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New national consumer laws

Agreements were made between the states and territories in 2008 and 2009 to create a single national consumer law for Australia.

This involves the introduction of a number of new laws, the latest law introduced aims to improve protection for consumers by removing unfair terms in standard form contracts that can be used to harm or exploit consumers.

The new law came into effect on 1 July 2010 by amending the Trade Practices Act. It only applies to contracts entered into after 1 July.

It protects individuals who acquire a product or service for personal, domestic or household use or consumption. It does not include insurance contracts at this stage.

People enter contracts on a daily basis and often without realizing it. For example, hiring a tradesperson or joining a gym. Often there are no contract terms supplied or, if there are, people do not read them adequately or at all. Contracts can also be entered on line, for example software licences.

The contract between the supplier and the consumer must be a standard form contract (usually in writing but can be verbal), which broadly speaking means that the same terms and conditions are offered to all consumers without negotiation.

The core of the legislation is the ability of the consumer to have a term of a contract declared void if the term is unfair.

If a term is declared to be unfair, if possible, the contract will continue to operate without that term. However, if the contract does not make sense with the term removed, the whole contract will fail.

A term may be unfair if:

- There is an imbalance between the rights and obligations of the parties;
- It would be to the consumer's detriment, financial or otherwise, if he/she relied on that term.

Some examples of unfair terms would be a term which penalizes only one party for a breach; a term allowing one party to change the purchase price without any right by the other party to terminate and a term limiting the rights of one party to sue the other.

If you think a term in a contract is unfair there are several options available:

- The Australian Competition and Consumer Commission ("ACCC") or the Department of Fair Trading can provide advice and may take legal action on your behalf;
- The ACCC can also provide access to alternative dispute resolution schemes where mediation is used rather than court action; or
- You can take the matter to Court yourself.

If you run a business and rely on standard form contracts those contracts should be reviewed in light of the potential risks to your business if a term of your contracts is held to be unfair.

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