

Book Review

Unfair Contract Terms in Australia
Dr Jeannie Paterson
Thomson Reuters
221 pp \$150.00
Reviewed by BJM

I don't know about you, the reader, but I am finding that consumer and banking contracts which I am asked to accept are becoming more and more complicated, but their terms and conditions are becoming harder to identify.

We have all probably realised the enormous impact on consumer, supplier relationships which the Trade Practices Acts brought to this Country, but I wonder how many of us have, as yet, sat down and actively considered the successor to that Act, the *Competition and Consumer Act 2010* which includes the Australian Consumer Law in its second schedule?

Early in 2011 I spent some time trying to give myself an understanding of what the new Act provides and thought I had gained a reasonable pass mark. However this book has made me think that my study was significantly deficient. Dr Paterson has produced a book which fits into the description of a serious text book, one which will sit close by for frequent reference. Indeed, may I suggest that it is more than a text book, but in reality a detailed and analytical analysis of the new legislation, a consideration of the trends in judicial decisions both within Australia and elsewhere and a text which will develop our understanding of the subject.

I warn the reader that this is not a book to be taken lightly nor one to be read at bed time. Rather it is a very detailed and serious (dare I again say, reference) book. To whet your appetite, the subject headings include, identifying the reasons behind regulating unfair contract terms, spelling out contracts and terms which are excluded from the Act, such as those covered by the ASIC legislation or the *Insurance Contracts Act*, contracts to which the Act does apply, the significance in this context of standard form contracts versus negotiated contracts, identifying and interpreting the terms of a contract, test of an unfair term and what matters are relevant in determining unfairness, enforcement, effect and remedies, unconscionable conduct, unfair terms and the consumer guarantees law.

The book concludes with a discussion of a list of examples which emanated from the United Kingdom of the kind of terms of a consumer contract that may be unfair, known as "the grey terms" and common terms which may be unfair. These chapters warrant careful study. I give two examples of a grey term, namely, one that purports to allow one party to vary the upfront price without giving the other party the right to terminate and the other being a term which seeks to reverse the evidential burden in proceedings relating to the contract.

I endeavour to read a book from cover to cover, prior to preparing a review. This is one of those books which I have found easier to absorb by reading a part of it at a time, dwelling on that part and then later reading the same part again, or if I am comfortable with what I have read, moving on. You the reader, might by that comment, come to appreciate that when I emphasise the reference nature of the book, I do not do so lightly.

This is one of the most succinct but at the same time, comprehensive and analytical books that I have had the pleasure of reviewing. If you practice in the field of contract or consumer law, this is a must have reference book and it will be regularly referred to as a guide to following this emerging legislation.