



Thursday 23 August 2018

Manager, Insurance and Financial Services Unit
The Treasury
Email: UCTinsurance@treasury.gov.au

RE: Unfair contract terms - insurance products

I write regarding the consultation on unfair contract terms (UCT) and insurance products. CHOICE supports the key proposal put forward in the proposals paper, to extend the UCT laws to apply to insurance contracts, and also to tailor the laws to accommodate specific features of insurance contracts.

As the paper discusses, all businesses selling to consumers are prohibited from including UCT in a standard form contract, except insurance. There are sound policy grounds for the prohibition on UCT and these grounds apply equally to insurance.

The UCT provisions were established to overcome consumer confusion in understanding complex contract terms in standard form contracts, where there was no possibility for a consumer to negotiate terms as part of the transaction. In many respects insurance is the ideal case study for why a prohibition on UCT should exist. General insurance contracts are often so complex that consumers need an additional layer of protection against harmful terms. Contracts extend over pages of information, few people read or understand them, and they contain complex terms which most people are unlikely to understand. As a consequence, consumers suffer detriment by having claims denied due to the mismatch between what they thought the policy covered and what was actually covered. Allowing insurance contracts to include provisions that are unfair leaves consumers open to exploitation.

CHOICE strongly supports the proposal to amend section 15 of the *Insurance Contracts Act 1984* (IC Act) to allow the current unfair contract terms laws in the *Australian Securities and Investments Commission Act 2001* to apply to insurance contracts regulated by the IC Act. This is a straightforward and commonsense approach that would act on the recommendations of various reviews that the unfair contract terms exemption for insurance contracts be removed. This avoids duplicating the provisions

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across another piece of legislation, which may increase the risk of inadvertently introducing inconsistencies into the law.

The UCT law should apply to insurance contracts in exactly the same way it applies to other standard form contracts, but elements of the law will need to be tailored to ensure that insurance contracts are properly captured. CHOICE supports the proposals in Treasury's paper, including the proposal to narrowly define the main subject matter of the contract as those terms that describe what is being insured. We agree that this would ensure consistency with the overall approach taken by the existing unfair contract terms laws, and the underlying policy objective to address the power imbalance that arises from consumers being offered contracts on a 'take it or leave it' basis.

For further information please contact CHOICE on [REDACTED]

Yours sincerely,



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