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Time to Review Standard Form B2B Contracts

In November 2016 existing unfair contract protection for consumers will be extended to also protect small businesses. As it stands now, small businesses that enter into standard form contracts with other, usually larger, businesses (B2B contracts) have no option but to accept all the terms of the standard form contract they are given. There is little or no opportunity for them to negotiate the terms, as most powerful businesses present their B2B contracts on a 'take it or leave it' basis.

The amendment to the *Australian Consumer Law* takes effect from 12 November 2016. It will apply to B2B standard form contracts entered into with small business on or after that date. It will also apply to existing B2B contracts with small businesses that are amended after that date. A 'small business' is one that employs less than 20 people and the contract is worth up to \$300,000 in a single year; or 1 million dollars if the contract runs for more than a year.

Examples of unfair contract terms include terms that:

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

Under the new law, such terms would most likely be considered as unfair and the small business could make an application to the court to have those terms removed.

It is important to note that only a court or a tribunal can decide if a term is unfair, however, if a court or a tribunal does find that

Words to the Wise

“Whenever you are about to find fault with someone, ask yourself the following question: What fault of mine most nearly resembles the one I am about to criticise?”

Marcus Aurelius, *Meditations*

a term is unfair, the term will be void. The rest of the contract will continue to bind the parties to the extent it is capable of operating without the unfair term.

We strongly recommend all businesses that issue standard form contracts undertake a review of their terms now to ensure that they are compliant with the new laws. Please contact Piquet Kruzas, our Business and Commercial Senior Lawyer if you would like assistance.

Advance Care Directives

What are they and are they legal?

The common law has always recognised “a competent adult’s right of autonomy or self-determination” and “the right to control his or her own body”.¹

An ‘Advance Care Directive’ is:

“an oral or written statement that tells a health care professional what forms of medical care a person would accept or refuse in a specific medical circumstance. It would specify who should make health care decisions if the person is unable to express his or her wishes”.²

¹ *Malette v Schulman* 76 DLR (4th) 321 (1990)
² Health Department of Victoria definition

Did you know...

If you work in the city, our Melbourne office is ideally positioned to meet your legal needs. For a convenient lunch time appointment or consultation, give us a call.

If you would like to receive an electronic version of Legal Insight, please:

- send an email to office@hutchinsonlegal.com.au
- call Tristan Tottenham of our office on **9870 9870**
- write to us at PO Box 450, Ringwood 3134

Currently the *Medical Treatment Act 1988* enables a person with legal capacity or their medical agent appointed by an Enduring Medical Power of Attorney to refuse medical treatment (other than palliative care) for a current condition. Whilst popular in the U.S., Advanced Care Directives are not currently legally enforceable in Australia.

However, the law is set to change in the near future. The Medical Treatment Planning and Decision Act is being thoroughly debated in the legal community at present. The Act will give a person over 18 years of age (or their Attorney appointed under a valid Medical Power of Attorney or their Guardian appointed by V.C.A.T³) the ability to give specific instructions to Medical Professionals as to how they wish to be treated at the end of their lives, or in emergency situations (it will, however, not permit euthanasia).

It is unclear at the moment, what form Advance Care Directives will take, or whether they will need to be registered or not. However, the Act will significantly reform the law surrounding 'end of life' choices and medical treatment generally. Great emphasis will be placed on the right of the decision maker to make decisions with autonomy and the freedom to make one's own choices.

An important issue in this discussion is whether the Act will provide appropriate safeguards around the issue of 'informed decisions' being made.

We will provide updates when the new laws are enacted. In the meantime, if you require any assistance with Enduring Medical Powers of Attorney or any Estate or Personal Planning matters, please contact our Wills and Estates/Eldercare Legal Team on 9870 9870.



3 The Victorian Civil and Administrative Tribunal

An invitation to Client FUNction

Presenting

ADMIT ONE

SNOWDEN

21 SEPT 2016

Based on the books *The Snowden Files: The Inside Story of the World's Most Wanted Man* by Luke Harding and *Time of the Octopus* by Anatoly Kucherena. Stars Joseph Gordon-Levitt. Written and directed by Oliver Stone.

Note: For those particularly sensitive, the movie contains one risqué scene and parental guidance is recommended.

Mark your diaries; our next Client FUNction is approaching fast!

Date
Wednesday,
21 September 2016

Time
6:15 pm for
6:45 pm start

Where
Hoyts, Eastland
Shopping Centre

RSVP
Tristan on
9870 9870
or
tristan@
hutchinsonlegal.
com.au

Oops – we were wrong!

Last issue our Words to the Wise was attributed to Martin Luther. In actual fact, the words were spoken by Martin Luther King Jr who was killed in 1968.

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New Additions

We welcome three new members to the Hutchinson Legal team – Julie Tewkesbury, personal assistant and administration; Jordan O'Toole a graduate lawyer and Piquet Kruzas, Senior Lawyer. Jordan is assisting in various areas of law. Piquet is working on Business and Commercial Law matters, including employment and defamation law.



HUTCHINSON LEGAL
per Con Nottas & Grant Hutchinson

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FastFACTS

1,241

The number of Australians who were given a new chance in life by 435 organ donors in 2015.

No.1

The most common dispute type in Victoria from 2009-2014 was in relation to fences.

1.4 million

The average number of blood donations made in Australia per year.

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