

CORPORATE AND
CONSUMER LAW

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COMMISSION CONSULTING ON
GUIDELINES ABOUT UNFAIR CONTRACT
TERMS

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The recent amendments to the Fair Trading Act 1986 included the introduction of a prohibition on including, enforcing or relying on any “unfair contract term” in standard form consumer contracts. This prohibition will apply to contracts that are entered into after 17 March 2015 or which are varied or renewed after that date.



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The Commerce Commission has released draft guidelines on the new provisions of the Fair Trading Act dealing with unfair contract terms. The draft Unfair Contract Terms Guidelines can be viewed on the Commission’s website [here](#). The specified purpose of the guidelines is to:

- explain the Unfair Contract Terms provisions;
- explain how the Commerce Commission will assess whether a term is unfair, and the principles to be applied by the courts;
- outline the kinds of terms that may be unfair, and those that may not be unfair; and
- describe the Commerce Commission’s approach to enforcing breaches of the Unfair Contract Terms provisions.

The Commission welcomes feedback on the draft guidelines and expects to release the final guidelines by the end of November 2014.

“We are holding this consultation well in advance of March 2015, as we want to make sure businesses have plenty of time to run a ruler over their current consumer contracts and get ahead of any issues” said Commerce Commission Chairman Dr Mark Berry.

The draft Unfair Contract Terms Guidelines highlight that the Commission has considered a wide range of businesses that may use standard form contracts, including finance companies, retirement villages, gyms, telecommunications companies, residential construction, motor vehicle sales, travel (such as airfares and rental cars), day care centres, online apps and software, pay TV, hire purchase, retirement villages, residential tenancy and real estate and utilities like electricity and gas. Some of these businesses are likely to use standard form consumer contracts that will be subject to the prohibition against using or relying on unfair terms.

While not legally binding, the guidelines shed light on the Commerce Commission’s intended approach to enforcing the new provisions and assessing whether a contract term is “unfair”. This is particularly important due to the fact that only the Commerce Commission can apply to the court for a declaration that a standard form consumer contract term is “unfair”.



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The Commerce Commission has indicated that it will make the decision as to whether to apply to have a term declared unfair based on its current enforcement guidelines which are available [here](#). This means that factors such as the extent of detriment caused, the seriousness of the relevant trader's conduct and the extent of public interest in a particular issue will be relevant factors when the Commerce Commission is deciding whether to make an application to the Court.

The Commission invites submissions on the draft Unfair Contract Terms Guidelines. Submissions should be sent to uctconsult@comcom.govt.nz by 5pm on 30 September 2014.

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