

LegalTalk Alert

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PRICEWATERHOUSECOOPERS 



New unfair contract terms provisions commence 1 July 2010

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As highlighted in our earlier Alert on the new Australian Consumer Law, all Australian and foreign businesses operating in Australia should now be aware that the unfair contract terms provisions introduced by the *Trade Practices Amendment (Australian Consumer Law) Act (No. 1) 2010* are to commence on 1 July 2010.

Standard form consumer contracts entered into on or after 1 July 2010 will be subject to the new provisions whereas a contract entered into prior to 1 July 2010 will not be, unless that contract has been varied or renewed.

If businesses have not already done so, they should review their standard form consumer contracts as a matter of priority to ensure that they do not contain any unfair terms. Failing to ensure contracts are compliant may result in a term being void, which will have consequences to the remaining terms and overall operation of the contract.

The new provisions provide that a term is void and unenforceable if:

- it is a term of a consumer contract
- the contract is a standard form contract, and
- the term is unfair.

A consumer contract is a contract for supply of goods or services, or a sale or grant of interest in land, to an individual whose acquisition is wholly or predominantly for personal, domestic or household use or consumption. Therefore, except in relation to sole traders, contracts between businesses are excluded from the new provisions.

There is no definition for a standard form contract. However, in general terms, a contract may be considered to be in standard form if it is has been prepared by one party to the contract and it was not subject to negotiation. A common example is a suppliers standard terms of trade, usually printed on the back of a receipt.

A term will be unfair if it:

- would cause a significant imbalance in the parties' rights and obligations under the contract
- is not reasonably necessary to protect the legitimate interests of the party who would be advantaged, and
- would cause detriment (financial or non-financial) to a party if it was applied or relied on.

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