



Australian Government



Australian
**Small Business and
Family Enterprise**
Ombudsman

21 August 2018

Manager, Insurance and Financial Services Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: UCTinsurance@treasury.gov.au

Dear Sir/Madam

EXTENDING UNFAIR CONTRACT TERMS PROTECTIONS TO INSURANCE CONTRACTS

We welcome and support the extension of unfair contract term provisions (UCT) to contracts of insurance. The UCT provisions are a critical tool for small to medium enterprises (SMEs), to negotiate fair and reasonable terms in contracts.

In extending UCT provisions to insurance we strongly support tailoring the UCT provisions to accommodate specific aspects of insurance. For example, allowing a SME to select from different policy options is standard therefore the resulting contract is subject to the UCT provisions.

We have firsthand experience of the power of UCT provisions. Our assistance function provides access to dispute resolution services for those SMEs involved in a disagreement. Since the introduction of the UCT provisions, many contract disputes are resolved in the first conversation using the UCT provisions as a lever. By referencing the UCT provisions, we have been able to assist SMEs to negotiate, and have changed or removed, clauses that appear unfair such as unreasonable penalties for early exit.

When negotiations fail, a SMEs only alternative is to seek a ruling through the courts. As our inquiries have shown, SMEs are unable to afford using the court system. Larger companies have greater resources, both in funding and expertise, to extend court proceedings until the drain on the resources of an SME forces them to give up or go out of business.

We do not support the alternative, to enhance existing IC Act remedies. While this may provide the ability to customise UCT for insurance, such as reversing the onus of proof, and may be seen as an advantage, it will simply increase red tape for SMEs. To operate their business SMEs will have many contracts. Having to know which piece of legislation applies to which contract, particularly if they have different rules, simply adds complexity. Any, and all, changes to legislation or regulation that effect SMEs must aim to reduce red tape and level the playing field between SMEs and larger players.

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We will advocate for a change in how SMEs can challenge terms outside the court system as part of the impending review of the legislation. We will also request that more work is done to promote the provisions through channels accessed by SMEs. Our experience indicates that many SMEs are unaware of the UCT provisions. While resources and examples are provided by the regulators on their web sites, such as the ACCC, this is not where SMEs go for information. To reach SMEs regulators must promote the provisions through social media and through SME networks such as industry associations.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Jill Lawrence on 02 6263 1558 or at jill.lawrence@asbfeo.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kate Carnell', written in a cursive style.

Kate Carnell AO

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