

# Departmental Disclosure Statement

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Fair Trading Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

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

MBIE certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

23 April 2026

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## **Part One: General Policy Statement**

This Bill amends the Fair Trading Act 1986 (the Act). The Act is a core part of New Zealand's consumer law framework and sets baseline rules for how businesses interact with consumers, including prohibitions on misleading and deceptive conduct, false representations, and unfair practices. The Act plays a central role in supporting consumer confidence, consumer protection, and well functioning markets. The Commerce Commission enforces the Act and the courts determine breaches and impose penalties and other remedies.

The Bill's objectives are to ensure the Act remains fit for purpose as business practices and digital markets evolve, strengthen deterrence of unfair trading conduct, support appropriate consequences for breaches, and enable efficient and effective enforcement. The Bill also includes targeted changes intended to support proactive scam disruption and to keep product safety settings up to date.

The Bill achieves these objectives through a package of reforms in three related areas: penalties and enforcement reform, enabling proactive scam disruption, and streamlining product safety settings.

### **Penalties and enforcement reform**

The Bill modernises the Act's enforcement and remedies framework by shifting most breaches from a primarily criminal enforcement model to a civil liability regime, while retaining criminal offences for a limited set of intentional and serious misconduct offences (including serious product safety offending and conduct that obstructs enforcement).

The Bill includes the machinery provisions needed to operate the civil liability regime in practice, including processes and supporting rules for civil proceedings, civil liability orders, defences, and time limits.

The Bill raises the maximum civil penalties and criminal fines. For serious breaches, the new maximums are increased and can also take into account the financial benefit from misconduct.

### **Safe harbour defence to support proactive scam disruption**

The Bill introduces a statutory safe harbour conditional defence to protect online service providers from civil liability in proceedings when they act in good faith to proactively disrupt suspected scam activity. The safe harbour is intended to encourage timely action to reduce consumer harm from scams, while remaining subject to conditions designed to ensure the protection is used appropriately and civil liberties are protected.

In general terms, the defence will be available where an online service provider has reasonable grounds to believe an activity is a scam. In addition, the disruption action must be reasonably proportionate, taken in good faith, commenced within a specified timeframe, and promptly reversed if the provider no longer has reasonable grounds to believe the activity is a scam.

### **Streamlining product safety settings**

The Bill streamlines the legislative framework under the Act for product safety requirements. The aim of this is to help ensure they can be kept up to date as

necessary. It enables regulations to authorise the Chief Executive of the Ministry of Business, Innovation and Employment to set technical product safety requirements by product safety notice, while regulations made by the Governor General will set which products are subject to product safety regulation. This is intended to improve flexibility and timeliness in updating references to technical standards as they change and keeping settings aligned internationally, within the scope set by the regulations, to facilitate trade.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>NO</b>
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### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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<b>2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p><i>Penalties: Updating the penalties in the Fair Trading Act 1986</i>, The Ministry of Business, Innovation and Employment (MBIE), 10 September 2025. This Regulatory Impact Statement (RIS) is accessible at: <a href="https://www.mbie.govt.nz/dmsdocument/31960-regulatory-impact-statement-updating-the-penalties-regime-in-the-fair-trading-act-1986">https://www.mbie.govt.nz/dmsdocument/31960-regulatory-impact-statement-updating-the-penalties-regime-in-the-fair-trading-act-1986</a></p> <p><i>Scams: Legislative limitations on civil liabilities for entities disrupting scams</i>, MBIE, 8 May 2025 This RIS is accessible at: <a href="https://www.mbie.govt.nz/dmsdocument/31959-regulatory-impact-statement-on-the-safe-harbour-provision-to-support-online-service-providers-to-disrupt-online-scams">https://www.mbie.govt.nz/dmsdocument/31959-regulatory-impact-statement-on-the-safe-harbour-provision-to-support-online-service-providers-to-disrupt-online-scams</a></p> <p>Product Safety: A RIS was not required for the product safety component of this Bill, as an exemption was granted on the grounds that the policy given effect in this Bill has no or only minor economic, social, or environmental impacts.</p>	

<b>2.3.1. If so, did the Ministry for Regulation provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>
The Ministry for Regulation determined that the RIS for policy decisions on this Bill did not meet the threshold for receiving an independent opinion on the quality of the RIS' from the RIA Team based in the Ministry for Regulation.	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>NO</b>
There are no material differences between the preferred policy options in the two RIS and the changes to the Act set out in this Bill.	

## Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
<p>Penalties: Officials analysed the potential costs and benefits arising from these changes as part of preparing the RIS – this included high level estimates of the potential costs and benefits to New Zealand businesses, consumers, and the Commerce Commission as the Act’s enforcement agency. This analysis is set out on pages 26 to 28 of the RIS.</p> <p>The analysis included in the RIS is qualitative only. This is due to the challenges of quantifying the costs and benefits of future enforcement activities, and because penalties for future breaches of the Act will be determined by the courts based on the facts of any case.</p> <p>Officials have not analysed the potential impacts on the income or wealth of any group of persons. As set out in the <a href="#">Departmental Disclosure Statement technical guidance</a> (page 30), losses arising from legal penalties are to be set aside from this analysis.</p> <p>Safe harbour: Officials analysed the potential non-monetised costs and benefits from these changes as part of preparing the RIS. This included high-level estimates of low non-monetised costs, including minor one-off compliance and process adjustments for industry, limited court involvement, and a small risk of temporary disruption from mistakenly blocked content, mitigated by procedural safeguards. The non-monetised benefits are potentially high, as reduced legal uncertainty enables faster industry action against scam activity, improves consumer protection and trust in digital systems, and supports confidence in legitimate online activity over time.</p> <p>The safe harbour provision could cause a legitimate business’ website to be taken down accidentally. If that were to occur, there may be a window of lost income from accessing the website. However, we do not consider that this meets the threshold for a “substantial, unavoidable loss of wealth” given the mitigations through the defence’s conditions and 28-day requirement to reverse disruption.</p> <p>Product safety: A RIS was not required, as an exemption was granted for minor impacts.</p>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b><i>Penalties amendments</i></b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
<b><i>Safe harbour for scams</i></b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>NO</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>
<b><i>Product safety standards</i></b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>

<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
<p>Penalties: As this Bill involves amending penalty levels, the potential costs and benefits of the changes will depend on how businesses and individuals comply with the fair trading obligations set out in the Act.</p> <p>It is expected that increased maximum penalties will better deter businesses and individuals from breaching the Act's provisions due to the higher monetary impacts of penalties. This increased deterrence will benefit consumers by reducing instances of unfair trading conduct that can cost them money and will benefit compliant businesses by ensuring that their competitors are deterred from breaching the Act to gain an unfair commercial advantage.</p> <p>The Commerce Commission enforces the Act. The Commerce Commission will continue to pursue action against unfair trading conduct and will issue guidance on how businesses and individuals can meet their obligations under the Act. It is therefore likely that the costs and benefits arising from the changes in this Bill will be impacted by the compliance and enforcement activity undertaken by the Commerce Commission.</p> <p><i>Product safety:</i> As this Bill enables technical product safety requirements to be updated through product safety notices (where authorised by regulations), the potential costs and benefits will depend on how regulated parties comply with those requirements and the extent to which the notice mechanism is used to keep technical references current as standards change.</p> <p>It is expected this will reduce the time and effort needed to keep technical requirements up to date, supporting clearer and more current product safety requirements over time.</p>	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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Officials have analysed the provisions in the Act to identify potential international obligations that may be impacted by this Bill. This analysis identified one section in the Act that directly relates to an international obligation.

Section 51 of the Act sets out that sections 10 and 13 (which deal with misleading representations) apply to goods exported from New Zealand to China pursuant to the *Agreement between the Government of New Zealand and the Government of the People's Republic of China on Cooperation in the Field of Conformity Assessment in Relation to Electrical and Electronic Equipment and Components*, which is Annex 14 of the *Free Trade Agreement between the Government of New Zealand and the Government of the People's Republic of China*.

As amended by this Bill, sections 10 and 13 are tier 1 civil liability provisions, but section 51 continues to provide for a warrant to be issued under section 47(2) in relation to contraventions (or involvement in contraventions) of those sections connected with goods exported (or potentially exported) to China.

### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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MBIE undertook internal analysis both on the penalties proposals and safe harbour separately to identify whether a Treaty interest or obligation arose in the policy development phase. MBIE has a general obligation through the Treaty to engage with Māori on economic development policy. The analysis identified that this obligation likely did not extend to this policy area outside of a general obligation to consider consumer law issues broadly.

### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>	<b>NO</b>
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Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill.

Such advice, or reports, will be accessible on the Ministry's website at

<https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/advice/>

## Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>YES</b>
<p>This Bill amends the offences and penalties regime in the Act by shifting most criminal offence provisions to a new civil liability regime, increasing maximum pecuniary penalties, and replacing existing infringement offences with either standard criminal offences or civil breaches (with consequential revocation of the Fair Trading (Infringement Offences) Regulations 2014). It also includes supporting machinery and processes for civil proceedings under the Act.</p>	

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
<p>MBIE officials have engaged with the Ministry of Justice's Offences and Penalties Vetting team, and policy team, as part of developing the policy on these changes and as part of drafting this Bill.</p> <p>Ministry of Justice officials requested additional detail on the rationale behind shifting offence provisions to a civil regime and the rationale for increasing maximum penalty amounts. MBIE officials provided advice and analysis in response, including an explanation of how penalties for breaching each offence section in the Act will change due to this Bill.</p> <p>Infringements: The Ministry of Justice was engaged on the Bill's treatment of the Act's existing infringement offences, including concerns about disproportionate fine-to-fee settings and to clarify the status of convictions. MBIE sought Ministerial decisions on options to address these issues by replacing infringement offences with a single enforcement pathway (either standard criminal offences or civil breaches, depending on the conduct).</p> <p>Following departmental consultation on the draft Bill, the Ministry of Justice raised further concerns about the movement of some former infringement conduct into the Bill's lower-tier civil liability settings, including whether tier-2 pecuniary penalties are appropriate for low-level conduct. MBIE has prioritised and worked through this feedback as part of finalising the drafting.</p> <p>MBIE officials have also engaged with the Ministry of Justice's operational team responsible for implementing the Te Au Reka digital caseflow management system. This engagement focused on understanding how the changes in the Bill would be implemented and to confirm any lead-in time needed for the changes. Based on this engagement, we understand that a lead-in time of around six months will be required in order to implement the changes needed through Te Au Reka. MBIE officials will continue working with the Ministry of Justice operational team as part of implementing the changes in this Bill.</p> <p>The Legislation Design and Advisory Committee (LDAC) was also engaged to test several detailed design questions regarding the Bill (such as the interaction between the new civil liability regime and the infringement offences regime in the Act). Officials received formal advice from LDAC on these matters.</p> <p>NZBORA vetting: The Bill was submitted to the Ministry of Justice for NZBORA vetting; the resulting advice to the Attorney-General is generally published once the Bill is introduced on the Ministry of Justice website: <a href="https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/advice/">https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/advice/</a>. That advice was not available before the LEG paper was lodged on 23 April 2026.</p>	

## Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>NO</b>
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<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>NO</b>
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### External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
<p>Targeted consultation was undertaken on proposals to strengthen penalties between 28 July and 8 August 2025. MBIE officials engaged groups representing New Zealand businesses, consumers, and the legal sector. Public consultation was not undertaken during this process due to the need to expedite policy work at the direction of Ministers.</p> <p>This targeted consultation tested the proposals set out in this Bill to introduce a civil liability regime and to increase maximum penalty levels. Other options for amending the Act were also tested (such as expanding infringement offences) but these options have not been progressed by Ministers.</p> <p>Proposals to shift to civil pecuniary penalties and increase maximum penalty levels were supported by consumer groups but generally opposed by businesses and some law firms citing limited evidence of a problem and issues of proportionality and procedural safeguards. Subsequent engagement with certain business sector groups was undertaken to respond to concerns raised and to provide further evidence and explanation of the changes.</p> <p>Product safety: Targeted consultation was also undertaken between 28 July and 8 August 2025 on proposals to streamline updates to product safety regulations. Submitters generally supported streamlining how product safety standards are kept up to date</p> <p>Safe Harbour: Targeted consultation was undertaken during policy development for the scams safe harbour. No formal or public consultation was undertaken. This consultation was supported by public consultation in Australia on proposals analogous to the safe harbour defence in the <i>Scam Prevention Framework Act 2025 (Aus)</i>.</p>	

### Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>YES</b>
<p>MBIE officials have engaged closely with the Commerce Commission as part of the policy development and drafting process to ensure that the Bill's provisions are workable and complete.</p> <p>For the safe harbour, MBIE also informally engaged with stakeholders in the telecommunications and banking sectors to test whether the proposed defence settings would be workable in practice to support timely scam disruption.</p> <p>In addition, MBIE consulted a range of agencies with operational or system interests in the Bill's settings, including the Ministry for Regulation, Ministry of Justice, Treasury, Ministry of Foreign Affairs and Trade, New Zealand Customs Service, Department of Internal Affairs, Financial Markets Authority, Office of the Privacy Commissioner, Police, Serious Fraud Office, Reserve Bank of New Zealand, and Standards NZ to test the workability of the proposals and identify any implementation issues.</p> <p>Officials also tested the workability of the Bill's consequential amendments for occupational licensing regimes by consulting with the operational teams and regulators responsible for those regimes (including regulators responsible for licensing and disqualification settings) to confirm the amendments would work in practice.</p>	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
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### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>
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### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
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### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>
<p>The Bill restructures which provisions are enforced through criminal offences and which are enforced through the new civil liability regime. The Bill identifies offence provisions in new section 40 and civil liability provisions in new section 41B (tier 1 and tier 2).</p> <p>Civil liability provisions (new s 41B):</p> <ul style="list-style-type: none"><li>- Tier 1: 7, 10, 11, 12, 12A, 13, 14(1), 16, 17, 19, 20, 21(c), 22, 26A, 26B, 31A.</li><li>- Tier 2: 21A(2); 28, 28A(4), 28B(2) - (3); 36 – 36D, 36F-36H, 36L, 36M, 36O -36Q, 36U - 36V, 36WB - 36WC, 36ZB, 36ZD, 36ZF.</li></ul> <p>Offence provisions (new s 40): 21(a) - (b), 21C, 24, 30, 31, 32, 33D(4), 36, 46E, 33C(7), 33D(6), 36RA, 47(5), 47G(5A), 47L(8).</p> <p>Burden of proof: civil liability proceedings are treated as civil proceedings and the usual civil rules apply (including standard of proof).</p>	

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>YES</b>
<p>The safe harbour creates a conditional defence that will provide immunity for online service providers, such as digital platforms, telecommunications service providers, and website hosting services, against <b>civil</b> proceedings, so long as the provider meets the necessary conditions under the safe harbour.</p> <p>The safe harbour does not extend to criminal proceedings and is intended to be targeted towards general civil proceedings, including but not limited to; negligence, contract economic loss.</p>	

### Significant decision-making powers

<b>4.6. Does this Bill 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?</b>	<b>NO</b>
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## Powers to make delegated legislation

<b>4.7. Does this Bill 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?</b>	<b>NO</b>
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<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
<p>Clauses 9 and 10 of the Bill amend the existing power in section 29 of the Act to make regulations prescribing one or more product safety standards for a specified product or class of products. The use of this power affects the legal obligations of those involved in the supply of those products to consumers (with criminal liability for contraventions).</p> <p>The amendments provide for a different allocation of powers within the Executive branch of government. Their purpose is to give product safety regulations the option of further delegating decisions about the details of the requirements that apply to the relevant products to the Chief Executive of MBIE, through a product safety notice. This would enable the law to more quickly respond to changes in the technical standards that are cited as containing the most up to date and suitable requirements to ensure the relevant products are safe. It would not enable decisions about what products are subject to safety regulation to be delegated to the Chief Executive.</p>	

## Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>
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