

28 March 2018

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Fair Trading (Oppressive Contracts) Amendment Bill

1. We have considered whether the Fair Trading (Oppressive Contracts) Amendment Bill ('the Bill'), a member's Bill in the name of Duncan Webb MP, is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 ('the Bill of Rights Act').
2. The Bill amends the Fair Trading Act 1986 ('the principal Act'). It aims to redress the power imbalance between consumers and suppliers, particularly in respect of standard form contracts. The Bill:
 - a. inserts new definitions for 'questionable' contract terms, 'oppressive' contract terms and enforcement, and 'standard form contract';
 - b. replaces s 26A of the principal Act, which relates to contract terms in standard form consumer contracts that the High Court or District Court have declared to be unfair, with new ss 26A and 26B. New ss 26A and 26B prohibit a person in trade from including or enforcing an unfair contract term in a standard form contract, and prohibit enforcement of a standard form contract term if to do so would be oppressive;
 - c. repeals ss 46H to 46M of the principal Act to remove the Commerce Commission's ability to apply to the High Court or District Court for a declaration that a term in a standard form consumer contract is an unfair contract term; and
 - d. places restrictions on the circumstances in which a person in trade can rely on a limitation defence in respect of civil proceedings brought by a consumer relating to a consumer contract.
3. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.

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