

Short-Form Departmental Disclosure Statement

Consumer Law Reform Bill

Supplementary Order Paper No 404

A short form disclosure statement for proposed government amendments to a Bill seeks to bring together in one place some selected information to support and enhance the Parliamentary and public scrutiny of those proposed amendments.

It highlights certain significant powers or features in the proposed amendments that might be of particular Parliamentary or public interest and warrant an explanation.

There was no original disclosure statement for this Bill.

This disclosure statement was prepared by the Ministry of Business, Innovation and Employment.

The Ministry of Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

26 November 2013.

Significant Legislative Features

Offences, penalties and court jurisdictions

1. Do the proposed amendments create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalties)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO

Privacy issues

2. Do the proposed amendments create, amend, or remove any provisions relating to the collection storage, access to, correction of, use or disclosure of personal information?	NO
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Compulsory acquisition of private property

3. Do the proposed amendments contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4. Do the proposed amendments create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

5. Do the proposed amendments affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the burden of proof for offences

6. Do the proposed amendments:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for any offence or civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

7. Do the proposed amendments create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

8. Do the proposed amendments create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

9. Do the proposed amendments create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
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The proposed amendments (section 36RA of the Fair Trading Act 1986) enable regulations to exempt agreements from the uninvited direct sales agreements provisions in the Bill in specified circumstances.

The proposed amendments address an overlap between the Bill and the Financial Markets Conduct Act 2013 (FMC Act). The Bill will impose a cooling off period and disclosure requirements on uninvited direct sales. The FMC Act already prohibits selling financial products in unsolicited meetings. Both provisions are directed at preventing pressure selling. Generally the overlap is not problematic. However, there are some exemptions from the Financial Markets Conduct Act 2013 provision, including so as to recognise alternative regulatory safeguards. At present there are no corresponding exemptions from the Bill's provisions. The regulation-making power will enable corresponding exemptions to be made.

The regulation-making power is necessary to prevent the Financial Markets Conduct Act 2013 exemptions from being undermined and to prevent duplication of some disclosure obligations. Using regulations, rather than including corresponding exemptions in the Bill itself, ensures that the exemptions apply only to the extent that the overlap is problematic in practice. The exemption power is confined to those agreements already exempted from the Financial Markets Conduct Act 2013 provision. In addition, the Minister must be satisfied that the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to it. The requirement for consultation to be undertaken with persons substantially affected by them before any regulations are made is a further safeguard.

10. Do the proposed amendments create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

11. Do the proposed amendments contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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