> <p>“(c) That the goods will be forthwith exported.</p> <p>“(6) The Collector shall release goods seized under section 71A (3) of this Act (not being goods forfeited to the Crown under subsection (3) of this section) to the owner on the expiration of the period of 1 month after the giving of a notice under subsection (1) of this section to the objector or the objectors unless an objector has, before the expiration of that period,—</p> <p>“(a) Instituted an action or proceeding for infringement of the relevant trade mark in respect of the goods; and</p> <p>“(b) Given notice in writing to the Collector stating that that action or proceeding has been instituted.</p> <p>“(7) Where—</p> <p>“(a) Goods have been seized under section 71A (3) of this Act; and</p> <p>“(b) An objector is a registered user of the relevant trade mark,—</p> <p>nothing in this Act prevents the institution of an action or proceeding for infringement of the relevant trade mark in respect of the goods by that registered user, being an action or proceeding instituted before the expiration of the period referred to in subsection (6) of this section.</p> <p>“(8) Where—</p> <p>“(a) An action or proceeding for infringement of a trade mark has been instituted in respect of goods seized under section 71A (3) of this Act; and</p>

FIRST SCHEDULE—*continued*ENACTMENTS AMENDED—*continued*

Title of Enactment	Amendment
1953, No. 66—The Trade Marks Act 1953 (1957 Reprint, Vol. 15, p. 771)— <i>continued</i>	<p>“(b) At any time after the expiration of 3 weeks after the date on which the action or proceeding was instituted there is not in force an order of the Court in which the action or proceeding was instituted restraining the release of the goods,—</p> <p>the Collector shall release the goods to the owner.</p> <p>Cf. Trade Marks Act 1955 (Aust.), s. 103 (7)–(14)</p> <p>“71C. Provisions relating to subsequent proceedings for infringement of trade mark—(1) Where—</p> <p>“(a) An action or proceeding for infringement of a trade mark has been instituted in respect of goods seized under section 71A (3) of this Act; and</p> <p>“(b) A person applies to the Court in which the action or proceeding was instituted to be joined as a defendant to the action or proceeding,—</p> <p>the Court may permit that person to be joined as a defendant to the action or proceeding.</p> <p>“(2) Where, in an action or proceeding for infringement of a trade mark in respect of goods seized under section 71A (3) of this Act, the Court makes an order in relation to the release of the goods, the Collector shall, subject to subsection (4) of this section, comply with the terms of that order.</p> <p>“(3) Where—</p> <p>“(a) In an action or proceeding for infringement of a trade mark instituted by an objector in respect of goods seized under section 71A (3) of this Act, a Court determines that the importation of the goods did not constitute an infringement of the relevant trade mark; and</p>

FIRST SCHEDULE—*continued*ENACTMENTS AMENDED—*continued*

Title of Enactment	Amendment
1953, No. 66—The Trade Marks Act 1953 (1957 Reprint, Vol. 15, p. 771)— <i>continued</i>	<p>“(b) The defendant satisfies the Court that he has suffered loss or damage by reason of the goods being detained,—</p> <p>the Court may order the objector to pay to the defendant such amount as the Court determines as compensation for that loss or damage, other than any part of that loss or damage that is attributable to any period before the day on which that action or proceeding was instituted.</p> <p>“(4) Where a Collector has seized goods under section 71A (3) of this Act, the Collector shall not release or dispose of the goods under this section or section 71B of this Act, and shall not take any action in relation to the goods in pursuance of an order of the Court made in an action or proceeding for infringement of a trade mark instituted in respect of the goods, if the Collector is required or permitted under any of the Customs Acts, or any other Act to retain control of the goods.</p> <p>“(5) Without limiting the relief that the Court may grant apart from this section, where an objector has instituted an action or proceeding for infringement of a trade mark in respect of goods seized under section 71A (3) of this Act, the Court in which the action or proceeding was instituted—</p> <p>“(a) May, at any time, if it thinks just, make an order, subject to such terms (if any) as the Court thinks fit, requiring the goods to be released to the owner; or</p> <p>“(b) May order that the goods be forfeited to the Crown.</p> <p>“(6) Where the Court orders that goods be forfeited to the Crown, the goods shall be disposed of in such manner as the Comptroller of Customs directs.</p> <p>“(7) The Collector is entitled to appear and be heard in any action or proceeding instituted in respect of goods seized under section 71A (3) of this Act.</p>

FIRST SCHEDULE—*continued*ENACTMENTS AMENDED—*continued*

Title of Enactment	Amendment
1953, No. 66—The Trade Marks Act 1953 (1957 Reprint, Vol. 15, p. 771)— <i>continued</i>	<p>“(8) Where security given under section 71A (4) of this Act for reimbursing the Crown in respect of expenses that may be incurred by the Crown by virtue of action taken by a Collector in relation to goods seized under section 71A (3) of this Act is insufficient to meet those expenses, the amount of the excess shall be a debt due by the objector or, if there is more than one objector, jointly and severally by the objectors, to the Crown and may be recovered by action taken in a court of competent jurisdiction.</p> <p>“71D. Saving—No action or proceeding shall lie against the Crown in respect of any loss or damage suffered by a person by reason of—</p> <p>“(a) Goods being seized or not being seized under section 71A of this Act; or</p> <p>“(b) The release of goods seized under section 71A of this Act.”</p> <p>Cf. Trade Marks Act 1955 (Aust.), s. 103 (23), (24)</p>

SECOND SCHEDULE

Section 44 (2)

ENACTMENTS REPEALED

- 1908, No. 174—The Employment Agents Act 1908 (Reprinted 1968, Vol. 2, p. 1557).
- 1949, No. 41—The Wool Labelling Act 1949 (R.S. Vol. 2, p. 903).
- 1954, No. 43—The Merchandise Marks Act 1954 (R.S. Vol. 10, p. 113).
- 1954, No. 95—The Labour Department Act 1952; So much of the First Schedule as relates to the Employment Agents Act 1908.
- 1960, No. 24—The Employment Agents Amendment Act 1960 (Reprinted 1968, Vol. 2, p. 1565).
- 1967, No. 30—The Employment Agents Amendment Act 1967 (Reprinted 1968, Vol. 2, p. 1566).
- 1969, No. 12—The Consumer Information Act 1969.
- 1975, No. 46—The Unsolicited Goods and Services Act 1975; Section 8 (4).
- 1975, No. 74—The Employment Agents Amendment Act 1975.
- 1975, No. 113—The Commerce Act 1975; So much of the Fourth Schedule as relates to the Consumer Information Act 1969.
- 1981, No. 118—The Medicines Act 1981; Section 112.
- 1982, No. 134—The Fertilisers Act 1982; Section 25 (2).