



HOLDING REDLICH



Unfair contract terms for small business

GTA Advisory and Compliance Workshop

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Overview of the new unfair contract law

What is it?

- Existing unfair contract laws for consumers.
- For example:
 - Europcar: unfair rental terms for costs of damage when hirer not at fault or breached any other term of the contract.
 - Chrisco: unfair lay-by terms following final payment.

When is it effective?

- 12 November 2016
- Includes contracts already in existence if they are:
 - amended;
 - renewed; or
 - rolled over,
 - on or after that date.

Who will it affect?

- A business that:
- Employs fewer than 20 employees; and
 - Either the price is:
 - less than \$300,000 in a single year; or
 - less than \$1,000,000 if the contract term is greater than 12 months.

How will the new law be applied?

Supply of goods and services

- Take it or leave it
- One of the parties has all or most of the bargaining power in the transaction
- The contract was prepared by one party before any discussion occurred between the parties
- Does not take into account the specific characteristics of the other party of the particular transaction

Contains a term that is unfair

- Cause a significant imbalance in the parties rights and obligations
- Not reasonably necessary to protect the legitimate interest of the party who would be advantaged by the term
- Cause detriment (whether financial or otherwise) to a party if it were to be applied or relied on

Standard form contract

Goods: grain, oilseeds, pulses – all commodities.

Services: IT, equipment hire agreements.

- Excluded:
 - Shipping
 - Company constitutions
 - Managed investment schemes
 - Insurance contracts

