



## Unfair contract terms regime starts 17 March: a summary of key issues

### Speed read

Here we compile and summarise our ongoing article series about one of the most radical changes to New Zealand contract law in years.

The unfair contract terms regime in the Fair Trading Act allows the Commerce Commission to request court declarations that standard form consumer contract provisions are unfair. Once declared, the unfair provisions become unenforceable, and companies in breach of the regime can be fined up to \$600,000.

Our article series addresses key issues and developments that NZ suppliers need to be aware of prior to the unfair contract terms regime coming into effect on 17 March 2015.



February 2015

### The Detail

The new unfair contract terms provisions in the Fair Trading Act will introduce a requirement that standard form consumer contracts don't contain unfair contract terms.

This new regime closely follows Australia's legislation introduced in 2010, the Australian Consumer Law.

Australia's regulator, the ACCC, reviewed consumer contracts across several industries and highlighted contractual provisions in breach of the new regime. Following this 2013 [report](#),<sup>1</sup> the regulator has made it clear that it will increasingly look at enforcement options.

The Commerce Commission is likely to take a similar approach in New Zealand.

Below, we summarise our article series about the impending regime and address some key issues to help suppliers avoid being stung.

### ***Many B2C contract terms unenforceable from March 2015 (November 2014)***

Read the article [here](#).

ACCC's 2013 report, *Unfair Contract Terms: Industry Review Outcomes*, identifies specific non-compliant provisions frequently found in consumer contracts. NZ will employ a similar unfair contract terms regime, and many common NZ supplier contracts will not comply with this law. The ACCC report provides heads-up guidance as to what NZ suppliers need to change. We also outline an action list of changes in preparation for the new regime.

### ***Unfair contract terms law: first case is against ISP (April 2013)***

Read the article [here](#).

In April 2013, ACCC issued proceedings against an ISP, Bytecard, in the first case under the Australian unfair contract terms regime. The ACCC's report and enforcement approach is highly relevant to NZ suppliers.

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**Unfair contract terms developments in NZ (August 2013)**

Read the article [here](#).

In Australia's first unfair contract terms proceeding, the ISP at fault consented to judgment against it, re-affirming the regulator's objective (as will likely be the case in NZ) of educating first, but then enforcing the law against non-compliant suppliers. Meanwhile, we note legislative reform and summary material towards a similar unfair contract regime in the UK.

**Summary: Fair Trading Act and Consumer Guarantees Act changes (June 2014)**

Read the article [here](#).

A convenient table summarising other big FTA and CGA changes affecting both B2B and B2C contracts from 17 June 2014 onwards. The table is linked to more detailed articles, complete with action lists, for each law change.

**A trap: new unfair contract terms regime applies to varied and renewed contracts (November 2014)**

Read the article [here](#).

This update clarifies that the unfair contract terms regime will only apply to standard form consumer contracts that are entered into, varied, or renewed from 17 March 2015 onwards.

Nonetheless, because the majority of ongoing consumer contracts are varied or renewed at some stage, and the fact that it is not yet clear what constitutes a variation or renewal (is a price rise a variation?), suppliers should start planning how to deal with the new law as soon as possible.

**Unfair contract terms: Do what the regulator says or face the consequences (December 2014)**

Read the article [here](#).

After successfully prosecuting a Telco, the ACCC has turned its attention to a car hire company in breach of the unfair contract terms regime. In both cases the contracts contained terms found in many standard form B2C contracts.

The NZ Commerce Commission will also seek to initially educate, then directly encourage compliance, before enforcing the law against recalcitrant suppliers in court. The message: get ready for more action.

**Common Telco B2C contract clauses likely to be unenforceable from March 2015 (February 2015)**

Read the article [here](#).

Initial implementation of the Australian unfair contract terms regime involved a major focus on terms in Telco contracts. We look at the treatment of Telcos by Australian regulators and identify 8 clauses typically found in standard form Telco B2C contracts that will require change under the new law.

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1. Australian Competition & Consumer Commission *Unfair Contract Terms: Industry Review Outcomes* (14 March 2013).

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