



ACCC Crackdown on Unfair Contract Terms - Are Your Contracts Fair?

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10 Apr 2018

The Australian Competition and Consumer Commission (ACCC) has commenced its crack down on unfair contract terms with small businesses. Following its recent success against JJ Richards & Sons Pty Ltd, the ACCC is now pursuing Ashley & Martin and Servcorp with court proceedings alleging unfair terms in their standard-form contracts – could you be next?

“Unfair contract” legislation was expanded to protect small businesses because they generally do not have sufficient resources or bargaining power to resist an “unfair contract terms”. Of course, what the legislation is targeting is “standard form” contracts that are offered to clients on a “take or leave it basis”, and where the upfront price payable under the contract does not exceed \$300,000, or \$1 million if the contract is for more than 12 months.

What are unfair contract terms?

A term that causes a significant imbalance in the parties’ rights and obligations arising out of the contract, is not necessary to protect the legitimate interests of the party who would be advantaged by the term and would cause detriment to a party if it was relied on.

Unfair Contract Terms to look out for?

You should be wary of any term permitting or has the effect of permitting one party, but not the other party, to:

1. avoid or limit their performance of the contract;
2. terminate the contract;
3. vary the terms of the contract;
4. renew or not renew the contract;
5. vary the upfront price payable without the right of the other party to terminate;
6. vary the characteristics of the goods or services to be supplied or the interest in land to be sold or granted under the contract;
7. determine whether the contract has been breached or to interpret its meaning;
8. limit one party’s right to sue another party;

Lessons learnt from JJ Richards & Sons Pty Ltd Case

People that can help



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The ACCC successfully argued that approximately 10,000 of JJ Richards's standard form contracts to provide waste management services to small businesses were unfair.

JJ Richards's contracts contained unfair terms which:

- forced contracts to automatically renew unless the customer cancelled the contract within thirty days before the end of the term;
- allowed JJ Richards to charge customers for services not rendered even when caused by reasons beyond the customer's control;
- allowed JJ Richards to unilaterally increase its prices.

The Court declared that the unfair contract terms were void (i.e. not binding on JJ Richards's customers) and ordered JJ Richards to publicise the decision, notify affected customers and implement a compliance program. JJ Richards would have clearly suffered reputational damage and high legal costs, and would also suffer the expense of renegotiating all of the voided contracts. If you need your existing customer contracts reviewed, or advice on customer allegations you've received that your contracts are unfair, contact our Commercial Law Team.

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