



Monthly Information Newsletter – Tax & Super

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Changes to unfair contract terms laws: what businesses need to know

Soon to be implemented changes to the Australian Consumer Law will provide additional protection to consumers and small businesses prohibiting the proposal, use or reliance on unfair contract terms in standard form contracts.

The ACCC recognises that *“standard form contracts provide a cost-effective way for many businesses to contract with significant volumes of consumer or small business customers. However, these contracts are largely imposed on a ‘take it or leave it’ basis and are usually drafted to the advantage of the party offering them”*.

Currently under the laws protecting consumers and small businesses from unfair terms in standard form contracts, where particular terms of a contract are found to be unfair, a Court can only declare those terms void. This provides little motivation to ensure the terms of standard form contracts are, in fact, fair.

From 9 November 2023, in addition to expanding the coverage of the unfair contract term laws to a wider range of small businesses, Courts will now be able to impose substantial penalties where unfair terms have been included in a standard form contract, and a party to the contract is a small business (that is, small businesses with an annual turnover of less than \$10m or fewer than 100 employees).

With the maximum penalties increasing to \$2.5m for individuals, and for businesses to the greater of \$50 million or three times the value of the "reasonably attributable" benefit obtained from the conduct, the ACCC is encouraging businesses to review their standard form contracts prior to these changes taking effect.

You can view more information about changes to the unfair contract terms laws on the ACCC's website [here](#) and [here](#). If you have any questions about these changes, please reach out to us.

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