

Consumer Law Reform Bill

There is currently a bill before Parliament which, if passed, will extensively overhaul consumer law. All businesses will be forced to review their contracts to ensure compliance with the new laws.

Consumer Law is comprised mainly of the Consumer Guarantees Act (**CGA**) and the Fair Trading Act (**FTA**). In the past, many businesses have been able to largely disregard the CGA. That is because there is provision for businesses to contract out of the CGA when dealing with other businesses. So, businesses have largely only had to ensure compliance with the FTA in this area. Compounded with this has been limited scope of the FTA and relatively low monetary penalties for breach.

Businesses will (if the Bill is passed) have:

- Less ability to contract out of the CGA; and
- Far greater risk under the FTA than is currently the case.

A business will only be able to contract out of the CGA in its dealings with another business where it is fair and reasonable for it to do so. It can be expected that this will overcome "flea on the back of the elephant" type scenarios and require some equality of exchange in the respective bargaining positions of the businesses, or at least it being demonstrable that both parties have had access to legal advice. Businesses seeking to contract out of the CGA may be advised to seek a warranty from the other party that it has either sought legal advice or voluntarily declined to take advantage of the opportunity to do so.

Greater risk under the FTA stems from its wider scope with introduction of the concept of "unfair contract terms". Under the FTA it will be prohibited for a business to include "unfair contract terms" in their standard form contracts. Just what will be regarded as unfair in this context will undoubtedly be determined by the courts over time but businesses would be well advised to review their existing contracts with the new concept of unfair contract terms in mind. The penalty for getting this wrong is another factor for businesses to keep in mind.

Maximum penalties under the FTA are to be increased from \$200,000 to \$600,000 per offence. We would be happy to undertake a review of your contracts in light of these changes.