



## Paul Clitheroe

Paul Clitheroe is a founding director of financial planning firm ipac, Chairman of the Australian Government Financial Literacy Board and chief commentator for Money Magazine.

# new consumer protection against unfair contracts

If you're taking out a new loan, signing up for a mobile phone plan or even just joining the local gym, chances are you'll be asked to sign a contract. It always pays to read the fine print on any contract but since 1 July, consumers have the extra reassurance of new protection from unfair terms or conditions.

Many of the contracts we sign are 'standard form' contracts that don't leave room for negotiation. You either sign on the dotted line and accept the conditions or take your business elsewhere.

The trouble with these contracts is that they can be lengthy, often with reams of fine print written in almost incomprehensible legal terms. That's why plenty of people don't always read, or understand the contract thoroughly.

And because many of us do business online these days, contracts aren't always in hard copy. They can involve clicking an 'I agree' button on a web page, which can make it difficult to go back and review the terms of a contract.

The trouble is, the fine print can come back to haunt us if things go wrong. It's often only when a problem arises that we discover the contract favours the service

or product provider – not you, the consumer.

The sorts of problems I'm referring to are things like hefty exit charges if you want to refinance a home loan. Or over-the-top mobile phone charges, which are a key source of consumer complaints.

Since 1 July however new laws have been introduced that are designed to swing the balance of contracts back in favour of consumers. Under these laws, our courts are entitled to declare the terms of a contract as unfair if it significantly favours the provider. The unfair condition can be scratched, even though the remainder of the contract may still hold.

If you sign a contract, which you later discover unreasonably favours the provider while making life tough for you, the first step is to approach the provider or its dispute resolution scheme. Or you can take up the matter with ASIC or going a step further, take legal action.

While the new laws are a step forward I reckon it's an area where an ounce of prevention is worth a tonne of cure. Yes, the courts may be able to overrule the terms of a contract but getting to this point can involve tremendous hassle and expense.

What's likely to be most beneficial for consumers is the new laws will help discourage more businesses from drafting unfair contracts. But in the meantime I stress that it is important to read any contract you sign. Don't make assumptions about what it says.

If you don't understand the terms of a contract, have it reviewed by someone who can explain it to you – your solicitor is a good choice. This is especially important for home loan contracts that involve significant amounts of money.

If you're signing up for something relatively simple like gym membership, and you're presented with an overly lengthy contract, the warning bells should start ringing. It may be best to go with an alternate business that can keep things simple.

The new rules only apply to contracts entered after 1 July 2010. For more information, ASIC has produced a booklet on unfair contract that you can download from [www.fido.gov.au](http://www.fido.gov.au).

*Paul Clitheroe's 'Making Money' for the week beginning 2 August 2010*



**Disclaimer:** The material contained herein is of a general nature only and is not intended to be relied upon as a substitute for professional advice. ipac has not taken individual circumstances, objectives or needs into consideration. Before acting on any advice, you should consider whether the advice is appropriate to your individual circumstances. You are advised to seek independent professional advice. While ipac believes that the information contained in this publication is correct, no warranty of accuracy, reliability or completeness is given, and except for liability under statute which cannot be excluded, no liability for error and omissions is accepted. **ipac securities limited** ABN 30 008 587 595 AFS Licence No. 234656.

**ipac securities limited** Level 31 Grosvenor Place 225 George Street Sydney NSW 2000 Australia  
Sydney Office Locked Bag 15 Grosvenor Place NSW 1220. DX 10328 Sydney Stock Exchange.  
Telephone 02 9373 7000. Facsimile 02 9373 7111. Adviser Services 1800 812 950. Investor Services 1800 624 542.