



BRIEFING

Addressing misleading grocery pricing

Date:	2 May 2025	Priority:	Medium
Security classification:	In Confidence	Tracking number:	BRIEFING-REQ-0013284

Action sought		
	Action sought	Deadline
Hon Nicola Willis Minister of Economic Growth	<p>Agree to either a targeted amendment to the Fair Trading Act, or to address misleading pricing through a wider FTA review.</p> <p>Direct MBIE to report back by the end of Quarter 2 2025.</p>	15 May 2025

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Glen Hildreth	Manager, Consumer Policy	Privacy of Natural Persons	✓
Privacy of Natural	Senior Policy Advisor		

The following departments/agencies have been consulted:
None.

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

Comments:



BRIEFING

Addressing misleading grocery pricing

Date:	2 May 2025	Priority:	Medium
Security classification:	In Confidence	Tracking number:	BRIEFING-REQ-0013284

Purpose

To provide advice on options for addressing misleading pricing practices by supermarkets.

Executive Summary

On 17 April you requested advice on increasing the fines for misleading pricing in the grocery sector. Misleading pricing can include higher charges at the checkout than the advertised price, 'specials' that don't represent a saving on the normal price, and multibuys that are more expensive than if the products are individually purchased.

The Commerce Commission (the **Commission**) and Consumer NZ allege that these forms of misleading pricing are common in the grocery sector, as well as other sectors such as telecommunications, airlines and large retail stores. The Commission argues that the criminal fines imposed under the Fair Trading Act 1986 (**FTA**) are insufficient to incentivise large businesses to invest in more accurate pricing technology. This could be because they are low and difficult to pursue.

You could increase the existing maximum criminal fines in the FTA. This change could be made specific to supermarkets and/or high-revenue businesses, or they could remain general. This approach could result in the introduction of legislation by October this year.

Alternatively, you could consider a wider range of approaches which may be more effective at incentivising supermarkets to comply. This could include amending the way that maximum fines are calculated; introducing new, higher civil pecuniary penalties; or introducing a new infringement regime. If considering this wider range of approaches, legislation could be introduced by May 2026.

Thirdly, you could address the issue through an upcoming wider review of the FTA. This would enable other known issues to be addressed in tandem, reduce the risk of overlaps or delays. Depending on the scope of a review and resourcing, legislation could potentially be introduced this Parliamentary term.

The risks of all three options include that the evidence base for the problem is uncertain; that higher penalties could deter new entrants to the grocery sector thereby counteracting your objective to increase supermarket competition, and that commencing this work programme could delay other priorities in the Commerce and Consumer Affairs portfolio.

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

a **Indicate your interest** in initially proceeding with one of these three options:

	Tick your preference
Option 1: Increasing the maximum fines for misleading conduct by supermarkets in the FTA, with legislation introduced by October 2025	
Option 2: Amending the enforcement provisions in the FTA more generally, with legislation introduced by May 2026	
Option 3: Addressing the issue through a wider review of the entire FTA, with legislation introduced by September 2026	

Discuss

b **Note** that if the changes are general across the wider economy, rather than targeted towards supermarkets, the work programme would sit within the Minister for Commerce and Consumer Affairs' portfolio and be subject to his agreement.

Noted

c **Note** that commencing any particular option now would not preclude proceeding with another option later; although, if proceeding with multiple options, the timeframe for the latter options would be extended.

Noted

d **Direct** MBIE to report back by the end of Quarter 2 2025 with a draft Cabinet paper (for Option 1), or further advice (for Options 2 or 3).

Agree / Disagree

e **Note** that a letter is attached at **Annex One** for you to send to supermarkets encouraging them to ensure more accurate pricing of their own volition.

Noted

Privacy of Natural Persons

Glen Hildreth
Manager, Consumer Policy

2 May 2025

Hon Nicola Willis
Minister for Economic Growth

..... / /

Background

You requested advice on increasing penalties for misleading grocery pricing

1. On 17 April you expressed interest in amending the FTA so that supermarkets face a stronger deterrent to misleading pricing. We understand that you would like to progress this separately from the wider review of the FTA, due to begin later this year, so that the change can occur more quickly.
2. We also understand that you intend to write to the supermarkets, putting them on notice of the law change, and encouraging them to ensure accurate pricing of their own volition. A draft letter is attached at **Annex 1**.

Nature of the problem

The Commission and Consumer NZ allege misleading pricing is common

3. The Grocery Commissioner has five investigations underway into misleading supermarket pricing and is filing criminal charges against a Woolworths and two PAK'nSAVEs. The Commission is also requiring each of the main retailers to regularly report on consumer complaints. Previously, the Commission had only taken one case against a grocery retailer for misleading pricing (PAK'nSAVE, in 2020). It has taken cases against other types of retailers for misleading pricing, such as Look Sharp in 2025 and Bike Barn in 2017.
4. These actions follow Consumer NZ's recent campaign to end "dodgy" supermarket specials, through which it received more than 600 complaints about misleading pricing and promotional practices. Complaints included "specials" which didn't represent a saving on the normal price, customers being charged more at the checkout than the advertised price, and multibuys which were more expensive than if the products had been individually purchased.
5. The Commission has looked into similar issues for telecommunications companies, airlines, and banking. Consumer NZ has drawn attention to potentially misleading specials by other major retailers such as Briscoes, Farmers, Harvey Norman and Noel Leeming.

The Commission's view is that current fines do not sufficiently deter misleading pricing

6. The FTA makes it a criminal offence for a business to make a misleading or false representation of the price of its goods and services. If a business consistently makes a false or misleading representation, consumers can report the business to the Commission, which can take the case to the High Court.
7. The maximum criminal fine that the High Court can impose on a business for a single offence of misleading conduct under the FTA is \$600,000. Typically, a business cannot be charged multiple fines for multiple occurrences of the same offence. However, a recent case against Vodafone/One NZ for 18 misleading advertising breaches found that breaches in different regions were different offences. Vodafone was fined \$3.675 million for the offending.
8. The Commission's view is that the FTA fines are insufficient to incentivise supermarkets to ensure accurate pricing. We understand this could be because:
 - a. fines are too low (i.e. it is cheaper for supermarkets to pay the fine than to invest in better pricing technology), and/or

- b. enforcement is too challenging because of the two-step process involving both the Commission and the courts, and a high bar for finding guilt “beyond reasonable doubt”, which means that too few fines are imposed.

The fines in the FTA are lower than the penalties in other commercial legislation

9. Other commercial legislation (the Financial Markets Conduct Act, Grocery Industry Competition Act and Commerce Act) imposes civil pecuniary penalties which in some circumstances can be much higher than the criminal fines imposed under the FTA. These statutes contain maximum pecuniary penalties of three times the commercial gain that the business received from the breach. If the commercial gain cannot be calculated, then the penalties are up to \$10 million or 10 per cent of a company’s annual turnover in the Grocery Industry Competition Act and Commerce Act, or up to \$5 million in the Financial Markets Conduct Act. There could be a case for increasing the criminal fines in the FTA to align with similar legislation.

The Minister of Commerce and Consumer Affairs intends to review the FTA

10. The Minister of Commerce and Consumer Affairs has indicated an interest in reviewing the FTA and we intend to begin preliminary work soon, subject to other priorities. The FTA review could consider the enforcement regime as well as other issues raised by the Commission, such as changes to the provisions regarding unfair contract terms.

Options for intervention

Option 1: Increasing the maximum criminal fines in the FTA

11. Under this option, we would progress a narrow amendment bill that increases the existing criminal fines in the FTA from \$600,000. Increasing the maximum fines could make it more cost effective for supermarkets to invest in better pricing technology than to simply pay the fine. This option would require analysis to determine the amount that the fines should be increased to.
12. Subject to sufficient resourcing at MBIE and PCO, it could be possible to introduce the amendment bill by October this year, however there would be no public consultation prior to the introduction of the bill.
13. The maximum penalties in the FTA are not targeted at any specific sectors or business types. However, you could choose to target the new maximum penalties towards:
 - a. Only high-revenue businesses (in any sector), for example, those with a turnover higher than \$33 million, as this figure would align with the definition of large businesses in the Financial Markets Conduct Regulations.
 - b. Only high-revenue supermarkets, for example, those regulated under the Grocery Industry Competition Act (Foodstuffs and Woolworths).
14. Targeting the new maximum fine so that it only applies to high-revenue supermarkets would send a strong message. It would also help to mitigate the risk of progressing legislative change without public consultation, as it would more directly target the concern raised by the Commission and reduce the range of business subject to the higher penalties.

Option 2: Amending the enforcement provisions within the FTA

15. Increasing the maximum fines in the FTA may not address the root causes of the issue, which could be that the process for enforcing the legislation and imposing the penalties is too onerous. You may wish to consider a broader range of options which could be more effective at incentivising compliance. These options, either individually or in combination, could tie the penalties more closely to the scale of offending and make it easier for the Commission to impose penalties on supermarkets. As a result, these options could prove to be a greater incentive for supermarkets to ensure accurate pricing.
16. This could include, for example:
 - a. Amending the maximum penalty so that it is a proportion of the business' revenue or profits, rather than a fixed figure
 - b. Introducing new, higher pecuniary penalties. Civil offences tend to be easier to prove than criminal offences, for several reasons including the lower standard of proof ('on the balance of probabilities' rather than 'beyond reasonable doubt'), and therefore the penalties could be more likely to be imposed. Additionally, this would be more consistent with other commercial legislation.
 - c. Empowering the Commission to directly impose infringement fines on businesses for misleading pricing, which would reduce the complexity and time-consuming nature of the current two-step process.

Option 3: Addressing the issue through a wider review of the FTA (preferred option)

17. Under this option we would review the enforcement mechanisms, including penalties, as part of a planned review of the FTA. While this would take longer to progress, it allows us to consider the matters discussed in Option 2 alongside other known issues with the FTA, such as those relating to unfair contract terms. Addressing the issues in tandem could result in changes that are more effective at incentivising businesses to comply.
18. We intend to provide initial advice to the Minister of Commerce and Consumer Affairs on the scope of an FTA review in the coming weeks, however this will likely be delayed should you wish to progress with Options 1 or 2.

Comparison of options

19. The wider the scope, the more consistent and effective the interventions are likely to be. However, a wider scope would also result in a lengthier and more resource-intensive process. The table below compares indicative timeframes for the three options. Option 1 would not include public consultation. For Options 2 and 3 we recommend consultation, as the changes will be more wide reaching in nature.

Table: Indicative timeframes for all four options (subject to resourcing).

	Option 1: Increasing the fines for supermarkets	Option 2: Amending the enforcement provisions	Option 3: Addressing through the FTA review
Policy design and regulatory impact analysis	May - Jun 2025	May – Aug 2025	May – Oct 2025

Cabinet consultation decisions	None	Sep 2025	Nov - Dec 2026
Public consultation and subsequent analysis	None	Oct – Nov 2025	Jan - Feb 2026
Cabinet policy decisions	Jul 2025	Dec 2026	Mar 2026
Drafting of legislation by PCO	Aug 2025	Jan – Mar 2026	Apr - Jul 2026
LEG / Introduction	Sep - Oct 2025	Apr – May 2026	Aug – Sep 2026

20. Proceeding with one option now would not preclude proceeding with others later. For example, we could prepare legislation to increase the fines for supermarkets now (Option 1), while conducting wider policy analysis of the penalties as part of a review of the FTA (Option 3). However, due to resourcing constraints and other priorities this would delay the introduction of legislation for the latter programme of work.
21. If you choose to proceed with Option 1 or 2 and target the changes specifically to supermarkets, then the work programme will sit within your portfolio. However, this would likely give rise to complexity and inconsistency, so we do not recommend doing so. If you agree to look at penalties more broadly then the work programme will sit within Minister Simpson’s portfolio.

Risks

Evidence base and likely impacts are uncertain

22. In the time available we have been unable to determine the extent to which increasing the potential penalties would likely impact supermarkets’ compliance with the FTA. There is also a risk that introducing legislation ahead of public consultation will mean that these impacts will remain unknown and that there will be a relatively small evidence base to inform Cabinet decisions. While this will be mitigated to some extent by select committee consultation, we recommend that any options progressed ahead of public consultation be targeted at supermarkets in order to mitigate this risk. However, this approach would give rise to an inconsistency in the way that the FTA is applied to supermarkets versus other large organisations that may have misleading pricing.

Higher penalties could deter new entrants and detract from addressing issues with a greater impact

23. While misleading pricing is undesirable, we consider anti-competitive conduct in the grocery sector to be a greater issue with a more severe impact on consumers. Focusing on misleading pricing could divert the Commission’s attention away from addressing anti-competitive conduct.
24. Increasing penalties may counteract government objectives to stimulate competition in the grocery sector, as it could appear inconsistent with your “open for business” message to international supermarket operators. At worst, potential new entrants may be dissuaded if there is a risk of large fines. Targeting any change could mitigate this risk.

Amendment legislation could take longer than anticipated

25. Depending on the approach taken, it may not be straightforward to amend the FTA. We do not recommend using urgency for this legislation, because combining this with the imposition of much higher penalties, and a lack of any consultation with affected retailers, would risk adverse unintended consequences.
26. This work will require resourcing from MBIE's policy and legal teams, and from the Parliamentary Counsel Office. To meet the timeline above, we may need to deprioritise other policy work in the Commerce and Consumer Affairs portfolio, such as work to address scams, implement a consumer data right, and/ or financial services reforms. The Parliamentary Counsel Office is also under pressure and may have limited resource to support this work.

Next steps

We propose to report back after initial consultation with more detailed advice

27. Once you have indicated your preferred option, we will consult the Commission to gain a better understanding of the nature of the problem, and the Ministry of Justice and Legislation Design and Advisory Committee (if necessary) to determine appropriate penalties.
28. We propose to report back to you by the end of Quarter 2 2025 with advice to progress your preferred option.
29. If you would like to proceed with Option 1, we will also start preparing a Regulatory Impact Statement (**RIS**). Our RIS will examine the proposed legislative options as well as other non-legislative options (eg enforceable undertakings or a 'name and shame' approach) and set out MBIE's view on which might work best to minimise this practice.

We recommend you discuss with the Minister for Commerce and Consumer Affairs

30. We recommend you discuss the proposed approach with the Minister for Commerce and Consumer Affairs, as any work in this area is likely to impact other aspects of his portfolio, particularly the review of the FTA. If you decide to address the issue through a work programme with a broader scope than just supermarkets then the work would sit at least partially within his portfolio.

We have prepared a letter for you to send to supermarkets

31. We understand you intend to inform supermarkets (Foodstuffs North Island, Foodstuffs South Island, and Woolworths) of your interest in increasing penalties for misleading pricing, and to encourage them to get ahead of a potential law change by correcting their pricing of their own volition. We have drafted the letter in such a way that it indicated your willingness to take further action should supermarkets not improve their systems, without pre-empting Cabinet decision-making.

Annexes

Annex 1: Draft letter to supermarkets

Annex 1: Draft letter to supermarkets

Hon Nicola Willis

Minister of Finance
Minister for Economic Growth
Minister for Social Investment



XXX

Managing Director

EMAIL

Dear XXX

I am writing to express my concern about misleading promotional practices and common pricing errors which the Commerce Commission and Consumer New Zealand have identified as occurring in your industry. This includes specials that don't represent a saving on the normal price, higher charges at the checkout than the advertised price, and multibuys that are more expensive than if the products are individually purchased.

I recently met with Consumer NZ who have advised me that during a nine-month study, it received over 600 pricing complaints regarding supermarkets. It also noted consumer research that found 60 per cent of supermarket customers noticed pricing inaccuracies while shopping. This is unacceptable. This issue could be losing New Zealand consumers significant amounts of money each year. At a time when New Zealand consumers are struggling with the cost of living, every cent counts.

I understand the Grocery Commissioner wrote to you in June 2024 outlining similar concerns and that it is filing criminal charges against Woolworths New Zealand and two PAK'nSAVE stores in relation to inaccurate pricing and misleading specials. I note you have written back to the Commissioner with commitments to improve your processes to address these issues.

I expect you to live up to these commitments and continue to take concrete steps to address this issue. It should not be the customer's responsibility to alert stores on their pricing discrepancies. Instead, supermarkets should be investing in pricing technology, such as Electronic Shelf Labels, and making improvements to their processes to ensure they are complying with the law.

As you will know, addressing issues in the grocery industry is a top priority for me. If these issues do not improve, and you do not make satisfactory improvements to your processes and technology, I will consider what further actions I can take, including potentially reviewing the enforcement provisions in the Fair Trading Act 1986.

I look forward to hearing about how you intend to improve current practices by the end of June 2025.

Sincerely

Hon Nicola Willis

Minister for Economic Growth



BRIEFING

Scoping options for targeted Fair Trading Act amendments

Date:	27 June 2025	Priority:	Medium
Security classification:	In Confidence	Tracking number:	0016128

Action sought		
	Action sought	Deadline
Hon Scott Simpson Minister of Commerce and Consumer Affairs	Indicate which of the proposed amendments should be included in the amendment package. Agree targeted consultation	3 July 2025
Hon Nicola Willis Acting Minister of Commerce and Consumer Affairs (Grocery Sector)		

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Glen Hildreth	Manager, Consumer Policy	Privacy of Natural Persons	✓
Privacy of Natural Persons	Principal Policy Advisor		
	Senior Policy Advisor		

The following departments/agencies have been consulted:
N/A

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

Comments:



BRIEFING

Scoping options for targeted Fair Trading Act amendments

Date:	27 June 2025	Priority:	Medium
Security classification:	In Confidence	Tracking number:	0016128

Purpose

1. To seek your agreement on the scope of a targeted package of amendments to the Fair Trading Act 1986 (the Act). This will confirm areas for policy work, based on Ministerial direction and opportunities for improvement. The aim is to introduce a Bill by the end of 2025

Executive summary

2. The Minister of Commerce and Consumer Affairs and the Acting Minister of Commerce and Consumer Affairs (Grocery Sector) are seeking changes to various aspects of the Act. The proposed amendments respond to this Ministerial direction and reflect recent engagement with the Commerce Commission.
3. To support your decisions on the scope of a package of reform, this briefing sets out a range of potential changes to the Act. The issues vary in complexity and include:
 - a. **Penalties reform:** introducing a civil penalties regime to complement or replace existing criminal offences, with three options ranging from targeted civil liability to full discretion for the Commerce Commission.
 - b. **Regulatory flexibility:** enabling the Minister to grant exemptions from specified obligations under the Act, to improve responsiveness and reduce compliance burdens.
 - c. **Scam disruption:** incorporating a statutory “safe harbour” defence for businesses that take reasonable steps to block or remove scam content.
 - d. **Product safety standards:** allowing automatic updates to standards and potentially delegating decisions to require compliance with official New Zealand or international product safety standards to the Commerce Commission or MBIE Chief Executive.
 - e. **Unfair contract terms:** enhancing enforcement by allowing private parties to challenge unfair terms and potentially removing the current two-step enforcement process.
4. Ministers are invited to indicate which amendments they would like us to commence targeted consultation on, in order to inform further policy development. We understand that Ministers would like to have a Bill ready for introduction this year, however the final scope will influence legislative timeframes and the need for further policy development or consultation.

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

- a **Agree** to progress a package of targeted amendments to the Fair Trading Act 1986, with the aim of introducing a Bill to Parliament by the end of 2025.

Agree / Disagree

- b **Indicate** which of the following proposed amendments you would like to include in the legislative package

#	Amendment	Include in package (please tick)
1	Introduce a civil penalties regime	
2	Enable the Minister to grant exemptions from specified obligations under the Act	
3	Include scams safe harbour to enable private disruption of suspected scam content	
4	Allow automatic updates to product safety standards	
5	Delegate adoption of official New Zealand or international product safety standards to the Commerce Commission or MBIE Chief Executive	
6	Allow private parties to challenge unfair contract terms	
7	Remove the requirement for a second breach before penalties apply to unfair contract terms	

- c **Agree** that officials will undertake targeted consultation on the amendments selected above

Agree / Disagree

Hon Nicola Willis

Acting Minister of Commerce and Consumer Affairs (Groceries Sector)

..... / /

Hon Scott Simpson

Minister of Commerce and Consumer Affairs

..... / /

Privacy of Natural Persons

Glen Hildreth

Manager, Consumer Policy

26 June 2025

Background

5. The Fair Trading Act (the Act) is a cornerstone of New Zealand's consumer protection framework. Ministers have recently signalled a range of priorities for targeted amendments to this legislation.

Minister Willis has requested changes to strengthen enforcement and enable regulatory flexibility

6. Over recent months, Minister Willis has engaged with officials on issues relating to the performance of the grocery sector. These discussions have highlighted ongoing concerns about misleading pricing practices and the challenges the Commerce Commission faces in taking enforcement action under the current penalties regime. The Commission has advised that existing maximum fines may be insufficient to incentivise investment in pricing systems and compliance.
7. On 25 June 2025, Minister Willis publicly announced an intention to consider changes to the enforcement provisions of the Act. The penalties in the Act apply to all businesses and are not just limited to the grocery sector. Officials have been asked to explore options for strengthening the enforcement regime, including increasing maximum penalties and considering a shift from a criminal to a civil liability model.
8. Minister Willis has also asked us to consider whether an exemption making power could improve regulatory flexibility.

Separately, Minister Simpson has been progressing a small amendment to the Act as part of the scams work programme

9. This aims to support proactive removal of scam content, including through a statutory "safe harbour" defence. Minister Simpson has agreed to progress this alongside any other the Act amendments.

Officials have identified additional opportunities to improve the Act

10. In addition to the above Ministerial priorities, we have identified opportunities for amending the Act. These include updates relating to product safety standards and unfair contract terms.
11. Some amendments are relatively minor and could be implemented quickly. While others may require further policy development or consultation.

Civil penalties could improve enforcement and deterrence

The current penalties regime has limitations

12. The Act is enforced through a regime of criminal offences. Businesses that break the law can be prosecuted in the District Court and, if convicted, fined up to \$600,000 per offence. To secure a conviction, the Commerce Commission must prove its case beyond reasonable doubt.
13. In practice, however, the criminal regime has several limitations that reduce how often it's used and how effective it is. For instance, Commerce Commission staff have advised us that:
 - a. actual fines imposed by the District Court are often well below the maximum possible fines.

- b. many investigations related to misleading pricing are resource intensive which means enforcement action tends to focus only on the most serious or clear cut cases.
- 14. As a result, many lower level or systemic issues may not be pursued, even where there is consumer harm.
- 15. MBIE has not done a full review of enforcement outcomes. However, repeated breaches by some businesses raise concerns about whether current penalties, and the reliance on criminal regime, are adequate to change behaviour.

Example:

A recent case involving One New Zealand (formerly Vodafone) illustrates these challenges. One New Zealand were convicted on 9 representative charges under section 11 of the Act, which makes it illegal to make claims that are likely to mislead people about what a product or service is, how it works, or what it offers. The charges related to a marketing campaign for its “FibreX” broadband service, which was promoted as a fibre product despite being delivered over a hybrid fibre-coaxial network. The company also suggested that FibreX was the only broadband option available at certain addresses, when that was not the case.

The District Court imposed a fine of \$2.2 million, which was later increased to \$3.6 million on appeal. While this is the largest penalty to date under the Act, it remains below the maximum available under the Act for the scale of offending. The case highlights the difficulty of achieving proportionate penalties, even where there is sustained and widespread non-compliance.

Comparative enforcement models in New Zealand and Australia

- 16. Several of New Zealand’s commercial laws, such as the Commerce Act 1986 and the Financial Markets Conduct Act 2013, already use civil penalties to support enforcement. These regimes allow regulators to take civil proceeding, with penalties that are often higher and easier to apply than criminal sanctions. Aligning the Act with these pieces of legislation could improve consistency and give the Commerce Commission more flexible tools.
- 17. Australia’s consumer law also provides a useful example of how civil penalties can be used effectively in a consumer protection context. Under the Australian Competition and Consumer Act 2010, breaches can be pursued through the civil courts, with penalties based on a lower standard of proof and significantly higher maximum fines. This model gives the regulator more options for responding to breaches and may help them act more quickly and appropriately.
- 18. More detail on these models is provided in Annex 1.

Exploring a civil penalties regime to strengthen the Act’s enforcement

- 19. We are exploring options to shift the Act’s enforcement model from a criminal to a civil regime. This reflects Ministerial interest in improving the effectiveness of the Act while ensuring enforcement tools are fit for purpose.
- 20. The proposed options introduce civil pecuniary penalties, which can be set at significantly higher levels than criminal fines. For example, penalties could be aligned with the Commerce

Act 1986, which uses the largest out of \$10 million, three times the commercial gain, or 10 percent of annual turnover. This would provide stronger incentives for compliance and support more proportionate enforcement responses.

Three options for introducing civil liability and pecuniary penalties

21. We have developed three possible approaches for introducing civil liability and pecuniary penalties under the Act. These are:
- A. Targeted civil liability:** this option would replace a limited set of criminal offences in the Act with civil liability, focusing on a small number of breaches where the shift is likely to have the greatest impact. This would allow for higher penalties and a lower standard of proof, improving enforcement in areas like pricing misrepresentations.
 - B. Broad civil liability** (MBIE recommended): this option would replace most criminal offences with civil liability, retaining criminal penalties only for the most egregious breaches. This would align the Act with other commercial laws and provide the Commerce Commission with more flexible enforcement tools.
 - C. Full enforcement flexibility** (Commission preferred): this option would
 - a. add civil penalties
 - b. add infringement notices to a broader set of breaches
 - c. retain all existing criminal offences
 - d. increase infringement fee amounts
 - e. increase criminal penalty amountsThis would give the Commerce Commission full discretion to choose the most appropriate enforcement pathway for each case. While this flexibility could improve responsiveness, it will raise concerns about legal certainty and consistency.
22. A more detailed description of each option is provided in **Annex 2**.
23. Subject to your agreement, MBIE proposes to undertake targeted consultation on these options. This will help test their feasibility and effectiveness. It will also identify any unintended consequences and ensure that any changes are well-informed and proportionate

Proposed exemption power to improve responsiveness under the Act

Improving regulatory flexibility through targeted exemptions

24. Several sets of regulations have been made under the Act, including regulations that require the disclosure of the country of origin for food, and the unit pricing of grocery items. Currently, exemptions from these obligations must be made through the regulation making process (eg when specifying who they apply to). This approach may be considered slow, resource-intensive, and may lack the flexibility needed to respond to emerging issues.
25. One way of addressing such problems more quickly, by avoiding the need to go through a full regulation-making process when seeking to disapply certain obligations, would be to provide an exemption power in the Act. This could enable the Minister of Commerce and Consumer Affairs to, by notice, exempt a person or class of persons from specified obligations in secondary legislation made under the Act.

There is precedent for this approach in other legislation

26. A comparable mechanism exists in the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, where the Minister of Justice may grant exemptions to businesses where compliance obligations are disproportionate to the risk, or where the business were not intended to be covered within its scope. Although the legislation focuses on crime prevention, its exemption process is a good example of how to reduce red tape and improve flexibility.
27. The Legislation Design and Advisory Committee supports the use of delegated powers where they enable responsiveness to changing circumstances and reduce regulatory overhead, provided they are clearly scoped, subject to appropriate safeguards, and limited to operational or technical matters rather than core policy decisions.

Scam disruption tools could support faster industry action

28. Separately, Minister Simpson has been progressing a small amendment to the Act as part of the scams work programme. This change would enable businesses to take more proactive steps to block or remove scam content online, through a statutory “safe harbour” defence.
29. As agreed at the Commerce and Consumer Affairs officials meeting on 24 June, given that the scams work requires amendments to the Act, the proposed scam-related amendments should be included in the targeted legislative package.

Updating standards could improve safety and reduce compliance costs

Automatic updates of product safety standards could reduce regulatory lag

30. New Zealand’s regulatory system has long struggled with outdated standards remaining legally enforceable, even after newer versions are released. This issue is not unique to the Act. Similar challenges exist in areas like building and medicines regulation, where fixed references to standards have led to unnecessary compliance costs and confusion. Under the Act, some product safety regulations still cite standards that were replaced more than a decade ago. For example, the product safety standard for bicycles refers to AS/NZS 1927:1998 which was superseded in 2010 but remains the legally required version in New Zealand.
31. This static approach makes it harder for businesses to keep up with best practice and creates additional work for regulators. It also risks undermining consumer safety by locking in outdated benchmarks.
32. Australia has recently modernised its consumer law to allow product safety standards to be incorporated by reference in a way that automatically reflects the most current version. We recommend adopting a similar approach under the Act. This change would cut down on red tape, make rules clearer for businesses, and help keep consumers safe. It would also help align New Zealand’s framework with international practice, supporting both consumer confidence and cross-border trade.

Delegation could speed up adoption of international standards

33. Product safety standards under the Act are adopted by Cabinet through regulations. While this ensures appropriate oversight, the process can be slow and resource-intensive, particularly when updating standards that have already been developed and endorsed internationally.

34. A way to address this could be to allow the Commerce Commission or the Chief Executive of MBIE to adopt certain international product safety standards by notice, where those standards have been developed by recognised by international bodies such as the International Organization for Standardization, or by the joint Australia/New Zealand standards setting body. This would apply only to the adoption of existing standards that have already gone through a full standards process, including representative working groups.
35. This targeted delegation would reduce delays, improve regulatory responsiveness, and help ensure New Zealand keeps pace with international best practice. Cabinet would retain responsibility for broader policy decisions.

Addressing gaps in the unfair contract terms framework

Standard form contracts can leave consumers exposed to unfair terms

36. An unfair contract term is a clause in a standard form consumer contract that gives too much power to the business and puts the consumer at a disadvantage. These contracts are usually offered on a “take it or leave it” basis, meaning the consumer does not get a real chance to negotiate the terms. This is common in everyday agreements like gym memberships, phone plans, or rental agreements, where the business uses the same contract for everyone.
37. Because the terms are set in advance and not open to discussion, the law recognises that consumers are in a weaker position. That is why the unfair contract terms rules focus on these types of contracts, to make sure businesses do not include terms that are one-sided or unreasonable. These concerns were also raised in the Fired Up Stiletto petition, and the Government’s response, published in June 2025, indicated it would consider exploring these issues in any upcoming review of the Act.

Expanding who can challenge unfair contract terms could improve enforcement

38. Currently, only the Commerce Commission can apply to the court to have a contract term declared unfair (except in a groceries context). This restriction was based on earlier Cabinet decision in 2013, during the development of the Consumer Law Reform Bill which noted that the legal test for unfairness was too uncertain for consistent application by private individuals, raising concerns about confusion and inconsistent outcomes.
39. However, this limitation makes it harder for consumers and small businesses to challenge potentially unfair terms. One option could be to allow them to apply directly to the courts or Disputes Tribunal to have a term ruled unfair. This would make the regime more accessible and could help prevent the continued use of unfair terms.
40. While this change could make it easier for people to challenge unfair terms, it might also put more strain on the courts and tribunals. A higher volume of cases could affect a tribunal’s capacity and timeliness, particularly where legal interpretation is complex. There is also a risk of inconsistent decisions across forums, which could create uncertainty for both consumers and businesses.
41. This change would be relatively straightforward to implement.

Removing the two-step process could strengthen enforcement

42. Under the current law, the Commerce Commission must first apply to the court to have a

contract term declared unfair. Only if the business continues to use or enforce that term after it has been declared as unfair can penalties or other consequences apply. This two-step process limits the impact of the regime and may allow unfair terms to remain in use for too long.

43. A more effective approach could be to remove the need for a second proceeding. Once a court has declared a term unfair, it would be automatically unlawful to use or rely on that term again. This would make the regime clearer and more efficient and would give businesses a stronger incentive to remove unfair terms from their contracts.
44. This change would represent a more significant shift in the enforcement framework and would likely require public consultation to assess its potential impacts. Consultation would help gather information on the likely costs, benefits, and practical implications for businesses, consumers, and the courts.

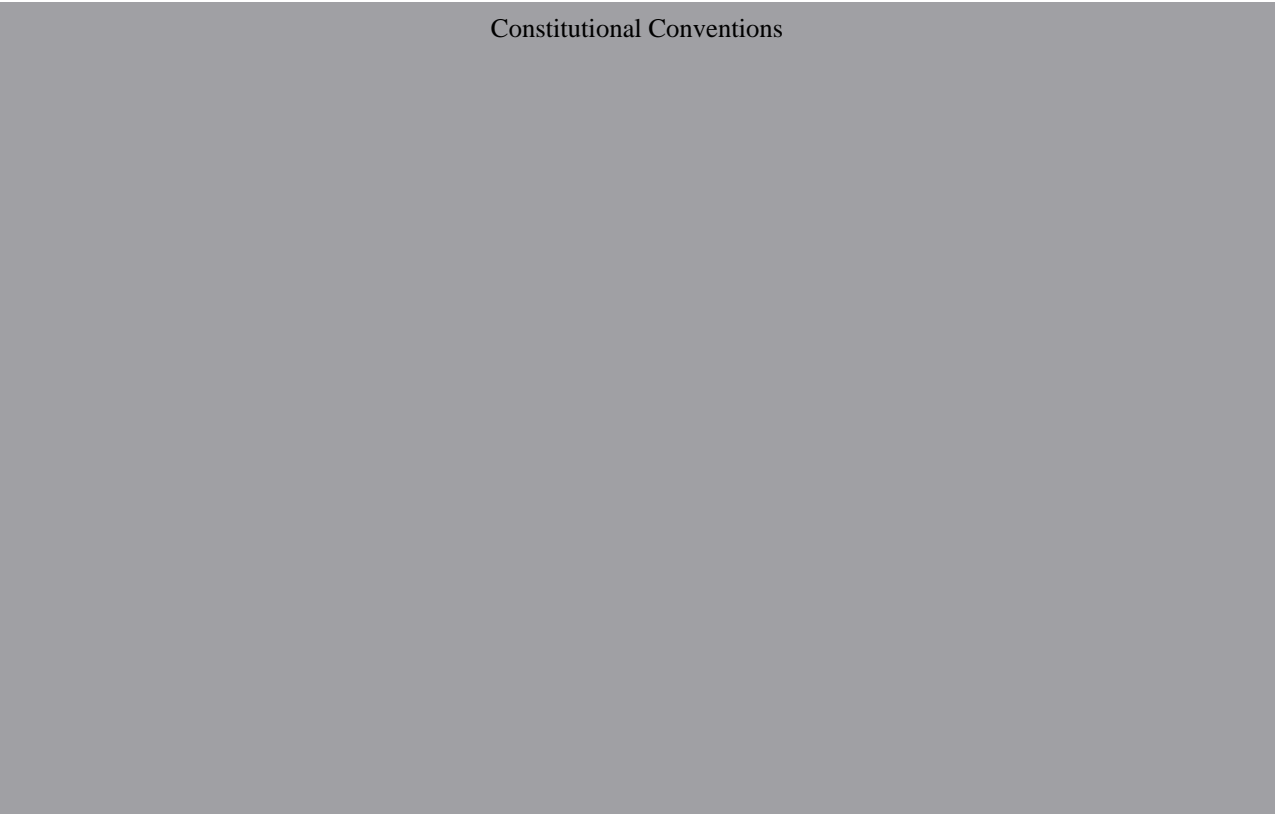
Interdependence of proposed changes

45. The Commerce Commission has advised that both changes should either be implemented together, or not at all.

Timeframes

46. The following timeline outlines the key milestones for progressing the Act amendments, with the aim of introducing a Bill to Parliament by December 2025. This timeframe assumes a relatively targeted package.
47. The inclusion of more complex or wide-ranging amendments, particularly those requiring public consultation, may increase the risk of delays to drafting and introduction. We will continue to monitor scope and complexity as policy decisions are made and will advise if adjustments to the timeline become necessary.

Constitutional Conventions



Risks and mitigations

48. The table below outlines key risks associated with progressing the Act amendments, along with how officials propose to manage them.

Constitutional Conventions



Next steps

49. We anticipate the following next steps:
 - a. Once you decide which of the proposed changes to include in the Act amendments. We will update the scope based on that direction and provide further advice as needed.
 - b. We will prepare a Cabinet paper for Ministers to take to the Cabinet Economic Development Committee in July 2025. This paper will seek agreement on the scope and next steps for developing the amendment package.

Annex 1: Comparison of penalty amendment options

New Zealand's commercial law already includes several examples of civil penalties regimes. For instance, both the **Commerce Act 1986** and the **Financial Markets Conduct Act 2013** allow regulators to take enforcement action through the civil courts, with penalties that can be substantial. These regimes are designed to promote compliance and deter misconduct without relying on criminal prosecution.

The Act currently differs in that it relies solely on criminal offences, which require a higher standard of proof, can be more resource-intensive to enforce, and typically result in lower fines. Aligning the Act with other commercial laws could improve consistency across regulatory frameworks and give the Commerce Commission more flexible enforcement tools.

Australia's **Competition and Consumer Act 2010** provides a useful example of how a civil penalties regime can be structured. Under the Australian consumer law, breaches of consumer protection rules can be treated as civil offences. This means that enforcement action can be taken through the civil courts, rather than relying solely on criminal prosecution.

In Australia, the regulator can apply to the court for a civil pecuniary penalty if it believes a business has broken the law. The court then decides whether a breach has occurred based on the balance of probabilities. This is a lower threshold than the criminal standard used under the Act, which requires proof beyond reasonable doubt.

The maximum civil penalties available in Australia are significantly higher than those under the Act. For companies, the court can impose a penalty of up to AUD 50 million, or three times the value of any benefit gained from the breach, or 30 percent of the company's turnover during the breach period.

This model gives the regulator more options for responding to breaches and may help them act more quickly and appropriately.

Annex 2: Civil penalties options: detailed descriptions

- This annex provides further detail on the three options for introducing a civil penalties regime under the Act. Each option varies in scope and complexity, and is intended to support more effective enforcement and improved compliance.

Option A: Targeted civil liability

Overview

- Option A involves reclassifying a limited set of criminal offences relating to misleading and deceptive conduct as civil liability with much higher pecuniary penalties. Other breaches would remain criminal, including provisions for issuing infringement notices for available for minor breaches.

Benefits

- This option could be targeted just at pricing misrepresentations, or at false or misleading representations and misleading conduct more broadly. Pecuniary penalties may be aligned with, for example, those under the Commerce Act 1986, which allow the greater of up to \$10 million, three times gains made, or 10% of annual turnover.

Risks and limitations

- Introducing pecuniary penalties in a targeted way may allow for more effective enforcement and greater deterrence for conduct where the Commission has recently raised issues. Thus providing stronger incentives for businesses to compete fairly and protect the interests of consumers.
- However, introducing pecuniary penalties may make businesses feel more exposed to legal risk. This is because the penalties would be higher than criminal fines, and the standard of proof is lower, civil cases are decided on the balance of probabilities, rather than beyond reasonable doubt. This could raise compliance costs if businesses feel they need more legal advice or internal checks to manage that risk.

Implementation considerations

- The limited scope of civil penalty provisions may also create enforcement challenges for the Commerce Commission. If a business engages in conduct that breaches both civil and criminal provisions, the Commission may need to initiate separate proceedings under each regime, or otherwise only prosecute some of the breaches. This could complicate enforcement, increase costs, and delay resolution. The Commission has advised that, in practice, it would manage this challenge through appropriate selection of charges.

Option B: Broad civil liability (MBIE recommended)

Overview

- Building on Option A, this option would extend the shift from criminal law to civil liability enforcement for most criminal law offences currently under the Act. Only a small number of particularly egregious administrative offences would remain within the realm of the criminal law. As with option A, pecuniary penalties may be aligned with those under the Commerce

Act 1986. The current system of infringement notices and fines would continue to be available for minor breaches.

Benefits

- As with Option A, this approach may support more effective enforcement and greater deterrence, as well as reducing reliance on the criminal justice system. The broader scope of civil liability may further strengthen deterrence by increasing the likelihood of enforcement and the potential consequences of non-compliance. Thus providing even stronger incentives for businesses to compete fairly and protect the interests of consumers.

Risks and limitations

- However, applying civil penalties more broadly could also increase the compliance burden on businesses. Some may feel more exposed to legal risk, especially in sectors where the rules are complex or still developing. This could lead to higher compliance costs and more cautious business behaviour.

Implementation considerations

- This approach is broadly consistent with the enforcement framework under the Financial Markets Conduct Act, where civil liability is used for a wide range of breaches, and criminal penalties are reserved for more serious or intentional misconduct.
- The increased use of pecuniary penalties may also make enforcement more complex in cases where a business breaches both civil and criminal provisions, as the Commerce Commission may need to take separate proceedings under each regime. This could increase costs and delay enforcement outcomes. The Commission has advised that, in practice, it would manage this challenge through appropriate selection of charges.

Option C: Full enforcement flexibility (Commission preferred)

Overview

- This option would introduce pecuniary penalties without changing existing criminal offences, and also expand the scope of infringement offences to cover a range of other matters including false and misleading representations and misleading conduct. Pecuniary penalties would be set at Commerce Act. Criminal penalties would also be increased to match, with consideration given to introducing an intent (mens rea) element where appropriate. And infringement penalties would be raised substantially (currently they are only \$1,000).

Benefits

- This would give the Commerce Commission full flexibility to decide how to respond to breaches of the Act. For most breaches, the Commission could choose to take action under the criminal law, the civil law, or issue an infringement notice (where the breach is clear-cut). The decision would depend on the defendant, how serious the conduct is and what kind of response is most appropriate.
- Like Options A and B, the availability of civil law pecuniary penalties may strengthen compliance with the Act by increasing the likelihood and visibility of enforcement. The ability

for the Commerce Commission to exercise its discretion to escalate enforcement responses from civil to criminal proceedings may also encourage compliance.

Risks and limitations

- However, the flexibility of this model may also result in greater uncertainty for businesses. If it's unclear how the Commerce Commission might decide which enforcement path to take, businesses may struggle to understand their legal risk. This could lead to increased compliance costs and more risk averse behaviour, particularly among smaller or newer market entrants.

Implementation considerations

- While both the Financial Markets Conduct Act and the Commerce Act provide for civil and criminal penalties, criminal enforcement is typically reserved for more egregious or intentional conduct. These regimes distinguish between types of offences, with different penalties applying depending on the severity and nature of the breach.
- Guidelines from the Legislation Design and Advisory Committee and Ministry of Justice recommend that given conduct should only be subject to one penalty (double jeopardy risk). As such the the Committees guidelines do not support having both civil and criminal proceedings for the same conduct, due to concerns about legal certainty, fairness, and the risk of inconsistency of treatment among similar instances of the Act's breaches.
- In addition, guidelines for infringement offences are that they should be applied only to clear-cut breaches (i.e. not requiring extensive investigation) and should not exceed \$1,000 (although some regimes have higher infringement fees). Therefore, if Option C is chosen, it would need to be supported with provisions prohibiting the application of both criminal and civil penalties to the same conduct (such as section 507 of the Financial Markets Conduct Act). The Commission will also consider developing guidance for businesses to support them to understand which option it would pursue, in what circumstances.



BRIEFING

Decisions on Fair Trading Act Proposals

Date:	16 October 2025	Priority:	Low
Security classification:	In Confidence	Tracking number:	0022456

Action sought		
	Action sought	Deadline
Hon Nicola Willis Acting Minister of Commerce and Consumer Affairs (Grocery Sector)	Agree to defer or not progress certain proposals to amend the Fair Trading Act 1986.	27 October 2025
Hon Scott Simpson Minister of Commerce and Consumer Affairs		27 October 2025

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Glen Hildreth	Manager, Consumer Policy	Privacy of Natural Persons	✓
Privacy of Natural Persons	Principal Advisor, Consumer Policy		

The following departments/agencies have been consulted:
N/A.

Minister's office to complete:

- | | |
|---|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Noted | <input type="checkbox"/> Needs change |
| <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by Events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments:



BRIEFING

Decisions on Fair Trading Act Proposals

Date:	16 October 2025	Priority:	Low
Security classification:	In Confidence	Tracking number:	0022456

Purpose

To seek agreement to defer or not progress certain options for amending the Fair Trading Act 1986 (the Act) that were included in targeted consultation on amendments to the Act.

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

a **Agree** to defer the following matters for a future review of the Act:

- i. expanding the range of infringement offences, increasing infringement fees and extending the period for issuing infringement notices
- ii. setting an offence provision for harassment and coercion
- iii. allowing private parties to challenge unfair contract terms
- iv. removing the requirement for a second breach before a contract can be declared unfair.

Agree / Disagree

b **Agree** to not progress further work on the proposal to prohibit insurance and indemnification against penalties.

Agree / Disagree

Privacy of Natural Persons

Glen Hildreth
Manager, Consumer Policy

16 October 2025

Hon Nicola Willis
**Acting Minister of Commerce and
Consumer Affairs (Grocery Sector)**

..... / /

Hon Scott Simpson
**Minister of Commerce and Consumer
Affairs**

..... / /

Background

1. Between 28 July and 8 August 2025, officials carried out targeted consultation on the following options for amending the Fair Trading Act 1986 (the Act) with business, consumer and legal groups:

Topic	Options for amending the Act
Penalties regime	<ol style="list-style-type: none"> a. replace most criminal offences in the Act with a civil regime b. increase maximum penalties for breaches of the Act c. expand the range of infringement offences d. increase infringement fees e. extend the enforcement period for infringement notices f. prohibit insurance and indemnification against penalties g. set an offence for harassment and coercion.
Product safety standards	<ol style="list-style-type: none"> h. enable automatic updates to product safety standards i. delegate adoption of international product safety standards to MBIE.
Unfair contract terms	<ol style="list-style-type: none"> j. allow private parties to challenge unfair contract terms k. remove the requirement for a second breach before penalties apply.

2. Following consultation, Cabinet agreed to progress the following changes to the Act through a Fair Trading Amendment Bill (the Bill) [CAB-25-MIN-0353 refers]:
 - a. replace most criminal offences in the Act with a civil regime
 - b. increase maximum penalties for breaches of the Act, in line with the Financial Markets Conduct Act 2013
 - c. insert a new safe harbour provision to enable online service providers to disrupt online scams (this proposal was advanced separately by the Anti-Scam Alliance).
3. Cabinet also agreed to streamline updates to product safety standards by delegating decisions to MBIE to update regulations when new versions of standards become available (this decision superseded options above to automatically update standards and to delegate adoption of international standards to MBIE). This change will be implemented separately through the Regulatory Systems (Commercial Matters) Amendment Bill.
4. Officials recommend that changes to infringement offences, unfair contract terms, and harassment and coercion be deferred for consideration in a future review of the Act (which could occur next Parliamentary term, subject to decisions by Ministers) and to not advance work on prohibiting insurance and indemnification against penalties. This briefing seeks your agreement to this approach so that the outcomes on these options can be communicated to the stakeholders we engaged during targeted consultation.
5. Our recommended approach in this briefing aligns with our earlier advice to prioritise introducing a civil penalties regime and increasing maximum penalty amounts, and to advance other changes later, to best enable the Bill to be introduced before year-end [briefing 0019124 refers].

Options we recommend be deferred

6. Several options that officials consulted on are complex and require further analysis before decisions can be taken. While there is merit in further exploring these, we recommend the proposals below be considered as part of a future review of the Act.

Option	Description of the proposal	Why we recommend it be deferred
<i>Penalties regime</i>		
Expand the range of infringement offences in the Act	Allow infringement notices for a broader set of breaches, including more complex conduct such as misleading representations, to deal with more minor breaches.	Infringement notices can only be applied to conduct that is relatively minor and 'black and white' in nature. Further work is needed to ensure that any new infringement offences will meet these requirements.
Increase infringement fees	Increase maximum infringement fees in the Act from \$2,000 to \$20,000, in line with the Financial Markets Conduct Act 2013.	Infringement fees above \$2,000 are uncommon in New Zealand legislation. Increasing infringement notices above the existing cap would require further analysis to ensure higher maximum amounts are warranted.
Increase period during which infringement notices can be issued	Extend the timeframe for the Commerce Commission to issue infringement notices from four months to ten months after a potential breach.	The Summary Proceedings Act 1957 sets out an enforceability period for infringements of four months. Further analysis is required to determine whether longer periods are warranted for fair trading breaches.
Set an offence for harassment and coercion	Introduce an offence provision, and penalties, for harassment and coercion to ensure such conduct is sufficiently deterred by making it clear that harassment and coercion in trade would attract meaningful penalties.	While there is merit in penalising harassment and coercion, the design of a prohibition is not straightforward. As there is no single definition of harassment in other statutes (the Crimes Act 1961 and Harassment Act 1997 both prohibit harassment but define it differently) this prohibition would need careful design to target unjustifiable harassment and coercion, without impacting legitimate commercial dealings.

Option	Description of the proposal	Why we recommend it be deferred
<i>Unfair Contract Terms</i>		
Allow private parties to challenge unfair contract terms	Enable private individuals and small businesses to challenge unfair terms via the Disputes Tribunal. The goal was to empower private parties to seek remedies for unfair contract terms.	Legitimate risks were raised during consultation that this change would remove the Commission's ability to 'filter' claims for those that have merit and may result in large volumes of vexatious or poorly founded claims. The Disputes Tribunal is also not well placed to deal with complex contract law matters or to make decisions that extend beyond the specific disputes before them, such as setting precedents or determining issues with broader regulatory implications.
Remove the requirement for a second breach before penalties apply	Enable penalties to apply from the first breach of an unfair contract term, rather than only after a business continued to use a term that had already been declared unfair.	Further analysis is needed on the potential costs, benefits and risks of this change. This change should also be considered alongside the potential option of enabling private action against unfair contract terms.

Options we recommend not be progressed further

7. We consider there are significant risks in relation to the proposal to prohibit insurance and indemnification against penalties. We recommend that this proposal not be progressed.

Option	Description	Why we recommend it not be progressed
Prohibit insurance and indemnification against penalties	Prohibit people or businesses from indemnifying, or taking out insurance policies, to remove their liability to Act penalties. Exposing people more directly to the risk of penalties could incentivise better compliance.	Changes may expose individuals to significant liability which creates a risk that qualified people are deterred from becoming directors. Insurance policies play an important risk management role and disincentivise breaches by exposing businesses to higher premiums or loss of coverage if they breach the Act.

Confidential Advice to Government



BRIEFING

Summary of submissions and draft Cabinet paper on Fair Trading Act amendments

Date:	4 November 2025	Priority:	Medium
Security classification:	In Confidence	Tracking number:	0019124

Action sought		
	Action sought	Deadline
Hon Nicola Willis Acting Minister of Commerce and Consumer Affairs (Grocery Sector)	Provide feedback on the attached draft Cabinet paper.	27 August 2025
Hon Scott Simpson Minister of Commerce and Consumer Affairs	Provide feedback on the attached draft Cabinet paper.	27 August 2025

Contact for telephone discussion (if required)				
Name	Position	Telephone	1st contact	
Glen Hildreth	Manager, Consumer Policy	Privacy of Natural Persons		
Privacy of Natural Persons	Principal Policy Advisor			✓

The following departments/agencies have been consulted:
N/A

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

Comments:



BRIEFING

Summary of submissions and draft Cabinet paper on Fair Trading Act amendments

Date:	4 November 2025	Priority:	Medium
Security classification:	In Confidence	Tracking number:	0019124

Purpose

To provide you with a summary of submissions and draft Cabinet paper on amendments to the Fair Trading Act (the Act).

Executive summary

You recently agreed that MBIE undertake targeted consultation on a package of reforms to the Act, to be introduced to Parliament by the end of the year [BRIEFING-REQ-0016128]. MBIE completed consultation with business and consumer stakeholders on proposals to replace criminal offences with much higher civil pecuniary penalties, increase the range and size of infringement penalties, improve enforcement of unfair contract terms, and streamline product safety regulation.

While some proposals were relatively non-controversial (e.g. allowing automatic updates to product safety regulations), submitters were divided on the merits of most other proposals. Consumer groups strongly supported the proposed changes to the Act's penalties. Businesses were concerned about or opposed to many of the changes – especially the introduction of high civil pecuniary penalties. Many business submitters were critical of the short timeframe and targeted nature of the consultation, and referred to a lack of evidence.

We have prepared a draft Cabinet paper that reflects our recommendations on a package of changes. The draft Cabinet paper proposes:

- replacing criminal penalties with much higher civil pecuniary penalties aligned with the fair dealing provisions of the Financial Markets Conduct Act – up to \$5 million (for a body corporate) or \$1 million (for an individual), three times the gain or the consideration in the relevant transactions – rather than the Commerce Act (up to \$10 million, three times gain or 10% of turnover)
- automatic updating of product safety regulations
- introducing a safe-harbour for businesses taking proactive anti-scam activities.

We recommend that the penalties in the Act should be aligned with the Financial Markets Conduct Act as the conduct is similar, and the penalties are more proportionate than those in overseas jurisdictions such as Australia given the relative size of our economies.

Other changes that are more complicated or controversial could be considered as part of a future review rather than delaying introduction of a Bill giving effect to these decisions.

Constitutional Conventions

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

- a **Agree** to replace criminal offences in the Fair Trading Act with civil pecuniary penalties, except for serious administrative offences, such as obstructing the Commerce Commission, failing to comply with information requests and breaching management banning orders.

Agree / Disagree

- b **Agree** to amend the Fair Trading Act to provide for three tiers of penalties:

i. **Tier 1:** up to \$5 million (for a body corporate) or \$1 million (for an individual), three times the gain made or the consideration in the relevant transactions;

ii. **Tier 2:** up to \$200,000 for an individual

iii. **Tier 3:** up to \$200,000 for a body corporate or \$60,000 for an individual.

Agree / Disagree

- c **Agree** to permit product safety regulations to automatically incorporate the latest version of official standards by reference.

Agree / Disagree

- d **Agree** to provide feedback on the attached draft Cabinet paper, in order to introduce legislation before the end of 2025, and to have legislation passed before the end of the current Parliamentary term.

Agree / Disagree

- e **Agree** that a version of the attached draft Cabinet paper be circulated for concurrent agency and Ministerial consultation, with a view to lodging on 4 September for consideration at ECO on 10 September.

Agree / Disagree

- f **Agree** that other proposals (changes to infringement offences, unfair contract terms, delegating product safety regulation to MBIE) be considered in a future review.

Agree / Disagree

Privacy of Natural Persons

Glen Hildreth
Manager, Consumer Policy

19 August 2025

Hon Nicola Willis
**Acting Minister of Commerce and
Consumer Affairs (Grocery Sector)**

..... / /

Hon Scott Simpson
**Minister of Commerce and Consumer
Affairs**

..... / /

Background

1. You recently agreed that MBIE undertake targeted consultation on a package of reforms to the Fair Trading Act, to be introduced to Parliament by the end of the year [BRIEFING-REQ-0016128]. The package comprised the following options:
 - a. **Penalties:** replacing or complementing existing criminal offences with much larger civil penalties, and expanding the range and size of infringement penalties
 - b. **Unfair contract terms:** allowing private parties to challenge unfair contract terms, and removing the requirement for a second breach before penalties apply to unfair contract terms
 - c. **Product safety:** automatic updates to product safety regulations to reflect the latest versions of domestic and international standards, and delegating adoption of official New Zealand or international product safety standards to the MBIE Chief Executive.
2. The amendment bill would also include a safe harbour to enable private disruption of suspected scam content, which has been consulted on previously.

Feedback from targeted consultation

3. MBIE undertook targeted consultation with a range of business and consumer groups, in addition to major law firms:
 - a. Consumer groups (e.g. [Confidentiality]) strongly support increasing penalties, shifting to civil pecuniary penalties and introducing a wider range of infringement offences to improve enforcement.
 - b. Business submitters (e.g. [Confidentiality]) strongly oppose higher penalties, citing concerns about proportionality, procedural safeguards and lack of evidence of a problem.
 - c. Law firms generally support the intent to modernise enforcement but caution that changes must be evidence-based and carefully designed. They emphasise the need for safeguards, proportionality, and clarity, particularly around increased penalties and civil liability. Along with businesses, they were wary of infringement offences including complex provisions like misleading conduct (section 13), citing reputational risks and legal uncertainty.
4. We extended the consultation period for the unfair contract terms proposals to 5 September, following stakeholder feedback about the complexity of the proposals and competing consultation demands. This change was communicated to your offices on 5 August. Based on verbal feedback, we expect consumer groups to support the changes and business submitters to oppose them, with businesses and law firms having particular concerns about individual consumers being able to take cases to less formal forums such as the Disputes Tribunal.

5. The only reform that attracted general support was automatic updates to product safety standards, provided there are safeguards such as clear communication, transitional periods and free public access to standards.
6. In addition to views on the proposals, there was considerable criticism of the process and evidence base:
 - a. Several submitters (e.g. Confidentiality) criticised the short timeframe and targeted nature of the consultation. They felt the process lacked transparency, did not allow sufficient time for analysis and limited broader engagement. Some called for a second round of public consultation before progressing reforms.
 - b. Many submitters, particularly from industry and legal sectors, questioned whether the proposals were sufficiently supported by data or analysis. Confidentiality and others argued that the problem definition relied on unsupported assertions and the options lacked any cost-benefit assessment.

Draft Cabinet paper

The draft Cabinet paper proposes introducing new civil pecuniary penalties

7. You have previously indicated that you would like to progress with targeted reforms, rather than a more fulsome review of the Act, with a view to a Bill being introduced this year. We consider it is necessary to further refine the reforms from those consulted on. We therefore recommend that work on the more complicated or controversial matters be deferred to a future review of the Act.
8. The draft Cabinet paper (**Annex 1**) contains the following proposals:
 - a. replacing existing criminal offences with civil pecuniary penalties, up to \$5 million, three times the gain made or consideration in the relevant transaction
 - b. allowing automatic updates to product safety regulations to reflect the latest versions of domestic and international standards.
9. We consulted introducing new civil pecuniary penalties for most breaches of the Act, with maximum penalties aligned with the Commerce Act – up to \$500,000 for an individual, or \$10 million for a body corporate.

We recommend that maximum penalties be aligned with those in the FMC Act

10. Following consultation, we recommend instead aligning penalty levels with the fair dealing provisions of the Financial Markets Conduct Act (**FMC Act**). Our proposals involve three tiers of maximum penalties, with the first two based on those in the FMC Act:

Breaches	Maximum penalties (based on FMC Act)
Misleading or deceiving the public in respect of goods, services or employment Unsubstantiated representations False or misleading representations Pyramid selling Unfair contract terms Product safety breaches	Greater of: <ul style="list-style-type: none"> • \$5 million (body corporate) or \$1m (individual) • 3 times gain made or loss avoided • consideration in the relevant transaction.

Gifts or prizes with hidden conditions Referral selling Accepting payment without delivering Charging for things not asked for	\$600,000 (body corporate) or \$200,000 (individual)
Disclosure or transactional breaches, such as failing to comply with consumer information standards, or not meeting contract cancellation obligations	\$200,000 (body corporate) or \$60,000 (individual)

11. We recommend alignment with the FMC Act because:

- a. The provisions cover equivalent conduct. The fair dealing provisions in the FMC Act cover misleading and deceptive conduct, false or misleading representations and unsubstantiated representations in respect of financial products and financial services. The Commerce Act covers quite different conduct, namely agreements, mergers etc that substantially lessen competition. Some submitters supported this view.
- b. Higher penalties in the Fair Trading Act than the FMC Act may cause difficulties and inefficiencies in enforcement of fair dealing in the FMC Act. Where a financial firm had breached the fair dealing provisions, the FMA would need to decide whether to take action under the FMC Act, or refer the matter to the Commerce Commission which could seek higher penalties for the same conduct under the Fair Trading Act.

12. We are still fine tuning the categorisations of some provisions between the criminal and civil regime, and their penalty levels, as set out in the draft Cabinet paper. For example, the Commission has expressed strong views that product safety matters should remain criminal liability offences as they take these cases frequently on relatively straightforward matters and consider the current criminal regime remains appropriate. Given tight timing to prepare the draft Cabinet paper for Ministerial and departmental consultation, we are still considering this feedback and will engage with the Commission to address these matters while the draft paper is out for consultation.

Business submitters were opposed to an increase in penalties

13. Increases in penalties were controversial with stakeholders – strongly supported by consumer groups, but opposed by businesses. Risks identified by stakeholders included:

- a. chilling effects of investment
- b. penalising system errors and deterring innovation
- c. disproportionate impacts on SMEs – the original \$10 million maximum was described as potentially putting some out of business.

Consumer groups favoured more stringent penalties

14. We think that alignment with other existing New Zealand law (i.e. FMC Act) makes this more defensible. Maximum penalties would be eight times higher than current levels. Some groups such as **Confidentiali** wanted full alignment with Australian penalty levels (i.e. 50 million AUD or 30% of turnover), which would greatly exceed every other New Zealand regulatory regime. Adjusting for the relative sizes of the two economies and exchange rates would give an equivalent maximum in New Zealand of approximately \$8 million.

The draft Cabinet paper does not seek decisions on other enforcement matters

15. We have omitted other proposals from the draft Cabinet paper, on the basis that these are more complex or controversial options, and lower priority.

Infringement notices

16. The Act provides for infringement notices (with fees of up to \$1,000) to be issued for certain offences. We consulted on a proposal to increase the range of offences that infringement notices could be applied to, and the level of infringement fees.
17. Infringement offences need to be carefully designed to ensure that the conduct they capture is sufficiently clear and 'bright line' that it does not require a court to determine guilt. Our initial proposal was to apply infringement offences to general prohibitions on misleading conduct, similar to in Australia. However, this is unlikely to comply with Legislation Design and Advisory Committee (LDAC) and Ministry of Justice guidance on use of infringement offences in New Zealand.

Restrictions on indemnities or insurance covering penalties

18. A common question that arises in regulatory regimes with civil pecuniary penalties is whether there should be any restrictions on indemnities or insurance covering penalties. For example, a director or employee of a company may be indemnified by the company for any liability arising from their position, or may obtain professional indemnity insurance.
19. Consumer groups argued that indemnification undermines deterrence and accountability, especially for large corporates, and wanted its use restricted or prohibited. Business groups argued the opposite – that insurance is essential for risk management, and restrictions would deter qualified directors and contradict recent Government moves to reduce personal liability for directors.
20. LDAC guidance notes that the effect of insurance and indemnification on the deterrent effect of pecuniary penalties is not necessarily clear. "On the one hand, insurance mitigates the financial risk so it may undermine deterrent and punitive goals of the legislation. On the other hand, insurance companies can motivate their clients to minimise their risk of non-compliant behaviour through the threat of increased premiums."¹
21. We do not think there is a straightforward case for restrictions on insurance and indemnification under the Act. Generally actions under the Act are taken against body corporates, rather than individuals within a company. Given the overall purpose of the amendments is imposing higher penalties against large businesses, it seems unnecessary for the policy intent to limit indemnities and insurance for individuals. We also accept that oversight by insurance companies may have benefits for compliance. We have therefore omitted any restrictions from the draft Cabinet paper.

Penalties for breaches of the prohibition on harassment and coercion

22. The Act prohibits a person from using physical force, harassment or coercion in connection with the:
 - a. supply or possible supply of goods or services or the payment for goods or services

¹ Legislation Design and Advisory Committee, *Legislation Guidelines: 2021 edition*, 'Chapter 26: Pecuniary Penalties'.

b. sale or grant of an interest or possible sale or grant of an interest in land, or the payment for an interest in land.

23. However, unlike in Australia, the Act does not impose any penalties on persons breaching the prohibitions. Only proceedings such as injunctions and compensation claims can be taken.

24. We asked submitters whether, as part of any rewrite of penalty provisions, civil pecuniary penalties should be extended to harassment and coercion, and suggested a number of alternative ways that this could be done. There was some support for this from a range of stakeholders: [Confidentiality] Undue harassment by debt collectors has been a particular concern of consumer groups in recent years [Confidentiality] were opposed, and warned about unintended consequences for debt collection, customer service and commercial negotiations.

25. We consider that, while there is merit in penalising harassment and coercion in commercial contexts, the design of a prohibition is not sufficiently straightforward to include in this policy process. Any penalties need to be designed to target unjustifiable harassment and coercion, without impacting legitimate commercial dealings, strong bargaining and normal debt collection activities.

The draft Cabinet paper includes the anti-scam safe harbour

26. The draft Cabinet paper also proposes a small amendment to the Act that Minister Simpson has been progressing as part of the scams work programme [BRIEFING-REQ-00012674]. This change would enable businesses to take more proactive steps to block and remove scam content online, through a statutory 'safe harbour' defence from civil liability.

The draft Cabinet paper includes one product safety proposal

We recommend that product safety standards are automatically updated

27. As discussed in our previous briefing, New Zealand's regulatory systems have long struggled with outdated standards remaining legally enforceable, even after newer versions of standards are released. Some product safety regulations under the Act still cite standards that were replaced more than a decade ago. For example, the product safety standard for bicycles refers to AS/NZS 1927:1998, which was superseded in 2010 but remains the legally required version in New Zealand. Updating these standards requires a full Cabinet process, and is seldom at the top of Minister or agency priorities.

28. This static approach results in compliance difficulties for businesses, as goods – especially those imported from overseas – are typically manufactured and tested to the latest standards. It makes it harder for businesses to keep up with best practice and creates additional work for regulators.

29. This proposal would allow product safety regulations under the Act to refer to the latest version of a standard, and not just the version that exists when the regulations are made.

30. Submitters were generally supportive of this change, although some businesses and legal firms had concerns about implementation. [Confidentiality] [Confidentiality] all supported the change (at least in principle). Several stakeholders (e.g. [Confidentiality]) stressed the importance of:

- a. advanced notice and guidance about upcoming changes to standards
 - b. risk-based transitional periods
 - c. free public access to standards.
31. Providing appropriate communication and reasonable transition periods is part of normal good regulatory practice. It may not be necessary for there to be mandatory transitions in all cases – regulations could allow businesses to comply with either the old standard or the new standard.
32. Free public access to standards would be more challenging, as Standards NZ and overseas standards bodies operate on a user pays basis. Free access to standards would require government funding. Standards NZ currently charges \$100–\$250 for most product safety standards for a single user PDF, or slightly more for a hard copy. We do not think this is a large business cost.

We do not recommend seeking to delegate decision making on new product safety standards

33. We consulted on a proposal to delegate to MBIE the ability to adopt product safety regulations that incorporate international standards. There are legitimate questions about whether these decisions should remain with Cabinet, given that they can have significant compliance impacts on affected businesses.

We have omitted other proposals relating to unfair contract terms

34. We have omitted proposals relating to the Act’s unfair contract terms provisions from the draft Cabinet paper, as these require further consideration of the appropriate forum (e.g. Disputes Tribunal, or just the District Court), and the impact on legal certainty for complex commercial agreements, such as loan securitisations.
35. We have extended the deadline for submissions on these matters to early-September.

Risks

36. The Act applies to all businesses supplying goods and services in New Zealand, and any change to enforcement tools and penalties have significant impacts across the economy. The proposals will affect how businesses design and approve marketing and promotional activities, how they design compliance programmes and respond to legal risks, and what insurance arrangements they have for the business and its directors.
37. The changes to penalties included in the draft Cabinet paper are somewhat controversial, and may be subject to valid criticisms from business that there has been relatively little consultation prior to policy decisions, and the evidence base is weak. Confidentiality
- Confidentiality
38. While an argument can be made that penalties should be higher in order to provide sufficient incentives on businesses, there is limited empirical evidence to inform what an appropriate penalty would be.
39. We have sought to mitigate this by recommending that the penalties in the Act align with comparable regimes, notably the FMC Act. This would be the first time that penalties have increased in the Act since 2014.

40. These concerns are also somewhat mitigated by further refining the scope of the Cabinet paper. MBIE can carry out further consultation and analysis on the matters being progressed during drafting of legislation. Further changes could be made to settings and confirmed by Cabinet when approval is sought for introduction.

Confidential Advice to Government



BRIEFING

Fair Trading Amendment Bill: Additional Policy Decisions

Date:	12 February 2026	Priority:	Medium
Security classification:	In Confidence	Tracking number:	0026777

Minister	Action sought	Deadline
Hon Scott Simpson Minister of Commerce and Consumer Affairs	Agree to amend the infringement offences regime in the Fair Trading Act through the Fair Trading Amendment Bill. Agree to reflect upcoming amendments to the Commerce Act in the Bill. Agree to streamline how product safety regulations are updated through the Bill.	17 February 2026

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Glen Hildreth	Manager, Consumer Policy	Privacy of Natural Persons	✓
Privacy of Natural Persons	Principal Advisor, Consumer Policy		

The following departments/agencies have been consulted
Parliamentary Counsel Office and the Commerce Commission have been consulted on this briefing. The Ministry of Justice has been engaged on the infringement offences issues.

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

Comments:



BRIEFING

Fair Trading Amendment Bill: Additional Policy Decisions

Date:	12 February 2026	Priority:	Medium
Security classification:	In Confidence	Tracking number:	0026777

Purpose

To seek your agreement to additional policy decisions to amend the Fair Trading Act 1986 (the Act) through the Fair Trading Amendment Bill (the Bill).

Executive summary

Cabinet has agreed to strengthen the penalties regime in the Fair Trading Act 1986 (the Act), introduce a new safe harbour to support scam disruption, and streamline how product safety standard regulations are updated [CAB-25-MIN-0353 refers].

As part of drafting the Bill to implement these changes, officials have identified three areas where further policy decisions from you are required:

- Existing infringement offences in the Act have fines that are disproportionately high relative to infringement fees for the same conduct, and the Act is unclear that breaches of infringement offences do not result in criminal convictions. We recommend replacing these infringement offences with either standard criminal offences or civil breaches. This will provide proportionate penalties for breaches and clarity on which ones result in convictions.
- The Commerce Commission Reform Bill and the Commerce (Promoting Competition and Other Matters) Amendment Bill update powers, definitions, and processes in the Commerce Act that are also in the Fair Trading Act. To maintain consistency, we recommend amending the Fair Trading Act to reflect relevant changes being made in the Commerce Act.
- To enable changes to product safety regulations to come into force sooner we have included them in this draft Bill instead of the Regulatory Systems (Commercial Matters) Amendment Bill, which will now be introduced late this year. For completeness, we seek your approval to including these changes in the Bill.

The timing to address these matters in the Bill and introduce the Bill by 1 April 2026 is tight. There are two timing options available:

- **Timing option 1 – prioritise 1 April 2026 introduction:** this involves making changes to align with the Commerce Act at select committee. This timing option will still be tight, requires steps to run concurrently, and assumes no further drafting issues arise.
- **Timing option 2 – defer introduction to May 2026:** this option involves amending the infringements regime and making changes to align with the Commerce Act before the Bill is introduced. This option would result in a higher quality Bill and is our recommended option.

We seek your decision on which timing option you wish to progress.

Recommended actions

The Ministry of Business, Innovation and Employment recommends that you:

Infringement offences

- a **Note** that the infringement offences in the Fair Trading Act have disproportionately high fines relative to infringement fees, and the Act is unclear on the status of convictions for these offences.

Noted

- b **Agree** to one of the following options:

- i. **Option 1:** Retain the current infringement offences and fees, and increase fines for these breaches through the Bill (status quo)

Agree / Disagree

- ii. **Option 2:** Retain the current infringement offences and fees, but set new fines for these provisions capped at three times the value of infringement fees (\$6,000) and clarify that these breaches do not result in convictions

Agree / Disagree

- iii. **Option 3 (recommended option):** Shift infringement offences to either standard criminal offences (with convictions and fines) or civil breaches (with no convictions and civil pecuniary penalties) depending on the nature of the conduct.

Agree / Disagree

- c **Agree** to implement Option 3 by amending the Fair Trading Act to replace existing infringement offences with:

- i. criminal liability and a fine of up to \$1 million for individuals or \$5 million for body corporates; three times the value of commercial gain; or the value of consideration for:
- i. breaching a suspension of supply notice.
- ii. civil liability and pecuniary penalties of up to \$60,000 for an individual and \$200,000 for a body corporate for:
- i. breaching consumer information standards
 - ii. not disclosing a person's trader status online
 - iii. failing to comply with disclosure requirements for layby sales agreements
 - iv. failing to comply with disclosure requirements for uninvited direct sales
 - v. failing to comply with disclosure requirements for extended warranty agreements
 - vi. failing to comply with gift card expiry date requirements.

Agree / Disagree

Aligning with changes to the Commerce Act

- d **Agree** to amend the Fair Trading Act where necessary, to ensure consistency with amendments to the Commerce Act arising from the Commerce Commission Reform Bill and Commerce (Promoting Competition and Other Matters) Amendment Bill.

Agree / Disagree

Streamlining updates to product safety standards

- e **Agree** that amendments to the Fair Trading Act 1986 to streamline updates to product safety standard regulations be included in the Fair Trading Amendment Bill, rather than the Regulatory Systems (Commercial Matters) Amendment Bill.

Agree / Disagree

Timing for the Fair Trading Amendment Bill

- f **Agree** to either:
- i. **Timing option 1 – prioritise 1 April 2026 introduction**, noting that this option is tight and while we could address the issues with infringement offences prior to introduction we would need to reflect changes to the Commerce Act at select committee; OR
 - ii. **Timing option 2 – defer introduction to May 2026 (recommended option)**, noting that under this option we could amend the infringements regime and make the changes to align with the Commerce Act before introduction.

Agree / Disagree

Agree / Disagree

Glen Hildreth
Manager, Consumer Policy

12 February 2026

Hon Scott Simpson
Minister of Commerce and Consumer Affairs

..... / /

Background

1. On 13 October 2025, Cabinet agreed to strengthen the penalties regime in the Fair Trading Act 1986 (the Act), introduce a new safe harbour to support scam disruption, and streamline how product safety standard regulations are updated [CAB-25-MIN-0353 refers].
2. Officials are working with Parliamentary Counsel Office (PCO) to draft the Fair Trading Amendment Bill (the Bill) to implement these changes. As part of drafting the Bill, we have identified three areas where we require additional policy decisions. We seek your approval to:
 - a. Amend the infringement offences in the Act to address issues around disproportionate fees and fines and to clarify the status of convictions for infringement offences – see **Part 1** of this paper
 - b. Amend the Act to ensure consistency with upcoming amendments to the Commerce Act through the Commerce Commission Reform Bill and Commerce (Promoting Competition and Other Matters) Amendment Bill – see **Part 2** of this paper
 - c. Include changes in the Bill to streamline how product safety standard regulations are updated – see **Part 3** of this paper.
3. Cabinet has authorised you as Minister of Commerce and Consumer Affairs to take any further decisions, consistent with the policy intent of the Cabinet paper CAB-25-SUB-0353, as part of drafting the Bill. The decisions you take can be confirmed when the Bill is considered at Cabinet Legislation Committee (LEG).

Part 1: Infringement Offences

4. In mid-2025, officials consulted on adding infringement offences to other conduct and increasing infringement fees in the Act. You subsequently agreed not to progress work on these options (briefing 0022456 refers). We have however identified two issues relating to the Act's existing infringement offences as part of drafting.

Infringement offences in the Fair Trading Act

5. In 2014, infringement offences were added to the Act to address clear-cut, and low level offences that do not warrant criminal convictions. Infringement fees for these offences can be set at up to \$2,000 but have been set at either \$1,500 or \$1,000 to date (see Table 1 below).
6. If the Commerce Commission (Commission) issues a charging document and takes a matter to court, or if a person challenges an infringement notice, the court can impose a fine. Most infringement offences attract fines of up to \$10,000 for an individual or \$30,000 for a body corporate. The Bill will increase these fines to \$60,000 for an individual and \$200,000 for a body corporate.
7. One infringement offence, failing to comply with a suspension of supply notice under section 33D, carries fines of up to \$200,000 for an individual or \$600,000 for a body corporate. The Bill will increase these fines to the greater of: \$1 million for individuals or \$5 million for a body corporate, three times the value of commercial gain, or the value of consideration.

Table 1: Fair Trading Act infringement offences

Section	Infringement offence	Infringement fee	Current maximum fine	Maximum fine in the Bill
28	Failing to comply with a consumer information standard.	\$1,000	Individual: \$10,000 Body corporate: \$30,000	Individual: \$60,000 Body corporate: \$200,000
28B(2) and 28B(3)	Failing to disclose a person's trader status on the internet.			
36C and 36D	Failing to comply with disclosure requirements for layby sale agreements.			
36L	Failing to comply with disclosure requirements for uninvited direct sales.	\$1,000	Individual: \$10,000 Body corporate: \$30,000	Individual: \$60,000 Body corporate: \$200,000
36U	Failing to comply with disclosure requirements for extended warranties.			
36WB and 36WC	Selling a gift card with an expiry date of less than 3 years after date of sale and failing to state the expiry prominently. <i>(Comes into force from 16 March 2026).</i>			
33D	Failing to comply with a suspension of supply notice issued by a product safety officer.	\$1,500	Individual: \$200,000 Body corporate: \$600,000	Greater of: <ul style="list-style-type: none"> \$1 million (individual) or \$5 million (body corporate); 3x commercial gain; or value of consideration.

Issue 1: fines for infringement offences are disproportionately high relative to infringement fees

- The Ministry of Justice advises that fines for infringement offences are typically set at up to three times' the value of the maximum infringement fee. However, existing fines in the Act are well above this level and will become even higher through the Bill.
- Maximum fines in the Act for most infringement offences are currently 5 to 15 times the maximum infringement fee of \$2,000 in the Act – increasing to 30 to 100 times through the changes in the Bill. Fines for breaching a suspension of supply notice will become 500 to 2,500 times the maximum infringement fee. This disproportionate ratio between infringement fees and fines creates several issues:

- a. the high fines could deter people from challenging an infringement fee in the courts even if they have valid reasons
- b. those who breach the Act could face two very different enforcement outcomes for the same conduct – a small infringement fee or a very large fine – which undermines natural justice and the predictability of the law
- c. pairing large fines with infringement offences for the same conduct undermines the idea that infringements should target clear-cut, low level offending.

Issue 2: the Act is unclear about whether people can be convicted of infringement offences

- 10. Infringements deal with clear-cut and low level offending, so they cannot result in a criminal conviction. This is because section 375 of the Criminal Procedure Act 2011 states that a person cannot be convicted of an infringement offence, regardless of whether an infringement notice was issued or if a person was charged. However, a fine can still be issued.
- 11. The fines for infringements are contained in sections 40(1) and 40(1B) in the Act. These fines are also available for breaches of standard offences, and the wording of these sections states these fines are available 'on conviction'. This implies that these fines are only available for standard offences, not infringements, and has resulted in courts reaching different decisions on whether convictions are available. Since 2014, there have been several cases taken by the Commission where the court has not entered a conviction for a breach of an infringement offence, and at least one case where the court has entered a conviction¹.

Options to address these issues

- 12. We have considered three options for addressing the issues with infringement offences above (see **Annex 1** for our analysis of these options):
 - a. **Option 1:** Retain the current infringement offences and fees, and increase fines for these breaches through the Bill (status quo)
 - b. **Option 2:** Retain the current infringement offences and fees, but set new fines for these provisions capped at three times' the value of infringement fees (\$6,000) and clarify that these breaches do not result in convictions
 - c. **Option 3: (recommended option):** Shift infringement offences to either standard criminal offences (with convictions and fines) or civil breaches (with no convictions and civil pecuniary penalties) depending on the nature of the conduct.
- 13. We recommend Option 3 because it will enable penalties to be set that reflect the nature and harm of the conduct involved. Option 3 also provides greater ability than Option 2 to deter and address widespread breaches of these sections, which can be common. For example, breaching a consumer information standard for used motor vehicles could impact dozens of used cars on a car yard, and the high-value nature of these purchases mean that a breach could have a significant financial impact on customers. An infringement fee of up to \$2,000 or fine of up to \$6,000 is unlikely to address conduct of this scale.

¹ Commerce Commission v Beau Ideal Ltd [2024]. Beau Ideal Limited was convicted of breaching extended warranty disclosure requirements and fined \$23,000.

14. Option 3 would enable criminal convictions to be set for the most serious breaches and would address the issue of having disproportionate fees and fines for the same conduct, as infringement fees would no longer be available alongside large fines. Option 3 would be consistent with the policy intent of the Cabinet paper to strengthen penalties as it results in stronger penalties for these breaches than are currently available.
15. Under Option 3, the Commission would need to take proceedings to court to seek a conviction and fine or a civil pecuniary penalty, and the cost and effort of this may be unwarranted for small breaches. However, infringement notices have not been issued in large numbers by the Commission in recent years, with just two issued in 2025.

The Commerce Commission's preferred option

16. The Commission's first preference is to amend the Act to set civil pecuniary penalties and civil infringements for the same conduct. The Commission prefers this option as, in its view, it would provide flexibility to use different penalties to deal with large-scale or minor breaches. In the Commission's view, having both options would replicate the long-standing and highly successful arrangement for enforcement of the Telecommunications Act. It would also assist the Commission to respond with pace and urgency to breaches of unit pricing requirements in groceries. The Commission's second preference is Option 3 (MBIE's recommended option).
17. We have not included the option of setting civil infringements in our analysis as we have received strong guidance from PCO and the Ministry of Justice that infringements should be based on established processes in criminal law. The Ministry of Justice also notes that civil infringement regimes are very unusual and do not align with guidance from the Legislation Design and Advisory Committee. Civil infringement regimes are contained in the Telecommunications Act 2001 and Unsolicited Electronic Messages Act 2007. However, infringement regimes are typically based on the criminal law as they rely on provisions in the Criminal Procedure Act 2011 and Summary Proceedings Act 1957.
18. Including civil infringements alongside civil penalties would also not resolve the issue of having disproportionate penalties for the same conduct. The Act would still have a very large gap between infringement fees and fines, well beyond the recommended ratio. People and businesses would also still face two very different potential penalties for their conduct, which undermines predictability of the law.

Implementing Option 3

19. Implementing Option 3 requires decisions about which regime each infringement offence should move to. The nature of the breach and its impacts determine whether an infringement offence should shift to become a standard criminal matter (with conviction and fine) or to become a civil matter with a pecuniary penalty.
20. We recommend amending the Act to set the penalties for infringement offences as set out in Table 2 below. Table 2 aligns with how Cabinet has decided to amend penalties for other parts of the Act – with civil penalties for consumer information matters and criminal offences for serious product safety breaches.

Table 2: Proposed treatment of infringement offences under the Fair Trading Act

Section	Infringement offences	Proposed treatment under the Act
28	Failing to comply with a consumer information standard.	Breaching a consumer information notice can result in misleading claims about a product's attributes or price that negatively impacts consumers. But this conduct is not 'truly criminal' in that it does not result in violence, emotional harm, or significant harm to property, the economy, or law and justice. Recommendation: civil liability with a pecuniary penalty of up to \$60,000 (individual) or \$200,000 (body corporate).
28B(2) and 28B(3)	Failing to disclose a person's trader status on the internet.	A breach can result in consumers being misled about who they are transacting with, and the potential rights or fair trading protections available to them under the Act. However, this conduct is not 'truly criminal'. Recommendation: civil liability with a pecuniary penalty of up to \$60,000 (individual) or \$200,000 (body corporate).
36C and 36D	Failing to comply with disclosure requirements for layby sales agreements.	A breach can negatively impact consumers through provision of incorrect or misleading information about contracts, or a consumer's rights. However, this conduct is not 'truly criminal'. Recommendation: civil liability with a pecuniary penalty of up to \$60,000 (individual) or \$200,000 (body corporate).
36L	Failing to comply with disclosure requirements for uninvited direct sales.	
36U	Failing to comply with disclosure requirements for extended warranties.	
36WB and 36WC	Selling a gift card with an expiry date of less than 3 years after date of sale and failing to state the expiry prominently. <i>(Comes into force from 16 March 2026).</i>	A breach can negatively impact consumers (for example, a very short expiry date would give the owner little time to use a card) but does not warrant a criminal conviction. Recommendation: civil liability with a pecuniary penalty of up to \$60,000 (individual) or \$200,000 (body corporate).
33D	Failing to comply with a suspension of supply notice issued by a product safety officer.	Failing to comply with a suspension of supply notice involves a serious breach of a notice issued by a product safety officer to limit the harm of an unsafe product. A breach could cause injury or death to consumers and would have a significant impact on the administration of law and justice, so warrants a criminal conviction. Recommendation: criminal conviction and fine (of up to \$1m for an individual or \$5m for a body corporate, 3x commercial gain, or the value of consideration).

Issue 2: Aligning the Fair Trading Act with updates to the Commerce Act

21. The Commerce Commission Reform Bill and Commerce (Promoting Competition and Other Matters) Amendment Bill will update sections of the Commerce Act that are also included in the Fair Trading Act. These updates are largely technical in nature and include certain definitions (like the definition of a 'document'), and Commission's powers relating to enforcement (such as the ability for the Commission to search a 'thing' in addition to a place).

Table 3: Changes to the Commerce Act relevant to the Fair Trading Act

Bill	Purpose of Bill	Areas of alignment needed
Commerce Commission Reform Bill	Updates the Commerce Commission's governance, decision-making and mandate.	Amend the Fair Trading Act to ensure that equivalent powers between the two Acts remain consistent and aligned, including in relation to: <ul style="list-style-type: none"> notice provisions proceedings privileged.
Commerce (Promoting Competition and Other Matters) Amendment Bill	Modernises and strengthens the Commerce Act's competition settings, including by updating certain definitions and powers of the Commission.	Ensure equivalent powers between the two Acts remain consistent and aligned where relevant, including: <ul style="list-style-type: none"> definition of 'document' information gathering, service of notice and search powers co-operation arrangements powers of the Commerce Commission to prohibit disclosure proceedings privileged.

22. We recommend amending the Fair Trading Act to ensure consistency with these changes. We note that these changes are not critical to the passage of the Bill, and they could be included later (e.g. at Select Committee) if introduction of the Bill by 1 April 2026 is a priority. Further amendments may need to be made to the Fair Trading Act if there are any subsequent changes to these Bills as they progress through Parliament.
23. Cabinet has delegated to you the ability to make additional policy decisions consistent with the policy intent of Cabinet paper CAB-25-SUB-0353, including on issues that arise during drafting of the Fair Trading Amendment Bill.
24. The Cabinet paper noted a key policy reason for updating the Fair Trading Act offences regime is that it does not currently align with other legislation like the Financial Markets Conduct Act or Commerce Act (see paragraph 11.3 of the Cabinet paper). Amending the Fair Trading Act to ensure it continues to be consistent with the Commerce Act on technical matters relating to enforcement aligns with this intent.

Part 3: Streamlining updates to product safety standard regulations

- 25. Cabinet has also agreed to amend the Act to allow product safety standard regulations to reference any future version of the same standard, subject to departmental approval [CAB-25-MIN-0353 refers]. This change will make it easier to keep product safety regulations up to date and provides more clarity about which product safety standards apply.
- 26. We originally intended to include these changes to the Act in the Regulatory Systems (Commercial Matters) Amendment Bill. However, we understand this Bill will now progress late this year, so we have included these changes in the draft Bill so these improvements can be made sooner. For completeness, we seek your approval to including these changes in the Bill. This decision can be confirmed at LEG.

Next steps

- 27. We are working to draft the Bill for introduction by 1 April 2026 but note that resolving the issues in this briefing makes meeting this deadline tight. There are two timing options for the Bill, and we seek your decision on which timeline you would like to progress. Constitutional

Constitutional Conventions

Timing option 1: prioritise introduction by 1 April 2026

Constitutional Conventions

Annexes

Annex One: Infringement Offences Options Analysis.

Annex One: Infringement Offences Options analysis

Criteria	Option 1: Retain the current infringement offences and fees, and increase fines for these breaches through the Bill (status quo)	Option 2: Retain the current infringement offences and fees, but set new fines for these provisions capped at three times' the value of infringement fees (\$6,000) and clarify that these breaches do not result in convictions	Option 3: Shift infringement offences to either standard criminal offences (with convictions and fines) or civil breaches (with no convictions and civil pecuniary penalties) depending on the nature of the conduct (recommended option).
Penalties are strong enough to deter and address breaches	0	+1 The Commission has noted that many of the matters dealt with under the infringement offence provisions can involve wide-ranging breaches that impact many consumers. Only being able to issue infringement fees and small fines for this conduct may be insufficient to deter and address breaches, but this option has the advantage of being able to deter low-level clear cut breaches more effectively.	+1 Criminal offences and convictions could be targeted to breaches that result in significant consumer harm (like breaching a suspension of supply notice) while reserving the ability to deal with other contraventions through strong civil pecuniary penalties. This option effectively increases the maximum penalties for breaches of this conduct compared to current penalties in the Act, but reduces the Commission's ability to address low-level and clear cut offending as infringement notices would not be available.
People who breach the Act have clarity about the penalty they could face	0	+2 Increases clarity for which enforcement tools apply to which breaches, as there is no longer the potential for two very different penalties for the same conduct. Setting separate fines of up to \$6,000 for these breaches would clarify that these fines are separate to other fines for criminal matters in the Bill and would not result in convictions.	+2 Increases clarity for which enforcement tools apply to which breaches, as there is no longer the potential for two very different penalties for the same conduct. Splitting out criminal matters as 'standard' criminal offences provides clarity that these matters can result in convictions, while clarifying that civil matters do not result in convictions.
Consistency with penalties for other conduct	0	-1 This option would result in relatively small penalties being available for a subset of breaches of product safety and consumer information matters. Other breaches of similar provisions in the Act would have much higher penalties as a result of changes in the Bill.	+1 This option also better aligns with how Cabinet has agreed to set penalties for other provisions in the Bill (e.g. dealing with serious product safety contraventions as criminal matters, while dealing with consumer information matters through the civil regime).
Overall assessment	0	2	4

Key for qualitative judgements:

- +2** much better than the status quo/counterfactual
- +1** better than the status quo/counterfactual
- 0** about the same as the status quo/counterfactual
- 1** worse than the status quo/counterfactual
- 2** much worse than the status quo/counterfactual



Fair Trading Amendment Bill – Draft LEG paper and Bill

Date:	5 May 2026	Priority:	Medium
Security classification:	In Confidence	Tracking number:	0030112

Action sought		
	Action sought	Deadline
Hon Cameron Brewer Minister of Commerce and Consumer Affairs	<p>Agree to the proposed changes in the Bill.</p> <p>Agree to the revised product safety framework.</p> <p>Agree to provide feedback on the draft LEG Cabinet paper.</p> <p>Agree to commence Ministerial consultation.</p>	21 April 2026
Hon Nicola Willis Associate Minister of Commerce and Consumer Affairs	Note the contents of this briefing.	21 April 2026

Contact for telephone discussion (if required)			
Name	Position	Telephone	1st contact
Glen Hildreth	Manager, Consumer Policy	Privacy of Natural Persons	✓
Privacy of Natural Persons	Senior Policy Advisor		

The following departments/agencies have been consulted:
N/A

Minister's office to complete:

Approved

Declined

Noted

Needs change

Seen

Overtaken by Events

See Minister's Notes

Withdrawn

Comments:



Fair Trading Amendment Bill – Draft LEG paper and Bill

Date:	16 April 2026	Priority:	Medium
Security classification:	In Confidence	Tracking number:	0030112

Purpose

The purpose of this briefing is to feedback on the draft Cabinet Legislation Committee (**LEG**) paper for the Fair Trading Amendment Bill (**the Bill**), including minor and technical drafting changes and a refined product safety framework.

Executive summary

Cabinet has previously agreed to a package of reforms to the Fair Trading Act 1986 (**the Act**) to strengthen penalties, support scam disruption, and streamline the updating of product safety requirements. We have since progressed detailed drafting of the Bill with the Parliamentary Counsel Office (**PCO**).

During drafting, a number of minor, technical, consequential, transitional, and savings changes were required to ensure the Bill gives effect to Cabinet’s decisions, operates as intended, and fits coherently within the Act and the wider legislative framework. These changes do not alter Cabinet’s agreed policy intent and are typical of issues resolved through legislative drafting.

Cabinet agreed to streamline product safety updates because regulations lock in a specific version of a technical standard that can quickly become out of date [CAB-25-MIN-0353]. During drafting, we identified that the “update by notice” approach agreed to by Cabinet would still leave the regulations pointing to an old version of the technical standard (as a notice cannot amend regulations), undermining certainty for businesses. We therefore recommend a revised mechanism: Cabinet continues to decide what products are regulated, while regulations authorise the MBIE Chief Executive to specify or update applicable standards by notice. This means the technical standards would sit in a single, up-to-date notice, rather than in regulations. This revised mechanism requires Cabinet approval because it goes beyond the original approach.

This briefing seeks your feedback on the attached draft LEG paper, and to the minor and technical drafting changes and refined product safety framework that will be reflected in the Bill. Subject to any feedback from consultation, we propose to lodge the Bill and Cabinet paper on Thursday, 23 April 2026.

Recommended action

The Ministry of Business, Innovation and Employment recommends that you:

- a **Agree** to the changes made during drafting of the Fair Trading Amendment Bill, noting they are minor and do not alter Cabinet’s agreed policy intent;

Agree / Disagree

- b **Note** that the approach previously agreed to by Cabinet to streamline product safety updates [CAB-25-MIN-0353] would still leave regulations referring to outdated versions of technical standards, because notices cannot amend regulations, undermining certainty for businesses;

Noted

- c **Agree** that the Fair Trading Amendment Bill provide a regulation-making power that authorises the MBIE Chief Executive to issue product safety notices that specify or update product safety standards, within parameters set by Cabinet;

Agree / Disagree

- d **Note** that the draft LEG paper proposes a four-month select committee process, and that MBIE recommends a six-month select committee process.

Noted

- e **Agree** that a version of the attached draft Cabinet Legislation Committee paper, amended to reflect feedback from you and from Ministerial and inter-agency consultation, should be submitted for consideration by the Cabinet Legislation Committee at its meeting of Thursday 30 April 2026.

Agree / Disagree

Glen Hildreth
Manager, Consumer Policy

Hon Cameron Brewer
Minister of Commerce and Consumer Affairs

16 April 2026

..... / /

Background

1. On 13 October 2025, Cabinet agreed to a package of reforms to the Act to strengthen penalties, support scam disruption, and streamline updates to product safety regulations [CAB-25-MIN-0353]. In particular, Cabinet agreed to:
 - a. replace much of the Act's criminal penalties regime with a civil liability regime, with significantly increased maximum penalties calibrated to the seriousness of the conduct
 - b. introduce a statutory safe harbour to support online service providers to disrupt suspected scam content in good faith
 - c. to streamline updates to product safety regulations, recognising the need for greater flexibility to keep the technical standards specified in those regulations up to date without requiring repeated Cabinet decisions on highly technical matters.
2. Following Cabinet's decisions, and under delegated authority, Hon Scott Simpon agreed to replace existing infringement offences with either standard criminal offences or civil liability provisions, depending on the nature and seriousness of the conduct [BRIEFING-REQ-0026777 refers]
3. The Bill has a Category 4 priority on the Legislation Programme (pass if possible before the general election).
4. The attached draft LEG paper (**Annex One**) and draft Bill (**Annex Two**) is ready for your feedback.

Summary of changes in the Bill

Product safety standards

Cabinet has agreed to streamline the process for updating product safety regulations

5. The Act provides for product safety standards to be prescribed in regulations. In many cases these regulations specify an existing technical standard. However, as these underlying standards are frequently updated, the regulations quickly fall out of date.
6. To address this concern, Cabinet agreed to streamline the process by which regulations would be updated by allowing the MBIE Chief Executive to update standards.

During drafting we identified an issue with the approach agreed to by Cabinet

7. The underlying issue is that product safety regulations lock in a particular version of a technical standard, meaning they quickly become out of date as standards are revised. Cabinet's earlier decision was to address this by allowing regulations to reference future versions of the same standard, with later updates approved at the CE of MBIE level, to reduce the need for repeated Cabinet decisions on highly technical matters.
8. During drafting, we identified a practical limitation with this approach. Even if a newer version of a standard were approved at an official level, the regulations themselves would continue to reference the outdated version, because a notice cannot amend regulations. This risks

businesses being directed to an out-of-date standard when checking the regulations, undermining certainty and the intended streamlining benefits.

We recommend changing the mechanism for setting technical product safety standards

9. We propose to address this by changing the mechanism for setting technical detail. Cabinet would continue to decide which products are subject to safety regulation and whether compliance with standards is required, while regulations would authorise the MBIE Chief Executive to specify or update the applicable product safety standards by disallowable product safety notice, within parameters set by Cabinet.
10. In practice, this means the technical requirements would sit in a single, up-to-date notice rather than in regulations that must be amended each time a standard changes. Where authorised, notices could specify one or more applicable standards (or parts of standards) and include reasonable transition periods.
11. This approach preserves a clear division of roles. Cabinet retains control over the core policy decisions, which products are regulated and the scope of any delegation, while the MBIE Chief Executive manages technical updates to standards as they evolve, within the limits set by regulations.
12. The change also better supports alignment with international practice over time. While regulations can already specify one or more product safety standards, relocating this technical detail to notices allows updates to be made more efficiently as international standards change, without repeated regulatory amendments, while still maintaining product safety outcomes.
13. Note that this is an enabling power in the Bill. Each existing product safety regulation would still need to be amended to authorise the use of product safety notices and to set the scope of any delegation to the MBIE Chief Executive. This was not able to be done consequentially.

Cabinet agreement will need to be sought to include these changes in the Bill

14. Because this approach goes beyond the earlier proposal to reference future versions of an already specified standard, with updates approved by the MBIE Chief Executive, and instead allows the MBIE Chief Executive to update the applicable standards and variations by notice, Cabinet agreement is required.
15. The LEG paper also seeks agreement to progress this change by the Bill rather than a future Regulatory Systems (Commercial Matters) Amendment Bill, as agreed in mid-March [BRIEFING-REQ-0026777 refers].

Minor, technical, consequential, and transitional changes

16. During drafting, several consequential, transitional, and savings changes were identified to ensure the Bill gives effect to Cabinet's decisions, operates as intended, and fits coherently within the Act and the wider legislative framework.
17. These changes have been incorporated directly into the Bill as drafted and do not alter Cabinet's agreed policy intent or the substantive policy decisions your predecessor has already taken. They are typical of issues resolved during detailed legislative drafting with PCO.

18. The most significant changes include:

- a. **Commencement provisions:** These provide when the new framework will come into force, including a delayed commencement (six months after Royal assent) for the enforcement changes to allow implementation time (eg updated guidance, operational processes and systems). Delayed Commencement supports operational readiness and does not introduce new day to day conduct obligations for businesses, the underlying rules remain the same. Provisions relating to product safety and consumer information standards commence earlier where no transition period is required.
- b. **Transitional and savings provisions:** These clarify which rules apply before and after commencement, and ensure current investigations and court cases can continue without interruption.
- c. **Consequential amendments:** These are small, necessary updates to other Acts to keep related regimes working as intended. For example:
 - i. updating the Auctioneers Act 2013, which currently uses Fair Trading Act convictions as a basis for licence disqualification
 - ii. updating the Harmful Digital Communications Act 2015 (which currently operates its own safe harbour defence provision for harmful digital communications) to clarify any overlaps with the scams safe harbour.
- d. **Technical and drafting refinements:** These clarify definitions, improve internal consistency across Parts of the Act, and resolve drafting issues identified during PCO review.

19. **Annex Three** sets out these changes in more detail.

Draft LEG paper

20. The attached draft LEG paper (**Annex One**) seeks Cabinet approval to progress the Bill and, if agreed, would:

- a. approve the Bill for introduction to the House of Representatives,
- b. note the Bill gives effect to Cabinet's earlier decisions to strengthen penalties under the Act (including moving most offences to a civil liability regime) and to introduce a statutory safe harbour defence to support proactive scam disruption
- c. note the Bill reflects implementation decisions made under delegated authority during drafting, including changes to infringement offences, commencement and transitional arrangements, and consequential amendment
- d. seek Cabinet agreement to the refined product safety framework.

21. The draft LEG paper is aligned with the Bill as currently drafted and is provided to support Ministerial and departmental consultation ahead of formal Cabinet consideration.

Select Committee duration

24. To date, the proposals in this Bill have not been subject to public consultation. We carried out a two week targeted consultation last year during which we received strong feedback from members of the business community. Conversely, consumer advocates have voiced displeasure that the reforms being progressed are narrower in scope than what they were consulted on. Given the limited duration and targeted nature of the consultation undertaken to date, it is likely that further refinements and changes to the Bill will be proposed during the select committee process.
25. We anticipate there will be widespread feedback on these proposals and consider that a six-month select committee process would be preferable. This would provide adequate opportunity for public submissions and scrutiny. However, a select committee process of this length would mean the Bill is unlikely to progress to passage within the current parliamentary term, given the short, targeted two-week consultation undertaken prior to introduction.

Consultation, next steps, and indicative timeline

Departmental consultation

26. We commenced departmental consultation on 7 April 2026 with agencies that have direct operational, regulatory, or system-level interests in the Bill, namely the: Commerce Commission, Ministry for Regulation, Ministry of Justice, Treasury, Department of the Prime Minister and Cabinet, Ministry of Foreign Affairs and Trade, New Zealand Customs Service, Department of Internal Affairs, Financial Markets Authority, Office of the Privacy Commissioner, Police, Serious Fraud Office, Reserve Bank of New Zealand, and Inland Revenue.

Ministerial consultation

27. We understand your Office has begun Ministerial consultation.

Indicative process and timing

Step	Timing
Departmental consultation on the draft Bill and LEG paper	7 April – 21 April
Ministerial consultation on the draft Bill and LEG paper	14 April – 21 April
Vetting of Bill against the New Zealand Bill of Rights Act 1990 (BORA)	15 April – 29 April
Lodge Bill and Cabinet paper with LEG	Thursday 23 April
Cabinet Legislation Committee (LEG)	Thursday 30 April
Cabinet / Executive Council	Monday 4 May
Introduction of Bill	Tuesday 5 May

Confidential Advice to Government

Annexes

Annex 1: Draft LEG paper

Annex 2: Draft Fair Trading Amendment Bill

Annex 3: Summary of minor, technical, consequential, and transitional changes

Annex 1: Draft LEG paper

UPDATED VERSION TO BE SUPPLIED AFTER DEPARTMENTAL AND MINISTERIAL
CONSULTATION

Office of the Minister for Commerce and Consumer Affairs
Cabinet Legislation Committee

Fair Trading Amendment Bill: Approval for Introduction

Confidential Advice to Government



Confidential Advice to Government



Confidential Advice to Government



Confidential Advice to Government



Confidential Advice to Government

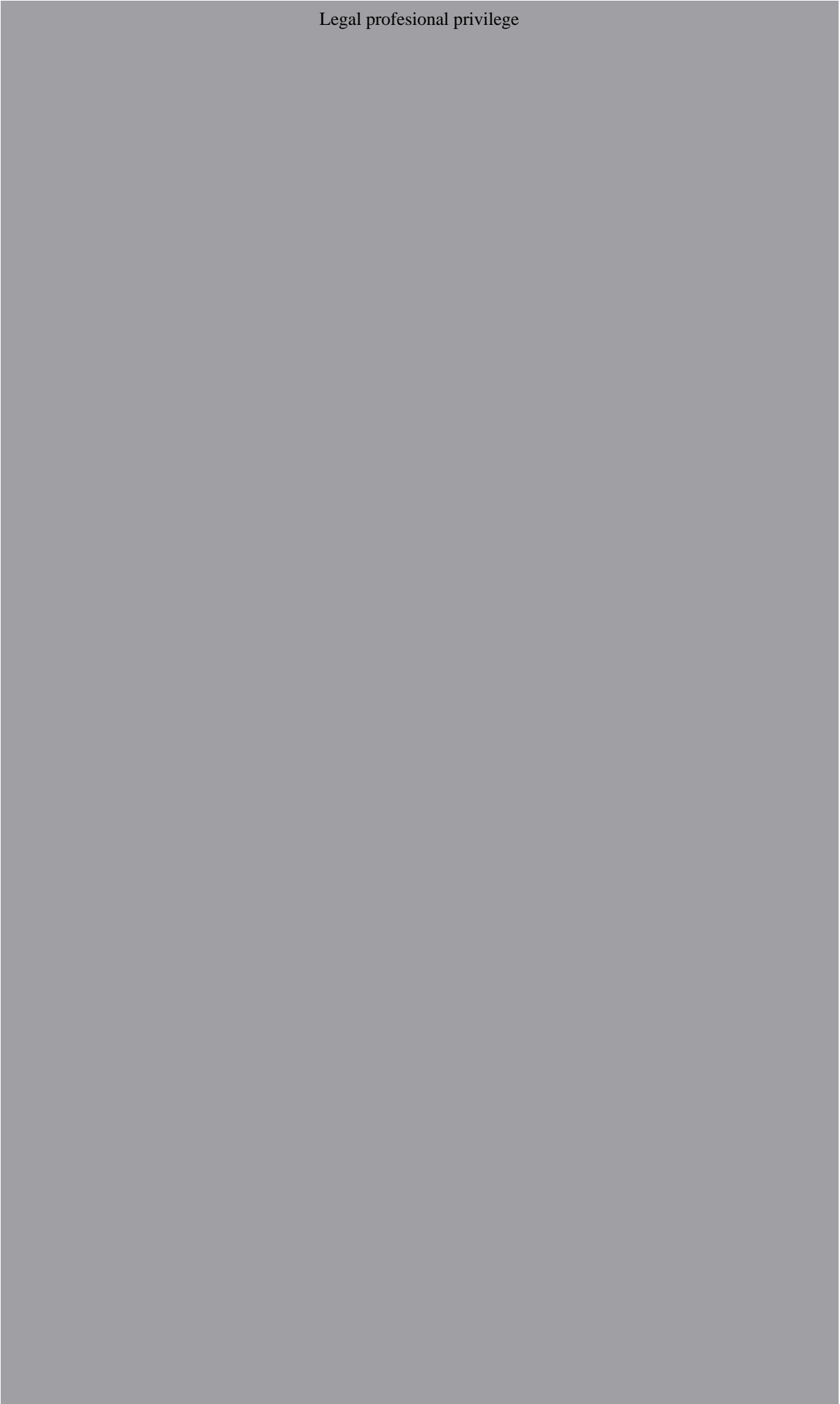


Annex 2: Draft Fair Trading Amendment Bill

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Legal profesional privilege

Legal profesional privilege





Legal profesional privilege

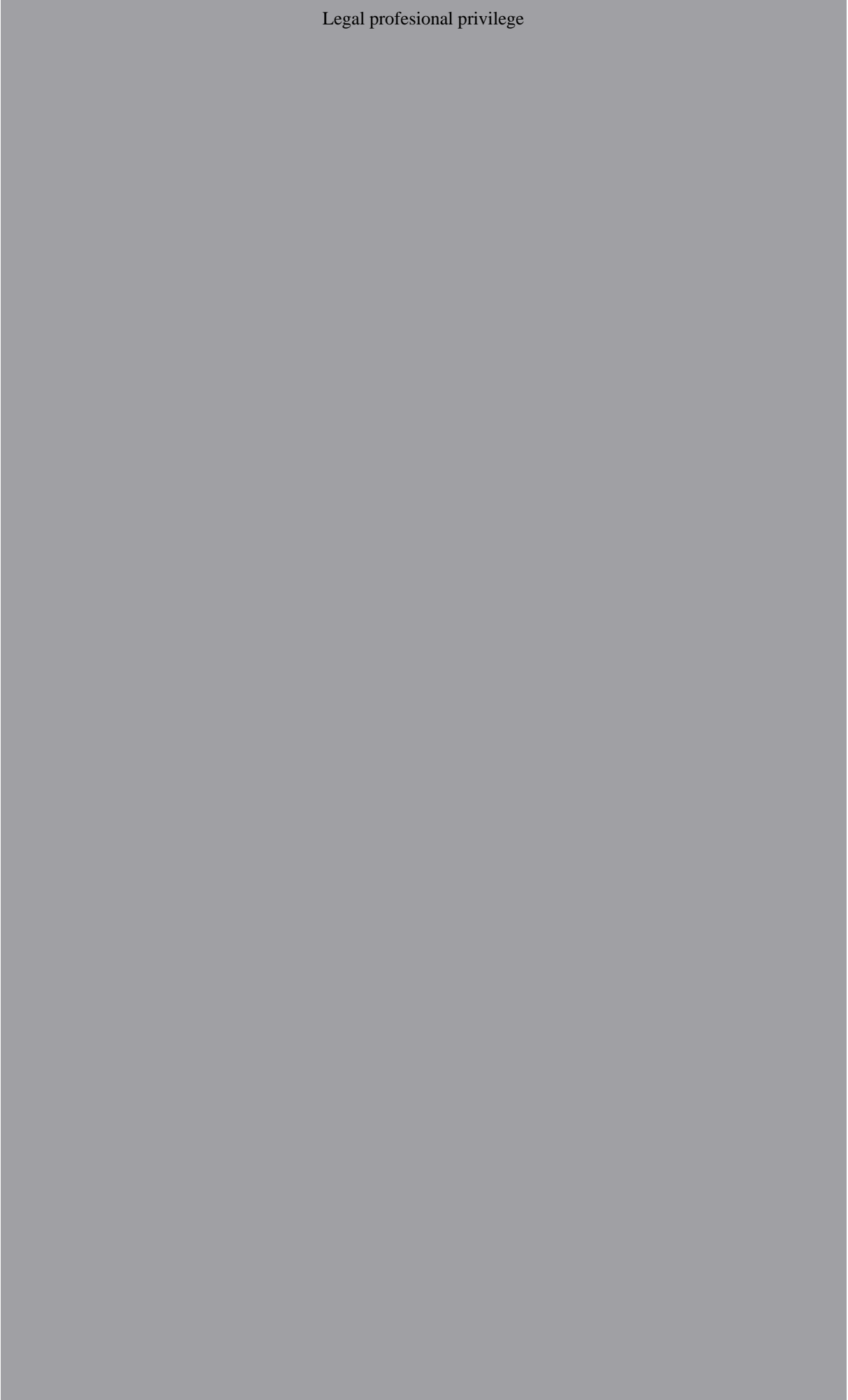


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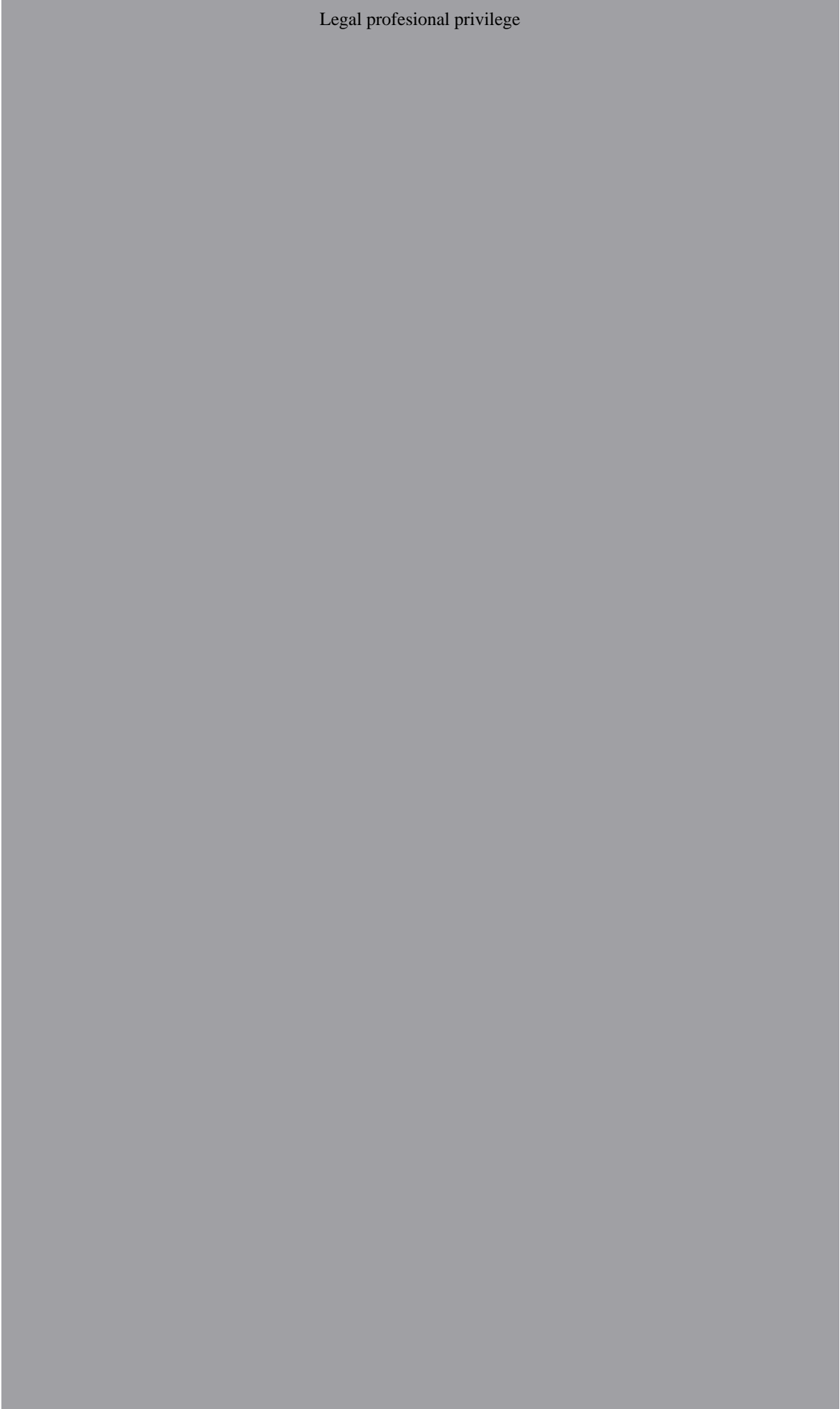
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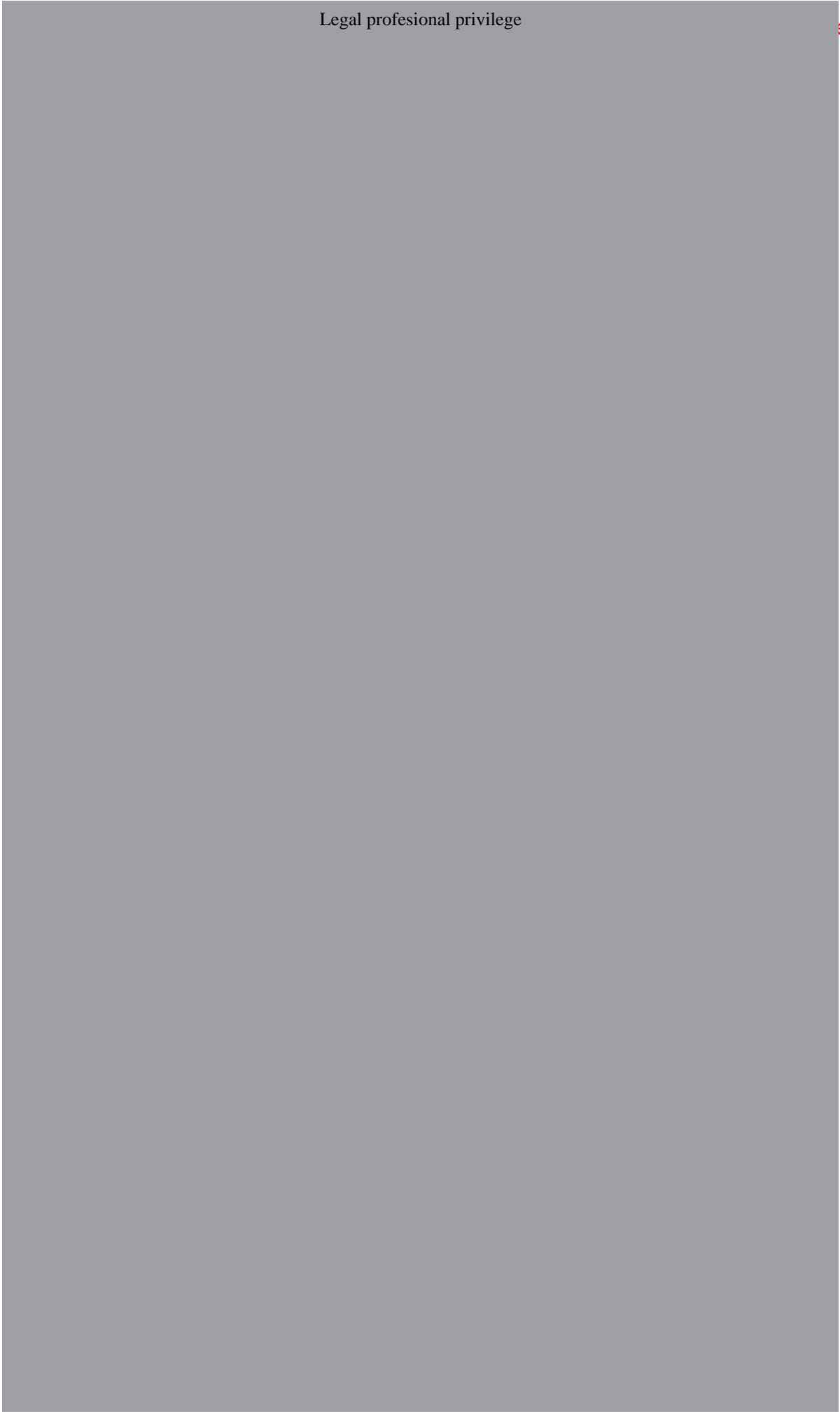
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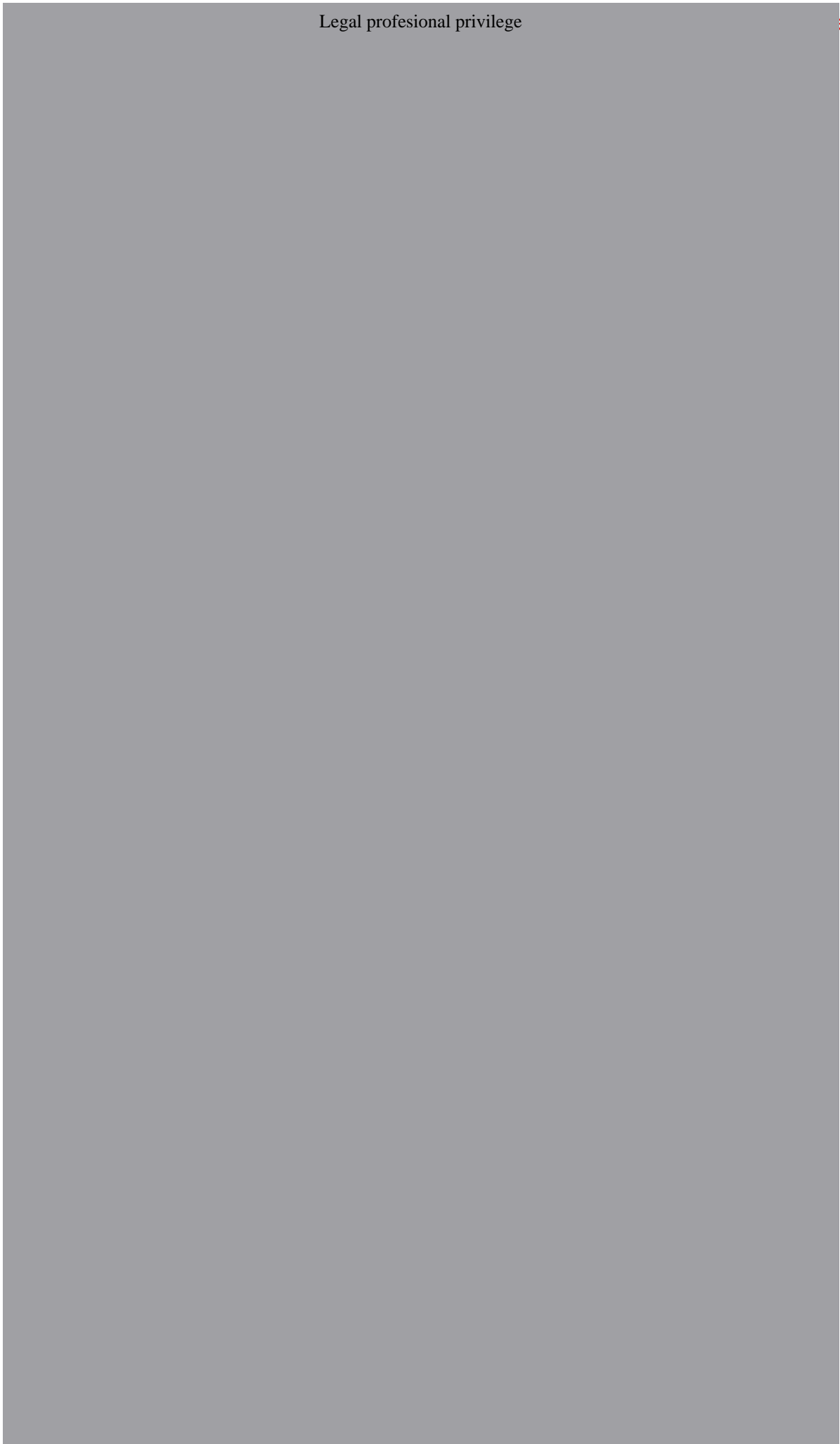
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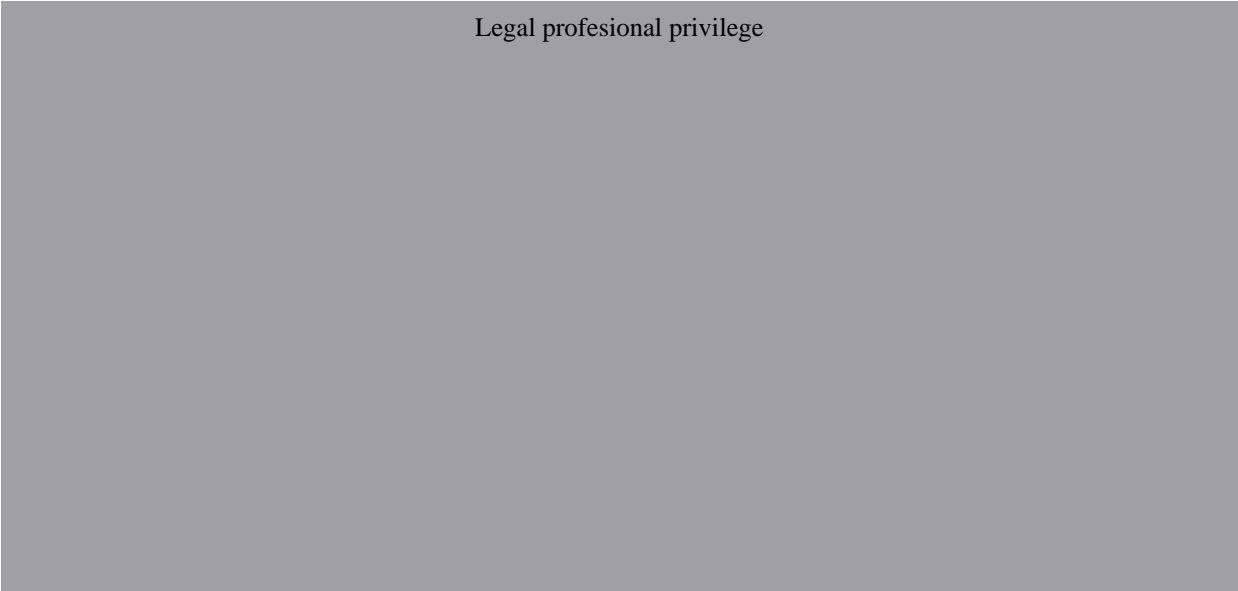


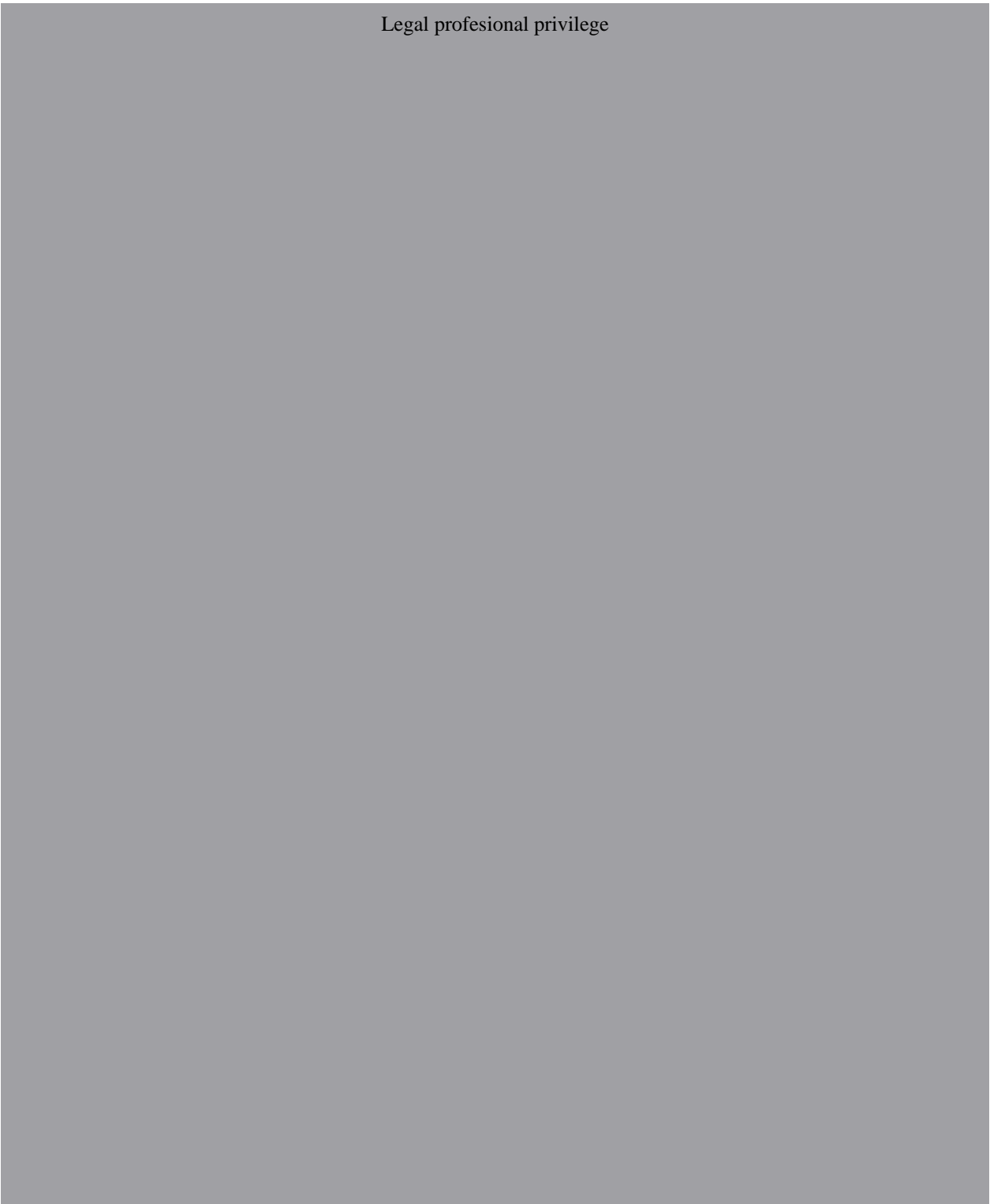


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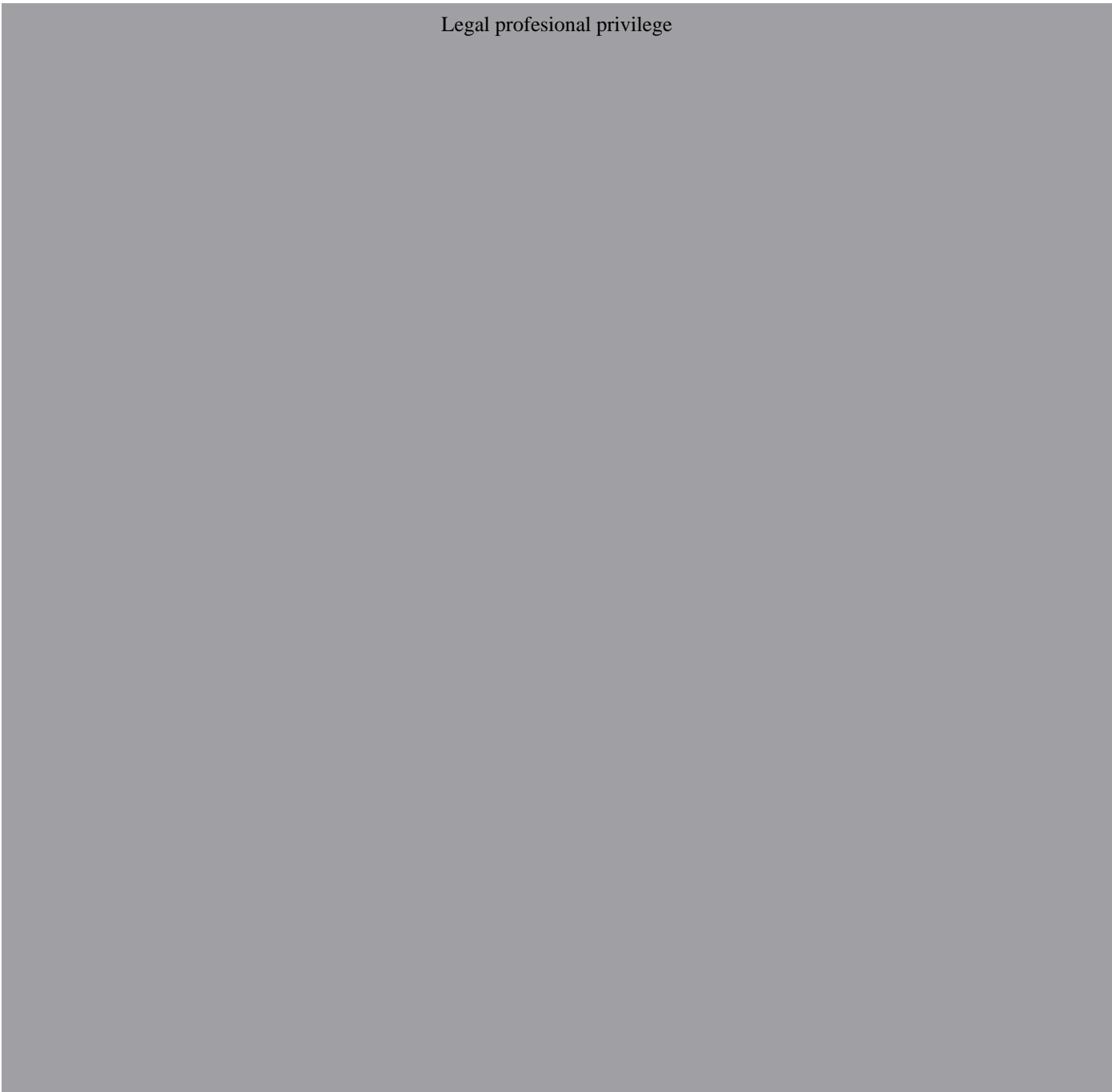
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Annex 3: Summary of minor, technical, consequential, and transitional changes

Purpose

This Annex summarises the minor, technical, consequential, transitional, and savings changes made during detailed legislative drafting of the Fair Trading Amendment Bill (the Bill) with the Parliamentary Counsel Office (PCO).

- These changes are required to ensure the Bill:
- gives full effect to Cabinet's agreed policy decisions
- operates coherently within the Fair Trading Act 1986 (the Act) and the wider legislative framework
- includes appropriate commencement and transition arrangements.

None of the changes described in this Annex alter Cabinet's agreed policy intent or introduce new substantive policy decisions. They are the types of refinements routinely made during detailed legislative drafting.

Overview of changes

The changes fall into the following broad categories:

1. Commencement arrangements
2. Transitional and savings provisions
3. Consequential amendments to other Acts and regulations, including:
 - updates to offence-based references
 - licensing, disqualification, and banning regimes
 - cross references and remedial pathways
 - alignment of safe harbour with the Harmful Digital Communications Act 2015
 - impact on Energy Efficiency (Energy Using Products) Regulations
4. Infringement and secondary legislation tidy-ups
5. Other minor and technical drafting refinements

Each category is summarised below.

1) Commencement arrangements

The Bill provides for staged commencement to support effective implementation and regulatory certainty.

In particular:

- the new enforcement, remedies, and penalties framework will commence six months after Royal assent
- all other provisions of the Bill will commence immediately on Royal assent, as they do not require a transition period.

The six month delayed commencement for the enforcement and penalties framework is intended to provide a preparation period only. During this period:

- no new substantive obligations are imposed on businesses
- existing Act obligations continue to apply.

The delay is designed to:

- give regulators time to update operational guidance, systems, and enforcement approaches
- allow courts and tribunals to prepare for the new remedies and penalty architecture
- give businesses clear notice and sufficient time to review and, if necessary, adjust internal compliance processes in light of the changed consequences of non-compliance, rather than any change in underlying conduct requirements.

Immediate commencement of the remaining provisions avoids unnecessary delay where no implementation lead in is required and allows the benefits of those changes to be realised as soon as possible.

2) Transitional and savings provisions

Transitional and savings provisions ensure continuity across the commencement date and avoid unintended gaps in enforcement, licensing, or disqualification regimes.

In particular, these provisions clarify that pre-commencement convictions under the Act continue to be treated as relevant convictions for specified purposes, even where the same conduct would not constitute an offence under the amended Act.

This prevents historical convictions from inadvertently 'dropping out' as relevant triggers following the shift from criminal offences to civil liability.

- Transitional or savings provisions of this kind are included in the following legislation:
- Fair Trading Act 1986, in relation to management banning orders
- Auctioneers Act 2013
- Motor Vehicle Sales Act 2003
- Private Security Personnel and Private Investigators Act 2010
- Real Estate Agents Act 2008

These provisions preserve the integrity of existing regulatory and licensing settings and do not introduce any retrospective penalties or new policy effects.

3) Consequential amendments to other Acts and regulations

A range of consequential amendments are made to other Acts and regulations so they continue to operate as intended following the changes to the Bill. These amendments are technical in nature and maintain existing policy outcomes.

For clarity, they are grouped by purpose.

Updating offence-based references

Some legislation refers to the Act's obligations on the assumption that they are enforced as criminal offences. As the Bill treats some of this conduct as civil liability, these references are updated so the relevant provisions continue to function as intended.

Affected legislation includes:

- Consumer Guarantees Act 1993
- Credit Contracts and Consumer Finance Act 2003
- Customer and Product Data Act 2025

These amendments ensure that existing consequences continue to apply where the underlying obligation is enforced through civil, rather than criminal pathways.

Licensing, disqualification, and banning regimes

A number of licensing and regulatory regimes rely on the Acts outcomes (such as convictions or findings of misconduct) when determining whether a person may be licensed, or whether banning or disqualification applies.

As the Bill shifts some of the misconduct from criminal offences to civil liability, minor consequential amendments are required to ensure these regimes continue to operate as intended.

In summary, the amendments ensure that:

- existing policy thresholds and look-back periods are preserved
- relevant Fair Trading Act misconduct continues to be captured, regardless of whether it results in a conviction or a civil contravention.

Affected legislation includes:

- Immigration Advisers Licensing Act 2007
- Motor Vehicle Sales Act 2003
- Private Security Personnel and Private Investigators Act 2010
- Real Estate Agents Act 2008
- Secondhand Dealers and Pawnbrokers Act 2004
- Real Estate Agents (Exemptions) Regulations 2017
- Real Estate Agents (Licensing) Regulations 2009

These changes do not widen or narrow who may be licensed or disqualified. They maintain existing regulatory intent following the shift in enforcement settings.

Cross references and remedial pathways

A small number of amendments update cross-references and links to court and tribunal powers so they continue to work properly following the restructuring of the Act's enforcement and remedies framework.

In practical terms, these changes ensure that:

- references in other legislation continue to point to the correct Fair Trading Act provisions
- courts and tribunals can still order compensation, void contracts, and grant other remedies in Fair Trading Act cases, without any loss of jurisdiction.

Affected legislation includes:

- Lawyers and Conveyancers Act 2006
- The Motor Vehicle Sales Act 2003
- The Summary Proceedings (Orders of Reparation) Order 2011

These are technical updates only. They do not change available remedies or who may bring proceedings and simply ensure existing enforcement and compensation pathways continue to operate as intended.

Safe harbour alignment with Harmful Digital Communications Act 2015

As part of the Bill's introduction of a safe harbour for online content hosts, minor consequential amendments are made to ensure the new framework operates coherently alongside existing legislation.

In particular, amendments are made to the Harmful Digital Communications Act 2015 to clarify how the two regimes interact where online content is taken down or disabled.

At a high level, these amendments:

- make clear that an online content host may rely on either the Fair Trading Act safe harbour or the Harmful Digital Communications Act safe harbour, where the relevant statutory conditions are met; and
- clarify how existing Harmful Digital Communications Act processes apply where content is removed or disabled before all procedural steps under that Act are completed.

These amendments are clarificatory and consequential. They do not expand the scope of either safe harbour or alter the underlying policy intent of either regime.

Impact on Energy Efficiency (Energy Using Products) Regulations 2002

The Energy Efficiency (Energy Using Products) Regulations 2002 include an offence provision that relies on section 13 of the Fair Trading Act operating as a criminal offence.

As the Bill amends section 13 of the Fair Trading Act so that it operates as a civil liability provision, a consequential amendment is required to ensure the Regulations remain consistent with the amended enforcement framework.

Accordingly, the amendment removes the offence provision that refers directly to Fair Trading Act offences. The scope of this change is limited to what is necessary to maintain consistency with the Bill, as broader changes to energy efficiency enforcement settings do not arise directly from those amendments and would require separate policy decisions and legislation.

This approach ensures the Energy Efficiency (Energy Using Products) Regulations remain legally coherent following the Bill, without introducing new policy.

4) Infringement and secondary legislation tidy-ups

Minor amendments are made to infringement-related and secondary legislation to reflect the Bill's restructuring of enforcement settings.

- Affected legislation includes:
- Summary Proceedings Act 1957
- Fair Trading (Infringement Offences) Regulations 2014

5) Other minor and technical drafting refinements

Standard, non-substantive drafting refinements were made during detailed PCO drafting to improve clarity and ensure the amended legislation operates coherently.

These refinements include:

- definition and interpretation tidy-ups
- internal consistency and cross-reference corrections
- minor structural or wording changes that do not affect substantive outcomes.

These changes are routine quality-assurance measures and do not alter Cabinet's agreed policy intent.