

# House of Representatives

# Supplementary Order Paper

Tuesday, 3 December 2013

## Consumer Law Reform Bill

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### *Proposed amendments*

Hon Craig Foss, in Committee, to move the following amendments:

#### *Clause 18*

In *clause 18*, after *new section 36R* (after line 22 on page 45), insert:

#### **“36RA Regulations**

- “(1) The Governor-General may, by Order in Council made on the recommendation of the Minister in accordance with **subsection (2)**, make regulations for the following purposes:
  - “(a) exempting classes of agreement for the issue or sale of a financial product from 1 or more provisions of this subpart:
  - “(b) prescribing terms and conditions to which an exemption described in **paragraph (a)** is subject.
- “(2) The Minister must not make a recommendation under this section unless—
  - “(a) the Minister is satisfied that the exemption is not broader than is reasonably necessary to address the matters that gave rise to the regulations; and
  - “(b) the Minister has consulted the persons or representatives of the persons that the Minister considers will be substantially affected by any Order in Council made in accordance with the recommendation, and those persons have had the opportunity to comment to the Minister; and
  - “(c) the Minister has considered those comments.
- “(3) A failure to comply with **subsection (2)** does not affect the validity of any Order in Council made under this section.

- “(4) In this section, **agreement for the issue or sale of a financial product** means an agreement, resulting from an offer described in section 34(2) of the Financial Markets Conduct Act 2013, for the issue or sale of a financial product (within the meaning of that section).

*Clause 41, new section 46A*

In *clause 41, new section 46A(5)*, replace “relating to the allocation of liability” (line 22 on page 84) with “relating to the existence or allocation of liability”.

*Schedule 3*

In *Schedule 3, Part 2*, delete the item relating to the Judicature Act 1908 (lines 26 to 29 on page 115).

In *Schedule 3, Part 2*, replace the item relating to the Sale of Liquor Act 1989 (lines 12 to 16 on page 117) with:

**Sale and Supply of Alcohol Act 2012 (2012 No 120)**

Section 39(1)(b): omit “holds an auctioneer’s licence under the Auctioneers Act 1928” and substitute “is registered as an auctioneer under **Part 2 of the Consumer Law Reform Act 2011**”.

In *Schedule 3, Part 2*, delete the item relating to the Summary Proceedings Act 1957 (on page 118).

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## Explanatory note

This Supplementary Order Paper proposes to amend the Consumer Law Reform Bill as follows.

*Clause 18* inserts *new Part 4A* into the Fair Trading Act 1986, which includes a subpart relating to uninvited direct sales (*new subpart 2*). However, there is an overlap, in relation to uninvited direct sales of financial products, between *new subpart 2* and the Financial Markets Conduct Act 2013 (the **FMC Act**). Section 34 of the FMC Act prohibits a person from offering financial products for issue or sale to a person (**A**) who is acting otherwise than in trade if the offer is made in the course of, or results from, an unsolicited meeting with A. Section 34(2) sets out exceptions to that general prohibition. However, an offer permitted under section 34(2) of the FMC Act may still be regulated under *new subpart 2* of the Fair Trading Act 1986—even though the rationale for exempting the offer from the prohibition in the FMC Act may be equally applicable in the context of the offer being regulated under *new subpart 2*. To cater for this situation, *new section 36RA* is inserted into *new subpart 2* to authorise regulations to be made exempting classes of agreements described in section 34(2) from 1 or more provisions of *new subpart 2*.

*Clause 41* of the Bill inserts into the Consumer Guarantees Act 1993 *new section 46A*, which provides for the indemnification of gas and electricity retailers in the event of a failure of the guarantee of acceptable quality relating to gas and electricity. *New section 46A(5)* specifies the dispute resolution schemes to be

used in the event of disputes between gas or electricity retailers and responsible parties relating to the allocation of liability under the indemnity. That subsection is amended to clarify that it applies to disputes about whether there is liability under the indemnity, as well as to disputes about the allocation of any liability.

*Schedule 3* of the Bill is amended to—

- remove a consequential amendment to the Judicature Act 1908 (this amendment will be made instead under section 51C of the Judicature Act 1908):
- replace a consequential amendment to section 52 of the Sale of Liquor Act 1989 (that section will be repealed on 18 December 2013 by section 418(3) of the Sale and Supply of Liquor Act 2012) with an equivalent amendment to section 39 of the Sale and Supply of Alcohol Act 2012:
- remove a consequential amendment to Schedule 1 of the Summary Proceedings Act 1957, which was repealed on 1 July 2013.

### **Departmental disclosure statement**

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Supplementary Order Paper. It provides access to information about any material policy changes to the Bill and identifies any new significant or unusual legislative features of the Bill as amended.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=sop&subtype=government&year=2013&no=404&>.