

## UNFAIR CONTRACT TERMS...WHAT'S CHANGING?

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To: ALL AADA MEMBERS

In late 2023, significant changes to Australia's unfair contract terms (UCT) regime will take effect.

From 10 November 2023 the use, application of or reliance on unfair terms in a wide range of standard form contracts will become **illegal**, with contraventions attracting new higher maximum penalties, as opposed to previously where it could only be declared void.

These changes are not retrospective and will only apply to new agreements or renewals commencing on or beyond 10 November 2023. However, where a term of a contract is varied or added on or after 10 November 2023, the changes relevant to deciding whether a contract is a standard form contract apply to the whole contract.

Standard form contracts are typically used in industries where there is a high volume of 'agreements' occurring and contracts are generally offered on a 'take it or leave it' basis. This may include contracts with suppliers, service providers and consumers. Dealers should consider their own compliance with these changes prior to the commencement date.

Standard contract terms may be regarded as unfair if one party to the contract has a significant advantage over the other and it would cause financial or other harm to the other party if enforced.

The reforms also expand the UCT regime to apply to a wider class of small businesses. The significantly expanded definition of 'small business', will apply to businesses that employ 100 people or less (increased from 20) or any business with an annual turnover of less than \$10 million.

The AADA has continued to advocate on behalf of members on the issue of UCT and welcomes the recent changes which will help strengthen protections for small businesses from unfair terms in standard-form contracts. However, AADA will continue to advocate for all franchise agreements to qualify for UCT protections, irrespective of the number of employees or annual turnover.

There are a number of resources explaining the changes available, and members are urged to familiarise themselves with these changes prior to their introduction.

Dealers and Dealer Councils should seek legal advice prior to finalising new agreements and be advised that these UCT changes continue to apply to consumer sales contracts and to ensure that these contracts are updated to ensure compliance, particularly, as higher penalties apply.

More information on the upcoming changes can also be found on the [ACCC website](https://www.accc.gov.au).

# DEALER BULLETIN



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