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## Commercial Law e-alert

### Australian Consumer Law – Unfair contract terms in standard form consumer contracts

The unfair contract provisions under the *Trade Practices Amendments (Australian Consumer Law) Act 2010* (“Act”) came into force on 1 July 2010. This means that standard form consumer contracts entered into from 1 July 2010 are subject to the unfair contract provisions of the Act.

#### What types of contracts are subject to the unfair contract provisions?

The unfair contract provisions apply to unfair contract terms in “standard form consumer” contracts.

Standard form contracts are widely used for financial products and services such as loans, credit cards, telecommunications products and utilities services.

“Consumer” contracts include contracts for the supply of goods or services, financial products or financial services, and the sale or grant of an interest in land. A consumer contract can only exist if one of the parties is an individual and is acquiring goods or services predominantly for personal, domestic or household use.

Contracts that are negotiated, contracts between businesses, and insurance contracts are not subject to the unfair contract provisions.

#### What is an unfair contract term?

Under the unfair contract provisions of the Act, a term in a standard form consumer contract is unfair if:

1. it would cause significant imbalance to the rights and obligations under the contract;
2. it is not reasonably necessary to protect the legitimate interests of the party advantaged by the term; and
3. it would cause financial or other detriment to a party.

Factors which a court will consider in determining whether a term is unfair include whether the term is legible, presented clearly, expressed in plain English and readily available to all parties, and the terms of the contract as a whole.

#### What if your contract was entered into before 1 July 2010?

Contracts already in existence on 1 July 2010 are only subject to the unfair contract provisions if the contract is renewed or a term is varied on or after 1 July 2010.

#### What is the effect if a term is unfair?

If a party to a standard form consumer contract believes a term is unfair, they may apply to a court to have the term declared unfair and void, or make a complaint to the Australian Competition and Consumer Commission (ACCC) or the Australian Securities and Investments Commission (ASIC) who may apply to a court on behalf of the party.

If a court finds that a term in a standard form consumer contract is unfair, the term will be void. However, the parties may continue to be bound by the other terms in the contract, if the contract is capable of operating without the unfair term.

## What should you do if you use standard form consumer contracts?

Businesses should review whether their contracts are standard form consumer contracts under the Act and whether any terms may be considered unfair.

Hunt & Hunt can advise in relation to standard form consumer contracts and can assist with re-drafting the terms if this is necessary to comply with the Act.

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