



AUSTRALIAN CHAMBER OF
COMMERCE AND INDUSTRY

12 May 2015

Consumer Policy Framework Unit
Small Business Competition and Consumer Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Sir/Madam

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Exposure Draft Legislation – Small Business and Unfair Contract Terms Bill 2015

The Australian Chamber of Commerce and Industry (ACCI) welcomes the opportunity to make a submission to the Exposure Draft of the *Small Business and Unfair Contract Terms Bill 2015*.

ACCI appreciates the need for legislative protections for small business in relation to unfair contract terms where there is 'unequal' bargaining power between the entities concerned. The existing legal framework largely addresses 'unfair' business dealings rather than 'unfair' contract terms. ACCI further appreciates that the costs associated with legal due diligence of low-value standard form contracts, often far exceed the benefits. This may result in small businesses forgoing critical commercial opportunities.

ACCI supports the limitation of the proposed legislation to low value small business transactions. However, while ACCI supports the introduction of unfair contract term protections for small businesses it encourages the Government to reconsider the scope of the proposed legislative provisions. ACCI believes that small business to small business contracts should not be included in the proposed regime. The Regulatory Impact Statement (RIS)¹ states that small businesses are more likely to lack resources and bargaining power than medium or large businesses in negotiating 'unfair' contract terms. ACCI believes that the threshold criterion of 'unequal' bargaining power is therefore unlikely to arise in contractual negotiations between small businesses. Such a situation is more likely to arise in the instance of small business negotiations with medium to large business entities.

ACCI acknowledges that there may be limited instances of 'unequal' bargaining power in some small business to business contractual negotiations. However, in developing any regulatory framework it is vital to ensure that the benefits exceed the costs and are proportionate to the perceived detriment.

¹ Decision Regulation Impact Statement – Extending Unfair Contract Term Protections to Small Businesses (2015), p3.



ACCI believes that while well targeted and designed regulations may deliver economic benefits they invariably impose costs on businesses. Regulation imposes compliance costs on businesses by requiring them to undertake additional activities and provide information to Government and third parties. The compliance costs incurred by businesses may thus well exceed the level necessary to achieve the Government's policy objectives. ACCI believes that, in this instance, the regulatory compliance burden imposed on small businesses will far exceed any positive policy outcomes desired by Government.

Yours Sincerely,

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

John Osborn
Director
Economics & Industry Policy