

Revised Unfair Contract Terms Regulations

Broader Reach and Higher Penalties

Summary

- Increased Financial Penalties
- Court discretion for Unfair Contract Terms (UCTs)
- Increased Court Authority
- Additional Remedial Actions

Under the current law:

1. Unfair contract terms are rendered void.
2. If the term is declared unfair by the court, it is automatically void.
3. The law applies to non-party consumers.
4. The 'small business' threshold is defined as having fewer than 20 employees and an upfront price under \$300,000 or \$1 million for contracts lasting over 12 months.
5. The court can enjoin a party from applying or relying on a term of a contract declared unfair.
6. When determining if a contract is a 'standard form contract' the court considers factors like whether one party

Under the new law:

1. Unfair contract terms are unlawful.
2. The court has expanded powers to issue appropriate orders preventing or reducing losses caused by unfair contract terms.
3. The law applies to both non-party consumers and non-party small businesses.
4. The small business; threshold includes businesses with fewer than 100 employees or an annual turnover of less than \$10 million.
5. The court can injunct individuals from entering future contracts with similar terms and applying or relying on such terms in existing contracts as well as impose civil penalties.
6. The court, in determining if the contract is a 'standard form contract' will take into account if there are limited opportunities for the consumer or small business to negotiate the terms of the contract, whether one of the parties has all or most of the bargaining power relating to the transaction, whether one of parties was required to accept or reject the terms of the contract and whether the terms of the contract take into account the specific characteristics of another party or the particular transaction. The court does not consider minor negotiation opportunities or the extent of negotiation in another contract when assessing fairness.
7. New penalties in place, charged per contravention (per unfair term):
 - Body corporate – the greater of (i) \$50 million, (ii) three times the value of the benefit of the UCT or (iii) 10% off annual turnover during the preceding 12-month period; or
 - Individual - \$2,500,000

UCT reforms set in motion one year after Royal Assent.

Act now to align your business contracts with the new standards.

Contact us now!



Bruce McFarlane
Principal of BDC Law
M +61 402 205 878
bmcfarlane@bdclaw.com.au



Jane Garber-Rosenzweig
Special Counsel of BDC Law
M +61 478 041 646
jgarberrosenzweig@bdclaw.com.au