

TRADE PRACTICES LAW JOURNAL

Volume 13, Number 4

December 2005

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ARTICLES

Dealing with unfair terms in consumer contracts: The search for a new regulatory model – *Frank Zumbo*

Once it is recognised that the equitable doctrine of unconscionability and the existing statutory prohibitions against unconscionable conduct have a procedural unconscionability bias, it becomes readily apparent that these are not the right vehicles for dealing with claims based solely on the substantive unfairness of contractual terms. Indeed, in the absence of a legally recognisable disabling condition affecting the consumer during the contract-making process, the courts will rarely, if ever, rely on the equitable doctrine or existing statutory provisions against unconscionable conduct to deal with allegedly unfair terms in a consumer contract. With the equitable doctrine and the existing statutory provisions against unconscionable conduct being so ineffective in dealing directly with unfair terms in consumer contracts, the time has come to adopt a new regulatory general model to deal with such unfair terms. Such a model should not only provide a vehicle for dealing with unfair terms in a timely and cost-effective manner, but should also offer clear guidance as to when a term will be considered unfair. Given that new regulatory models already exist in the United Kingdom and Victoria, it is opportune to consider their operation and possible additions to such models with a view to identifying the most appropriate model for dealing directly with unfair terms in consumer contracts. 194

TPC/ACCC: The Commissioners the media largely ignored – *Hank Spier*

Bill Kovacic, an eminent US anti-trust practitioner said “The United States has an incomparably large and capable community of individuals expert in anti-trust and consumer protection. It is a national embarrassment that appointments to the FTC do not consistently reflect this remarkable strength.” What of Australia? The Journal has published articles on three of the four past TPC/ACCC Chairmen, and the Deputies. This article, the next in the series, is on the Commissioners. It gives a historical perspective on the Commissioners since the inception of the TPC in 1974, and the impact many of these had on the agency. The article also provides some insight as to how the interaction of Commissioners and the Chairmen, and Deputy Chairmen has worked in the past and what is an ideal mix of roles. 214

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The *Trade Practices Law Journal* comprises four parts a year.

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ISSN 1039-3277

Typeset by Lawbook Co., Pyrmont, NSW

Printed by Ligare Pty Ltd, Riverwood, NSW