

Unfair contract terms regime expanded

Legislation has now passed which will expand the application of the unfair contract terms regime to a far wider number of small businesses. Consumer protections have also been bolstered with the introduction of a significant penalty regime.

With the expansion of the unfair contract terms regime to insurance contracts in October 2021, many insurers undertook reviews of their standard form insurance contracts aimed at consumers and small businesses.

The passage of the *Treasury Laws Amendment (More Competition, Better Prices) Act 2022 (UCT Act)* on 27 October 2022 marks the expansion of the unfair contract terms regime.

Under the amendments, a contract will be a small business contract within the scope of the unfair contract terms regime if it is for the supply of goods or services (including insurance), and at least one party to the contract employs fewer than 100 persons (up from 20 persons), or the party's turnover, for the party's last income year that ended on or before the contract is made, is less than AUD10,000,000.

The amendments also introduce serious penalties for contravening the unfair contract term provisions of the *Competition and Consumer Act 2010 (Cth)* and *Australian Securities and Investments Commission Act 2001 (Cth)*.

The penalties for a body corporate will be the greater of:

- AUD50,000,000;
- Three times the value of any benefit obtained, if such an amount can be quantified (unchanged); or
- 30% of the body corporate's adjusted turnover during the breach turnover period for the offence.

The changes to the unfair contract terms regime and the new penalty regime for unfair contract terms will come into effect on 9 November 2023, being 12 months after the day on which the UCT Act received Royal Assent. The changes only apply to contracts made, renewed or to terms which are varied from the date of commencement of the UCT Act.

Recommendations

Insurers will need to undertake further reviews of their suite of insurance contracts offered to individuals or small businesses to ensure that those contracts which are captured under this expanded regime are reviewed for unfair terms.