

PRESENTERS



Joe Edwards, Russell McVeagh, Auckland

Joe is a litigation partner who heads the Marketing Law, Media and Intellectual Property team. He specialises in commercial litigation, with a particular focus on regulatory investigations and prosecutions, privacy law, intellectual property and consumer law disputes. Joe has been counsel on some of New Zealand's leading civil and criminal cases under the Fair Trading Act.



Troy Pilkington, Russell McVeagh, Auckland

Troy specialises in the areas of competition (antitrust), consumer, and regulatory law, including advising on joint ventures, competitor collaborations and partnering arrangements, exclusive supply arrangements and Fair Trading Act issues. He has worked on a number of significant Commerce Commission investigations and market studies.

The statements and conclusions contained in this book are those of the author(s) only and not those of the New Zealand Law Society. This book has been prepared for the purpose of a Continuing Legal Education course. It is not intended to be a comprehensive statement of the law or practice, and should not be relied upon as such. If advice on the law is required, it should be sought on a formal, professional basis.

CONTENTS

1. INTRODUCTION.....	1
2. BACKGROUND TO THE INTRODUCTION.....	3
3. THE PROHIBITION AGAINST UNCONSCIONABLE CONDUCT	5
A SNAPSHOT OF NEW ZEALAND'S UNCONSCIONABLE CONDUCT PROVISIONS.....	5
HOW DOES THE PROHIBITION OVERLAP WITH THE DOCTRINE OF UNCONSCIONABILITY?	5
HOW DOES THE PROHIBITION OVERLAP WITH THE PROHIBITION ON HARASSMENT AND COERCION?	7
WORKING THROUGH THE OPERATION OF THE PROHIBITION	8
CORE PRINCIPLES ON "UNCONSCIONABLE CONDUCT" IN AUSTRALIA.....	9
KEY THEMES FROM ENFORCEMENT ACTION IN AUSTRALIA	11
PRACTICAL TIPS FOR NEW ZEALAND BUSINESSES.....	13
4. UNFAIR CONTRACT TERMS BUSINESS-TO-BUSINESS EXTENSION	17
THE EXISTING CONSUMER UCT REGIME	17
HOW DOES THE NEW B2B PROHIBITION WORK?.....	18
<i>Significant imbalance</i>	20
<i>Not reasonably necessary in order to protect legitimate interests</i>	20
<i>Would cause detriment</i>	21
<i>Transparency and the contract as a whole</i>	21
KEY THEMES FROM ENFORCEMENT IN AUSTRALIA	22
PRACTICAL TIPS FOR NEW ZEALAND BUSINESSES.....	24