

## Unfair contract terms: Small business contracts

A Norton Rose Fulbright infographic – Extension of unfair contract terms to small business contracts; enactment of legislation and business implications.

### Key messages

- 1

The Treasury Legislation Amendment (Small Business and Unfair Contract Terms) Act 2015 “Act” was enacted on 12 November 2015.
- 2

The Act commenced on 12 November 2015, however a 12 month transition period applies which will expire on 11 November 2016.
- 3


The effect of the Act will be wide ranging and strategic reviews will be essential.

### Small business contracts

1


A contract will be a ‘small business contract’ if it is a standard form contract and, at the time of the contract, one of the parties is a business that employs

LESS THAN 20 EMPLOYEES



2

IF THE CONTRACT IS SHORTER THAN




&

UPFRONT PRICE PAYABLE IS LESS THAN

\$300,000

AND

IF THE CONTRACT IS LONGER THAN



&

UPFRONT PRICE PAYABLE IS LESS THAN

\$1,000,000

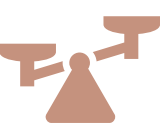
OR

\* includes full-time, part-time and casual employees working on a regular and systematic basis using a headcount approach, regardless of employee’s hours or workload.


WHAT TO LOOK OUT FOR  
12 MONTH IMPLEMENTATION PERIOD TO ALLOW BUSINESS TO COMPLY

### Unfair


A term can be considered unfair if it:



causes a significant imbalance in parties’ rights and obligations under the contract



is not reasonably necessary to protect the legitimate interests of the advantaged party



would cause detriment to the small business if it is relied on

WHAT TO LOOK OUT FOR  
JUDICIAL INTERPRETATION - INDICATIONS FROM KEY PROPONENTS ABOUT HOW THE CONCEPT MAY BE INTERPRETED BY THE COURTS

### What will be affected?

Almost all commercial contracts




FRANCHISE/ LICENCE AGREEMENTS



FINANCE DOCUMENTS



TENDERS



CONSULTANCY AGREEMENTS



SUPPLY & DISTRIBUTION AGREEMENTS



TRADING TERMS & CONDITIONS



RENTAL/ LEASING CONTRACTS

WHAT TO LOOK OUT FOR  
EXCLUSIONS - WHETHER A RELEVANT CONTRACT HAS BEEN EXCLUDED

### Next steps

- Identify possible contracts with small businesses
- Assess potential exposure by reviewing contract terms
- Consider a strategy to avoid the ambit of the legislation