

# Impacts of Unfair Contract Terms on transport operators

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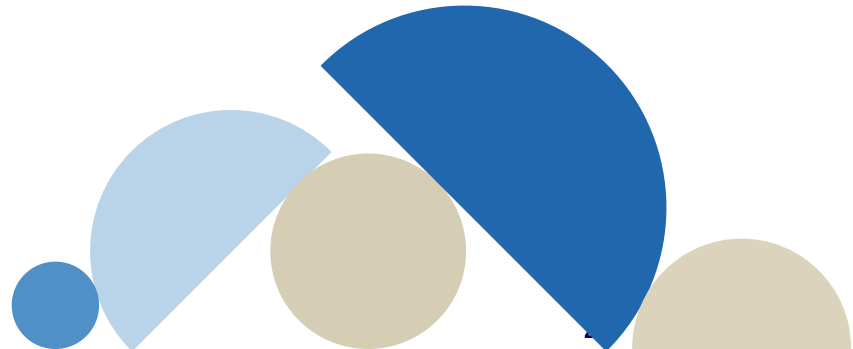
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1. Unfair Contract Terms in the context of Transport.

2. Carriers Legal Liability and Carriers (Goods In Transit)

3. Freight Forwarders Liability, Logistics Operators Liability and Marine Liability



What impact the existing Consumer Laws have on the contractual relationship of companies in the transport chain.

What are the expected changes to the Consumer Laws and what impact are they likely to have.

How could these changes impact the marine insurance policies that are typically placed for cargo owners and trucking companies.

How could these changes impact the marine liability policies that are typically placed for transport operators, logistics operators and warehouse operators.

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## What does UCT apply to and when?

Has applied to standard terms and conditions of carriage since 12 November 2016 that are 'standard form':

1. consumer contracts; and
2. small business contracts



- Whether one of the parties has all or most of the bargaining power relating to the transaction;
- Whether the contract was prepared by one party before any discussion relating to the transaction occurred between the parties;
- Whether another party was, in effect, required either to accept or reject the terms of the contract in the form in which they were presented;
- Whether the terms of the contract take into account the specific characteristics of another party or the particular transaction.

(s 12BK of the ASIC Act)



# Small Business Contracts

A small business has:

- Less than 20 employees (may increase to 100 employees in the future); and

Either of the following applies:

- the upfront price does not exceed \$300,000; or
- the contract has a duration of more than 12 months and the upfront price does not exceed \$1,000,000.

(s 12BF(4) of the ASIC Act)



## When Is a Term Unfair?

1. Significant imbalance of rights and obligations; and
2. Not reasonably necessary; and
3. Would cause detriment to a party if it were to be applied or relied on.

Consider the extent to which a term is transparent and the contract as a whole.

(s 12BG of the ASIC Act)





“However, this restriction will not apply in the event of the occurrence (certified by the United States Centres for Disease Control or successor body) of a widespread viral infection transmitted via bites or contact with bodily fluids that causes human corpses to reanimate and seek to consume living human flesh, blood, brain or nerve tissue and is likely to result in the fall of organized civilization.”





- Declaration that term is void
- Order to pay civil penalty (likely to come into effect soon)
- The Court fashions an appropriate remedy rather than declaring the term void (likely to come into effect soon):
- Corrective advertising
- Compensatory damages

- Identify clauses that are not reasonably necessary and will cause detriment to customer if relied upon; and
- either delete clause or cascade the clause to include fairer clause



## Incorporation Of Standard Terms and Conditions

Adopt some or all of the following:

- Include full wording or direct link to STCs in quotes and credit applications.
- All consignment notes and shipper's letters of instructions to include statement at foot in bold that all business transacted is subject to STCS and either printed on reverse or direct link.
- All consignment notes and shipper's letters of instructions to include space for sender to sign acknowledging bound by STCs.



# Impacts of Unfair Contract Terms on your transport clients

Cargo and Marine Liability



# Cargo and Carriers Liability

- What are we referring to as cargo and carrier's liability?
- Will these covers be impacted by UCT?
- What do we need to consider as an industry to ensure compliance?

If we focus on the 4 identified covers opposite, we can quickly ascertain that the new UCT regime can potentially have far reaching implications on our covers.

Need to ensure we have scrutinized our wordings, and...

Our insured's need to carefully consider ALL the contracts that they are linked to in relation to the carriage of their cargo or other cargo.

Annual Marine Cargo  
policy

Goods in Transit  
policy

Goods in Transit  
(Carriers) policy

Carrier Cargo  
Liability policy



- General or Common Carriers – bound to accept carriage of goods and persons and are strictly liability for loss or damage
- Specialist carriers such as couriers and home removalists
- Impact of the contracts of carriage – critical in defining who does what and who is liable for what.
- Understand the impacts that UCT have on transport clients
- How to negate possible UCT issues arising
- What do we need to do?

- What types of contract is used?
- How can liability be affected?
- What are the impacts on cover?

House bill of lading

House air waybill

Standard Terms and  
Conditions

Specific Customer  
Contracts





## Types of contracts used –

- standard terms and conditions,
  - negotiated terms,
  - specific customer contracts
- 
- How liability with the customer might be affected
- 
- Affect on cover



## Other Types of Marine Liabilities



Ship Repairers



Marina Operators



Ports and Terminals

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# Questions?

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Thank You

