MLB LAWYERS & ASSOCIATES

QUARTERLY NEWSLETTER

JUNE 2012

The Responsibility of a Holder of a Warehouse Licence

The holder of a warehouse licence is responsible for the safe custody and accounting of goods which must comply with the requirements of the Border Protection. If a holder of a warehouse does not comply with those requirements they will be responsible for any unpaid revenue.

From 1 July 2010 administration of Excise Equivalent Goods ("EEGs") that are warehoused moved from Customs and Border Protection to the Australian Taxation Office ("ATO"). EEGs are alcohol, tabacco and fuel that are imported and liable to excise duty because they are manufactured or produced in Australia.

Unless you are in the duty free, catering bond and providore industries, a warehouse licence should be obtained from the ATO if you need to store EEGs in a warehouse or operate one or more warehouses and at least one of them has EEGs.

Depot licence holders storing goods subject to the control of Customs into containers can only utilise warehouse premises for holding/unpacking of imported goods or holding/unpacking of goods for export.

There are strict government requirements that a holder of a warehouse licence must comply with at all times for the safe custody and accounting of goods. The cost of compliance should be taken into account when assessing the cost of storage services especially if the goods being stored require a special licence, such as a warehouse licence to store EEGs.

What does the *Trade Practices Amendment (Australia Consumer Law) Act (No 1) 2010* mean for Suppliers?

The *Trade Practices Amendment (Australia Consumer Law) Act (No 1)* 2010 ("the Act") applies to all consumer contracts entered into or terms varied or renewed after 1 July 2010.

A "consumer contract" means an agreement for the supply of goods or services (or sale or grant of an interest in land) to an individual who acquires the goods, services or interest wholly or predominantly for their own personal, domestic or household use or consumption.

The Act makes changes to various provisions of the *Trade Practices Act 1974* and *Australian Securities and Investment Commission Act 2001* to prohibit unfair contractual terms in consumer contracts.

The Act only applies to "standard form" contracts and does not apply to business to business contracts. It also does not apply to certain shipping contracts (such as contracts for the carriage of goods by ship), contracts that are constitutions of companies, managed investment schemes and other types of bodies or contracts under the *Insurance Contracts Act 1984.* A "standard form contract" is not defined in the Act but is likely to be a contract prepared by a business which is given to a customer to sign without the customer having the opportunity to negotiate the terms and conditions.

The Act deems a term in a consumer contract to be "unfair" if the term:

(a) Causes significant imbalance in the parties' rights and obligations arising under the contract;
(b) Is not reasonably necessary to protect the legitimate interests of

the party who will benefit from the term; and

(c) Causes detriment to a party if the term applies.

A consumer contract may be “unfair” if:

(a) It penalises only the consumer if the contract is terminated;
(b) Only the supplier can avoid, change, vary, restrict the contract terms or terminate or renew the contract; or
(c) The term or the contract overall is difficult to read or understand.

If a court considers a term “unfair” in a contract, it will set it aside and if the contract can operate without that term, the remaining terms in the contract will be enforceable.

Civil pecuniary penalties apply against suppliers that contravene the Act.

The Act may encourage consumers and regulators to challenge standard form contracts making it difficult for a business to rely on their terms of trade. It is therefore recommended that all standard contracts with consumers be reviewed carefully to ensure that no unfair terms exist in those contracts.

MLB Lawyers & Associates, Level 1, 441 South Road, Bentleigh Victoria 3204

Telephone 1300 688 421 - Facsimile 61 3 9580 6962

Email: enquiries@mlblawyers.com.au