

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.



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**



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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