

# UCT reforms: expanded scope and penalties

## New consequences for Unfair Contract Terms (UCTs)

- Illegality
- Penalties
- New court variation power
- Other remedies

### Does the UCT regime apply?

#### Current Regime

- 1 Is it a standard form contract?**  
*Are the terms and conditions set by one party and is there little scope to negotiate?*  
If **yes**, move to step 2.  
If **no**, the UCT regime **does not apply**.
- 2 Is the contract with a consumer?**  
*Has the contract been entered into with an individual for goods, services, or land, predominantly for personal or domestic use?*  
If **yes**, move to step 5.  
If **no**, move to step 3.
- 3 Is the contract with a small business?**  
*Has the contract been entered into with a small business (someone who employs ≤ 20 people)?*  
If **yes**, move to step 4.  
If **no**, the UCT regime **does not apply**.
- 4 Does the contract meet the financial thresholds?**  
*Is the upfront price payable (excluding interest) under the contract ≤ \$300,000 or, for a contract of over 12 months, ≤ \$1 million?*  
If **yes**, move to step 5.  
If **no**, the UCT regime **does not apply**.
- 5 The UCT regime applies**  
Consider whether the agreement contains any terms that may be **unfair**. Existing legal principles apply.

REFORM

#### Proposed Reforms

- 1 Is it a standard form contract?**  
*Terms and conditions are set by one party with little scope to negotiate, ie:*
  - 'repeated usage of a contract' is a relevant factor;
  - negotiation of minor / insubstantial changes, selection of pre-determined options, ≠ ability to negotiate;
  - the ability of a party to negotiate a similar contract is not to be regarded as indicative that the contract is not a standard form contract.
 If **yes**, move to step 2.  
If **no**, the UCT regime **does not apply**.
- 2 No change**
- 3 Is the contract with a small business?**  
*Small business is:*
  - someone who employs ≤ 100 people); OR
  - business with annual T/O of ≤ \$10 million
 If **yes**, move to step 4.  
If **no**, the UCT regime **does not apply**.
- 4 Does the contract meet the financial thresholds?**  
*For ACL, no financial thresholds.*  
*For ASIC Act, is the upfront price payable (excluding interest) under the contract ≤ \$5 million?*  
If **ACL / yes**, move to step 5.  
If **no**, the UCT regime **does not apply**.
- 5 No change**

REFORM

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**The UCT reforms are proposed to come into effect 12 months from Royal Assent. Now is the time to ensure your business' standard form contracts are compliant.**

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