

## ACCC successful in unfair terms case – Friday the 13th for JJ Richards

On Friday the 13<sup>th</sup> of October, the first decision on the new unfair contracts regime was decided in favour of the ACCC. All eight of the impugned terms of JJ Richards' contract were found to be invalid and unenforceable.

In a victory for the ACCC and a clear sign that the ACCC is prepared to enforce the new regime, Justice Moshinsky of the Federal Court found all eight of the terms unfair (by consent of JJ Richards). The consequences are that all of the terms found unfair are now invalid and cannot be relied on or enforced by JJ Richards. The standard terms and conditions used by JJ Richards include only 18 terms, so to find 8 of these void is significant. This will mean JJ Richards now has to correct its standard form contract and all existing contracts with small businesses. In finding the terms unfair, the Court noted that the combination of unfair terms in this case increased the overall imbalance and contributed to each being considered unfair.

### Court Orders

JJ Richards has consented to orders to, within 90 days, establish and implement an ACL Compliance Program undertaken by all employees who deal with customers (including small businesses) in relation to contracts. The program will be required to run for a period of 3 years. In addition to this, JJ Richards was made to publish a corrective notice on any part of its website or customer portal which is used to market or supply waste management services. At its own cost, JJ Richards must also provide a copy of the Orders to each person who is a party to the proceedings.

### Invalid Terms

For reference, the terms found to be invalid were:

- binding customers to subsequent contracts unless they cancel the contract within 30 days before the end of the term (i.e. automatic renewal clauses);
- allowing JJ Richards to unilaterally increase its prices;
- removing any liability for JJ Richards where its performance is "prevented or hindered in any way" (i.e. broad exclusion of liability clauses);
- allowing JJ Richards to charge customers for services not rendered for reasons that are beyond the customer's control;
- granting JJ Richards exclusive rights to remove waste from a customer's premises;
- allowing JJ Richards to suspend its service but continue to charge the customer if payment is not made after seven days;
- creating an unlimited indemnity in favour of JJ Richards; and
- preventing customers from terminating their contracts if they have payments outstanding and allowing JJ Richards to continue charging customers equipment rental after the termination of the contract.

### The Unfair Contract Terms Regime

The unfair contract terms regime applies to standard form contracts where one party is a small business and the upfront price payable is no more than \$300,000 (if the contract is less than 12 months) or \$1,000,000 (if the contract is longer than 12 months). A small business is one that has less than 20 employees. Standard form contracts are those which are given on a "take it or leave it" basis.

Many businesses use terms like these and are unaware of the implications of the new regime. If you use standard form contracts be on notice and ensure that you have reviewed your contracts to ensure compliance! If you don't take action, you run the risk that your contract terms are found to be void and unenforceable, and of course the reputational risk.

We will also keep you informed of the result in the other action that the ACCC is running against Servcorp. Watch this space.

For further information, please contact Dean Katz (Partner, Corporate & Commercial) on +61 9608 2253 or by email [d.katz@cornwalls.com.au](mailto:d.katz@cornwalls.com.au). Thanks to Amy Giles and Tom Boyce who assisted Dean with this article.

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