

New laws that are designed to protect small businesses from falling victim to unfair contract terms may help tip the balance of power back in favour of smaller farmers, especially when it comes to innovations involving data.

In November 2016, Australia's current regime of protection against unfair contract terms for consumers will be extended to cover [unfair terms in standard pre-printed form contracts for small business](#). I am studying the impact of these changes on the multitude of standard form contracts that farmers deal with on a daily basis, particularly contracts associated with digital agriculture.

[It won't be too long](#) before we see swarms of autonomous, collision-avoiding agri-bots, driverless tractors and drones in use on farms. These digital technologies bring undeniable opportunities for productivity gains to farmers.

However for each digital farming technology adopted, a standard form "Terms of Use" agreement is entered into by the farmers. This regulates the collection and aggregation of the farm data by the technology.

Farm data is being seen as [one of the most valuable things](#) that farmers harvest now because it can be used to predictive business models for all aspects of farming. Many of these "Terms of Use" agreements can be one-sided, as they give agribusinesses the ability to develop these models, while farmers lack this information.

## **Extending the law to cover unfair contract terms for small business**

The new unfair contracts term legislation affords protection to small business- defined as those that employ fewer than 20 persons. While there are some notable exceptions, many primary producers operate businesses that would fall under this definition of a small business, this includes the dairy and horticultural industries.

The unfair terms in milk processing contracts being enforced against dairy farmers in Victoria

are just one example of the impact that unfair contract terms can have on an industry. This is also now the subject of an [Australian Competition and Consumer Commission review](#) .

Under the most recent changes, a contract term may be declared void and unenforceable if it satisfies these three criteria:

1. the contract is a standard form contract for the supply of goods and services (including financial services) or the sale or grant of an interest in land
2. where the upfront price payable under the contract does not exceed A\$300,000 for contracts shorter than 1 year (or A\$1,000,000 for contracts longer than 12 months)
3. the term is unfair.

In terms of the third requirement terms are defined as “unfair” where:

- they could cause a significant imbalance in the parties’ rights and obligations
- it is not reasonably necessary to protect the legitimate interest of the party relying up the term
- detriment is suffered, either financial or otherwise.

In considering whether individual terms are unfair - how transparent they are and how they relate to the contract as a whole are looked at. Put simply, transparency means the terms are legible, in plain language, presented clearly and readily available to any party affected by the term or contract.

The standard form contracts the new laws apply to, are prepared by one party and presented to the other party who has little or no opportunity to negotiate the terms prior to entry. There are certain contracts between IT companies and farmers that could be considered unfair under the new legislation.

For example, agribusinesses are working hand in hand with IT companies to develop the new digital farming technologies, like business giant [Monsanto’s acquisition of Climate Corp \(who specialise in digital systems\) in the United States](#)

. Farmers agree to data contracts from these companies as part of using their technologies.

Often these contracts use an agreement where the click of an “I agree” icon signifies consent to the terms of a software licence. This could be considered not a completely thorough or transparent process for understanding the information in the contract.

### How the changes may affect the digital farmer

The “terms of use” embedded in digital farming technologies are complex, generally non-negotiable and presented on a “take it or leave it” basis when the technology is adopted. Many of the terms in these data contracts (that relate to the ownership, privacy, security, and the sharing of farm data with third parties) are not exactly considered to be transparent in relation to these latest unfair terms reforms.

The small print in some instances is locked under layers of policies that can only be found on some agribusinesses websites. This then creates a power imbalance between some multinational agribusinesses and small farming businesses. This is because often farmers are not made aware of the terms upon which they are giving access to their farm data.

Farmers have long held concerns about [the security and privacy of their data](#) and whether they have a right of access to their data once it has been collected and aggregated.

[A recent report](#)

revealed the majority of farmers saw value in sharing data with their peers but privacy was still one of the main concerns.

The latest extension of the law to cover small farming businesses contracts provides a golden opportunity for large agricultural data companies to review their contracts with farmers’ concerns in mind. Terms that appear excessive in terms of what is reasonable to protect their interests should be reviewed to ensure the privacy and security of farmers’ data is adequately protected.

Hopefully, these changes will go some way towards a more transparent, fair and equitable contracting environment where conversation and negotiation become part of the future of big agricultural data.

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## Changes to contract laws could give small farming businesses more control of data and innovation

Written by The Conversation

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**Read more** <http://theconversation.com/changes-to-contract-laws-could-give-small-farming-businesses-more-control-of-data-and-innovation-69275>