

**Undertakings to the New Zealand
Commerce Commission under section
46A of the Fair Trading Act 1986**

The Warehouse Limited

1 Persons giving undertakings

- 1.1 These undertakings are given to the Commerce Commission (**Commission**) for the purposes of section 46A of the Fair Trading Act 1986 (**FTA**) by The Warehouse Limited (**The Warehouse**), a company incorporated in New Zealand under company number 116039.
- 1.2 The Warehouse is a supplier of household goods in New Zealand, including children's toys.

2 Background

- 2.1 On 18 May 2023 the Commission purchased samples of three variants of a range of vehicle toys known as the 'Roo Crew Take-Apart-Vehicle' toys (the **Take-Apart Toys**) from The Warehouse. The Commission staff alerted the store manager to an issue with the labelling of the Take-Apart Toys and this was then communicated to the Support Office where immediate action was taken to remove the product from shelves.
- 2.2 At that time, the labelling of the Take-Apart Toys included the image of a young child under the age of 3 years playing with one of the toys under the supervision of an adult. It also included a choking hazard warning and a label stating that it was for children over 3 years.
- 2.3 On 26 May 2023 the Commission sent an email to the Head of Compliance advising of their purchase and its view that the Take-Apart Toys may have breached the Product Safety Standards (Children's Toys) Regulations 2005 (the **Regulations**) as the toys appeared to be marketed to children under the age of 36 months and may have had small parts that could have been a choking hazard.
- 2.4 On 26 June 2023 the Commission instigated an investigation into whether the Take-Apart Toys sold by The Warehouse in New Zealand failed to comply with the relevant mandatory safety standard for children's toys.
- 2.5 Regulation 4 of the Product Safety Standards (Children's Toys) Regulations 2005 (the **Regulations**) provides that the Regulations apply to *'toys manufactured, designed, labelled or marketed for use by children up to and including 36 months of age whether or not the toys are manufactured, designed, labelled or marketed for use by children over that age'*.
- 2.6 Having considered the nature, appearance, colours, size, shape and function of the Take-Apart Toys as well as the expert opinion obtained by the Commission, the Commission considered that regulation 4 of the Regulations applied and therefore that the Take-Apart Toys were required to meet the Standard.
- 2.7 However, The Warehouse has an experienced buying and quality assurance team who assessed the Take-Apart Toy as appropriate for children over 3

years (36 months), in line with the test report on the toys received from the Supplier. As this was the determination, the view was formed that the Regulations did not apply to the Take-Apart Toys and they were not required to meet the Standard.

- 2.8 The Warehouse stocked and sold the Take-Apart Toys in two time periods:
- 2.8.1 Period One: between 17 March 2021 and 18 May 2023, the Warehouse stocked the Take-Apart Toys with labelling that showed an image of a young child under the age of 3 years, with adult supervision, playing with one of the toys (**Labelling**).
- 2.8.2 Period Two: Between 28 June 2023 and 23 December 2023, The Warehouse stocked the Take-Apart Toys with amended labelling, including an image of a child older than the stated age suitability of 3+ on the labelling.
- 2.9 In September 2023, The Warehouse issued a public recall notice for the Take-Apart Toys as labelled in Period One.
- 2.10 Neither the Commission nor The Warehouse have been made aware of any injuries or incidents in respect of the Take-Apart Toys before or after The Warehouse ceased selling the Take-Apart Toys in New Zealand, nor have any complaints been received in respect of its sale of the Take-Apart Toys.
- 2.11 Subsequently, the Commission filed a total of 11 charges against The Warehouse (CRI-2024-004-010305) under the FTA. The Commission alleged that
- 2.11.1 The Take-Apart Toys were manufactured, designed, labelled and/or marketed for use by children aged 36 months and under and therefore caught by the Regulations; and.
- 2.11.2 The Take-Apart Toys did not comply with the Regulations because they contained small parts that failed the small parts test prescribed by Clauses 4.4.1 and 5.2 of the AS/NZS ISO 8124.1:2002 Safety of toys—Part 1: Safety aspects related to mechanical and physical properties' (the **Standard**).
- 2.12 The Warehouse accepts that the Take-Apart Toys were labelled and marketed for use by children aged 36 months and under for Period One. It therefore intends to enter guilty pleas to the 9 charges covered by that time period, to the extent those charges reflect that the Regulations applied because of the labelling and marketing of the Take-Apart Toys only.
- 2.13 The Warehouse does not accept that the Take-Apart Toys were otherwise:
- 2.13.1 manufactured and designed for use by children aged 36 months and under at any time; or

2.13.2 labelled for marketed or use by children aged 36 months and under for Period Two, and

provides these undertakings without any further admission to the extent the Commission makes such allegations.

2.14 The Warehouse has also agreed to provide appropriate enforceable undertakings to the Commission, despite its differing view to the Commission's view as stated below on the products themselves, in the form set out in this document (**Undertakings**) in order to address the Commission's concerns regarding The Warehouse's sale of toys in the future and compliance with the Regulations.

2.15 Although the Commission maintains its position that the Take-Apart Toys were manufactured and designed for use by children aged 36 months and under, it has concluded, after reviewing the practices and criteria outlined in the Commission's Enforcement Response Guidelines, that it is in the public interest to resolve this investigation by:

2.15.1 The Warehouse entering guilty pleas on the basis set out at clause 2.10 above; and

2.15.2 acceptance of these Undertakings.

3 Purposes of Undertakings

3.1 The Undertakings are given by The Warehouse in order to:

2.1.1 satisfy the Commission that it will not stock toys that do not comply with the Regulations; and

2.1.2 resolve the Commission's investigation and prosecution of The Warehouse in relation to the Take-Apart Toys.

4 Undertakings

4.1 The Warehouse undertakes to the Commission, from the Effective Date of the Undertakings (as defined in clause 6 below):

Cease Supply of Certain Products

4.1.1 that it will not knowingly offer for sale in New Zealand the Take-Apart Toys or any other variants of the Take-Apart Toys (the **Toys**) unless they are first tested in accordance with and comply with the Standard under the Regulations;

4.1.2 that it will not knowingly supply or offer to supply to the public a toy that falls into either clause 4.1.3(ii) or (iii) below and fails to comply with the Standard when tested against it;

Test to be applied

4.1.3 in conducting the age grade assessment in respect of the Toys, apply the following test (the **Test**) to determine whether the toys fall within the Regulations, other than for those toys referred to in Schedule 1 of the Regulations:

- (i) Assess whether, viewed objectively, the toy in question was either manufactured, designed, labelled or marketed for use as a plaything by children up to and including 36 months of age including whether the toy has characteristics that appeal to and functionality that makes it able to be used by a child up to and including 36 months of age;
- (ii) If, viewed objectively, the toy meets any one of these alternative limbs (that is of manufacture, design, labelling or marketing for use by children up to and including 36 months of age), then The Warehouse acknowledges that the Regulations will apply and the toy will be tested against the Standard;
- (iii) Where a toy is manufactured, designed, labelled or marketed for use by children both under and over 36 months of age, The Warehouse acknowledges that the Regulations will apply and the toy will be tested against the Standard.

Enhanced age grading procedures

4.1.4 The Warehouse will enhance its procedures around the age grading of toys as follows:

- (i) Create a Toy Assessment Compliance Checklist (the **Checklist**), in conjunction with The Warehouse's external qualified child psychologist, ensuring that for each relevant toy consideration is given to the stated standards in the Regulations, including manufacture, design, labelling and marketing for age appropriateness.
- (ii) The Warehouse's Toy Buying and/or the Quality Assurance teams will make an assessment of the appropriate age grading of the toy, by applying the Test set out at clause 4.1.3 of these Undertakings and using the Checklist as set out at clause (i) above;
- (iii) Where appropriate, The Warehouse will engage an appropriately qualified professional to carry out age grade assessments on toys where The Warehouse's own

assessment and any test reports supplied with the toy diverge, and The Warehouse will adopt the findings of the independent professional assessment as determinative of the appropriate age range.

Enhanced training

- 4.1.5 The Warehouse will provide enhanced training to its Toy Buying and the Quality Assurance teams, through engaging The Warehouse's external qualified child psychologist. The training will cover the factors relevant to determining age grading of toys, including the application of regulation 4 of the Regulations.

The Warehouse will implement this enhanced training by no later than 1 January 2026. The enhanced training will be recorded and re-used ongoing for training new team members and refresher training.

Audit

- 4.1.6 The Warehouse's Internal Audit Team will conduct an annual audit to confirm compliance with the above steps in clauses 4.1.4(ii) and (iii). These internal audits will take place 12 and 24 months post the implementation of clause 4.1.6;
- 4.1.7 These internal audit reports will be provided by the Internal Audit team to the relevant members of The Warehouse Board and senior management;
- 4.1.8 Where any such internal audit reports identify any material failure to comply with these Undertakings, the Internal Audit team will provide a recommendation on how to rectify the material failure; and
- 4.1.9 Upon agreement from the relevant members of The Warehouse Board and/or senior management on the recommendations, The Warehouse will promptly and with due diligence address the material failures.

5 **Effect of the Undertakings**

- 5.1 The Undertakings are Court enforceable undertakings in terms of section 46A of the FTA.

6 **Commencement of Undertakings**

- 6.1 The Undertakings come into effect when:

- 6.1.1 The Undertakings are executed by The Warehouse; and

- 6.1.2 The Commission confirms its acceptance of the Undertakings (Effective Date).

7 Variation of the Undertakings

- 7.1 The Commission and The Warehouse can agree at any time to vary the Undertakings.
- 7.2 No variation to the Undertakings will be effective unless it is in writing, executed by The Warehouse and signed as accepted by the Commission.

8 Duration of the Undertakings

- 8.1 These Undertakings will continue to have effect until the earlier of:
- 8.1.1 The Commission for any reason discharges The Warehouse from the Undertakings; or
- 8.1.2 two years from the Effective Date (Expiry Date).
- 8.2 The Warehouse acknowledges that, upon the Expiry Date, the Regulations continue to apply and that the Test and processes outlined as set out in clause 4.1.3 represent the appropriate considerations to apply to determine whether toys fall within the Regulations (unless the applicable law or Regulations change, in which case any changed applicable law will apply).

9 Compliance with the Undertakings

- 9.1 If The Warehouse becomes aware of a breach of these Undertakings, whether advertent or inadvertent, it will notify the Commission within 20 working days of becoming aware, giving full particulars of the breach.
- 9.2 The Warehouse is to comply with all reasonable requests of the Commission in establishing whether there is compliance with the Undertakings.
- 9.3 The Undertakings may be enforced under s 46B of the FTA.

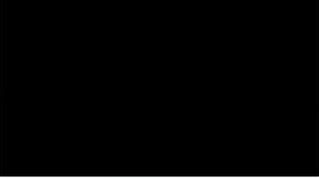
10 Miscellaneous

- 10.1 These Undertakings are properly executed if the parties sign the same copy, or separate identical copies of the execution page. Where separate copies are signed by The Warehouse or the Commission, the signed copy can be the original document, or a faxed or emailed copy.
- 10.2 The Warehouse acknowledges that:
- 2.2.1 The Commission may make the Undertakings publicly available including publishing them on the Commission's enforcement

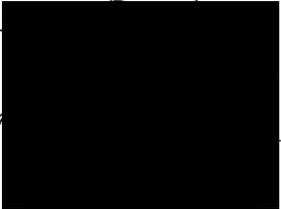
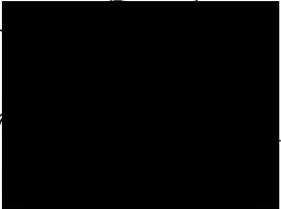
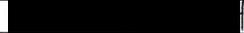
register on its website;

- 2.2.2 The Commission may, from time to time, make public reference to the Undertakings including in news media statements and in the Commission's publications; and
- 2.2.3 Nothing in the Undertakings is intended to restrict the right of the Commission, or the right of any other person, to take action under the FTA or under any other statute or law except in relation to an action by the Commission against The Warehouse in respect of the Take-Apart Toys (other than an application brought under s 46B of the FTA).

SIGNED for and on behalf of THE WAREHOUSE LIMITED:

Signature:  Name: 

Date: 30 October 2025

whose signature is: 
Signature:  Name: 
Occupation:  Address: Auckland, New Zealand

ACCEPTED by THE COMMERCE COMMISSION by:

Signature of authorised signatory Name of authorised signatory
  

Date: 3/11/2025

whose signature was witnessed by:

Signature:  Name: 
Occupation:  Address: 