



BEWARE BUSINESS RISKS FROM CHANGES TO THE LAW

Businesses need to be astute to the risk posed by constant changes in the law, and that managing those risks is best done by getting legal advice on potentially applicable laws and on how to stay alert to changes.

Australian Consumer Law Changes – Protections Extended to more Small Businesses

For example, recent changes to the Australian Consumer Law mean that business to business transactions for goods or services less than \$100,000, and not used up or transformed in manufacturing or repair, are now subject to statutory guarantees as to various aspects of acceptable quality, matching advertised descriptions, access to repairs and spare parts, supply within reasonable time and for the manufacturer and supplier to comply with warranties.

Unfair Contract Term Changes - Protections Extended to more Small Businesses

For business that use 'standard form contracts' with consumers, or with "small businesses" of up to 100 employees and annual turnover of not more than \$10 million, further changes are on the way that will extend unfair contract protections and make it easier for the contract to be void and unenforceable for containing unfair contract terms, and for which civil penalties will be able to be imposed, which if the same as other current penalties could be up to \$10 million.

Franchise law Changes – Additional Protection for Franchisees

New laws for franchises now regulate significant capital expenditure requirements, franchisee proposals to terminate, and franchisor terminations in special circumstances, and have doubled the cooling off period (and extended it to a substitute franchisee's purchase from an existing franchisee) and have restricted unilateral variations by a franchisor from having retrospective effect and have imposed additional disclosure requirements for franchisors.

Statutory Unconscionability – No Need to take Advantage of Pre-Existing Vulnerability

Changes to the law also arise from changes in judicial interpretation even without change to legislation. For example, recent judicial decisions mean that statutory unconscionability under Australian Consumer Law can now arise without any pre-existing vulnerability or disadvantage on the part of the 'weaker party'. There is no longer any need for pre-existing vulnerability or disadvantage, or for any exploitation or taking advantage of any such position. Rather the applicable standard is a normative, involving evaluation of whether the conduct is so far outside societal norms of acceptable behaviour as to warrant condemnation as conduct offensive to conscience. That is, whether contractual or other commercial conduct is outlawed will depend on the extent to which the conduct differs from norms of commercial behaviour.

For further information or assistance contact Murfett Legal on [+61 8 9388 3100](tel:+61893883100).

Note: The above is a summary for general information purposes only. It is not intended to be comprehensive or constitute legal advice. You should seek formal legal or other professional advice in relation to your particular circumstances before relying on the content of this article.

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