ADDISONS

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Direct Selling Legal Update

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Overview

Welcome to the latest issue of the Addisons Direct Selling Legal Update.

There have been a number of significant legal developments which impact upon the direct selling sector in the second half of 2018. In this newsletter, we take a closer look at some of those developments.

Bigger *Australian Consumer Law* Penalties for Christmas

Businesses beware. The penalty regime for consumer law in Australia has undergone a serious overhaul – just in time for the countdown to Christmas.

From 1 September 2018, the maximum pecuniary penalties the ACCC can seek for contraventions of key provisions of the Australian Consumer Law (**ACL**) increased significantly:

- **for corporations** – from $1.1 million to the greater of: (a) $10 million; (b) 3x the value of the benefit; and (c) if the benefit cannot be determined, 10% of the annual Australian turnover in the preceding 12 months; and
- **for individuals** – from $220,000 to $500,000.

Our Focus Paper looks at what this means for your business.

The ACCC releases its Annual Report

Heading into the Christmas period is always a festive time at the ACCC. Admittedly service-provider drinks are limited due to the ACCC's gifts & gratuities policy, Christmas lunch is pay-your-own-way as is required, but the one event ACCC staff always look forward to is the release of the ACCC's annual report. On 18 October 2018, the ACCC released its annual report detailing its activities over the past year.

We tell you just how much the ACCC achieved in 2018 – reference is made to substantial achievements, especially in respect of obtaining record fines.

Australia's war on waste

During 2018, a number of direct selling companies received letters from the Australian Packaging Covenant Organisation (**Covenant**) alerting them (if they do not know already) of their obligations relating to the control of waste from consumer packaging.

Currently, in Australia, there are multiple layers of mandatory, co-regulatory (hybrid) and voluntary schemes in place that control, or relate to, the environmental consequences of consumer products and, in particular, their packaging. Whether a company is affected depends on factors such as its annual turnover, its location, its role in the supply chain and the nature of the product or packaging it produces, supplies, distributes or consumes.

This Focus Paper provides a snapshot of the Covenant, the broadest instrument in Australia relating to the control of waste from consumer packaging.

Recent TGA changes to permitted ingredients in listed complementary medicines

Our Focus Paper looks at recent amendments to the *Therapeutic Goods Act 1989* including the introduction of new application categories and legislated timeframes in respect of the evaluation of new ingredients for entry onto the Therapeutic Goods (Permissible Ingredients) Determination and a period of "market exclusivity" for those new substances/ingredients.

Penalties looming for unfair small business contracts

On 14 October 2018, the ACCC's Deputy Chair, Mick Keogh, again reiterated the ACCC's view that major changes are required to unfair contract laws for small businesses. His speech at *the Franchise Council of Australia Law Symposium* follows similar comments

made earlier by the ACCC Chair, Rod Sims, at his address to the *Council of Small Business Organisations Australia* in August.

According to Mr Keogh, the ACCC considers that there are two fundamental flaws with the current regime: (1) unfair terms are not illegal; and (2) no civil pecuniary penalties or infringement notices are available for unfair terms.

The ACCC wants to be able to hold businesses to account for their unfair conduct by strengthening the laws to ensure that the laws are useful in protecting small businesses. In our Focus Paper, we provide a snapshot of the enforcement action to date taken by the ACCC and what we can expect from the ACCC as we move into 2019.

We hope that you find items of interest in this edition of our Addisons Direct Selling Legal Update. If you have any queries or would like to provide feedback or discuss, please do not hesitate to contact any of Addisons' Direct Selling team.

Best wishes for a happy Christmas and a prosperous 2019!

Cate Sendall

Editor

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Bigger ACL Penalties for Christmas

Authors: Laura Hartley, Partner; and Rachel White, Solicitor.

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- **for corporations** – from $1.1 million to the *greater* of: (a) $10 million; (b) 3x the value of the benefit; and (c) if the benefit cannot be determined, 10% of annual Australian turnover in the preceding 12 months; and
- **for individuals** – from $220,000 to $500,000.

Notably, these penalties apply for *each* contravention. Where a business is found guilty of multiple contraventions, as has often been the case, the total penalty imposed by a Court could easily spiral far beyond these amounts.

What does this mean for you?

As we all know, one of the busiest times of the year is fast approaching for businesses in Australia. In the flurry of activity, it can be tempting to take more risks and even cut a few corners in order to meet those tight deadlines and keep the commercial team happy.

However, the new penalties legislation means that all businesses need to take a moment to reassess the risk profile of their marketing, promotional and other trading activities in Australia, having regard to the ACL – before it's too late.

1. Reassess your current risk appetite

The threat of higher penalties under the ACL needs to be flagged with Boards and senior managers. Moving forward, businesses which contravene the ACL face not just reputational damage – they could be looking at hefty financial penalties that will have a material impact on their bottom line.

To give you some perspective, the new penalties legislation means that for a company with a $500 million Australian turnover, the maximum penalty per contravention could be $50 million – almost 50x the amount previously available under the ACL. As noted by Rod Sims, chairman of the ACCC: *"If you want your share price to keep rising and if you want to keep distributing dividends, then you better take this seriously."*

2. Get your house in order

One thing to bear in mind is that, whilst the amount of the penalties has changed, your obligations under the ACL have not.

False or misleading representations will no doubt continue to be a key enforcement area for the ACCC this Christmas. Also, as you may be aware, consumer guarantees have been on the ACCC's watch-list for a number of years now, with LG Electronics and Apple the latest targets in a string of high-profile, successful cases brought by the regulator.

In light of the increased risks, we strongly recommend conducting a review of all compliance policies and procedures, to ensure that they are up-to-date and adequately address any risk exposure in your business, before the commercial madness hits.

Some key areas to focus on are:

- Staff Training: Provide comprehensive training to all staff, especially customer helpline employees and other customer-facing staff, around consumer rights – particularly in respect of refunds and exchanges for faulty products. Remember, all goods sold to a consumer come with minimum statutory guarantees that cannot be contracted out of by any manufacturer or supplier.

- **Corporate governance:** If you don't already, you should consider having a marketing communications approval matrix in place. This is to ensure that any potentially high-risk claims are escalated to the attention of a senior manager as early as possible, so that they can be dealt with *before* they become a major issue.
- **Record keeping:** Keep a register to record whether and, if so, how conflicts with consumers are resolved, with a record of the date of the complaint, the complainant's details, and details around the nature of the complaint, the relevant product SKU, any investigative procedures undertaken, and the solution offered to the consumer (e.g. "full refund offered"). This will help to prevent any complaints from falling by the wayside amidst the festive rush.
- **Advertising and Marketing:** Closely review any product packaging and advertising and marketing materials to ensure that all claims can be readily substantiated and do not overreach the facts. Remember, it isn't always enough just to include a disclaimer on a product label or in advertising and marketing – that disclaimer needs to be sufficiently clear and the overall impression of the advertising or marketing must not be false or misleading. Otherwise you may run a real risk of breaking the law.

To wrap up, ACL penalties have become much more than just another cost of doing business in Australia. No doubt, after campaigning hard for these changes to the ACL, the ACCC will be eager to test out the scope of its latest gift from Parliament.

This is one year you won't want to be on the ACCC's black list.

Got any questions? Just get in touch.

Laughing all the way – the ACCC releases its 2018 annual report

Authors: Laura Hartley, Partner; and Julie Allen, Senior Associate.

Heading into the Christmas period is always a festive time at the ACCC. Admittedly service-provider drinks are limited due to the ACCC's gifts & gratuities policy, Christmas lunch is pay-your-own-way as the Government require it, but the one event ACCC staff always look forward to is the release of its annual report. Combined with its friends at the Australian Energy Markets Regulator, on 18 October 2018, the ACCC released the document detailing its activities over the past year.

You may well ask yourself - what did all 874 employees get up to? Well ask no longer. We are about to tell you just how much they achieved. And if you're a business, take heed because these successes don't just stop here.

1. Big name defeats

Apple ($9 million), Telstra ($10 million), Ford ($10 million), Flight Centre ($12.5 million) Cement Australia ($20.6 million) and Yazaki ($46 million) are a few of the big names openly brought to heel in court actions commenced by the ACCC. The ACCC has a big focus on litigation where it deems that the conduct of business fails to meet the standards set by the legislation. And certainly our judiciary agreed. The penalties being ordered by the courts are consistently increasing and the upward trend is only set to continue.

2. Higher penalties

We barely want to repeat this one as we sound like a cliché. So yes, bigger penalties came in for breach of key provisions of the *Australian Consumer Law*. But the ACCC is not resting on its laurels. It is still out there, waving its (figurative) placards. We anticipate the ACCC will have some success with convincing Government to change the law so that penalties apply in relation to Unfair Contract Terms (see our focus paper here) but the ACCC is also continuing to push for higher penalties for anti-competitive conduct and anything with "significant consumer harm" so that there is a higher deterrent factor for businesses. Notably, other countries in the OECD have penalties which are up to 12 times higher than those applying in Australia and these are often used as a benchmark by commentators on the issue.

3. Not for resale

Beware of preliminary findings and consider whether to go ahead with merger clearances. The ACCC has prevented the sale by Woolworths to BP of its petrol stations within the last year. Many other companies have also withdrawn their requests for merger review after preliminary findings. The key takeaway is to get good advice on your prospects early to save money and disappointment.

4. It's guaranteed

The ACCC has been focusing on consumer guarantees for a while now and successfully implemented a number of enforcement actions throughout 2018. The annual report is clear that the ACCC will continue to focus on the systemic misrepresentations about the extent of consumer rights under the *Australian Consumer Law* when it comes to warranty claims. In other words, consumers can always return that imported dodgy foot spa if it doesn't comply with the consumer guarantees.

5. Upskilling

The ACCC is in the process of upskilling. Criminal cartel conduct is now well within the ACCC's capability and a successful prosecution may result in jail time for the perpetrators. Further, with the Harper Review concluded, the ACCC has established a new Substantial Lessening of Competition unit to specialise in the analysis in relation to misuse of market power and concerted practices.

With Rod Sims still holding the reins, the bigger penalties, the upskilling of staff and the increased attention the ACCC is progressively receiving will sooner or later bring an errant business undone. And remember, when you have to pay for your own Christmas lunch, you don't feel too kindly towards companies that are making their spirits bright at the expense of the ordinary consumer.

Australia's War on Waste

Author: Penny Murray, Partner.

Overview

There has been a greater focus in Australia in recent months on the environmental consequences of waste and, in particular, the generation of waste from packaging particularly in light of the restrictions on exportation of recyclable waste to China. In late September 2018, new National Waste Targets for 2025 were revealed including an aim that 100% of all Australia's packaging will be reusable, recyclable or compostable by 2025.

Currently, in Australia, there are multiple layers of mandatory, co-regulatory (hybrid) and voluntary schemes in place that control, or relate to, the environmental consequences of consumer products and, in particular, their packaging.

Whether a company is affected depends on things like annual turnover, its location, its role in the supply chain and the nature of the product or packaging it produces, supplies, distributes or consumes.

The aim of this Focus Paper is to provide a snap shot of the Australian Packaging Covenant (**Covenant**), the broadest instrument in Australia relating to the control of waste from consumer packaging.

Waste regulation is State based but co-operation occurs among States

Environmental laws in Australia are primarily within the jurisdiction of the States and Territories. However, the States and Territories have co-operated in the development of the National Waste Policy and the establishment of a National Environmental Protection Measure (Used Packaging Materials) 2011 (**NEPM**) in relation to used packaging materials. This NEPM has been implemented in each State and Territory to ensure there is consistency nationwide.

In NSW, the NEPM is implemented by Part 8 of the Protection of the Environment Operations (Waste) Regulation 2014 (**POEO Regulation**). The NEPM is part of the co-regulatory national approach which consists of a hybrid voluntary and mandatory scheme.

What is the Australian Packaging Covenant?

The voluntary scheme is the Covenant. The Covenant is part of the co-regulatory approach to the regulation of waste derived from packaging of consumer products. It is called "co-regulatory" because businesses subject to the State laws (such as the POEO Regulation mentioned above), have the option to comply with the State law or be a part of the voluntary Covenant

Businesses that must make the choice between the State based law or the Covenant are brand owners[1] in the packaging supply chain with an annual turnover of $5 million or more. These brand owners must:

a) Decide whether to be a complying signatory of the Covenant and member of Australian Packaging Covenant Organisation (**APCO**); or

b) Meet the residual compliance obligations under the POEO Regulation.

Sustainability goals are stricter under State laws than the Covenant

Key obligations under the Covenant are that businesses must:

[1] ***A brand owner*** under the Covenant is a business in the supply chain of consumer packaging (e.g. an importer, supplier of raw material, manufacturer or wholesaler) or a retailer that is a manufacturer, wholesaler or importer or offers its branded products to consumers.

- Submit and publish an action plan that details how the brand owner will meet its resource efficiency, landfill minimisation and leadership targets (including a target that 70% of packaging is recycled or recovered);
- Submit and publish an annual report on performance;
- Allow independent audits;
- Consider sustainability of 100% of new packaging and 50% of existing packaging; and
- Establish on-site recycling.

Any business that fails to become a signatory to the Covenant is required to comply with the POEO Regulation. Requirements are to:

- ensure 80% of all material used in packaging products are recovered;
- ensure all recovered packaging is reused or recycled;
- provide adequate information to customers on packaging;
- conduct a review of all new and existing packaging by June 2020 for sustainability;
- submit a draft waste action plan, if requested by the Environmental Protection Authority (EPA); and
- keep packaging related records.

A further advantage of the Covenant is that, unlike the State regime, a failure does not result in a risk of criminal penalties. Signatories that fail to comply with the Covenant obligations can be removed from the register of signatories, in which case they are referred to the State or territory EPA (or equivalent) and become subject to the regulations and policies of the state or territory to which it supplies.

What does the future hold?

The recent press about the 2025 National Waste Targets indicates that stricter measures and regulations are likely to be incorporated into the Covenant and State laws to help achieve the new targets being[2]:

- 100% of all Australia's packaging will be reusable, recyclable or compostable by 2025 or earlier
- 70% of Australia's plastic packaging will be recycled or composted by 2025
- 30% average recycled content will be included across all packaging by 2025
- Problematic and unnecessary single-use plastic packaging will be phased out through design, innovation or introduction of alternatives

In addition, various States have introduced further and specific regulation on particular topics such as the use of plastic bags and in respect of drinking containers. We will publish a further paper which addresses the NSW container deposit scheme.

[2] See Press Release dated 26 September 2018 https://www.packagingcovenant.org.au/news/business-and-government-unite-to-tackle-waste-challenge

Recent TGA Changes to Permitted Ingredients in Listed Complementary Medicines

Authors: Tim Clarke, Special Counsel; and Cate Sendall, Senior Associate.

Among the very significant legislative changes[1] made recently to the *Therapeutic Goods Act 1989* (**TG Act**) were changes in respect of the regulation of complementary medicines in Australia.

The changes have come about as part of the legislative response to the *Review of Medicines and Medical Devices Regulation* (**Review**). The Review was undertaken primarily to determine and assess unnecessary or ineffective regulation in respect of therapeutic goods (including complementary medicines). The Review also sought to identify opportunities to improve Australia's regulatory framework to enhance Australia's position globally in respect of the development, manufacture, promotion and regulation of therapeutic goods (including complementary medicines).

Enactment of Therapeutic Goods (Permissible Ingredients) Determination

On 1 January 2016, the TG Act was amended to introduce the Therapeutic Goods (Permissible Ingredients) Determination (**PID**)[2]. The PID was created as a Legislative Instrument to simplify the multiple legislative instruments that existed previously in prescribing the ingredients that were permitted by the TG Act for use in listed medicines (specifically complementary medicines). As the PID is a Legislative Instrument, it is more flexible and easier to update than other forms of legislation.

The Therapeutic Goods Administration (**TGA**) will update the PID four times each year. New ingredients for listed medicines that are permitted, or changes to the role or existing requirements for a permitted ingredient, can be updated by changes to the PID.[3]

The PID is the TGA's "official list of ingredients" that can be used in listed medicines. In addition to listing the ingredients, the PID also details the manner in which the ingredients can be used and any "requirements" specific to the inclusion of an ingredient in listed medicines. In other words, any ingredient not included in the PID is not able to form part of any listed medicine (including complementary medicines) in Australia.

Amendments to the TG Act

The recent amendments to the TG Act have introduced new application categories and legislated timeframes in respect of the evaluation of new ingredients for entry onto the PID. The changes are proposed to:

- Provide greater transparency and predictability of outcomes for applicants;
- Provide incentives to encourage research and development in respect of new ingredients and improve the evidence base for listed medicines by providing an applicant with a period of two years "market exclusivity" for any new substance/ingredient that is entered onto the PID; and
- Improve flexibility for applicants in respect of the type of evidence and information that can support an application to enter a new ingredient on the PID.

Application for entry on the PID (complementary medicines)

Upon receipt of an application for the inclusion of a new substance/ingredient in the PID in respect of complementary medicines, the Complementary and OTC Medicines Branch of the TGA will consider the quality and safety aspects of the proposed substance/ingredient.

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[1] *The Therapeutic Goods Amendment (2017 Measure No. 1) Act 2018*

[2] S26BB of the *Therapeutic Goods Act 1989*

[3] *Changes to evaluation of substances for use in listed complementary medicines*, TGA, 3 May 2018

In order for the new substance/ingredient to be included in the PID, the TGA must come to the view that it is both safe, and of appropriate quality. It is, however, open to the TGA to attach "requirements" to the new substance/ingredient with a view to ensuring the safety and quality aspects of its use in listed medicines and to ensure consumer protection. The requirement for applicants (and sponsors) to hold evidence of the efficacy of any ingredients (and related indications) to be used in listed medicines has not changed.

If a new ingredient is included in the PID, it is open to any sponsor to use the ingredient in their listed medicines (subject to any period of "market exclusivity" afforded to the applicant).

The recent changes to the TG Act include:

- New application categories, legislative timeframes and fees

  There are four different procedures by which a substance may be evaluated for use in listed medicines. The relevant procedure (or category) specifies the scope and extent of evaluation required by the TGA. The evaluation process required largely depends on whether the application is accompanied by safety and quality evaluation reports from a comparable overseas regulator (**COR**) or whether a fresh evaluation by the TGA is required. The categories are briefly detailed in the table below[4].

Category	**Evaluation process**	**Total evaluation time and TGA fees (AUD)**
IN1	TGA evaluation of safety and quality of new ingredient based on evaluation reports issued by a COR.	70 days Application fee - $1,050 Evaluation fee - $14,000
IN2	Evaluation of safety based on a COR report. Independent evaluation of quality by the TGA.	120 days Application fee - $1,050 Evaluation fee - $14,000
IN3	Evaluation of quality based on a COR report or a monograph contained in a default standard[5] Independent evaluation of safety by the TGA.	150 days Application fee - $2,770 Evaluation fee - $22,900
IN4	Full independent evaluation of safety and quality by the TGA.	180 days Application fee - $2,770 Evaluation fee - $22,900

  The TGA is yet to publish a list of CORs. It is envisaged, however, that this list will include regulators from the US, UK, Canada, New Zealand and other countries which maintain similar regulatory standards in respect of health and medicine regulation where safety and quality of any new medicinal substances (along with efficacy) are primary considerations.

[4] *Changes to evaluation of substances for use in listed complementary medicines*, TGA, 3 May 2018

[5] "Default standards" are, generally, publicly available authoritative standards published by the British Pharmacopoeia, European Pharmacopoeia and United States Pharmacopoeia – National Formulary

The TGA's evaluation time does not include the initial 40 days screening time required to receive and review an application and notify the applicant whether or not the substance/ingredient is accepted for evaluation. The evaluation period commences once the TGA has accepted an application for evaluation and the applicant has paid the relevant fee. If the TGA fails to make a recommendation post evaluation within the legislative timeframe, it is obliged to refund 25 percent of the application fee to the applicant.

- Market exclusivity

  After the TGA's evaluation of an ingredient, which will enable it to be entered in the PID, the applicant can request that it be granted a period of two years exclusive use of the ingredient (a "protected ingredient") in the Australian market. Any exclusivity period granted to a new ingredient will be detailed in the PID as a "requirement" in respect of that ingredient. Any user of the protected ingredient for listed medicines will be limited to the applicant (and/or its nominee(s)) for 2 years. After the end of the two years market exclusivity period (calculated from the date the protected ingredient appears in the PID), other parties will be permitted to use the ingredient/substance in all listed medicines. Unauthorised use of a protected ingredient in a listed medicine may result in cancellation of the listing for that medicine from the ARTG.[6]

  Entry on the PID of an ingredient/substance as a protected ingredient does not affect any ingredient that has been evaluated previously by the TGA for use in listed or registered medicines. It also will not apply to applications for entry in the PID to change the role (including route of administration) or requirements for use of any permitted ingredient (i.e. an ingredient already listed on the PID).

Conclusion

Each of the above changes in respect of the regulatory requirements applying to the inclusion of ingredients in listed medicines is relevant for complementary medicine business owners. In particular, the creation of a right to "market exclusivity" in respect of a new ingredient provides a significant incentive for businesses to undertake research and development in respect of new innovative products. Having market exclusivity in respect of an ingredient serves as a point of differentiation with competitors and the regulatory changes enhances evidence-based listed complementary (and other) medicines in Australia.

If you would like more information about the changes to the PID including the "market exclusivity" period for new TGA-approved ingredients and how it affects your complementary medicine business, please do not hesitate to contact us.

[6] Australian Regulatory Guidelines for Complementary Medicines, V8, TGA, April 2018. See s 30 of the TG Act.

Penalties looming for unfair small business contracts

Authors: Laura Hartley, Partner; and Renee Shipp, Special Counsel.

On 14 October 2018, the ACCC's Deputy Chair, Mick Keogh, again reiterated the ACCC's view that major changes are required to unfair contract laws for small businesses at *the Franchise Council of Australia Law Symposium*. This speech follows similar comments from the ACCC Chair, Rod Sims, at his address to the *Council of Small Business Organisations Australia* in August of this year[1].

According to Mr Keogh, the ACCC considers that there are two fundamental flaws with this regime:

1. **Unfair terms are not illegal**

   The current legislation does not make unfair contract terms illegal in standard form small business contracts. At the moment, a potentially unfair contract term can be challenged in Court. If the term is judged to be unfair, the Court can declare the term void and not enforceable.

2. **No civil pecuniary penalties or infringement notices are available for unfair terms**

   The ACCC cannot seek civil pecuniary penalties when a term is declared unfair by the Court or issue infringement notices for small business contract terms that are likely to be unfair.

The ACCC is essentially frustrated that it is not holding a large enough stick. In the absence of significant financial penalties, the ACCC's view is that the stakes are simply not high enough to force businesses to make compliance with these laws a priority. In fact, Mr Keogh went so far as to suggest:

> *"…businesses could be considered to have an added incentive to include potentially unfair terms in their contracts. The worst that can happen under the law is that if some of the terms are subject to legal challenge, the [sic] might be declared unfair and effectively struck out of the contract, but the contracts otherwise remains in force"*[2].

The ACCC wants to be able to hold businesses to account for their unfair conduct. In order to do this, the ACCC wants these laws to be strengthened to ensure their utility in protecting small businesses. In a nutshell, the ACCC wants its big wooden stick! The ACCC also wants the thresholds for defining 'a small business contract' reviewed to potentially expand the scope of the law to a greater number of contracts.

The small business unfair contracts regime was first enacted in November 2016 and, at the time, the Federal Government committed to review it within two years. Therefore, the due date for the Government's review is imminent. The Government will be drawing upon the experiences of the ACCC in administering this law, as well as the views of other key stakeholders. The ACCC has made it clear that it will be making its case for strengthening these laws and by making these public statements, the ACCC is ensuring that its views are widely known in time for this review.

Unfair contract laws are, without a doubt, a hot topic for the ACCC and these issues have permeated various inquiries, investigations and proceedings commenced by the ACCC in recent times. Unfair contract practices were a critical feature of the ACCC's inquiry into the dairy industry for which it released its final report on 30 April 2018 and, more recently, the ACCC's market study into the wine grape industry, which commenced in September 2018.

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[1] Mr Rod Sims, Transcript of speech delivered at *Council of Small Business Organisations Australia's National Small Business Summit* held on 31 August 2018

[2] Mr Mick Keogh, Transcript of speech delivered at *Franchise Council of Australia Law Symposium* held on 14 October 2018

The ACCC has successfully commenced Court actions for unfair contract terms against JJ Richards & Sons Pty Ltd and Servcorp Limited[3]. Proceedings against Ashley & Martin and Mitolo Group Pty Ltd are still before the Courts.

The ACCC has also obtained Court enforceable undertakings from a number of companies which have co-operated with the ACCC's investigation into unfair terms in small business contracts, including Husqvarna, Cardtronics, Wisdom Properties Group, Warrnambool Cheese and Butter, Fairfax Media, Lendlease Property Management, Sensis and Uber[4]. Typically, these undertakings have involved the business undertaking to the ACCC to amend the terms of their contracts and refrain from enforcing the unfair terms. These businesses are also generally required to carry out a compliance program with respect to the *Australian Consumer Law* for a number of years.

In light of these public statements and the ACCC's heavy focus on unfair contracting practices involving small businesses, we can certainly expect that the ACCC will be strongly pushing Government for tougher laws and we will have to wait to see whether the ACCC is successful in getting any traction with this issue. Addisons will be closely monitoring this area for further developments and will keep you updated.

[3] Addisons' wrote about the Servcorp decision on 8 August 2018. To find out more, click on this link: *http://www.addisonslawyers.com.au/knowledge/Servcorp_gets_served_by_the_ACCC1107.aspx*

[4] Addisons' wrote about the Uber action on 30 August 2017. To find out more, click on this link: http://www.addisonslawyers.com.au/knowledge/Uber-s_crash_course_in_the_new_unfair_contracts_regime1013.aspx