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Commercial Law e-alert

Your trade terms and your credit terms – time to update before it's too late!

There are two important law reforms coming in next year which will affect most businesses terms of trade and/or credit terms. If you and your forms are not up to date your terms will be unenforceable and at worst you may even be in breach of the *Trade Practices Act*.

The first reform is the Australian Consumer Law ("ACL") which comes in on the 1st January 2011. It changes the name of the *Trade Practices Act 1974* to the *Competition and Consumer Act 2010*, changes all the section numbers of the sections like 52 (misleading and deceptive conduct) and more importantly, introduces a set of "consumer" guarantees (which will apply to business to business transactions where the price is \$40,000 or less). Standard form terms are already subject to the unfair contracts terms which came in earlier this year as part of this major reform to consumer protection in Australia.

We can provide you with an advice that summarises the ACL as it applies to your business. It is then usually advisable to review your standard terms of trade as there are harsh penalties for having terms and conditions in consumer contracts that offend the ACL.

The second reform is the *Personal Property Securities Act 2009* which comes into effect in May 2011. It creates one new register for all personal property securities to be registered on – many of which have never had to be registered before (in fact there has been nowhere to register them). For example, if you have retention of title clauses in your terms of trade or in your credit terms, these interests will become unenforceable after 1 May 2011 unless you register them on the new Personal Property Securities Register.

Finally, a recent Supreme Court case in NSW concerning personal guarantees (such as are often included as part of the security for credit terms), suggests that the form of these guarantees should be reviewed to include a charge over freehold and leasehold property to allow you to put on a caveat over the guarantor's real estate if you need to in a bad debt situation.

If you need any help finding out about the impact of these reforms or preparing for them, please do not hesitate to contact us.

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