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Commercial Law e-alert

Small Businesses to Lose Protections against Faulty Goods and Services

Currently, the *Trade Practices Act 1974* ("**TPA**") provides many small businesses with protection against the supply of faulty goods and services. However, small businesses will lose this protection if the *Trade Practices Amendments (Australian Consumer Law) (No. 2) Bill 2010* ("**Bill**") passes through Parliament unamended.

The TPA, as it currently stands, provides a number of implied terms in contracts for goods and services entered into by "consumers". The implied terms provisions of the TPA have the effect of including a non-excludable warranty in "consumer" acquisitions of goods and services, for example, a warranty that the goods and/or services acquired will be fit for a specified purpose.

The TPA's implied terms protect small businesses because the current definition of "consumer" includes all goods or services acquired for less than \$40,000 which (in the case of goods) have not been acquired for the purpose of resale or as raw materials in a business that involves the production, manufacturing or repair of other goods. This means that many acquisitions of goods and services made by small businesses are covered by the TPA's implied terms.

However, the Bill proposes to amend the definition of "consumer" and introduce a new system of statutory consumer guarantees to replace the current implied terms regime.

Under the new definition, a person is taken to have acquired goods as a "consumer" if the goods were of a kind ordinarily acquired for personal, domestic or household use or consumption or the goods consisted of a vehicle or trailer acquired for use principally in the transport of goods on public roads. Under the new definition, a person is taken to have acquired services as a "consumer" if the services were of a kind ordinarily acquired for personal, domestic or household use or consumption.

This is a significant shift from the current definition of "consumer" under the TPA. The changes will mean that small businesses will be completely excluded from the proposed new system of statutory consumer guarantees.

It is speculated that the Bill will be passed in Parliament's upcoming winter sittings for implementation in Australia by the beginning of 2011. We will keep you updated.

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