

Unfair Contract Terms in Business Contracts

New Protections for Small Business

From 12 November 2016, a new law will protect small businesses from ‘unfair terms’ in standard form contracts with other businesses. These protections against unfair terms currently exist for consumers, but not for businesses.

A standard form contract is a ‘take it or leave it’ contract, where there is no negotiation on the terms – the fine print. In considering if a contract is a standard form contract, a court would take into account a range of factors, such as:- the relative bargaining powers of the parties, whether the contract was pre-prepared, and whether the purchasing party was given any real opportunity to negotiate the terms.

The new protections will apply to small businesses entering into standard form contracts. To come within the new protections, **either** party to the contract must have less than 20 employees. Further, the new protections will apply only if the **upfront price payable** under the contract is below \$300,000 for contracts of less than 12 months duration, or under \$1 million otherwise. **These protections only apply to contracts entered into on or after 12 November 2016.**

An unfair term may include:

- terms that enable one party (but not another) to avoid or limit their obligations under the contract
- terms that enable one party (but not another) to terminate the contract
- terms that penalise one party (but not another) for breaching or terminating the contract
- terms that enable one party (but not another) to vary the terms of the contract

Ultimately, only a court or tribunal can decide that a term is unfair.

More details, and examples of unfair terms, are provided on the ACCC’s website at <http://www.accc.gov.au/business/business-rights-protections/unfair-contract-terms>

The VSBC receives many complaints from small businesses caught by terms in the fine print of contracts which, if entered into from 12 November 2016, would likely be considered ‘unfair’. All businesses are strongly encouraged to read the fine print of any contract before signing it – particularly in the lead up to 12 November 2016.

The changes arise from amendments to the *Competition and Consumer Act 2010* (Cth). For further information, visit the **ACCC website** or contact the VSBC on 13 VSBC (13 8722) or at enquiries@vsbc.vic.gov.au

The Victorian Small Business Commissioner provides quick, low cost dispute resolution services for business-to-business disputes. Visit www.vsbv.vic.gov.au for more details.