

AUSTRALIAN CONTRACT CODE

[Revised 1999]

Application

Article 1

The Code applies to all contracts and proposed contracts which have their closest connection with Australia. A party may not rely on a stipulation that the law of another jurisdiction applies if it would be unconscionable or against the public interest to do so.

Article 2

The Code does not apply to the extent that it is inconsistent with Commonwealth, State or Territory legislation.

Article 3

Precedents do not determine the application of the Code.

Article 4

More than one article may apply in any case. Each relevant article must be taken into account.

Making a contract

Article 5

A contract is made only when the parties intend legal obligations to arise.

Article 6

A contract is made when one person makes a promise to another person in return for a promise or act by that person or another person.

Article 7

There is no contract if a necessary term is missing, is too vague, or has been left to future agreement.

Third parties

Article 8

A person may be a party to a contract if it was made by that person's agent or if it has been transferred to that person.

Article 9

A person who is not a party to a contract may enforce it to the extent that it was intended to confer a benefit on that person.

Obligations of the parties

Article 10

The obligations of the parties are –

- to perform their promises exactly
- to do everything which conscience requires to ensure that each gets the benefit intended by their promises.

Breach

Article 11

A party who fails to perform, or is unwilling or unable to perform, an obligation breaches the contract, unless performance is excused.

Excuses

Article 12

A party is excused from performance of a contract to the extent that it would be unconscionable for the other to insist on it.

Article 13

It *may* be unconscionable for a party to insist on performance if –

- that party has breached the contract
- advantage was taken of the other party
- the other party made a mistake

performance was conditional on something happening or not happening

it was agreed that the other party did not have to perform
circumstances have changed since the contract was made.

Article 14

It may *not* be unconscionable for a party to insist on performance if that party

–

cannot be restored to the position the party was in before the contract was made

would lose an interest in property acquired under the contract

was led to assume that the other party would not exercise a right to refuse performance.

Relief

Article 15

Where a party has breached the contract, the other party is entitled to either or both –

an order that the contract be performed to the extent still possible

an award of damages for loss caused by the breach, or nominal damages.

Article 16

The amount of damages to which a party is entitled is that amount which, as far as possible, puts the party in the same position as if the contract had been performed.

Article 17

It is up to the party claiming damages to prove that the loss was caused by the breach.

Article 18

Where damages cannot be assessed accurately the court may award an approximate amount.

Article 19

A party is *not* entitled to claim damages to the extent that a failure to avoid the loss makes it unconscionable to do so.

Article 20

A party is *not* entitled to keep or claim a specified amount on breach or cancellation of a contract to the extent that it would be unconscionable to do so.

Article 21

A court can grant any other relief.

Article 22

A court can refuse relief to the extent that this is required in the public interest.

Documents

Article 23

Where a document recording a contract is inaccurate a court can give effect to the contract intended by the parties.

Article 24

Signing a document usually establishes that the person signing intended to adopt its content.

Article 25

A court may exclude evidence which is inconsistent with an apparently genuine, complete and unequivocal document recording a contract.

Rights arising from assumptions

Article 26

A person who makes an assumption of any kind may require another person to act in accordance with that assumption to the extent that it would be unconscionable not to do so.

Overriding article

Article 27

A person may not assert a right or deny an obligation to the extent that it would be unconscionable to do so.