



## **Express law** *fast track information for clients*

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### **The new Australian Consumer Law**

**Legislation implementing a new Australian Consumer Law (ACL) to deal with unfair contract terms and introduce a civil penalties regime for contraventions of consumer law provisions was passed by both houses of Parliament on 17 March 2010.**

The legislation implementing the new law—the Trade Practices Amendment (Australian Consumer Law) Bill 2009—awaits Royal Assent but is expected to be in force by 1 July 2010.

A second Australian Consumer Law Bill—the Trade Practices Amendment (Australian Consumer Law) Bill (No. 2) 2010—was introduced into Parliament on the same day. The second Bill will implement the framework of the Australian Consumer Law and amend the *Trade Practices Act 1974* and the *Australian Securities and Investments Commission Act 2001*. The second bill will commence on 1 January 2011. The States are required to implement the Australian Consumer Law by the end of 2010.

The second Bill proposes to change the name of the Trade Practices Act to the *Competition and Consumer Act 2010*.

### ***Key developments***

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#### **A national consumer law**

The ACL will provide a national consumer law drawing on the consumer provisions of the Trade Practices Act and the preferred elements of State and Territory laws.

To implement the new ACL, the first Bill will insert a new Part XI, called 'The Australian Consumer Law', into the current Trade Practices Act.

#### **Greater powers for ACCC and ASIC**

Along with the new civil pecuniary penalties regime, the ACL will introduce greater powers for the ACCC and ASIC, consumer redress options, new safety standards provisions, and further enforcement tools such as infringement notices, disqualification orders and public warning powers.

#### **New provisions relating to unfair contract terms**

A key set of provisions of the new law relate to unfair contract terms. These provisions will commence on 1 July 2010.

Part 2-3 of the new law will provide that a term of a consumer contract will be **void** if it is:

- unfair, and
- the contract is a standard form contract.

However, if the contract is capable of operating without the unfair term, the contract continues to bind the parties.

### ***'Unfair' consumer contracts***

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#### **What is a consumer contract?**

A consumer contract is a contract for:

- a supply of goods or services, or
- a sale or grant of an interest in land

to an individual whose acquisition of the goods, services or interest is wholly or predominantly for personal, domestic or household use or consumption.

#### **What is an 'unfair' consumer contract?**

Under the ACL, a term in a consumer contract will be unfair if:

- it would cause a significant imbalance in the parties' rights and obligations arising under the contract
- it is not reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term
- it would cause detriment (whether financial or otherwise) to a party if it were to be relied on or applied.

### ***New civil pecuniary penalties***

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The ACL will provide for civil penalties to a maximum of \$1.1 million for corporations and \$220,000 for individuals for contraventions of various provisions.

In addition to the current criminal penalties, the new civil penalties regime signals a wider suite of possible ramifications for breaches of the Trade Practices Act.

### ***How will the new consumer law affect Commonwealth agencies?***

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Commonwealth agencies that are carrying on a business for the purposes of s 2A of the Trade Practices Act should consider reviewing their standard form terms and conditions if they enter into consumer contracts with individuals for 'personal, domestic or household use or consumption'.

AGS is well positioned to advise you on the application of the ACL, and would be happy to assist you with review of your standard form contracts.

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