

Article Information

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Contracting with small businesses: include unfair terms in your standard form contracts at your peril

Partners, presented at the 2018 Australian Petroleum Production and Exploration (APPEA) Conference on the business to business unfair contracts regime

A summary of the paper is below. If you would like to receive a full copy, please email:
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Many companies operating in the oil and gas space might think that the Australian Consumer Law has little impact on them. However, in November 2016, amendments were made to the Competition and Consumer Act extending the unfair contract terms regime under that legislation beyond dealings with individual consumers to small businesses.

This reform has potential far-reaching consequences for companies in the oil and gas sector which use standard form contracts with suppliers of goods and services. A standard form contract is one that is prepared by one party to the contract where the other party has little or no opportunity to negotiate the terms. If the contract counterparty is a small business (employing less than 20 employees) and if the upfront price is no more than \$300 000 or \$1 million if the contract is for more than 12 months, it is caught by this regime. If the standard form contract contains terms which are unfair, those terms may be declared void and there may be other consequences, including orders for monetary redress, penalties and the entire contract being avoided.

This paper explains the business to business unfair contracts regime, including what contracts it affects, which contracts and terms are excluded from the regime, and it examines, by way of some case studies, the types of terms which have been found to be unfair.