

# **REGULATORY IMPACT STATEMENT CONSUMER LAW REFORM: FURTHER DECISIONS FEBRUARY 2011**

## **AGENCY DISCLOSURE STATEMENT**

This Regulatory Impact Statement has been prepared by the Ministry of Consumer Affairs (MCA).

It is supplementary to the Regulatory Impact Statement: Consumer Law Reform December 2010. It provides an analysis of additional options to address problems that have been identified with consumer laws not adequately meeting the objectives of consumers who are able to transact with confidence and businesses which are able to compete on a level playing field. These options were not addressed in the first paper and cover product safety, consumer information, contracting out of the Fair Trading Act 1986, Fair Trading Act enforcement provisions, collateral credit and the Consumer Guarantees Act 1993, the relationship between the Carriage of Goods Act 1979 and the Consumer Guarantees Act, and updating the Weights and Measures Act 1987.

As noted in the Consumer Law Reform Regulatory Impact Statement (RIS), there are 7 consumer laws and 2 business laws that apply to consumer transactions. This RIS concerns the Fair Trading Act, Consumer Guarantees Act, Carriage of Goods Act and the Weights and Measures Act. The analysis of the problems with these laws has been undertaken using the framework of the OECD's Consumer Policy Toolkit. The analysis has found that consumers, businesses and those responsible for monitoring and enforcement (of the Fair Trading Act) would benefit from strengthened provisions in these Acts that enable better monitoring and enforcement and provide better access to redress.

If the laws are strengthened, they will better deliver on the objectives that:

- consumers are confident when they purchase goods and services,
- consumers and suppliers have confidence in market rules,
- consumers have access to redress if their reasonable expectations are not met, and
- consumer law is effective and enforceable, benefitting consumers and businesses.

The Consumer Law Reform is on the Regulation Review Programme 2010. The proposals are consistent with the Government Statement on Regulation: Better Regulation, Less Regulation.

There is very limited quantitative data to support the policy analysis. Overseas studies have been used to assist the quantitative analysis. Whilst the overseas market environments are not the same as that in New Zealand, the data is still helpful. In particular, Australian data is likely to reflect a similar situation to New Zealand as the New Zealand and Australian markets have many similarities.

## **STATUS QUO**

The Fair Trading Act 1986, the Consumer Guarantees Act 1993, the Carriage of Goods Act 1979 and the Weights and Measures Act 1987 set out rules concerning transactions between businesses and consumers and also businesses to businesses.

The Fair Trading Act includes provisions on product safety and consumer information regulation. The Minister of Consumer Affairs may issue unsafe goods notices and require compulsory product recalls. The Commerce Commission is responsible for monitoring and enforcement of compliance with the Act. The Ministry of Consumer Affairs Measurement and Product Safety Service (MAPSS) is responsible for advising on product safety regulation. Enforcement of the Act involves working with traders, sending formal warning notices, entering into settlement agreements when a breach of the Act is admitted and court proceedings. A breach of the Fair Trading Act may result in a civil or criminal conviction, a fine of up to \$60,000 for individuals and \$200,000 for bodies corporate and orders to vary a contract or for damages related to loss and suffering. The Disputes Tribunal has jurisdiction over parts of the Act and may make orders to vary a contract or for damages related to loss and suffering up to \$15,000.

The Consumer Guarantees Act (CGA) provides consumers the right to reject goods that are unsafe. The CGA includes a guarantee that a service, or any product resulting from the service, to consumers will be provided with reasonable care and skill.

The Carriage of Goods Act 1979 is specific law covering goods delivered by carriers, for example, couriers and transport firms. The Act allows a carrier to set the risk and limit the liability for damage or loss of goods through various types of contract, one being a strict liability with a limit of \$1,500.

The Weights and Measures Act provides the means by which consumers and businesses are assured of the correct quantity of goods sold by weight, measure or number.

## **PROBLEM DEFINITION**

Several areas where the Fair Trading Act, Consumer Guarantees Act, Carriage of Goods Act and the Weights and Measures Act are not meeting their objectives or could meet their objectives in a different way with more positive outcomes have been identified.

With respect to product safety, the existing law is adequate but does not provide for good disclosure of information on product safety recalls. Consumers are not finding out about product safety recalls. With respect to potentially unsafe goods, there is uncertainty about whether a notice can be issued for a good that it is reasonably foreseeable will be used (or misused) in an unsafe manner. The law does not provide for MAPSS and the Commerce Commission to have access to premises for monitoring and enforcement of product safety. There is also a problem when a good that has been implicated in a serious injury is still available for sale and an unsafe goods notice is pending. This is likely to be for a very short time period of up to 2 working days. Whilst in most cases the voluntary agreement of the retailer will be obtained to remove the good from sale, there can be difficult situations when the owner of a retail outlet cannot be contacted and the retail sales assistant is not able to act without permission from the retail owner.

With respect to consumer information, there are good regulation-making powers but one area not covered is the testing of products to obtain required labelling information. There is also uncertainty about whether consumer information regulations could be made covering information about donations for charitable purposes. This is relevant to Parliament's consideration of the Private Members Bill in the name of Mrs Amy Adams, "Fair Trading (Soliciting on Behalf of Charities) Amendment Bill. The law also does not provide for the Commerce Commission to have access to premises for monitoring and enforcement of consumer information regulations.

The case law is clear that traders cannot contract out of their obligations to consumers under the Fair Trading Act and that parties cannot excuse themselves from committing offences under the Fair Trading Act by contract. However, this is not easy or clear for consumers or small businesses to establish. This is because there is nothing in the Fair Trading Act to indicate its relationship to other contract law. It is a compliance cost when law is unclear and not easily understood by consumers and small businesses.

With respect to enforcement, the Fair Trading Act does not have specific provisions on the use of settlement agreements and their enforceability in contrast to other legislation, which weakens the value of this low cost approach to settlement. The Fair Trading Act only provides for convictions and fines and does not have infringement offences. Having only a court conviction and fine available as an enforcement offence in the Act is quite heavy handed for some more minor breaches of the Act. For example, technical consumer information regulation and product safety breaches plus with the proposed inclusion of layby sales, unsolicited goods and services, unsolicited direct selling, and auction regulation in the Fair Trading Act there is the possibility of several minor technical breaches. Infringement offences are an alternative option. Fines and convictions also do not seem to be a sufficient deterrent for some recidivist offenders under the Fair Trading Act. Banning provisions are a complementary enforcement option that can be used for recidivist offenders.

The Consumer Guarantees Act (CGA) sets out statutory guarantees regarding goods and services and it is the primary legislation for consumers obtaining redress. The Carriage of Goods Act overrides the CGA, meaning consumers often have less rights concerning carriage of goods. The Carriage of Goods Act assumes that consumers will be offered the option to take the limited carriers' risk. This option is not being offered and consumers are disadvantaged from not having this option plus not being covered by the CGA. The limited carriers' risk limit of \$1,500 was last updated in 1989 and with inflation has become too low.

There is a weakness in the CGA when goods are rejected and there are collateral credit arrangements. A consumer may still be responsible for a credit arrangement for goods they no longer own and for which they have not received a replacement or other compensation.

The Weights and Measures Act is very prescriptive. There are several areas where a more principles-based approach would benefit businesses and consumers. The prescription in the Act is making initiatives such as supermarket self check-outs involving weighing a possible breach of the Act.

## **OBJECTIVES**

- To improve consumer welfare by having well-functioning markets in which consumers participate confidently knowing their reasonable expectations should

be met when they transact and they should have access to redress if reasonable expectations are not met.

- To have in place principles-based consumer law that:
  - enables consumers to transact with confidence,
  - protects reputable suppliers and consumers from inappropriate market conduct,
  - is up to date and relevant now and into the future,
  - is easily accessible to those who are affected by it,
  - is in line with international best practice, as appropriate.
- To facilitate competition between businesses, for the long term benefit of consumers, by having market rules that protect against inappropriate trader behaviour.
- To achieve good market conduct by businesses, and by consumers and businesses having access to justice and the regulator undertaking effective enforcement of the law.
- To facilitate mutually beneficial trade on equitable terms by trade partners having trust that our laws deliver safe products and products that are consistent with any measure, quality or other claims made.

## **REGULATORY IMPACT ANALYSIS**

An analysis of consumer and business detriment as a result of consumer laws not meeting the above objectives has been undertaken using the OECD Consumer Policy Toolkit Framework.<sup>1</sup> The Framework includes assessments of the detriment and whether the detriment warrants a policy action, identification of the range of policy actions/options and evaluation of these options. This analysis is set out in the tables below including an assessment of the costs and benefits of the options. Specific analysis is provided on:

- Product Safety – Notification of Recalls
- Product Safety – Reasonably Foreseeable Use (including a misuse)
- Product Safety – Enforcement Powers
- Consumer Information Regulation-Making Powers – Testing
- Consumer Information Regulation-Making Powers – Soliciting on Behalf of Charitable Entities
- Fair Trading Act – Court Enforceable Undertakings
- Fair Trading Act – Banning Orders
- Fair Trading Act – Infringement Offences
- Consumer Guarantees Act and Carriage of Goods Act.
- Weights and Measures Act – Updating

More detailed analysis is set out in Additional Papers which will be available at a later time on [www.consumeraffairs.govt.nz](http://www.consumeraffairs.govt.nz).

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<sup>1</sup>Consumer Policy Toolkit, OECD, 2010.

## THE PREFERRED SET OF OPTIONS

The preferred option is to make amendments to the Fair Trading Act, the Consumer Guarantees Act, the Weights and Measures Act, and the Carriage of Goods Act.

### Fair Trading Act

**Problem:** Difficulties for consumers and MCA finding out about recalls.

**The preferred option:** is to strengthen the product safety provisions in the Fair Trading Act so that there is better provision of information to consumers on product safety recalls. The preferred option includes product safety recall information being available on the MCA website.

**Problem:** Unsafe goods can be available for sale as the existing provisions in the Act limit the regulator's ability to influence and stop the sale of such products.

**The preferred option:** is to widen the regulator's scope to remove unsafe products from sale, including stop sell notices and providing that unsafe goods notices may cover reasonably foreseeable use (and misuse). Provide for Government Product Safety Policy Statements. Whilst it is important to remove unsafe goods from sale, it is recognised that some very useful products can injure people if used incorrectly. All product safety decisions must take into account the utility of the product, the risk of harm and likely consumer behaviour associated with the product and, accordingly, the preferred option provides that for an unsafe goods notice concerning a product, where the concern is about reasonably foreseeable use or misuse, the Minister must take these factors into consideration. The preferred option recognises that most product safety is achieved through businesses behaving responsibly and voluntary recalls. Provision for Government Product Safety Policy Statements allows for information on acceptable product safety without the need for formal regulation.

**Problem:** The Act does not provide for the Commerce Commission to have access to businesses for monitoring and enforcement. It also does not provide for the use of lower level enforcement offences, or formally recognise the use of settlement agreements or allow for banning orders in extreme circumstances.

**The preferred option:** is to strengthen the monitoring and enforcement provisions in the Fair Trading Act through providing for infringement notices, court enforceable undertakings, banning orders and access to premises to monitor compliance with consumer information regulations. Good enforcement requires a range of enforcement tools are available. Infringement notices are particularly effective for clear breaches of the Act where an instant fine is able to send a quick, sharp enforcement message. Court enforceable undertakings will strengthen the use of settlement agreements and banning orders provide a tool at the other end of the spectrum for when a conviction or fine does not deter a recidivist offender.

The Consumer Law Reform provides for regulation of layby sales, unsolicited goods and services, unsolicited direct sales, and auction registration and conduct through the Fair Trading Act. It is important that there are a range of offence provisions to cover from such things as not providing a layby sales written agreement or failing to notify a product safety recall, which are minor breaches, through to major breaches concerning misrepresentations and pyramid selling.

## Consumer Guarantees Act and Carriage of Goods Act

**Problem:** Consumers have less redress rights for carrier services than other services. The Carriage of Goods Act does not require consumers are offered the limited liability option and the risk liability amount is too low.

**The preferred option:** is to provide that carrier services to consumers come under the Consumer Guarantees Act, unless the Carriage of Goods Act provides for a higher standard of service. The latter requires amendments to the Carriage of Goods Act. The preferred option is also to amend this Act to make it clear that consumers must be offered the limited liability option and to increase the limited liability option amount to \$2,500. The limited liability option in the Carriage of Goods Act offers advantages to both carriers and consumers.

**Problem:** The Consumer Guarantees Act does not have sufficiently strong redress provisions concerning collateral credit.

**The preferred option:** is to make it clear that consumer redress when goods are rejected may include the supplier discharging any remaining collateral credit obligations. The Consumer Guarantees Act is the main law providing consumer rights. It is self-enforced by consumers and is a major contributor to achieving the objective of confident consumers and enhanced consumer welfare.

## Weights and Measures Act

**Problem:**

The Weights and Measures Act is important legislation for domestic and export trade. There are some aspects that are not up to date and relevant.

**The preferred option:** is to make amendments to the Weights and Measures Act in accord with its objective of ensuring accurate measures and weight by providing for affirmation of accuracy when measuring and weighing instruments are retested, providing for suppliers to be responsible for weighing instrument accuracy but not necessarily the weighing of the goods (allowing self-serve checkouts) and widening access to approved Standards for measuring the accuracy of weights and measures.

## SUMMARY OF REGULATORY ANALYSIS

<b>Fair Trading Act: Product Safety – Notification of Recalls</b>	
<p><b>The consumer problem and its source / What is the problem?</b></p>	<p>Product safety recalls are undertaken if a product is found to be unsafe or potentially unsafe after it has been sold. An important aspect of a recall is advising product owners of the issue and how the product can be made safe or where to take it for a repair or replacement. Product safety recalls are notified in newspapers and sometimes to MAPSS<sup>2</sup> or Consumer NZ.</p> <p>The Australian Productivity Commission Review of the Australian Consumer Product Safety System (page 264) discusses recall effectiveness noting recall return rates of: less than 10% (New South Wales – described as successful); less than 5% (ACCC<sup>3</sup>); never above 50-60% (submitter); UK Department of Trade and Industry 2000</p>

<sup>2</sup> MAPSS – Measurement and Product Safety Service, Ministry of Consumer Affairs.

<sup>3</sup> ACCC – Australian Competition and Consumer Commission

	<p>study of 34 recalls showed an average return rate of 37% but 8 recalls had a return rate less than 10% (with products valued above £12 having higher return rates). Additionally the US Consumer Product Safety Commission has found the average recall response rate to be between 4-18%. The low rates of return in product recalls may mean that consumers throw the unsafe item away, or that they decide to take the risk in continuing to use it. It can probably be assumed, however, that a large number of consumers are unaware of the recall being in place.</p> <p>A potential issue is consumers not having access to a comprehensive list of products affected by safety recalls. MAPSS publishes recall information on the MCA website but this is not a comprehensive list and consumers cannot reliably use this information. For consumers who do not read newspapers there is an issue about the cost of their information search. There is consumer detriment where the information search is too costly in terms of time.</p> <p>Not having reliable information on product safety recalls means MAPSS may not be identifying trends and areas of risk in the market. It also means that New Zealand cannot provide information to international databases.</p>
<p><b>Measure of Consumer Detriment / Magnitude of Problem</b></p>	<p>There have not been any reported incidences of a serious accident involving a product that had been voluntarily recalled where consumers did not know and continued to use the product. This is, however, the risk to consumers under the current system.</p> <p>According to the Nielson Media Research National Readership Survey Results (2008) the readership of the major metropolitan newspapers where product recalls are advertised (the NZ Herald, Waikato Times, Dominion Post, the Press and the Otago Daily Times) totals 33.6% of the population over 15 years old. This is based on reading the newspaper for a period of at least two minutes. This means that two thirds of the adult population will not have the chance to be exposed to the message (in fact given that two minutes of flicking through is probably not enough to be exposed to a recall notice this is probably higher).</p>
<p><b>Measure of Business Detriment</b></p>	<p>At present a business may not know to inform MAPSS of their product safety recall and could lose the opportunity to receive advice and publicity and could run the risk of running an unsatisfactory recall.</p> <p>If the business has not taken satisfactory action to recall the goods then the Minister of Consumer Affairs can order a compulsory recall. This would generate costs and negative publicity for the business.</p> <p>As there is not a database of product safety recalls it is not possible to measure their effectiveness. A product safety recall involving an electrical appliance was undertaken in 2007. The Associate Minister of Energy was not satisfied with the response rate and the company involved had considerable expense in establishing it had undertaken best efforts and achieved an appropriate response. A central product safety recall site could assist in providing data on recalls.</p>

<p><b>The likely consequences of taking no policy action / Cost of Status Quo</b></p>	<p><b>Cost to Consumers</b></p> <p>If no policy action is taken the consumer detriment noted above will not be addressed.</p> <p><b>Cost to Businesses</b></p> <p>If no policy action is taken the business detriment noted above will not be addressed.</p> <p><b>Costs to Government</b></p> <p>At present MAPSS has to scan media for recall notices which is time consuming and inefficient. MAPSS does not have reliable statistics to evaluate trends in product safety meaning that there may be a cost in having to have this research carried out if they wanted to evaluate recall trends. MAPSS may incur a cost in tracking down companies who they find are recalling goods in order to work with them.</p>
<p><b>POLICY OPTIONS</b></p>	
<p><i>(1) No change</i></p>	<p>MCA does not favour this option.</p> <p>The <b>costs</b> to consumers, businesses and government are outlined above.</p>
<p><i>(2) Add provisions to the Fair Trading Act stating that if a supplier is carrying out a voluntary product safety related recall they are required to inform MCA within 2 days of ordering the recall. They will be required to submit the details of the recall in writing.</i></p>	<p>MCA favours this option.</p> <p>The <b>benefits</b> are:</p> <p>Consumers: Recall information will be available to them in a reliable one-stop shop through the MCA website. In the period 31 December – 30 January the MCA product recalls page on the MCA website received 103 unique visits, MCA expects this to increase if it becomes know that al product safety recall information is available on this site. .</p> <p>MAPSS can provide advice facilitating an effective recall and ensuring consumers have the best possible chance of being made aware of the recall and of receiving adequate redress.</p> <p>Businesses: Receive access to the publicity and advice of MAPSS.</p> <p>Assurance that if they follow the advice of MAPSS the recall should be successful thus limit the damage that could be caused to their reputation.</p> <p>Government: MAPSS will receive the information as it occurs in a timely and simple manner without the need to scan newspapers and overseas media.</p> <p>Greater alignment with Australian regulation in keeping with principles of harmonisation of consumer law for the Single Economic Market.</p> <p>MAPSS will be able to monitor the progress of recalls and ensure that they are carried out in an effective manner.</p> <p>MAPSS will have access to an accurate data set from which to identify product safety trends in the marketplace. This will enable them to better carry out their role in monitoring product safety issues in the market.</p>



	<p>The <b>costs</b> are:</p> <p>Businesses: Loss of choice regarding whether to inform MAPSS of their product safety recall.</p> <p>Cost of submitting a document outlining the issue.</p> <p>Government: Minor cost of making recall information available on the MCA website.</p> <p>Cost of providing advice and consultation.</p> <p>MCA does not expect these costs will be significant because many businesses already notify MAPSS of recalls and the cost should be outweighed by the time saved on searching for product recall notices in the media.</p> <p>The net benefits have not been quantified because the available data is insufficient to undertake a meaningful quantitative assessment.</p>
<p><i>(3) Add provisions to the Fair Trading Act requiring mandatory notification to the regulator of all product recalls</i></p>	<p>MCA does not favour this option.</p> <p>The <b>benefits</b> are:</p> <p>Consumers: Receive a higher level of information with regards to recalls and so can find information on recalls for reasons other than product safety.</p> <p>Government: MCA may be able to use some recall information to identify non-product safety trends in the market as well as the product safety ones.</p> <p>The <b>costs</b> are:</p> <p>Consumers: Potential for information overload. If recall notices become too frequent, really important ones for product safety reasons may not be taken as seriously or be able to stand out through the clutter.</p> <p>Businesses: Loss of choice regarding whether to inform MAPSS of their recall.</p> <p>Cost of submitting a document outlining the issue.</p> <p>Government: MAPSS have stated that they would need additional resources to carry this out so there would be a cost in implementing this policy. As this policy deals with all recalls, not just product safety ones, this cost would be greater than in option 2.</p> <p>There would need to be an established method of handling all product recalls such as a website or possible call centre.</p> <p>Australian legislation does not require this so this is not in keeping with the principle of greater harmonisation where appropriate.</p>
<p><i>(4) Undertake an education campaign promoting the MCA recalls page to consumers and making businesses aware of the benefits of informing MAPSS of their product safety recalls</i></p>	<p>MCA does not favour this option exclusively but it would fit alongside the legislation change.</p> <p>The <b>benefits</b> are:</p> <p>Consumers: Consumers may become aware of the MCA recalls page leading to increased traffic and use of this service.</p>

	<p>Businesses: This option represents very low costs to businesses.</p> <p>The <b>costs</b> are:</p> <p>Government: This option would be costly if it was to achieve the wide reach required for it to be effective. MAPSS has been working closely with retailers and other organisations to date. Whilst there is a high success rate associated with MAPSS persuasion and education there are still some product safety recalls of which MAPSS has not been advised in advance.</p>
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**Fair Trading Act: Product Safety – Reasonably Foreseeable Use (Including a Misuse) and Stop Selling**

<p><b>The consumer problem and its source / What is the problem?</b></p>	<p>At present a product cannot be banned by an unsafe goods notice nor can a compulsory recall be ordered unless it is deemed that it “will or may cause injury to any person.” The product must be considered to have the potential to cause an injury to a consumer even when used as intended. This narrow wording has caused difficulties in the past when considering products which, whilst safe when used in certain situations, cause injury when used (or misused) in other reasonably predictable situations. (For example, LPG powered air horns, which if used at a sports match would likely cause permanent ear injury to a person within close proximity, and very high capacity laser pointers, which whilst useful for astronomy, other lower strength pointers are also effective and do not interfere with aircraft navigation or cause extreme eye injury.)</p> <p>If a product has been implicated in a serious injury and is believed to be unsafe through a reasonably foreseeable use (or misuse) MAPSS cannot seek the banning or compulsory recall of that product because it will not meet the present “will or may cause injury” test. Instead MAPSS is forced to rely on cooperation with the supplier with no backstop to negotiations.</p>
<p><b>Measure of Consumer Detriment / Magnitude of Problem</b></p>	<p>The banning of any product must take into account the risk of the product compared to its utility. Although a product could cause harm if used incorrectly, this is not a reason to ban the product. There are a large number of products that will cause harm if used wrongly but have high utility value when used correctly. These include knives, irons, electric sanders, sewing machines.</p> <p>When the risk of a product causing harm when used as intended or used or misused in a reasonably foreseeable manner is high and the utility value of having the product available is low these are grounds for seeking the product is not available for sale in particular circumstances. An example is toy lead soldiers, which many years ago were routinely available and very popular as toys. There is a high risk of ingesting lead from such toys being chewed. Lead soldiers are not unsafe when on display (and are now sold only as collectors’ items) but are unsafe as a children’s toy as it is reasonably foreseeable they could be placed in a child’s mouth.</p>

	<p>Consumer detriment is possible where companies refuse to stop the sale of unsafe goods because they are only unsafe through a use other than their, perhaps narrow, intended purpose.</p> <p>A product that may be considered unsafe because of reasonably foreseeable misuse is a high-powered laser pointer. This product is not unsafe when used correctly but when used for other than its intended purpose can cause harm. A restriction on power may not affect the utility desired from laser pointers.</p> <p>A report from the Ministry of Health in 2010, showed for the last 2 years there have been 108 incidences in which aircraft have been targeted by laser pointers and Police have secured 7 successful prosecutions. Other incidences have targeted cars and the Interislander Ferries.</p> <p>In a 2-month period in 2009, 120 high powered lasers were sold on Trade Me at an average price of \$54. Each is sufficiently powerful to cause permanent eye damage with high costs to the individual consumer and the NZ health and social support systems. A Customs report notes approximately 240 laser pointers imported per year.</p> <p>The utility value of high powered laser pointers is low but the cost to consumers from reasonably foreseeable misuse is high. No quantitative estimate of these costs has been undertaken.</p> <p>Regarding products that are implicated in a serious injury and which are not removed from sale, consumers are exposed to a product with a high likelihood of being unsafe.</p>
<p><b>Measure of Business Detriment</b></p>	<p>Businesses supplying unsafe products can result in consumers losing confidence in the market and with particular business types. This can detrimentally affect businesses which may not have been associated with the supply of unsafe products. If a business sells a similar product and the unsafe product causes harm there could be negative publicity brought on the whole product category.</p> <p>Some businesses may be supplying unsafe products because they have not properly tested their products to assess safety under intended and reasonably foreseeable use and misuse. This reduces costs to such businesses but disadvantages other businesses that seek to trade fairly and supply only products that have been fully tested</p> <p>Other countries, including Australia, have a test of reasonable foreseeable use or misuse. It is important that New Zealand businesses take into consideration in the design and sale of their products similar tests to those applying internationally.</p> <p>No quantitative estimate of these costs has been undertaken.</p>
<p><b>The likely consequences of taking no policy action / Cost of Status Quo</b></p>	<p><b>Cost to Consumers</b></p> <p>The costs to consumers are outlined above. In summary, consumers only have protection in the form of unsafe goods notices/compulsory recalls from products which will or may cause injury through a direct fault of the product</p>

	<p>when used as the producer intended. Consumers will not have protection from products for which a reasonably foreseeable use (or misuse) will or may cause injury. Whilst there are not likely to be many products that fall into this category, there are several examples where there has been concern, including high powered lasers, as detailed above.</p> <p>Similarly, consumers only are protected from these products if MAPSS can persuade the retailer to stop supply.</p> <p><b>Cost to Businesses</b></p> <p>The costs to businesses are outlined above. The status quo is working effectively for most situations but has the potential at the margins to reduce consumer confidence that there are good product safety protections which could lead to increased demand for regulation. This would increase costs to businesses.</p> <p><b>Costs to Government</b></p> <p>As noted above, the status quo is working effectively for most situations but has the potential at the margins to reduce consumer confidence that there are good product safety protections which could lead to increased demand for regulation.</p> <p>Particular problems with regulating the sale of laser pointers have been noted. The voluntary product safety recall process is strengthened by having fall-back legislative provisions in case a trader does not accept responsibility related to an unsafe product.</p>
<b>POLICY OPTIONS</b>	
<i>(1) No change</i>	<p>MCA does not favour this option.</p> <p>The <b>costs</b> to consumers, businesses and government are outlined above.</p>
<p><i>(2) Add provisions to the Fair Trading Act giving the Minister of Consumer Affairs the power to issue unsafe goods notices and order compulsory recalls where a reasonably foreseeable use (including a misuse) will or may cause injury to any person.</i></p>	<p>MCA favours this option.</p> <p>The <b>benefits</b> are:</p> <p>Consumers: There is potentially less exposure to unsafe products and thus a higher level of consumer safety because there are more powers to remove unsafe products from sale.</p> <p>Businesses: Businesses trading fairly can be confident that they will not be disadvantaged by competitors selling unsafe products.</p> <p>Government: Widening the powers will increase the scope of MAPSS to work with businesses to ensure that unsafe products are not on the market. In the first instance this is undertaken by voluntary persuasion. Compulsory bans or recalls and the new proposed powers are a last resort.</p> <p>The <b>costs</b> are:</p> <p>Consumers: Possibility that consumers may be unable to purchase some goods if businesses cannot make them safe at a reasonable cost, and without compromising the functionality of the product.</p> <p>Businesses: Possibility that suppliers will be deterred from</p>

	<p>producing products that could cause injury through reasonably foreseeable misuse where this danger is difficult to rectify. Businesses may become overly cautious and miss market opportunities.</p> <p>If a business is issued an unsafe goods notice or ordered to undertake a recall there will be a significant compliance cost with this.</p> <p>Government: Introducing unsafe goods notices and compulsory recalls can be costly. Since these powers would be applicable to a wide range of products there would be an additional cost on the regulator in implementing this provision. It is expected that because these provisions are rarely used at present this would not be significant.</p> <p>The net benefits have not been quantified because the available data is insufficient to undertake a meaningful quantitative assessment.</p>
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<b>Fair Trading Act: Product Safety – Enforcement Powers</b>	
<p><b>The consumer problem and its source / What is the problem?</b></p>	<p>Consumers have high expectations of MAPSS and the Commerce Commission in terms of their role in monitoring and enforcement in the market place. The powers available to MAPSS and the Commerce Commission do not allow them to carry out their work to these expectations. As such consumers may feel that the regulator is not doing enough to ensure their safety in the market place.</p> <p>The limited powers of MAPSS and Commerce Commission officers mean that if a potentially unsafe product is identified sellers can continue to sell the product while MAPSS and the Commission go about the testing and putting in place an unsafe goods notice or taking action associated with a product that contravenes a ban or mandatory standard. This may put consumers at risk when unsafe goods continue to be sold.</p> <p>An example of the limitations can be seen in the following case: MAPSS officers carried out an investigation of toys available for sale in 2009 in a New Zealand chain store. As a courtesy the officers went to the manager to say what they intended to do and ask if it was okay. In this case, it wasn't – the manager insisted that MAPSS leave and contact head office first. Getting approval from head office and informing all of the stores took a total of two weeks, ample time for a suspicious product to be sold or moved.</p>
<p><b>Measure of Consumer Detriment / Magnitude of Problem</b></p>	<p>According to the AC Nielson commissioned report <i>Consumer/Trader Awareness and Experience of the Consumer, Product Safety and Energy Safety Legislation (2004)</i> consumers assume MAPSS is very active in the market place, ensuring the safety of consumer products. Where the monitoring carried out by MAPSS is not as stringent as consumers expect, and as a result unsafe products are available for sale, there is potential for consumer detriment.</p>

<p><b>The likely consequences of taking no policy action / Cost of Status Quo</b></p>	<p><b>Cost to Consumers</b></p> <p>If MAPSS or the Commerce Commission do not have the powers that are needed to monitor the safety of products in the market then consumers may be at risk of being injured by unsafe products.</p> <p>If MAPSS or the Commerce Commission do not have the power to demand identification of sellers then travelling sellers (such as those in a market) may be able to avoid investigation and continue to sell unsafe goods to consumers.</p> <p>If MAPSS or the Commerce Commission are unable to purchase products to be tested then businesses could stop them from carrying out their product safety work.</p> <p>If MAPSS or the Commerce Commission cannot demand to know a business' suppliers or to whom they have supplied the product then they are unable to track the product down. This could put consumers at risk and make MAPSS' work unnecessarily difficult.</p> <p>If MAPSS cannot issue "stop sale" orders then consumers may be at risk of being injured by unsafe products while MAPSS is in the process of getting an unsafe goods notice put in place.</p> <p><b>Cost to Businesses</b></p> <p>If MAPSS or the Commerce Commission's monitoring work is not operating as efficiently as possible then traders selling unsafe goods may be less likely to be caught. This could disadvantage suppliers seeking to trade only in safe products.</p> <p><b>Costs to Government</b></p> <p>MAPSS relies heavily on the co-operation of businesses in their work. They use a light-handed regulatory approach and work with businesses to deal with problems as they arise. The status quo limits the ability of MAPSS to carry out their work where businesses fail to co-operate with them.</p> <p>Because of the lack of legal powers available to MAPSS officers or the Commerce Commission in the area of product safety, there can be complicated and costly battles in order to achieve the goal of creating a safer product market.</p>
<p><b>POLICY OPTIONS (any or all of the following options could be used; they are not mutually exclusive)</b></p>	
<p><i>(1) No change</i></p>	<p>MCA does not favour this option.</p> <p>The <b>costs</b> to consumers, businesses and government are outlined above.</p> <p>The <b>benefits</b> are:</p> <p>Businesses: Businesses will not be at risk of having legal restrictions or orders put upon them by MAPSS or the Commerce Commission.</p> <p>Government: The status quo could possibly encourage</p>

	<p>MAPSS and the Commerce Commission to work closely with businesses to an agreed solution rather than to impose costs upon them. This could mean the relationships between MAPSS and businesses are strong working relationships.</p>
<p><i>(2) Add provisions to the Fair Trading Act giving MAPSS and Commerce Commission authorised officers the power to demand identification of sellers</i></p>	<p><b>The Problem</b></p> <p>At present traders are not required to provide their details to a MAPSS officer who asks for them. This is an issue with travelling sellers as MAPSS may not be able to find them again or may not be able to pass on their information to the Commerce Commission who enforces product safety legislation.</p> <p>MCA favours this option.</p> <p>The <b>benefits</b> are:</p> <p>Consumers: Consumers would have additional protection from suppliers without fixed premises who the Commerce Commission or MAPSS may not be able to track down without this information</p> <p>Businesses: Business obligations will be clearly understood by traders.</p> <p>Government: This provision mainly relates to travelling traders. This provision would allow MAPSS or the Commerce Commission to contact traders if they are concerned with their products. They can ensure traders are complying with their wishes and can keep them updated on developments in the instance of an unsafe goods notice.</p> <p>This provision would also allow greater collaboration between MAPSS and the Commerce Commission where there is already legislation (such as an unsafe goods notice or mandatory standard) in place. In these instances enforcement would be the role of the Commerce Commission and this provision would allow MAPSS to get the information required for the Commerce Commission to find the supplier.</p> <p>The <b>costs</b> are:</p> <p>Businesses: Businesses may face a higher level of accountability.</p> <p>Businesses may feel that this demand is an invasion of privacy.</p> <p>Government: Additional powers for MAPSS and Commerce Commission officers will require an authorisation scheme of some sort; this will have both an initial and an ongoing cost of implementation.</p>
<p><i>Add provisions to the Fair Trading Act giving MAPSS and Commerce Commission authorised officers the power to enter premises where goods are available for sale and to purchase goods for testing</i></p>	<p><b>The Problem</b></p> <p>New Zealand retailers are not obliged to let people into their retail premises or to sell them any product. As such if MAPSS are investigating a product they believe to be unsafe the retailer could refuse them entry or sale. This would make it impossible to carry out their monitoring work by testing products on the market.</p> <p>MCA favours this option.</p>

	<p>The <b>benefits</b> are:</p> <p>Consumers: Because traders are not required to allow anybody into their trading premises, a MAPSS or Commerce Commission officer could be turned away at the door if a trader knew who they were. This would make it impossible for them to do their job. The inclusion of this provision would ensure this was not the case and thus allow MAPSS and Commerce Commission officers to better monitor the safety of goods for sale, thus benefitting consumers.</p> <p>Additionally businesses are not required to sell products. MAPSS and Commerce Commission product testing ensures that products whose safety cannot be assessed by consumers (such as toys with lead) are monitored. This provision would ensure greater levels of safety for consumers.</p> <p>Businesses: Businesses benefit from the testing work carried out by MAPSS and the Commerce Commission when it identifies an issue with one of their products which they might not have been aware of.</p> <p>Businesses seeking to trade fairly should not find this provision places any additional administrative cost upon them.</p> <p>Government: These provisions would allow MAPSS and Commerce Commission officers greater powers in their role in monitoring the safety of products in the market.</p> <p>This power is necessary for MAPSS and Commerce Commission officers to carry out their work if businesses fail to co-operate.</p> <p>The <b>costs</b> are:</p> <p>Businesses: A business will not be able to slow the course of a MAPSS investigation. This may mean that their products are deemed unsafe and cannot be sold.</p> <p>Government: Additional powers for MAPSS and Commerce Commission officers will require an authorisation scheme of some sort; this will have both an initial and an ongoing cost of implementation.</p>
<p><i>Add provisions to the Fair Trading Act giving MAPSS and Commerce Commission officers the power to demand disclosure of the name and contact details of a supplier or anyone whom has been supplied by the trader</i></p>	<p><b>The Problem</b></p> <p>When MAPSS and the Commerce Commission have an issue with the safety of a product, they seek to discuss it with the supplier and may ask the supplier to recall the product or remedy the safety issue. At present a retailer does not have to disclose who their supplier is to a MAPSS or Commission officer. This makes it difficult for MAPSS or the Commission to talk to the right people about the product. Retailers have refused to tell MAPSS and Commission officers where the product was purchased which makes it difficult for MAPSS or the Commission to monitor the situation and understand how big the issue is.</p> <p>MCA favours this option.</p> <p>The <b>benefits</b> are:</p> <p>Consumers: Consumers can be guaranteed a higher level</p>



	<p>of safety particularly for low cost products where this can be an issue.</p> <p>Businesses: Suppliers can be assured that if there is a product safety issue with one of their products sold through a retailer, they will hear about it. The retailer will not be able to ignore the problem and risk damage to the supplier's brand.</p> <p>Businesses seeking to trade fairly should not find this provision places any additional administrative cost upon them.</p> <p>Government: MAPSS and Commerce Commission officers will be better able to discuss the issue with the correct people and stop the supply of the product at its source.</p> <p>MAPSS and the Commission will not have to go through a complicated process of trying to track a product from overseas or through various retailers. This will save resources for MAPSS and the Commission.</p> <p>The <b>costs</b> are:</p> <p>Businesses: Businesses run the risk of damaging relationships with their suppliers through this provision.</p> <p>Government: Additional powers for MAPSS and Commission officers will require an authorisation scheme of some sort; this will have both an initial and an ongoing cost of implementation.</p>
<p><i>Add provisions to the Fair Trading Act giving MAPSS and Commerce Commission officers the power to issue a stop sale order for a period of two working days subject to the following checks and balances:</i></p> <ul style="list-style-type: none"> <li>• <i>MAPSS must:</i> <ul style="list-style-type: none"> <li>• <i>Believe the product has been the cause of serious injury or death and;</i></li> <li>• <i>Will or may cause injury to any person or;</i></li> <li>• <i>Reasonably foreseeable use (including a misuse) will or may cause injury to any person.</i></li> </ul> </li> <li>• <i>The Commerce Commission must strongly suspect the product is in breach of an unsafe goods notice or a product safety regulation.</i></li> </ul>	<p><b>The Problem</b></p> <p>At present MAPSS and the Commerce Commission are not able to stop the sale of any good not explicitly covered by legislation. If the good is contravening a standard or is banned the Commerce Commission can stop sale. However if there is no ban or standard in place MAPSS cannot legally stop the sale of the product. This means that even if a product has caused injuries MAPSS cannot stop retailers selling it while it is investigated or while they are seeking an unsafe goods notice.</p> <p>This means that consumers can be exposed to unsafe products. An unscrupulous trader knowing that the products could be banned may be incentivised to sell as many as possible before any ban. Once banned the trader would be prevented from selling the product and may have incurred costs related to the product.</p> <p>MCA favours this option.</p> <p>The <b>benefits</b> are:</p> <p>Consumers: This provision would provide a greater degree of consumer safety in the rare circumstances where it was deemed necessary by ensuring that unsafe goods were not sold in the time it takes MAPSS to get an unsafe goods notice organised. This provision would ensure that in the case of a product which has been implicated in a serious injury in the time period while an unsafe goods notice is being sought the unsafe goods in question will not be for sale. This will ensure a higher degree of consumer safety and confidence.</p>

<ul style="list-style-type: none"> <li>• <i>Stop sale orders must only be issued by a MAPSS or Commerce Commission officer authorised to do so by the Minister of Consumer Affairs.</i></li> <li>• <i>The officer who has issued the stop sale order must inform the Minister within two working days of the order and of the next steps that will be taken.</i></li> <li>• <i>If the product is not found to be unsafe the trader who received the stop sale order will be able to seek compensation for the value of sales lost as a consequence of the order.</i></li> </ul>	<p>Businesses: Businesses seeking to trade fairly, in safe products should not be disadvantaged by this provision.</p> <p>Government: This provision would allow MAPSS the time required to seek an unsafe goods notice from the Minister of Consumer Affairs.</p> <p>MAPSS could use the threat of a stop sale order to persuade suppliers to cooperate with them.</p> <p>The <b>costs</b> are:</p> <p>Consumers: Consumers may not be able to purchase goods that they want because they are under investigation for a possible an unsafe goods notice (the consumer may not care about the safety concern).</p> <p>Businesses: Suppliers may be concerned that this provision will be used frequently and freely which could make this provision a concern for businesses.</p> <p>If a stop sale order is issued for a product that does not turn out to be unsafe, the supplier will have lost potential revenue. The supplier will be able to seek compensation for this but that will have a cost in terms of the effort required.</p> <p>A stop sale order, if heard about by the public, could cause reputational damage to the retailer and supplier.</p> <p>During the course of a stop sale order there may be an inventory cost of holding the goods while testing is undertaken.</p> <p>Government: If a stop sale order is ordered and the product is not unsafe, the government will incur a cost of paying compensation for the loss of sales to suppliers of the product.</p> <p>Additional powers for MAPSS officers will require an authorisation scheme of some sort; this will have both an initial and an ongoing cost of implementation.</p>
	<p>The net benefits of the above have not been quantified because of insufficient time to undertake a meaningful quantitative assessment.</p>
<p><i>(3) Undertake a public relations/education campaign to encourage traders to work with MAPSS officers</i></p>	<p><b>The Problem</b></p> <p>For a very small proportion of traders in the market there appears to be a somewhat reckless disregard for product safety. Because of this lack of concern these traders can be unwilling to voluntarily comply with product safety requests from MAPSS officers at present. If the option is taken to not increase the powers available to MAPSS officers then a campaign to educate traders of their requirements and of the benefit of working with product safety officers could be undertaken with the goal of making these traders more aware of the benefits of safer products and of working with regulators.</p> <p>MCA does not favour this option</p> <p>The <b>benefits</b> are:</p>

	<p>Businesses: Businesses may be afforded the opportunity to gain a better understanding of the importance of product safety. They will not have any additional compliance costs imposed upon them and should not feel threatened by more powerful product safety inspectors. They may take product safety issues more seriously as a result of the campaign and improve their reputation as a result.</p> <p>Government: This approach favours collaboration between regulators and businesses. This is very much the approach used at present. Greater awareness could make MAPSS officers work more effective.</p> <p>The <b>costs</b> are:</p> <p>Government: The vast majority of businesses act responsibly and cooperate gladly if a product safety issue is identified. An education/ public relations campaign approach is not appropriate for the few that do not. If the market and a general sense of responsibility cannot convince these traders to consider the safety of their consumers then a campaign is unlikely to.</p> <p>In order to appear unbiased a campaign targeting traders of consumer goods would need to be wide ranging and therefore costly even though the intended target market is a small proportion of traders.</p> <p>Our estimate is that the cost of implementing an education campaign for the sake of educating reckless traders unwilling to change would be expensive and greater than the benefits arising from such a campaign.</p>
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<p><b>Fair Trading Act: Consumer Information Standards (CIS) Regulation-Making Powers – Testing Requirements</b></p>	
<p><b>What is the problem?</b></p>	<p>The Consumer Information Standards (CIS) Regulation-Making Powers do not include specific requirements relating to testing that would support the use of labels. In comparison, the product safety standard regulation-making powers include testing requirements. During development of the Consumer Information Standards (Water Efficiency Labelling) Regulations, the lack of regulation-making powers regarding testing affected the development of these regulations.</p> <p>This issue is especially problematic when the tests in a standard being used related to labelling, instructions etc are inadequate or do not apply to the New Zealand situation, or where there is no standard to refer to.</p> <p>The regulation-making powers are restricted to prescribing information that is to be displayed; they do not specify how that information must be derived. For the displayed information in a CIS to be meaningful, it must be derived or measured the same way by all affected suppliers.</p> <p>While testing requirements can be established by declaring an official standard (or part(s) of an official standard) as a consumer information standard and modifying it as necessary, testing requirements are part of the CIS by</p>

	<p>implication, rather than specifically.</p> <p>Test procedures can have elements that may not be relevant to the information that is disclosed. Some of these elements could be outside the scope of the CIS.</p>
<p><b>Measure of Consumer Detriment / Magnitude of Problem</b></p>	<p>CIS regulations require disclosure of particular information. The disclosed information is used by consumers in their decision-making about purchasing a product.</p> <p>If a label or other disclosure is not supported by a testing requirement, the information provided to consumers may not be reliable and consistent across industry.</p> <p>Consumers rely on the information in a CIS with the expectation that the information is robust and supported by testing (if relevant). They are adversely impacted and lose general confidence in CIS and related information if they discover this information is not robust or they may have made a poor choice based on the information and no redress is available. This can be a cost impact or if the consumer was persuaded by the information to purchase a product based on their personal preferences, self-interests or ethics, they may feel betrayal or disappointment at their purchase if they find it does not meet that information.</p> <p>The scale of the impact is difficult to assess as label information is one factor influencing a decision. The CIS water efficiency labelling regulations were delayed. Using this as an example, a consumer who purchased a washing machine during the period the regulations were delayed was not able to factor into the decision the cost to run the machine. The consumer finds that the washing machine purchased has a 2 star rather than the desired 4 star water efficiency rating. If this information had been available they would have purchased another model. This means that based on their use of the machine more hot water is used at an additional cost of \$x per year over the number of years before the washing machine is replaced. This cost could have been avoided with the provision of information which could otherwise be obtained. The cost benefit analysis undertaken to support water efficiency labelling costed energy savings over a 15 year period from 2006 to 2020 of \$7.30 million. A simple assessment of the cost of the delay by 2-3 years of the water efficiency regulations, based on an even spread of savings over the 15 year period, is about \$1 million.</p>
<p><b>Measure of Business Detriment</b></p>	<p>Suppliers need certainty in the testing method to derive the information that must be disclosed in a CIS. Absence of these guidelines can add to compliance costs because suppliers will have to spend time and resources researching and determining the test method, and consulting lawyers and government whether the test method adequately provides the information to be disclosed. Absence of testing requirements may also mean unnecessary costs for business if the testing approach is perhaps more rigorous than intended by government.</p> <p>Using the CIS water efficiency labelling regulations as an example, businesses supported the introduction of these regulations and were concerned about the delays to their</p>

	introduction.
<b>The likely consequences of taking no policy action / Cost of Status Quo</b>	If reliability of testing is a concern, this is likely to affect the decision to have CIS regulations – either delaying the decision or not supporting having regulations. This may mean that consumers are not able to obtain information that is desired and businesses do not have regulations that set out the accepted form of information. The scale of the impact is difficult to assess. There are costs in delay and in having to develop a Standard to support a labelling and associated testing. The amendment or development of a Standard is difficult to estimate. Based on costs associated with a product safety standard and estimates for a consumer information standard, it could be expected to cost \$35,000-\$150,000.
<b>POLICY OPTIONS</b>	
<i>(1) No change</i>	MCA does not favour this option.  The <b>costs</b> to consumers, businesses and government are outlined above.
<i>(2) Add specific requirements for testing to section 27(1)</i>	The <b>benefits</b> are:  Consumers: Provision of reliable information. There may be a small reduction in product cost if the supplier does not have to undertake additional, not required, testing.  Businesses: Clear testing requirements can be prescribed. This reduces compliance costs (no uncertainty). Businesses also are not required to undertake irrelevant testing, which imposes unnecessary costs.  Government: This option provides flexibility in the development of CIS regulations which are more workable, and understandable to suppliers. It also improves policy implementation and ensures that the required information is adequately supported.  The <b>costs</b> are:  Businesses: Some submitters, mainly business associations, were concerned that the inclusion of testing would mean that prescriptive testing requirements could be mandated, leading to compliance costs. It may also lead to relabeling of products specifically for New Zealand to display testing requirements, when this is not required in other countries. They considered that this would be a non-tariff barrier to trade and result in a possible withdrawal from the market by importers.  These concerns are all valid and would be taken into account in the development of any specific regulations. The addition of the regulation-making power does not mean that testing requirements will be separately prescribed but provides the flexibility for use when needed (and this need is fully justified). A further regulatory impact analysis and consultation would be required before testing information became part of CIS regulations

<b>Fair Trading Act – Soliciting on Behalf of Charitable Entities</b>	
<b>What is the problem?</b>	<p>The Commerce Committee is considering the Fair Trading Act (Soliciting on Behalf of Charities) Amendment Bill, a Members Bill sponsored by Amy Adams, MP on information on traders soliciting on behalf of charities.</p> <p>Mrs Adams has identified that there is public concern that a disproportionate percentage of donated money is retained by the third party collectors to cover “costs” and members of the public making donations are not aware of this, which misleads public donors.</p> <p>At present there are no specific disclosure requirements for third party collectors to inform the public what proportion of the donation they retain for their own costs. The Fair Trading Act provides for disclosure of information through Consumer Information Standards (CIS) regulations. The regulation-making powers may not be sufficient to cover disclosure requirements for third party collectors to inform the public what proportion of the donation they retain for their own costs or with respect to charity donations. It is desirable that the CIS regulation-making powers are very broad in scope as they are intended to be the generic information disclosure regulation-making powers.</p>
<b>Measure of Consumer Detriment / Magnitude of Problem</b>	<p>The following is an analysis of the consumer detriment of not having information available on charitable donations. There are two forms of consumer detriment: structural and personal. Structural focuses on the loss of consumer welfare due to market or regulatory failure, while personal focuses on the negative outcomes for consumers relative to a benchmark such as reasonable expectations.</p> <p>Approximately 1.5 million New Zealanders donated money in the six months between December 2009 and June 2010. The median amount donated per month is approximately \$37 (the average is approximately \$135. Preliminary analysis by the Office of Community and Voluntary Sector suggests this skewing of the average is driven by large donations to religious, education and health-related organisations).</p> <p>It is assumed that the majority of donors have an expectation that most of the money they donate will be used towards the charitable activities promoted by the charity. As people gain altruistic welfare improvements, rather than tangible improvements, it has been identified that the detriment suffered by donors to charities would fall clearly into the personal detriment category.</p> <p>The number of consumer complaints recorded by public bodies or consumer organisations can be used as a sign of market problem.<sup>4</sup></p> <p><u>Consumer NZ</u></p> <p>Consumer NZ, a consumer organisation, informs that costs of third party collectors for charities is a common complaint,</p>

<sup>4</sup> Consumer Policy Toolkit 2010. OECD, page 72.

	<p>and a recent online poll shows that 95% of respondents want greater transparency of the costs of the third parties.<sup>5</sup></p> <p><u>Charities Commission</u></p> <p>The Charities Commission regularly receives complaints relating to third party collectors for charities, and has noted a rising awareness of the use of third party contractors in both charities and the media. The Charities Commission has conducted two surveys on public trust and confidence in charities, the <i>Trust and Confidence Survey</i><sup>6</sup> and <i>Empathy Insight Report</i>.<sup>7</sup> In these, they noted an increasing public concern over the fundraising techniques of charities and a reduction in confidence in the charities sector. Participants were more likely to feel trust and confidence in a charity if they felt donations were being spent wisely. They wanted to see how charities were spending donations, in particular:</p> <ul style="list-style-type: none"> <li>• No frivolous spending</li> <li>• No waste</li> <li>• A large proportion (ideally all) of the funds going to the cause</li> <li>• Doing the best thing for the cause.</li> </ul> <p><b>Additional outcomes from the survey include:</b></p> <ul style="list-style-type: none"> <li>• A majority of respondents (55%) continue to report high levels of trust and confidence in charities, however this figure has slipped slightly from 58% in 2008.</li> <li>• There has also been a slight decrease in the levels of trust that charities are operating effectively. Of the six statements tested on this topic, the greatest decrease was 6% down to 34% of respondents reporting high levels of trust that charities, “Ensure a reasonable proportion of donations get to the end cause”.</li> <li>• On a similar theme respondents were also asked their level of agreement with a range of statements that related to the administration of charities. This statement testing showed that respondents were far more comfortable with charities that were transparent in the way they operated.</li> <li>• Eighty-two percent (down 2%) of respondents agreed that, “I feel more confident in charities that are open about how they use their resources”. 70% (down 3%) of respondents agreed that, “I trust charities more if they are clear about how they are managed”.</li> <li>• Compared to the 2008 results the movements in levels of agreement have generally been negative for charities. The largest example of this was a 7% increase up to 38% of respondents who agreed</li> </ul>
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<sup>5</sup> Online polls such as that conducted by Consumer NZ are not considered robust.

<sup>6</sup> Trust and Confidence Survey, July 2010, Charities Commission (placed on their website November 2010).

<sup>7</sup> Empathy Insight Report, Public Trust and Confidence, Charities Commission, August 2010.

	<p>with the statement, “Charities use more dubious fundraising techniques these days”.</p> <ul style="list-style-type: none"> <li>The most common mode that respondents reported donating via within the last 12 months continues to be street collections (at 54%).</li> </ul> <p><u>Commerce Commission</u></p> <p>The Commerce Commission has not received any complaints. However, this is expected as the Commission has no role in this area.</p> <p><u>Submissions to Consumer Law Reform Discussion Paper and Commerce Committee</u></p> <p>The submissions received through both the Commerce Committee process and the Consumer Law Reform Discussion Paper show there is public distaste for less money than expected reaching the charity.</p>
<b>Measure of Business Detriment</b>	<p>Charities have expressed concern about the provision of information on third party collectors. There is a concern about the form of providing the information and that it may reduce donations to charities. Some smaller charities have indicated they are reliant on third party collectors as it is very competitive to obtain donations. Any reduction in donations would have a negative impact.</p>
<b>The likely consequences of taking no policy action / Cost of Status Quo</b>	<p>The following is an analysis of the detriment of not having information available on charitable donations. As stated above, up to 1.5 million New Zealanders are affected by fundraising/donating practices, according to the Office of Community and Voluntary Services. However, the amount of individual detriment is small, as it is mainly dissatisfaction and loss of confidence in the sector. Donating is undertaken by New Zealanders of all socio-economic groups, genders, ethnic backgrounds and ages.</p> <p>The detriment will remain and may increase with increasing awareness of the use of third party collectors through reports in the media and monitoring practices of entities such as the Charities Commission.</p> <p>Consumer confidence in the charitable sector may be eroded, placing greater pressure on charities for money. If there is a decline in donations, charitable services may cease, resulting in considerable detriment for those who would no longer receive those services. Their quality of life may be significantly reduced and the burden on other areas of the economy may be increased, i.e. healthcare.</p>
<b>POLICY OPTIONS</b>	
<i>(1) No change</i>	<p>MCA does not favour this option.</p> <p>Keeping the status quo would mean that regulations may not be possible for providing information related to charitable donations.</p>



<p><b>(2) Amend section 27(1)(a) to ensure it covers charitable donations including the ability to disclose such information as the proportion of a donation retained by a third party</b></p>	<p>MCA favours this option.</p> <p>This option would allow for CIS regulations related to charitable donations. There would need to be a separate regulatory impact analysis undertaken to support any CIS regulations.</p> <p>The information from the surveys and comments clearly indicates that transparency of information would alleviate some of the personal detriment felt by the public around third party collectors, as this was self-identified by many of the participants in surveys and complaints.</p>
<p>(3) Provide for consumers to be educated about third party collectors</p>	<p>MCA does not favour this option.</p> <p>It is unclear who would be best placed to undertake the education. If charities or the third parties were to educate, then the information may not be portrayed accurately if it was perceived that this would negatively affect the donations. It is also unlikely that consumers would seek out such information from MCA. The Charities Commission may be best placed as consumers may look for such information there, but the Commission does not oversee this type of contractual relationship between charities and third parties and therefore it may be inappropriate and resource intensive.</p> <p>As not all charities use third parties, education may negatively affect those charities which do not use them if consumer reaction was negative. To have consumers challenge collectors regarding their status may also influence the participation of volunteers to collect for charities.</p>

### Fair Trading Act – Court Enforceable Undertakings

<p><b>What is the problem?</b></p>	<p>A settlement agreement is an agreement between a regulator and a party who admits some contravention of the law. The agreement will usually provide for the party to remedy the breach and change their behaviour and in return the regulator will agree not to take any further enforcement action.</p> <p>The Commerce Commission uses informal settlement agreements when a person in trade voluntarily admits that they have breached the Fair Trading Act and gives an undertaking to alter its behaviour.</p> <p>However the Commission is unable to enforce settlement agreements because:</p> <ul style="list-style-type: none"> <li>• The Commission has to establish that the settlement agreement is an enforceable contract and that it has been breached. This is problematic if the Commission threatened prosecution as the alternative to the agreement, and if that is viewed by the court as duress.</li> <li>• Compensation for damage is the usual remedy for breach of contract, but an award of damages would depend on the Commission proving that it had suffered damage because of the breach of the settlement agreement. Under contract law the Commission is not able to claim compensation for damage</li> </ul>
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	<p>caused to third parties, such as consumers, because they are not parties to the contract.</p> <ul style="list-style-type: none"> <li>• An alternative remedy would be specific performance, where the court can require a party to fulfil its obligations under a contract. Specific performance of the terms of the settlement agreement may be available at the discretion of the court, but specific performance can be a difficult remedy to achieve, especially if the agreement has been cancelled by the breach, and it may not always be an appropriate remedy where the party's behaviour has already caused detriment to consumers.</li> <li>• The Commission could commence prosecution proceedings for the original breach of the Fair Trading Act if a settlement agreement has been breached and cancelled, but the three year limitation period could prevent the Commerce Commission from prosecuting for the original offence if a business breaches a settlement agreement some time after it was entered into. Nevertheless prosecution through the courts is extremely resource intensive and expensive.</li> <li>• It is artificial for the Commerce Commission to be required to go to court to access contractual remedies for breaches of the Fair Trading Act that have been admitted.</li> </ul> <p>Settlement agreements provide the Commerce Commission with a more efficient and potentially creative enforcement alternative, and their use should be encouraged. The inability to formally enter and enforce settlement agreements means that they are not used as often or as effectively as they could be.</p> <p>The Australian Competition and Consumer Commission (ACCC) has found that court enforceable undertakings are a vital aspect of its enforcement programme, stating that of the 50 court enforceable undertakings accepted during the 2005-2006 period for fair trading, 13 involved outcomes, primarily refunds, that would not have been achieved through other means.</p>
<p><b>Measure of Consumer and Business Detriment / Magnitude of Problem.</b></p>	<p><b>Costs to Consumers</b></p> <p>Without undertakings the Commission will have less ability to achieve timely redress and would probably collect less compensation for consumers. The use of undertakings will also be more open and transparent, and will allow a conciliatory approach with businesses and consumers both around the negotiating table. The utility gain of these benefits would be very difficult to quantify because of the small number of consumers affected and the different circumstances of each settlement.</p> <p>Last year, the Commerce Commission entered into its largest ever settlement agreement with ANZ National Bank Limited and ING (NZ) Limited in relation to alleged breaches of the Fair Trading Act. It was decided that the best possible outcome for the affected investors was to enter into a negotiated settlement, rather than commence lengthy and uncertain litigation. Under the agreement, the parties acknowledged that some of their conduct may have breached the Fair Trading Act. However the Commerce Commission was unable to formalise the settlement agreement under the Fair Trading Act.</p> <p>The Securities Commission also welcomed the settlement, and accepted its own enforceable undertaking from ANZ National and ING in respect of the conduct investigated by the Commerce Commission, under section 69J of the Securities Act 1978. An amendment to the Fair Trading Act would allow the Commission to</p>

	<p>do the same.</p> <p><b>Cost to Businesses</b></p> <p>Without undertakings businesses investigated by the Commerce Commission are required to spend substantial amounts on lawyers and court fees (the exact amounts have not been measured due to time constraints). Undertakings allow businesses to avoid expensive court proceedings. Undertakings allow good relationships to develop between the Commission and businesses, and allow the business to admit fault without facing open ended liability. This makes them more willing to cooperate with investigations and may also help repair the relationship between consumers and business. These are benefits but are hard to quantify except at great cost.</p> <p><b>Cost to Government</b></p> <p>Without enforceable undertakings, the Commission relies on court action to obtain remedies for consumers. In 2009/10 the Commission spent \$3.9 million on Fair Trading Act enforcement. It is unlikely that this figure will increase with the current downward pressure on fiscal spending. However, the number of Fair Trading Act breaches has increased (which may be related to the current economic climate). The increased use of enforceable undertakings allows the Commission to spend less on court action and spread their budget over a higher number of cases (the cost has not be quantified due to time constraints).</p>
<p><b>The likely consequences of taking no policy action / Cost of Status Quo</b></p>	<p>Settlement agreements provide an alternative to litigation and have a number of benefits for businesses in that they are more efficient and avoid the expense of court proceedings. They can also significantly speed up the process of obtaining compensation for the victims of the breach. Formal undertakings would make the settlement process more transparent and allow the Commerce Commission to enter into a wider range of creative solutions than are available under the current law.</p> <p>Increasingly laws have been enacted to allow enforcement agencies to accept enforceable undertakings. The Securities Act gives the Securities Commission the power to accept and enforce undertakings in relation to breaches of the Securities Act. The Australian Consumer Law has a very similar provision. The New Zealand Commerce Act and the Telecommunications Act also provide for the Commerce Commission to enter into court enforceable undertakings in relation to its regulatory roles under these Acts.</p>
<p><b>POLICY OPTIONS</b></p>	
<p><i>(1) No change</i></p>	<p>MCA does not favour this option.</p> <p>The costs to consumers, businesses and government are as above.</p>
<p><i>(2) Amend the Fair Trading Act to allow the Commerce Commission to accept court enforceable undertakings, along the lines of the Securities Act</i></p>	<p>MCA favours this option.</p> <p>The <b>benefits</b> are:</p> <p>Consumers and businesses: It will allow conciliatory, flexible, efficient and quick redress for breaches of the law without recourse to the courts. Enforceable undertakings will result in a utility gain for consumers, although it is not quantifiable.</p> <p>Government: Undertakings are more cost effective and promote high quality enforcement outcomes for the Commerce Commission in</p>

	<p>relation to the Fair Trading Act. The benefits will be fiscal but cannot be quantified due to other factors impacting on any estimate.</p> <p>The <b>costs</b> are:</p> <p>No specific costs of court enforceable undertakings have been identified. There will be the general costs of negotiating and enforcing the undertakings but these are likely to be less than the costs of court enforcement if undertakings were not an option.</p>
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<b>Fair Trading Act – Banning Orders</b>	
<b>What is the problem?</b>	<p>The Commerce Commission has identified some individuals who deliberately and repeatedly offend under the Fair Trading Act. Once convicted an individual can continue to trade (and potentially re-offend) under new branding or a new company. The most common examples are scams and pro-forma invoicing. The penalty for a conviction under the Fair Trading Act is a fine of up to \$60,000 for an individual or \$200,000 for a company, but scammers' profits from unlawful activities at the expense of their victims can exceed those amounts. Some scammers consider the fine as a "cost of business". Although the number of repeat offenders is small, the consumer detriment and harm to consumer confidence is destructive. The Commission currently has no choice but to continue prosecuting these people for their ongoing offending. Courts have expressed dismay that the only available remedy is a fine, which is ineffective if the defendant is insolvent or does not consider the fine a deterrent.</p> <p>Banning orders are a tool available to the courts under some legislation to ban individuals from management activities for a specified length of time. A person who breaches a ban can face serious consequences. In some cases a breach of a ban will be a criminal offence.</p> <p>The purpose of banning orders is to prevent the public from suffering detriment due to the ongoing misconduct of a deliberate wrongdoer who continues to act unlawfully or unfairly even after they have been convicted and fined.</p> <p>They are particularly appropriate where the benefits of committing the offences are considered by the wrongdoer to outweigh the possible penalties under the law. They are intended as a protection mechanism for the public rather than a deterrent for would-be offenders, although they are penal in nature.</p>
<b>Measure of Consumer and Business Detriment / Magnitude of Problem</b>	<p><b>Costs to Consumers</b></p> <p>Without banning orders, the Commission is not able to prevent ongoing offending. Some Fair Trading Act offences, such as scams and pro-forma invoicing, can cost consumer victims up to \$2 million. Many of the scammers are repeat offenders that do not see a fine and a conviction as a deterrent from offending. Recidivist offenders can cause the public significant financial and emotional damage from their repeat offending.</p> <p><b>Cost to Businesses</b></p> <p>Honest businesses are harmed by recidivists in that they are unable to operate in a market without being undercut by people previously convicted under the Fair Trading Act. The harm caused by a decrease in business confidence is hard to quantify except at a cost.</p>

	<p><b>Cost to Government</b></p> <p>Without banning orders, the only option to enforce the law against recidivists is to repeatedly prosecute them. These prosecutions contribute to the Commission's enforcement expenditure, which was \$3.9 million in 2009/10. If a person does not consider a conviction to be a sufficient deterrent, a prosecution is effectively a waste of time. Continued offending by an individual may also erode the public's confidence in the Fair Trading Act and the market in general (the cost of the public's decreased confidence difficult to quantify).</p>
<p><b>The likely consequences of taking no policy action / Cost of Status Quo</b></p>	<p>The Commerce Commission has identified some individuals who deliberately and repeatedly offend under the Fair Trading Act. Once convicted an individual can continue to trade (and potentially re-offend) under new branding or a new company. The most common examples are scams and pro-forma invoicing.</p> <p>Although the number of repeat offenders is small, the consumer detriment and harm to consumer confidence is destructive. The Commission currently has no choice but to continue prosecuting these people for their ongoing offending. Courts have expressed dismay that the only available remedy is a fine, which is ineffective if the defendant is insolvent or does not consider the fine a deterrent.</p> <p>The Australian Consumer Law includes a power for the court to disqualify a person from managing companies if that person contravenes specific provisions of the Australian equivalent of the Fair Trading Act, and the court is satisfied that a disqualification is justified. There are several other examples of the use of banning orders in New Zealand legislation.</p>
<p><b>POLICY OPTIONS</b></p>	
<p><i>(1) No change</i></p>	<p>The Ministry does not favour this option. The costs to consumers, businesses and government are as above. The Commerce Commission has no way to protect consumers from recidivist offenders under the Fair Trading Act.</p>
<p><i>(2) Encourage the Commerce Commission to apply to the court for permanent injunctions under section 41 of the Fair Trading Act to control repeat offenders</i></p>	<p>MCA does not favour this option.</p> <p>The <b>benefits</b> are:</p> <p>Consumers, businesses and government: There will be less regulation than with the Ministry's preferred option. Less regulation can be presumed to impose less cost on these groups, but detailed data of the reduced cost is not available.</p> <p>The <b>costs</b> are:</p> <p>Businesses, consumers and government: Permanent injunctions are not suitable to prevent an individual from causing consumer detriment by repeat breaches of the Fair Trading Act. Injunctions are not intended, and are not used as, a behavioural control to protect the public from recidivist offenders. A permanent injunction may specifically prohibit conduct that will breach the Fair Trading Act and courts have used this power to prohibit traders from undertaking activities that are <i>already</i> unlawful. Therefore, the costs to consumers, businesses and government are as above.</p>
<p><i>(3) Amend the Fair Trading Act to allow the Commerce Commission to apply to the court for a ban from</i></p>	<p>MCA favours this option.</p> <p>The <b>benefits</b> are:</p> <p>Consumers: Repeat offenders cause the most detriment when they</p>

<p><i>management</i></p>	<p>establish companies to front their offending, conceal their identities, and limit their liability. Consumers, shareholders and employees are all susceptible to the actions of unscrupulous company directors or managers. Costs to consumers are the financial and emotional damage caused by scams. Under this option, the court has the ability to protect consumers from individuals who may repeatedly re-offend behind the veil of an incorporated company.</p> <p>Businesses: Banned individuals will be prevented from taking on new directorships, allowing businesses and shareholders to choose their directors with confidence. Businesses will also be able to transact confident in the knowledge that they will not be undercut by businesses operated by recidivist offenders. The benefits of business and shareholder confidence are difficult to quantify.</p> <p>Government: The Commerce Commission's fiscal costs will be reduced with less enforcement and educational action necessary to combat recidivist offenders. A management ban is also easily enforced by the Companies Office with their current register of banned directors.</p> <p>The <b>costs</b> are:</p> <p>Defendants: A management ban will enable an individual to continue to earn a living while prohibiting them from causing detriment to susceptible consumers behind the veil of an incorporated company. However, it will limit the individual's occupational options, and impose a cost on the trader and his or her family (the cost has not been quantified). For this reason, there will be a number of safeguards to ensure bans are only used where absolutely necessary.</p> <p>Government: An application for a banning order is a civil remedy, so the Commerce Commission will be required to apply separately from a criminal prosecution. There will be a cost associated with the application (due to time constraints this cost has not been quantified).</p>
<p><i>(4) Amend the Fair Trading Act to allow the Commerce Commission to ban individuals from trade if it is necessary to prevent them from re-offending</i></p>	<p>MCA does not favour this option.</p> <p>The <b>benefits</b> are:</p> <p>Consumers, businesses and government: The court will have wide-ranging power to prevent recidivists from participating in any conduct that may lead to a breach of the law. This will reduce enforcement costs and protect the public from ongoing offending no matter what entity the individual is trading as. The benefits are the removal of financial and emotional costs to consumers from scams, increased business confidence and smaller fiscal costs (these costs have not been quantified).</p> <p>The <b>costs</b> are:</p> <p>Consumers, businesses and government: A general ban under the Fair Trading Act could have serious consequences for the livelihood of the banned person and their dependants. Such a power may result in unnecessarily wide bans and leave the person without a way to earn a living. This will impose a large cost on an offender and his or her family (this cost has not been quantified). No other banning power in New Zealand, or the power under the Australian Consumer Law, gives the court the ability to ban someone from trade altogether.</p>

<b>Fair Trading Act – Infringement offences and notices</b>	
<b>What is the problem?</b>	<p>The Commerce Commission has identified a class of offending that it considers breaches the Fair Trading Act, but that it does not prosecute on a regular basis because the costs outweigh the benefits. The alleged offending is usually minor and does not cause major consumer detriment, but if left unaddressed it could lead to more serious and repeated offending. The cumulative effect of minor offending may impact on consumers' confidence over time and will erode the public's confidence in the Fair Trading Act. One of the objectives of the Consumer Law Reform project is to ensure New Zealand's consumer laws are effective and enforceable.</p> <p>As an example, non-compliance with a Consumer Information Standard is an offence under the Fair Trading Act and is relatively common compared to other Fair Trading Act offences, with traders neglecting to display the notices, or displaying incorrect information. In these situations the Commerce Commission currently uses informal enforcement tools, such as warnings or compliance letters, or settlements, to encourage the offender to comply with the law. These are soft tools that do not always result in improved compliance. To ensure compliance the Commission would be required to prosecute the offender in court at a substantial cost.</p> <p>A quick assessment of product safety and consumer information notice cases indicates that a prosecution costs the Commerce Commission about \$15,000 per case. It is likely that a trader who defended a prosecution would incur similar costs. In comparison, infringement offences and notices allow enforcement agencies to carry out, at significantly lower cost, enforcement action for misconduct that is deemed not to be serious enough to be prosecuted in a court, or that needs to be acted against quickly, but which is still detrimental to the public good.</p> <p>The speed at which infringement notices may be issued provides an additional benefit when the misconduct needs to be remedied quickly, for example the need to get banned or dangerous goods off shelves in response to a compulsory product recall. The threat of an infringement notice issued on the spot for each recalled item on a shop shelf will encourage more and faster compliance with recalls.</p>
<b>Measure of Consumer and Business Detriment / Magnitude of Problem</b>	<p><b>Costs to Consumers</b></p> <p>Currently there are several types of offending that the Commerce Commission considers are too minor, or do not cause enough detriment, to be worth following up with formal enforcement action. Consumers continue to suffer detriment from this offending because there is no sufficient deterrent. An example is breaches of a Consumer Information Standard where an individual consumer may not be given the information required by the Standard but the single offence is not worthy of prosecution in itself. The individual costs to consumers of these breaches are likely to be small but have not been quantified. The cumulative cost of a decrease in consumer confidence has likewise not been quantified.</p> <p>There is also some offending which needs to be remedied quickly because of the danger it poses to the public, such as a failure to comply with a product recall or an unsafe goods notice. Court action does not provide a fast response to this sort of offending. The cost of ongoing danger posed to consumers from unsafe goods has not been quantified due to time constraints.</p>

	<p><b>Cost to Businesses</b></p> <p>Without the ability to issue infringement notices the Commission might be tempted to take court enforcement against minor breaches of the law. Businesses should not have to face the cost of going to court for minor offences where there is no harm caused and no intention to offend. The costs of unnecessary court action have not been quantified due to time constraints, but are likely to be large. Infringement notices give the Commission an alternative to court action.</p> <p><b>Cost to Government</b></p> <p>The Commission's consumer information notice and product safety standard investigation and enforcement costs for 2009/10 was \$149,000 (involving 50 cases). The allocation for the same activities for 2010/11 is \$289,000. The use of infringement notices would be a cost effective replacement for court enforcement for minor offences. Where court enforcement isn't effective, infringement notices are an enforcement tool that could be used to prevent the public from losing confidence in the effectiveness of the Fair Trading Act (this cost has not been quantified because of the difficulty of doing so).</p>
<p><b>The likely consequences of taking no policy action / Cost of Status Quo</b></p>	<p>The Commission has identified a class of offending that it considers minor and not worth the cost and time of court enforcement or negotiation with the offender. There are also some offences that need to be remedied quickly to limit the public harm. The Commission has no way to deal with these types of offending, and so confidence in the Fair Trading Act suffers. Consumers are left with no remedy and businesses may face unnecessary court action at times.</p> <p>Several enforcement agencies in New Zealand issue infringement notices and impose a fine on people who they have reasonable cause to believe have committed an offence identified as an infringement offence. Infringement notices are a quick and efficient enforcement tool used to penalise people for clear-cut, minor breaches of their statutory obligations. Infringement offences and notices are currently used to enforce over 20 pieces of legislation in New Zealand, including the Motor Vehicle Sales Act and the Weights and Measures Act.</p>
<p><b>POLICY OPTIONS</b></p>	
<p><i>(1) No change</i></p>	<p>MCA does not favour this option.</p> <p>The costs to consumers, businesses and government are as above.</p>
<p><i>(2) Encourage the Commerce Commission to use other informal enforcement tools such as warnings and compliance letters</i></p>	<p>MCA does not favour this option.</p> <p>The <b>benefits</b> are:</p> <p>Businesses: The "soft" approach means that businesses are given flexibility in how they comply with the Fair Trading Act. They may not be immediately penalised for minor breaches. This cost has not been quantified because of the difficulty of doing so.</p> <p>Government: The use of warnings and compliance letters will cost the Commission significantly less than court enforcement and may cost slightly less than infringement notices. This financial benefit has not been estimated.</p> <p>The <b>costs</b> are:</p> <p>Consumers: "Soft" enforcement tools may not encourage compliance</p>



	<p>with the Fair Trading Act. Although consumer detriment from individual breaches is small, cumulatively they are harmful (this cost has not been quantified because of the cost and difficulty of doing so).</p> <p>Government: Ongoing offending, if left unaddressed may erode the public's confidence in the Fair Trading Act (this cost has not been quantified because of the difficulty of doing so). There will still be some cost for the use of warning and compliance letters.</p>
<p><i>(3) Amend the Fair Trading Act to allow the Commerce Commission to issue infringement notices and small fines for a limited number of clear-cut infringement offences</i></p>	<p>MCA favours this option.</p> <p>The <b>benefits</b> are:</p> <p>Consumers: Consumers will be able to transact with the confidence that more businesses who act unfairly under the Fair Trading Act will face a penalty. Detriment caused by many small breaches will be limited. Consumers will also be protected by quicker penalties in situations where traders fail to comply with unsafe goods notices or recalls. The financial benefit of consumer detriment is hard to quantify.</p> <p>Businesses: Infringement notices are likely to be used more consistently across several types of offending compared to the use of court action (although the Commission will still have some discretion to take a prosecution or warn the alleged offender). This is a financial benefit for businesses, although it has not been quantified.</p> <p>Government: The Commission will have the ability to enforce the Fair Trading Act against minor offences efficiently and quickly, improving the public's perception of the law without requiring an increase in the Commission's enforcement budget.</p> <p>The <b>costs</b> are:</p> <p>Consumers: It may result in a decrease in the number of prosecutions carried out by the Commission, even for more serious conduct. The Commission will continue to have the option of progressing with a court prosecution instead of issuing an infringement notice if the offending is sufficiently serious. The cost is hypothetical so has not been quantified.</p> <p>Businesses: The use of infringement notices will probably replace some of the warning and compliance letters and other informal enforcement measures that the Commission uses. Businesses' benefit from the use of "soft" enforcement tools may be foregone. Evidence from other infringement regimes show that enforcement agencies continue to prefer assisting businesses to comply with the law as first resort rather than using infringement notices.</p> <p>Government: There will be a cost to the Commerce Commission to establish systems necessary to administer infringement notices. However, this cost may be covered by revenue from infringement fines. The cost and the overall net benefit of the preferred option have not been quantified due to time constraints.</p>

### Consumer Guarantees Act and Carriage of Goods Act

<p><b>What is the problem?</b></p>	<p>The carriage of goods is an important service in the completion of many transactions. Consumers can either be the recipient of the goods (eg, a mail order), or both the sender and receiver (between different individuals such as a Trade Me transaction, or the same</p>
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	<p>individual such as a furniture removal from one location to the other).</p> <p>The Carriage of Goods Act works well for business-to-business carriage.</p> <p>There are two issues of significance for consumers with the way the Carriage of Goods Act works for them. When a consumer receives a good that is damaged or the good is lost during the carriage, the receiver (consignee) has difficulty obtaining redress as they are not party to the carriage contract. The Act allows that carriers can contract out and therefore the consignee is likely to have had their rights of redress contracted away. In similar circumstances for other services, the Consumer Guarantees Act would apply, but this is not the case for loss or damage by carrier services.</p> <p>Another problem is that senders (consignors) are not being given fair choices for the contract of carriage. The Carriage of Goods Act allows for a limited carriers' risk contract with a liability limit of \$1,500. This is a strict liability contract and fault does not need to be proven. This is supposedly offset for the carrier by a higher freight fee. Alternative contracts can be "owners risk" (optional insurance obtained by the consignor) offset by a lower freight cost. It appears, however, that consignors are not being given the variety of contract choices which allows them to balance risk. Carriers are placing the risk squarely with the consumer, which is disproportionately borne by the intended receiver of the goods, who is not a party to the contract. Additionally, the transparency of freight costs is limited, so that it is difficult to see if the off-setting is value for money.</p> <p>The \$1,500 liability limit for the limited carriers' risk contract was last set in 1989 and has not been adjusted, as intended, with inflation.</p> <p>Therefore, consumers can be exposed to both structural (i.e. limited choices) and personal (i.e. reasonable expectations not met) detriment.</p>
<p><b>Measure of Consumer Detriment / Magnitude of the Problem</b></p>	<p>The Road Transport Forum has indicated that consumer carriage of goods lies between 5-10% of all carriage service. However, all consumers who use these services are likely to experience detriment if the carriage goes wrong. While no surveys have been done, a scan of complaints to consumer watchdogs, including Consumer NZ and Fair Go, indicates that there is dissatisfaction and actual loss by consumers who received damaged goods or whose goods are lost in transit. Many of the complaints relate to the difficulty in obtaining redress, and a lack of knowledge of the implications of contract terms. Consumers also expect that carrier services are carried out with due care and skill, and are unhappy when this is not the case. Consumer NZ advises that such complaints are common and ongoing, with significant difficulty in achieving resolution. The Trade Me Message Board clearly indicates people (buyers and sellers) are confused about the rules regarding carriage, particularly when loss or damage occurs.</p> <p>Officials have analysed a number of carrier contracts and have observed significant contracting out. Many contracts are not easily found on the company's website and some of the online booking systems do not allow for contracts to be easily read before signing up to them. Even then, the choice of contracts is limited to options that shift risk away from the carrier.</p> <p>There are several new online booking systems of freight companies for the carriage of small consumer items (such as Trade Me purchases), which are ideal for the limited carriers' risk contract.</p>

	<p>However, there is significant potential for detriment when not all the available contracts are provided as a choice. Consumers (particularly consignees) may have their rights contracted away without their knowledge or understanding; they may have underinsured goods, they are being denied the choice of a simple, no-fault contract; and the carrier service has no incentive or obligation to carry the goods with care.</p> <p>The effect of the limited carriers' liability limit remaining at \$1,500 is that it does not cover as many goods as it did in 1989.</p>
<b>Measure of Business Detriment</b>	<p>There is no detriment to businesses with the status quo.</p> <p>In the current carriage environment, carriers have significant and disproportionate advantages over consumers. They can contract out of all risk and also avoid redress rights of consumers. If a good is lost or damaged, a company may suffer no consequences, and in the case of damage, may also receive and retain freight costs.</p>
<b>The likely consequences of taking no policy action / Cost of Status Quo</b>	<p>The rise of Trade Me has meant that many consumers are utilising carrier services, either as a sender (consignor) or receiver (consignee). Several carrier businesses have recognised this trend and promote specific services for Trade Me purchases. However, this has resulted in a clear move away from providing redress rights and providing only carrier contract options that shift risk from the company onto the other parties, including the consignee who is not even a party to the contract. The Act was not written for such situations and consumer detriment would continue. It can be argued that detriment has worsened over the past few years, as more consumers participate in carrier services.</p> <p>Complaints about the low level of the limited carriers' risk liability limit will continue, as consumers continue to be out of pocket.</p>
<b>POLICY OPTIONS</b>	
<i>(1) No change</i>	<p>MCA does not favour this option.</p> <p>The status quo will continue the structural and personal detriment to consumers outlined above.</p>
<i>(2) Information to consumers</i>	<p>This option does not change the legislation but specifies for more proactive information on the rules of carriage to be provided to consumers. This can either be achieved by information on the Ministry of Consumer Affairs website, or by way of a Consumer Information Standard (CIS) regulation.</p> <p>The <b>benefits</b> of this option include that it informs consumers about any liability limit that may apply, or the need to insure goods. It also can inform consumers of what rights they do not have.</p> <p>The <b>costs</b> are:</p> <p>Consumers: It does not increase the chance that the limited carriers' risk option is available to them, nor does it improve their redress rights as they will continue to be excluded from the contract and the CGA will not apply.</p> <p>Businesses (in this case carriers): Consumers may become aware that they are not being offered all the options, and that they have little or no redress. Some businesses may lose custom. If information disclosure is mandatory, businesses will have compliance costs.</p>

	<p>Government: Information disclosure requires resource in the form of information on websites or hardcopy, and if regulations (CIS) are used, then this takes some time and effort on behalf of both the regulator and any enforcement agency. As it currently stands, the Carriage of Goods Act and the CGA do not involve an enforcement agency.</p> <p>Therefore, this option would not be effective in addressing the problems identified on its own. Mandatory information disclosure would involve the Commerce Commission in enforcing an area where it has not historically had a role..</p>
<p><i>(3) No contracting out</i></p>	<p>MCA does not favour this option, on its own.</p> <p>The <b>benefits</b> are:</p> <p>Consumers: An amendment to section 7 of the Carriage of Goods Act will allow the consignee to be able to pursue their rights to redress by preventing a carrier contracting out of obligations under the CGA, except as provided for by section 43 of the CGA. This will mean that consumers can utilise the CGA if the carriage contract gives them lesser rights than the CGA. It also means that if a carrier contracts out of their obligations under the Carriage of Goods Act, they cannot contract out of the CGA.</p> <p>Businesses: As this would reduce the current position enjoyed by businesses, there are no benefits. However, it does not affect business-to-business carriage. This option may be an incentive to improve the care and skill taken with the carriage of goods.</p> <p>The <b>costs</b> are:</p> <p>Consumers: Using the CGA will mean that the consumer would have to prove fault by the carrier for loss or damage. This cost in time and effort to the consumer is not balanced if the choice of contracts does not include a no-fault contract. Also, if businesses need more insurance, the cost of carriage may rise.</p> <p>Businesses: Carrier services would have similar obligations to other traders with respect to the CGA. Insurance may be needed to cover these obligations for consumer goods. More oversight of contract carriers may be needed to improve the care and skill of carriage services.</p> <p>As with information disclosure, this option does not resolve the problems identified if used on its own.</p>
<p><i>(4) No contracting out and requiring the limited carriers risk contract option to be offered</i></p>	<p>MCA does not favour this option.</p> <p>The <b>benefits</b> are:</p> <p>Consumers: The original intention of the Act was to offer all carriage contracts to non-business carriage as it allowed the choice of a simple, no fault contract for the unsophisticated sender/receiver.</p> <p>Businesses: While courier companies all offer this type of contract, other freight companies do not. For couriers, the strict liability contract appears to be well accepted, but is complicated in its success by the contracting out issue. To combine these two options would be advantageous for carriers as it provides a simple alternative to the CGA.</p> <p>The <b>costs</b> are:</p> <p>Consumers: Limited carriers' risk may result in higher freight charges as businesses seek to off-set insurance costs. If consumers</p>

	<p>choose this option, they may not recover the full value of the goods if the value of the goods exceeds the limit.</p> <p>Businesses: The limited carriers' risk contract requires insurance and therefore increases compliance costs. However, the Insurance Council of New Zealand has indicated that the increase is likely to be modest for all the insurances that may be required.</p> <p>If both changes were made, this would allow consumers to choose a simple, less onerous contract but still be covered by the CGA if the limited liability contract (usually signed by the sender only) provided less coverage.</p>
<p><i>(5) No contracting out and requiring the limited carriers risk contract option to be offered, with information to consumers</i></p>	<p>MCA favours this option.</p> <p>The <b>benefits</b> are those outlined above.</p> <p>The <b>costs</b> are those outlined above:</p> <p>The preferred option is to combine all the options. It is considered that the benefits outweigh the costs by rebalancing the risks inherent with the carriage of goods to be more evenly spread between consumers and carriers. The consumer information would relate to the new provisions, meaning that consumers would be informed about their redress rights and obligations.</p>
<p><i>(5A) Increasing the limited carriers' risk liability limit from \$1,500 to \$2,500, with changes by Order in Council</i></p>	<p>MCA favours this addition to option (5).</p> <p>The intention of the Act in 1979 was to increase the limit with inflation. This was not done, complicated by the fact that changes could only be made by Parliament.</p> <p>The <b>benefits</b> are:</p> <p>Consumers: An increase ensures that approximately the same goods are covered as those that were covered in 1989.</p> <p>Businesses: No discernable benefits, but increased costs are unlikely to be significant.</p> <p>The <b>costs</b> are:</p> <p>Consumers: Higher freight costs to cover the increase in insurance premiums, but these should be minimal according to the Insurance Council of New Zealand.</p> <p>Businesses: Higher insurance costs, but these should be minimal according to the Insurance Council of New Zealand.</p> <p>Notes from the Insurance Council on this issue:</p> <p>The possible effect on insurance premiums for carriers liability if the limit were to increase to \$2,500:</p> <p>[a] each insurer has a minimum premium they will apply per NZD \$100,000 of gross receipts; or per operating vehicle;</p> <p>[b] at about the 5-vehicle fleet mark, pricing moves from gross receipts / per vehicle to a gross receipts / per vehicle / claims experience model;</p> <p>[c] as the fleet gets larger and the operation more complex, the LCR CGA79 liability aspect becomes subservient to other CGA79 provisions, &amp; wider freight forwarder's liability concerns.</p> <p>With that said, we can therefore predict with more certainty the effect on smaller operators would be if the LCR limit moved from NZD \$1,500 to NZD \$2,500:</p>

	<ul style="list-style-type: none"> <li>• A single operator (local urban / sub-urban owner driver): NZD 450~500 to NZD 750~850 (annual gross premium)</li> <li>• Single long haul/ line haul per vehicle: NZD 750 to NZD 1,250 (annual gross premium), but this is very dependent on fleet size and claims history</li> <li>• However, particularly for small operators, it is probably more likely that they will select to take a larger deductible to negate any rise in their premium. Many would aim to keep their insurance premium the same. To do this they would probably be presented with a doubling of their deductible.</li> </ul> <p>Local carriage business often is a subservient part of other insurance programmes. LCR can be built into Material Damage policies, and General Liability policies. In those larger insurance risks, the LCR pricing will be less relevant to the overall annual premium. Often CGA79 liability is a section in a freight Forwarder's Policy. However, insurers will be aware that the catastrophe loss potential (i.e. so-called "roll-over" losses) will increase markedly if the LCR limit moves from NZD 1,500 to NZD 2,500, particularly on large intercity line-haul operations. From an insurer's perspective, these larger carrier risks i.e. large single units carrying a lot of different freight would present the greatest step-change if the current LCR limit rose to NZD 2,500. We have yet to measure the impact of larger vehicles coming on to our roads.</p> <p>We would expect an increase of a factor of approx. two-thirds on existing small operators' insurance premiums if the LCR limit moved from NZD \$1,500 to NZD \$2,500. We believe that most insurers (ourselves included) would, for small to medium carrier operations, at least start out a negotiation for a LCR annual premium with this two-thirds factor in mind. However, commercial pressures, larger deductibles, previous clean claims history and cash flow underwriting practices will alter this approach very quickly. As such, two-thirds should be seen as very much near the upper limit of likely price increases.</p> <p>There may be more claims lodged per unit as some may not be sought at the current limits. From we can ascertain, much of the insurance industry agrees with this article by solicitors Jones Fee: <a href="#">Waterfront Dodgems - A Dissenting View</a> (Ports of Auckland Limited v Southpac Trucks 2009): the Supreme Court pretty much got it wrong that the CGA79 was successful piece of legislation. For our purposes here, the LCR limit is now so old and now so minimal that it just gets ignored ("The reason for the limited amount of litigation over the grey areas [of the Act] is that normally the amounts involved are not high enough to justify the cost of proceeding, and not because all are satisfied that the answer is obvious"). This implies that there may be increased legal interest &amp; viable cost-outcomes for insurers refining some areas of the Act, i.e. to either defend liability or to achieve a recovery, if the LCR unit limit rises substantially.</p> <p>If the limit rose to NZD \$2,500, medium and larger carriers will probably seek other bases of liability with their regular clients e.g. Owner's Risk, Agreed Value or Agreed Terms.</p>
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<b>Weights and Measures Act</b>	
<b>What is the problem?</b>	The Weights and Measures Act specifies the requirements for establishing accurate measurement and weight. These requirements are consistent with international approaches and are fundamentally sound. Several areas have been identified where consumers and

	<p>traders are being negatively affected because the Act is too prescriptive or does not fully address measurement accuracy:</p> <ul style="list-style-type: none"> <li>• Self-service check out facilities, eg, at supermarkets, may not comply with the Act's requirement that retailers must weigh, measure or count goods, not pre-packaged, that are sold by weight or measure. The self-service initiative offers benefits to consumers and businesses. This initiative will be foregone if the Act is strictly enforced and until the Act is changed there is uncertainty for businesses/supermarkets concerning compliance with the Act.</li> <li>• There is no requirement that a retailer has the weighing instrument and the indicator of the weight within proximity to each other so that the consumer can see that the weighing undertaken is honest and accords with the displayed weight (eg, that no additional weight has been added to the scale). Dishonest measurement is a cost to the consumer and undermines market confidence.</li> <li>• Although there is a general requirement that all weighing and measuring instruments are accurate, and there is a requirement that weighing and measuring instruments must be verified before use, there is no requirement for re-verification. There is some evidence suggesting traders are not active in undertaking voluntary re-verification. There is also a problem when re-verification seals/marks are broken or removed. Inaccurate measuring instruments can mean consumers are overcharged and businesses may not receive the correct payment (eg, payment of a farmer for produce/hay by weight).</li> <li>• For non-retail sales by weight or measure, an invoice or delivery note must be produced stating the weight or measure. There is no requirement for the suppliers details to be provided which with internet sales may mean there is insufficient information for a consumer to query the weight or measure of the received goods.</li> </ul>
<p><b>Measure of Consumer Detriment / Magnitude of the Problem</b></p>	<p>There are approximately 350-400 supermarkets in NZ which could be affected by the compliance costs associated with the prescriptive law concerning retailers having to weigh goods sold by weight that are not pre-packaged.</p> <p>Over the last 6 months, MAPSS has, as part of its monitoring programme, undertaken 86 inspections of the performance and compliance of measuring instruments used for trade and the Accredited Persons that verified them. Instrument surveillance included: high flow truck stops, milk meters, fuel dispensers and road tankers. A 95% compliance rate was detected. The majority of these measuring instruments are in use in fuel and dairy industries that undertake routine voluntary re-verification at 1-2yr periods.</p> <p>Over this same period, 357 inspections were completed monitoring the performance and compliance of weighing instruments used for trade and the Accredited Persons that verified them. This instrument surveillance included: weighbridges, hopper weighers, supermarket scales and market traders. A 67% compliance rate was detected. The majority of non-compliant instruments were not subject to routine voluntarily re-verification.</p> <p>There is no good estimate of the extent of the problems with lack of contact information and weighing and weight display not being in close proximity. These are matters that have been raised in complaints to MAPSS and have been identified as inconsistent with the objectives of the Weights and Measures Act and which have the potential to undermine confidence in the integrity of NZ's measuring</p>

	regime. With increased use of internet sales there is potential for more complaints.
<b>The likely consequences of taking no policy action / Cost of Status Quo (Cost to consumers/economic losses to business)</b>	<p>Whenever MAPSS discovers inaccurate weighing or measuring instruments, non-compliance or poor measuring practices that they are able to remedy through intervention, the economic benefit of this intervention to consumers or traders is estimated. This estimation is called the "cost to consumer / cost to business" figure, and quantifies either the detriment to consumers in circumstances where consumers have been short changed, or the business / retailer productivity losses where businesses have given away more than the required quantity.</p> <p>Between 1 July 2009 and 31 June 2010: MAPSS inspectors found an estimated total of \$261,000 worth of combined savings to either consumers or businesses, as a result of reactive and proactive inspection activities. The majority of these savings were made through the identification of errors and the subsequent re-verification of inaccurate weighing instruments.</p>
<b>POLICY OPTIONS</b>	
<i>(1) No change</i>	<p>MCA does not favour this option.</p> <p>The costs to consumers and businesses are as above.</p>
<i>(2) Undertake a major review of the Weights and Measures Act to ensure its provisions are principles-based and not overly prescriptive</i>	<p>MCA does not favour this option at this time.</p> <p>The <b>benefits</b> are that a full review of the legislation would be undertaken to ensure it is fully up to date and relevant.</p> <p>The <b>costs</b> are:</p> <p>Businesses - With any major review there is uncertainty for businesses. This legislation is fundamentally sound although could benefit from a small number of amendments.</p> <p>Government: A full review would have affected the timetable of the Consumer Law Reform review.</p>
<p><i>(3) Amend the Weights and Measures Act</i></p> <ul style="list-style-type: none"> <li>• to enable the making of regulations for retesting of a weighing or measuring instrument's accuracy;</li> <li>• to provide that persons offering goods for sale (eg, retailers) are responsible for the accuracy of weighing equipment used to determine the sale of their goods;</li> <li>• to add an offence to remove, deface or obliterate a stamp or mark depicting re-verification;</li> <li>• to require that the weighing instrument and indicator of the weight of a good must be in close proximity so that the consumer can see both at the same time, if desired.</li> </ul>	<p>MCA favours this option.</p> <p>The <b>benefits</b> of <i>enabling the making of regulations for retesting of a weighing or measuring instrument's accuracy</i> are:</p> <ul style="list-style-type: none"> <li>• Consumers and businesses will gain certainty from a more accurate system of weights and measures. Mandatory certification will lead to increased accuracy in weighing and measuring equipment as it will force traders to have their weighing and measuring equipment checked at minimum regular intervals.</li> <li>• As a result businesses will be able to better control their inventory as they are more certain of the quantities they are selling.</li> <li>• Consumers likewise will gain greater confidence in the weight or measure of any quantity they have received. The same also applies to business to business transactions.</li> <li>• Enforcement of Weights and Measures legislation would be easier and more effective under a mandatory certification system. MAPSS would have greater knowledge of what equipment had failed and could run its inspections accordingly.</li> </ul> <p>The <b>costs</b> are:</p> <ul style="list-style-type: none"> <li>• Mandatory certification of weighing and measuring devices will</li> </ul>



	<p>impose increased costs on businesses and ultimately consumers. Before mandatory certification periods are regulated the Ministry would need to show that the benefits of such a scheme outweigh the additional costs.</p> <p>The <b>benefits</b> of <i>providing that persons offering goods for sale (eg, retailers) are responsible for the accuracy of weighing equipment used to determine the sale of their goods (but do not have to weigh the goods)</i> are:</p> <p>Consumers:</p> <ul style="list-style-type: none"> <li>• Allowing for purchasers to be responsible for the weighing process is consistent with the objective of the Consumer Law Reform to have in place principles based legislation that is up to date and relevant now and into the future. There is a need to update the Act as the process of purchasers weighing their own products is already occurring to great effect in supermarkets.</li> </ul> <p>Businesses:</p> <ul style="list-style-type: none"> <li>• Allowing purchasers to be responsible for the weighing process could reduce costs associated with the weighing and measuring of goods to businesses. The current law is potentially stifling innovation.</li> </ul> <p>The <b>benefits</b> of <i>providing that persons offering goods for sale (eg, retailers) are responsible for the accuracy of weighing equipment used to determine the sale of their goods (but do not have to weigh the goods)</i> are:</p> <p>Businesses:</p> <ul style="list-style-type: none"> <li>• It is important that the seller has the discretion as to when the purchaser has the ability to have the responsibility to weigh their own goods. Although the principles of contract law will give the seller the ability to refuse sale of a particular good or service a consumer may not have the ability to make correct use of the weighing equipment. Provision for such an ability should be at the seller's discretion, the Act simply needs to provide provision for this.</li> </ul> <p>The <b>benefits</b> of <i>adding an offence to remove, deface or obliterate a stamp or mark depicting reverification</i> are:</p> <p>Consumers and Businesses:</p> <ul style="list-style-type: none"> <li>• Will help to improve the accuracy of equipment by ensuring that only those who are qualified have access to make adjustments. This is beneficial to both consumers and businesses as it will improve certainty in the accuracy of goods sold by weight or measure.</li> </ul> <p>The <b>costs</b> of <i>adding an offence to remove, deface or obliterate a stamp or mark depicting reverification</i> are:</p> <ul style="list-style-type: none"> <li>• If an offence to break a seal is added to the Act when a seal is broken during a non metrological adjustment of a device the business will be obliged to have the device reverified before the device is able to again be used in trade. This reverification will be at the cost to the business.</li> </ul> <p>The benefits of <i>requiring that the weighing instrument and indicator of the weight of a good must be in close proximity</i> are:</p> <p>Consumers and Businesses:</p>
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	<ul style="list-style-type: none"> <li>• This change will aid in enabling consumers to transact with confidence as there will be clearer requirements and further consistency as to how traders operate weighing equipment.</li> </ul> <p>The <b>costs</b> of <i>requiring that the weighing instrument and indicator of the weight of a good must be in close proximity</i> are:</p> <p>Businesses:</p> <ul style="list-style-type: none"> <li>• Businesses may have to alter the way in which their equipment is set up in order to meet the requirements, the cost of doing this will be negligible.</li> </ul> <p>The <b>benefits</b> of all changes to <b>Government</b>:</p> <ul style="list-style-type: none"> <li>• This change will aid in the enforceability of the Act by clearing up what was an ambiguous area of the Act.</li> </ul> <p>The net benefits of the above have not been quantified because of insufficient time to undertake a meaningful quantitative assessment.</p>
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## CONSULTATION

The discussion document “Consumer Law Reform” was released in June 2010. Two stakeholder meetings were held – one in Auckland and one in Wellington in July 2010. Both were well attended with between 60-100 present at each covering business and consumer interests. 112 submissions were received commenting on the discussion document proposals. Oral hearings of submissions were also held on 9 and 10 August.

As part of the consultation process, Additional Papers have been produced by the Ministry of Consumer Affairs to assist the analysis. These papers will be made public but have not been consulted on further.

The Minister of Consumer Affairs also met with a number of stakeholders including businesses, the Commerce Commission and the Disputes Tribunals Referees. Officials from the Ministry of Consumer Affairs met with a number of stakeholders.

## RECOMMENDATIONS

MCA recommends the Consumer Law Reform provides for amendments to the Fair Trading Act:

- with respect to product safety adding mandatory notification of product safety recalls and the publication of recalls on the Ministry of Consumer Affairs website, extending the possible cover of unsafe goods notices and mandatory product safety recalls to reasonably foreseeable misuse, enabling the issue of Government Product Safety Policy Statements and enabling enforcement officers to enter premises during normal hours, purchase goods and issue stop selling notices when a good has been implicated in a serious incident,
- with respect to consumer information regulation-making powers, extend to cover testing of goods and product related services to support required consumer information and disclosure of information regarding collecting for charitable purposes,
- with respect to contracting out, codify the common law rules specifically in the Act to improve transparency,

- with respect to enforcement, adding court enforceable undertakings, banning orders and infringement offences.

MCA recommends the Consumer Law Reform provides for amendments to the Consumer Guarantees Act and the Carriage of Goods Act:

- requiring the limited liability option under the Carriage of Goods Act is offered and if it is not used the service guarantees in the Consumer Guarantees Act (CGA) apply, and that a carrier cannot contract out of CGA obligations.

MCA recommends the Consumer Law Reform provides for amendments to the Consumer Guarantees Act:

- allowing the vesting of a collateral credit arrangement with a supplier when goods have been rejected.

MCA recommends the Consumer Law Reform provides for amendments to the Weights and Measures Act

- enabling the making of regulations on retesting of instrument accuracy, disclosure of contact information with receipts for goods,
- enabling the Secretary to approve a person to hold the equivalent of the District Standard,
- requiring retailers are responsible for the accuracy of their scales but not weighing of goods,
- making it an offence to remove, deface or obliterate a stamp or mark depicting instrument accuracy and providing that the weighing instrument and indicator of the weight must be in close proximity.

## **IMPLEMENTATION**

It is proposed the above recommendations are implemented through a Consumer Law Reform Bill. Monitoring and enforcement of the Fair Trading Act will continue to be primarily undertaken by the Commerce Commission. The proposals will strengthen this role. MCA also has responsibilities related to product safety and the proposals would add a new role of providing information on product safety recalls. MCA is responsible for monitoring and enforcement of the Weights and Measures Act. The Consumer Guarantees Act and the Carriage of Goods Act are self-enforced by consumers and businesses.

## **MONITORING, EVALUATION AND REVIEW**

It is proposed that the Consumer Law Reform Bill include a requirement that the MCA undertake a review of the effectiveness of the new laws in achieving the Consumer Law Reform objectives, and report to Parliament within 5 years of the amendment legislation coming into force. The review will include consultation with representatives of consumer and business interests. If possible, there will be a survey undertaken of consumer confidence and understanding of consumer laws prior to the new laws and then 3-4 years later.