



Small Business
Development Corporation

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Manager
Financial System Division
Markets Group
Treasury
Langton Cres
PARKES ACT 2600

Via email to: InsuranceConsultations@treasury.gov.au

DRAFT REGULATION IMPACT STATEMENT – EXTENDING THE PROTECTION FROM UNFAIR CONTRACT TERMS TO INSURANCE CONTRACTS

The Small Business Development Corporation (SBDC) welcomes the opportunity to provide its views on the draft Regulation Impact Statement (RIS) relating to extending the protection from unfair contract terms (UCT) to insurance contracts.

The SBDC is an independent statutory authority of the Government of Western Australia (WA), established to support and facilitate the growth and development of small businesses in the state¹.

An important component of the SBDC's mandate is to advocate for a fair, conducive and productive environment for WA small businesses, and to influence the policy and regulatory environment affecting the small business sector. In this regard, the SBDC regularly contributes to policy and legislative reviews, inquiries and regulatory reform proposals undertaken across all tiers of government.

The SBDC strongly supports the Federal Government's proposed extension of the UCT provisions to the insurance sector. The UCT laws currently apply to most financial products and services regulated by the *Australian Securities and Investments Commission Act 2001* ('the ASIC Act') but not to insurance contracts regulated under the *Insurance Contracts Act 1984* ('the Insurance Contracts Act'), which is illogical.

The SBDC notes that this action is seeking to ensure that small businesses and consumers have the equivalent level of protections when entering into an insurance contract as they do under other financial products and services by removing terms that are unfair. It will also provide avenues of recourse where an insurance contract contains an unfair term.

¹ The views presented here are those of the SBDC and not necessarily those of the WA Government.

Whilst the SBDC fully supports this action, it is hoped the reforms will go further in the future. The SBDC has been strongly advocating for the introduction of pecuniary penalties and for UCTs to be made illegal in all small business standard form contracts, which we hope to see come into effect as a matter of urgency.

The ASIC Act presently excludes terms that define the main subject matter of a contract from the UCT regime. In order to implement the proposed reform, the ASIC Act will need to be amended to define the main subject matter of an insurance contract. The SBDC notes that the draft RIS considers options to include either a broad (Option 2) or a narrow (Option 3) definition of main subject matter.

In this regard, the SBDC supports the implementation of Option 3 – to apply UCT laws to insurance contracts, including a narrow definition of main subject matter – in line with the Federal Government’s preferred position and the recommendation made in the Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services.

The adoption of a narrow definition of main subject matter as “what is being insured” will ensure that the UCT laws can be applied to most terms in an insurance contract, ensuring small businesses and consumers can confidently rely on the UCT protections. This option includes tailoring the UCT law so that it applies effectively to insurance contracts, including amending the definition of upfront price payable to include excesses and deductibles that are transparently disclosed. It also allows third party beneficiaries to take action in certain circumstances, ensuring that the protections of the UCT law will be available to a wider range of small businesses and consumers.

The adoption of this option is also likely to lead to small businesses more adequately insuring themselves, as the extension of the UCT provisions to insurance would increase confidence in the industry.

Following these changes, insurers will need to review their standard form contracts and remove any unfair terms from them. Whilst the SBDC acknowledges that this provision will create an initial additional cost for insurers, it is noted that there should be no additional ongoing costs. Treasury has estimated the cost to the industry will be a one-off cost of approximately \$3.5 million. The SBDC believes that the additional cost to the industry will be outweighed by the benefit for small businesses and consumers that should arise from this reform. The SBDC notes that Treasury believes Option 3 is expected to provide the greatest net benefit.

The SBDC believes the transition period for the changes to take effect should be a maximum of 12 months from the date of assent, in line with previous legislation to implement UCT regulations. There does not appear to be any justification for a longer timeframe to implement these changes, such as the proposed 18 month period. A 12 month transition period should allow insurers adequate time to review their standard form contracts and ensure they are compliant with the new legislation.

The SBDC maintains a keen interest in the proposed amendments, and the broader regulatory environment that impacts on small businesses, and appreciate being kept informed of developments in relation to this draft RIS.

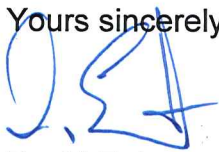
The SBDC also looks forward, in the future, to reviewing the Federal Government's consultation RIS on amendments to strengthen the existing UCT regime for small business, as referred to in a media release by the then Assistant Treasurer Hon Stuart Robert MP and the Minister for Small and Family Business, Skills and Vocational Education, Senator the Hon Michaelia Cash on 28 March 2019.

The SBDC notes that options referred to in that media release as being considered include making UCTs illegal and attaching civil penalties to breaches; redefining small business for the purposes of the protections as a business that employs fewer than 100 persons at the time the contract was entered into or had an annual turnover less than \$10 million; and broadening the coverage of small business contracts by removing the value threshold.

Along with other stakeholders including the Australian Small Business and Family Enterprise Ombudsman, the SBDC has strongly advocated for these amendments to be introduced. Addressing the deficiencies of the small business UCT laws is one of the most pressing policy issues currently impacting on Australian small businesses, and the SBDC urges the Federal Government to press ahead with these badly needed reforms as a matter of urgency.

If you would like to discuss this submission in more detail, please don't hesitate to contact Ms Sophie Leadbeater, Senior Policy and Advocacy Officer on (08) 6552 3210 or at sophie.leadbeater@smallbusiness.wa.gov.au.

Yours sincerely



David Eaton
SMALL BUSINESS COMMISSIONER

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