
Government enacts unfair contract terms legislation to protect small business

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In brief

The Federal Government has now enacted legislation to expand the unfair contract terms regime to protect small business. This new legislation is likely to become operational before the end of next year.

The regime will apply to standard form contracts:

- entered into with small businesses which employ less than 20 people,
- where the upfront price of the contract does not exceed \$300,000 (or \$1 million for contracts with a duration of more than a year).

Enterprises that use standard form contracts with small businesses should review their relevant contracts before the regime becomes operational to identify any contractual terms which are susceptible to being declared void if challenged.

In detail

The Federal Government has now enacted legislation to expand the unfair contract terms regime to protect small business. This new legislation will commence 12 months after royal assent, and is likely to become operative before the end of next year.

The existing unfair contract terms regime was limited to standard form contracts used in the supply of goods or services to consumers who acquired them wholly or predominantly for personal, domestic or household use or consumption.

The new regime will apply to all unfair contract terms found in a standard form contract used to acquire goods or services from small businesses or for the supply of goods or services to small businesses where:

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- the business you deal with at the time the contract is made, employs fewer than 20 people (including fulltime, part-time and casual employees who work on a regular and systematic basis, using a headcount approach), and
 - the upfront price payable under the contract does not exceed \$300,000 (or \$1million if the contract has a duration of more than 12 months).

These higher monetary thresholds follow the Turnbull Government's support of the Senate's amendments which increased the original upfront price threshold of \$100,000 proposed (and \$250,000 for contracts with a duration of more than a year).

Contractual terms found to be unfair are void when entered into with a consumer or small business.

The legislation will apply to standard form business contracts that are entered into or renewed/varied after the commencement date.

A more detailed summary of the Treasury Legislation Amendment (Small Business and Unfair Contract Terms) Bill 2015 can be found in our earlier [LegalTalk Alert](#) dated 19 August 2015.

The takeaway

The extension of the unfair contract terms regime will affect many companies who use standard form contracts to acquire goods or services from small businesses or supply goods or services to small businesses.

At PwC, we have developed an unfair contract terms matrix that will facilitate a systematic review of the contractual terms of your standard form contracts.

If you use standard form contracts with small businesses (or consumers), it will be important to commence a review of your relevant contracts before the regime becomes operational to identify the contractual terms which are susceptible to being declared void if challenged. As it is likely to become operational before the end of next year, now is an opportune time to achieve compliance with the new regime.

Let's talk

For a deeper discussion of how these issues might affect your business, please contact:

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