
Book reviews

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UNFAIR CONTRACT TERMS IN AUSTRALIA

Unfair Contract Terms in Australia by Jeannie Paterson: Thomson Reuters, 2012, ISBN 9780455229089, Pages: 221.

In 2008 the Productivity Commission published the *Review of Australia's Consumer Policy Framework* and identified several arguments supporting a regime to regulate unfair contract terms. The recommendations of the Commission were ultimately included in the *Competition and Consumer Act 2010*, particularly Sch 2, the *Australian Consumer Law* (ACL). The ACL is the national generic consumer law and replaces the *Trade Practices Act 1974*. A major aspect of these wide ranging laws is the introduction of a national law to regulate unfair contracts, specifically unfair contract terms.

This text serves as a thorough and clear introduction to a key component of the ACL, the Unfair Contract Terms Law (UCTL) located in Pts 2 to 3 of the ACL. Paterson commences with a discussion of how a safety net is required to protect consumers from unfair terms and that the regulation of unfair contract terms can play a role in creating a fairer and more balanced market.

Given that the ACL came into force less than a year prior to the publication of this text, an in-depth analysis of the application of the UCTL was obviously impossible to include. In Chapter 3 Paterson provides a comparison of the regulatory regimes found in the United Kingdom and the former Victorian *Fair Trading Act 1999* as case law under these regimes is relevant to the application of the UCTL. Although brief, this chapter provides a thorough analysis of how unfair contract terms were dealt with by the Victorian courts and are currently dealt with by the British courts. This analysis gives the reader an insight as to how the UCTL may ultimately be applied across Australia.

This text then outlines what type of terms and contract are exempt from UCTL review (Ch 4) and then lists the type of contracts to which the UCTL applies (Ch 5). These chapters are brief and future editions of the text will undoubtedly contain a discussion of case law once matters proceed through the courts. The same applies to Chapters 6 to 8, which provide clear explanations of the mechanics of the UCTL (Chapter 6 – *Identifying and Interpreting Terms under the UCTL*, Chapter 7 – *Test of an Unfair Term* and Chapter 8 – *Matters Relevant to Determining if a Term is Unfair*) and will undoubtedly become more in-depth as matters are litigated.

Paterson touches on *Unconscionable Conduct* (obligatory for any contract law text) and *Unfair Terms* before providing a brief analysis of the Consumer Guarantees Law (CGL). Paterson explains how the CGL complements the UCTL by regulating the substantive content of consumer contracts by setting minimum mandatory standards of quality applying to the supply of goods and services to consumers.

The final two chapters of the text consider the *Grey List of Terms That May be Unfair* (Chapter 12) and *Common Terms That May Be Unfair* (Chapter 13). Both chapters offer considerable analysis of the respective topics and methodically set out how and why such terms may be unfair in a manner which is easy for the reader to consider.

Paterson's book serves as an excellent introductory text to this particular section of the ACL and how the laws are likely to be applied. One can hope that further editions are to follow in the same vein as this text as Paterson presents the analysis of the legislation in a thorough, yet concise manner that makes for uncomplicated contemplation of an evolving and somewhat daunting area of law.

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