

## Changes to the Fair Trading Act

The Fair Trading Amendment Act 2021 places new obligations on businesses and provides new protections for consumers and small businesses with effect from 16 August 2022.

These include:

- unfair contract terms provisions are extended to cover standard form small trade contracts
- unconscionable conduct in trade is prohibited

The Commerce Commission (CC) is preparing guidance for businesses which will be published on their [website](#) in July and sent to [subscribers](#). It is recommended that you subscribe.

If your business uses standard form contracts for sale of goods or services to other businesses, CC recommends that you seek legal advice about your contracts before August.

### Extension of unfair contract terms to cover standard form small trade contracts – 16 August 2022

The unfair contract terms provisions, which currently apply to standard form consumer contracts only, are extended to include standard form small trade contracts. A contract is a 'small trade contract' if:

- each party is engaged in trade
- it is not a consumer contract
- it does not comprise or form part of a trading relationship that exceeds an annual value threshold of \$250,000 (including GST, if applicable) when the trading relationship first arises.

Contracts entered into before 16 August 2022 (and not varied or renewed on or after that date) will not be considered small trade contracts.

If the Court declares a term unfair, it will be an offence for a person to include, apply, enforce, or rely on the term in a small trade contract. The offence is punishable by a fine of up to \$200,000 for an individual or up to \$600,000 for a body corporate, and civil remedies will also apply.

## Prohibition on unconscionable conduct – 16 August 2022

There is a new prohibition against unconscionable conduct in trade. The term itself is not defined in the Fair Trading Act, but there is a non-exhaustive list of factors that the court can consider when assessing whether a trader's conduct is unconscionable.

This includes:

- the relative bargaining power of the trader engaging in the conduct and any affected person who is disadvantaged or likely to be disadvantaged by the conduct
- the extent to which the trader and an affected person acted in good faith
- whether the affected person was reasonably able to protect their interests when taking account of their particular characteristics and circumstances
- whether the affected person was able to understand any documents provided by the trader
- whether the trader subjected an affected person to unfair pressure or tactics or otherwise unduly influenced them.

Conduct can be unconscionable regardless of whether:

- there is a system or pattern of unconscionable conduct
- a particular individual is identified as disadvantaged
- there is a contract or not.

Traders that engage in unconscionable conduct can be fined up to \$600,000 for a business and \$200,000 for an individual.

Source: [Commerce Commission NZ](#)

*This article is brought to you by AdviceWise People, who provide WGANZ's free employment helpline 0800 692 384. If you have any questions or would like to discuss the article, please call Philip or Anthony.*