



# UCT Comparison Table

CURRENT UCT REGIME	NEW UCT REGIME
<b>Small business definition</b>	
<p><b>ACL and ASIC Act</b></p> <p>The UCT regime applies to a small business contract if:</p> <ul style="list-style-type: none"> <li>at the time the contract is entered into, at least one party to the contract is a business that employs fewer than 20 persons; AND</li> </ul> <p>either</p> <ul style="list-style-type: none"> <li>the upfront price payable under the contract does not exceed \$300,000; OR</li> <li>the contract has a duration of more than 12 months and the upfront price payable under the contract does not exceed \$1,000,000.</li> </ul>	<p><b>ACL</b></p> <p>The UCT regime will apply to a small business contract if one party to the contract is a business that:</p> <ul style="list-style-type: none"> <li>employs less than 100 people; OR</li> <li>has a turnover for the last income year of less than \$10 million.</li> </ul> <p>Note: the monetary contract threshold has been removed.</p> <p><b>ASIC Act</b></p> <p>The UCT regime will apply to a small-business contract if:</p> <ul style="list-style-type: none"> <li>the upfront price payable under the contract does not exceed \$5 million; AND</li> <li>one party to the contract is a business that:               <ul style="list-style-type: none"> <li>employs fewer than 100 people; OR</li> <li>has a turnover for the last income year of less than \$10 million.</li> </ul> </li> </ul> <p>Under the ACL and ASIC Act, part-time employees are to be counted as an appropriate fraction of a full-time equivalent employee.</p>
<b>Standard contract definition</b>	
<p>In determining whether a contract is a standard form contract, a court must take into account a number of specific matters (as set out in the article).</p>	<p>In addition to the current matters, a court must also take into account whether one of the parties has used the same or a similar contract before.</p>
<p>In determining whether a contract is a standard form contract, the matters a court must take into account include whether one party was required to reject or accept the terms of a contract in the form in which they were presented and whether another party was given an effective opportunity to negotiate the terms of the contract.</p>	<p>A contract may be determined to be a standard form contract despite there being an opportunity for:</p> <ul style="list-style-type: none"> <li>a party to negotiate changes to contract terms that are minor or insubstantial in effect;</li> <li>a party to select a term from a range of options determined by another party; or</li> <li>a party to another contract or proposed contract to negotiate terms of the other contract or proposed contract.</li> </ul>
<b>Pecuniary penalties</b>	
<p>No equivalent (currently no pecuniary penalty liability for contravention)</p>	<p>A pecuniary penalty may be imposed if a person proposes, applies, relies or purports to apply or rely on, an unfair contract term.</p> <p><b>ACL</b></p> <p>The maximum penalty for contravention by an individual will be \$2,500,000.</p> <p>For a body corporate, the maximum penalty will be the greater of:</p> <ul style="list-style-type: none"> <li>\$50,000,000;</li> </ul>



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	<ul style="list-style-type: none"> <li>▪ if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the act or omission, 3 times the value of that benefit; or</li> <li>▪ if the court cannot determine the value of the benefit obtained—30% of the body corporate’s adjusted turnover during the breach turnover period for the act or omission.</li> </ul> <p><b>ASIC Act</b></p> <p>The maximum penalty for contravention by an individual will be the greater of:</p> <ul style="list-style-type: none"> <li>▪ 5,000 penalty units (or \$1,565,000 for offences on or after 1 July 2023 at the current penalty unit rate of \$313); or</li> <li>▪ if the court can determine the amount of the benefit derived and detriment avoided because of the contravention, that amount multiplied by 3.</li> </ul> <p>For a body corporate, the maximum penalty will be the greatest of:</p> <ul style="list-style-type: none"> <li>▪ 50,000 penalty units (or \$15,650,000 for offences on or after 1 July 2023 at the current penalty unit rate of \$313);</li> <li>▪ the amount of the benefit derived and detriment avoided because of the contravention multiplied by 3; or</li> <li>▪ 10% of the annual turnover of the body corporate for the 12-month period ending at the end of the month in which the body corporate contravened, or began to contravene, the civil penalty provision, or if that amount is greater than an amount equal to 2,500,000 penalty units, 2,500,000 penalty units.</li> </ul>
<b>Court powers</b>	
<p>Where a court determines a term in a standard form contract to be unfair, it is automatically void.</p> <p>The court can also make orders for the whole or any part of a contract or collateral arrangement between the respondent and another person, including that the contract is void.</p> <p>These orders can be sought by an affected party or by application of the regulator on behalf of either a party or a non-party.</p> <p>Such orders can only be made when a person or class of persons has suffered, or is likely to suffer, loss or damage.</p>	<p>The court can make orders for a whole contract or collateral arrangement, including to void, vary or refuse to enforce the contract, if this is appropriate to prevent loss or damage that is likely to be caused.</p> <p>The new provisions do not require a court to consider that they will redress actual loss or damage.</p> <p>The court can also make orders, on the application of the regulator, preventing a term that is the same or substantially similar in effect to a term that has been declared as unfair, from being included in any future standard form small business or consumer contracts.</p> <p>Additionally, the court can make orders, on the application of the regulator, to prevent or reduce loss or damage which is likely to be caused to any person by a term that is the same or substantially the same in effect to a term that has been declared unfair.</p>
<p>Among other powers, the court can make an injunction in such terms as it considers appropriate restraining a party from applying, relying on, or purporting to apply or rely on, a term of a contract that has been declared an unfair term.</p>	<p>In addition to the current injunction powers, the court can make an injunction restraining a person from:</p> <ul style="list-style-type: none"> <li>▪ entering into any future contract that contains a term that is the same or similar in effect to a term that has been declared an unfair contract term; or</li> <li>▪ applying, or relying on, a term in any existing contract that is the same or similar in effect to a term that has</li> </ul>



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	been declared unfair, whether or not that contract is before the court.
<b><i>Excluded contracts</i></b>	
No equivalent.	<p>Certain categories of contracts are excluded from the operation of the unfair contract terms provisions. These include:</p> <ul style="list-style-type: none"> <li>▪ the operating rules of licensed financial markets such as ASX Limited;</li> <li>▪ the operating rules of licensed clearing and settlement facilities; and</li> <li>▪ real time gross settlement systems approved as payment and settlement systems by the RBA.</li> </ul> <p>Certain life insurance contracts are also excluded from the scope of the provisions in order to ensure positive consumer outcomes.</p>

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