

Consumer Law Year in Review 2019

New prohibitions, penalties, and precedent

LOOKING BACK



Finally some precedent on the Unfair Contract Terms (UCT) regime

In 2019 the High Court made its first declaration that a contract term is “unfair” under the UCT regime. Home Direct had a “voucher entitlement” scheme whereby customers would continue to make direct debit payments, even after they had finished paying off goods previously purchased, with those payments being converted to voucher entitlements. Two terms in that scheme were regarded as unfair. First, the voucher entitlements were non-refundable and second they expired after 12-months (and so Home Direct would retain the funds from any expired vouchers). Home Direct will provide refunds to customers who have had their vouchers forfeited between 17 March 2015 and July 2018.



NZCC successful appeal against Viagogo interim injunction case

The Court of Appeal held that the High Court erred in its finding that it did not have jurisdiction to grant an interim injunction against Viagogo (a Swiss-based ticket resale website). The High Court said it did not have jurisdiction as Viagogo had not yet been formally served in Switzerland. However, the Court of Appeal said that while the High Court must have jurisdiction to finally determine a case, the jurisdiction to grant interim relief is not limited in the same way. This decision means that the NZCC’s application for an interim injunction is able to proceed. However, the Court of Appeal notes that the NZCC must consider amendments already made to Viagogo’s website before it decides to proceed.



High Court re-writes approach to FTA penalties

The High Court rewrote the approach to penalties under the FTA when it fined Steel & Tube Holdings Limited ~\$2 million for making false and misleading representations about the testing and earthquake standards compliance of its steel mesh products. The High Court established a new framework for determining the starting point for penalties by prescribing minimum tariffs for each category of misrepresentation – with inadvertent misrepresentations being the least culpable and deliberate misrepresentations being the most culpable.



Surge in complaints to NZCC

Consumer complaints to the NZCC have risen sharply by more than 20% compared to the 2017/2018 year, to 8,964 complaints. This increase in complaints is almost entirely in relation to issues covered under the FTA – which increased by more than 1,500 complaints.

LOOKING AHEAD



New consumer protection powers introduced to Parliament

To wrap up the year, a Fair Trading Amendment Bill was introduced to Parliament as a result of the government’s work on unfair commercial practices and the review of consumer credit law.

The Bill:

- introduces a prohibition against unconscionable conduct in trade;
- extends the current protections against unfair contract terms in standard form consumer contracts to also apply to business-to-business contracts that form part of trading relationships with a value below \$250,000 per year; and
- strengthens the ability of consumers to require uninvited sellers to leave or not enter their premises, including through the use of ‘Do Not Knock’ stickers.

There will be a further opportunity for affected parties to make submissions through the select committee process early next year.



NZCC releases priorities 2019/20

The NZCC has issued its priority focus areas for 2019/2020, three of which are in the consumer and credit law space:

- Motor vehicle financing and related add-ons
- Environmental impacts of products
- Online retail

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