

## Unfair Contract Terms Update – Time to Review Your Contracts

The final consumer law reform 2013 changes are to be implemented this month. On March 17 the unfair contract term regime comes into force, prohibiting unfair terms in standard form consumer contracts between businesses and consumers. Consumers who consider a term in a standard form contract is unfair will now be able to complain to the Commerce Commission. The Commission may then apply to the court for a declaration that the term is unfair. Any term declared unfair will be unable to be included or enforced by the business in any of its contracts. If the business does include or enforce the term it will be liable for a fine of up to \$600,000 for a company or \$200,000 for an individual.

### What is a standard form consumer contract?

A standard form consumer contract is essentially a pre-prepared contract offered on a 'take it or leave it' basis that relates to goods or services of a kind ordinarily purchased for personal, domestic or household use, for example gym membership contracts, mobile phone contracts, terms of trade and also online flight bookings. This will include business to business contracts in some situations. For example, a contract between a business and a mobile phone provider for new employee mobile phones will likely be covered.

### What types of terms will be unfair?

A term may be considered unfair if:

- the term causes significant imbalance in the parties' rights and obligations;
- the term could cause detriment (whether financial or otherwise); and
- the term is not reasonably necessary to protect the legitimate interests of the advantaged party (which is usually the business).

Terms that go to the heart of the contract, such as those about the goods or services being sold or the upfront price payable, cannot be declared unfair.

The regime includes a 'grey list' of the kind of terms that may be considered to be unfair. These types of terms are one sided terms, where one party to the contract is able to adjust the contract in some way but the other party has no corresponding right. For example, a term that allows one party to change the price in a contract without the ability for the other party to cancel, a term that allows one party to unilaterally terminate the contract or a term that penalises one party (but not the other party) for a breach or termination of the contract.

The Commerce Commission has confirmed it will be publishing all unfair term declarations on its website. We will be keeping an eye on these declarations and will keep you informed of any significant decisions.

Now is a good time to review your standard form contracts. If you are concerned your contracts may contain unfair terms, or if you require further information on the new regime in general, please contact any one of our Commercial team members.