

21 September 2021

Director  
Consumer Policy and Currency Unit  
Market Conduct Division  
Treasury  
PARKES ACT 2600

Dear Sir/Madam

**Treasury Laws Amendment (Measures 4 for a later sitting) Bill 2021: Unfair contract terms reforms**

On behalf of the Air Conditioning & Mechanical Contractors' Association of Australia (AMCA), thank you for the opportunity to provide a submission regarding the Exposure Draft legislation.

The AMCA is the peak trade association for member companies operating in the commercial and industrial air conditioning and mechanical services industry. Our members are highly skilled operators with expertise in the design, fabrication, and installation of air conditioning and specialised ventilation systems and the ongoing service and maintenance of plant, equipment, and building services infrastructure.

In our view, the legislative intent of the unfair contract term protections regime—namely, to redress imbalances in negotiating power—is arguably more crucial for subcontractors operating in the building and construction industry than perhaps any other sector.

Therefore, we welcome many of the amendments in the exposure draft legislation, which we believe will provide vastly improved protections for all specialist contractors operating in our industry.

In particular, we strongly support the following changes:

- Increasing the **headcount** threshold for small business definition
- Removing the contract value threshold for the definition of a small business contract
- Ensuring that repeat usage of a contract must be taken into account by a court when determining whether a contract is a standard form contract.
- Setting out matters that the court must not consider when determining whether a party was required to accept or reject terms of a contract or whether a party was given an effective opportunity to negotiate the contract. These new matters form part of the provisions about determining whether a contract is a standard form contract.

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However, despite these improvements, the annual turnover threshold of \$10 million will continue to prevent many specialist subcontractors from accessing protections under the unfair contract terms legislation.

As stated in our earlier submissions, the high labour intensity and capital costs associated with commercial building activities mean that turnover is not indicative of a business's size, profitability, legal capacity, or negotiating power.

In fact, the hypercompetitive nature of commercial building projects—whereby projects are typically awarded via a competitive tendering process—has resulted in the 'commodification' of specialist subcontractors with two important implications for the negotiation of contractual arrangements.

Firstly, it serves to erode the negotiating power of specialist contractors who can be easily replaced with another bidder should they push back against unfair contract terms.

Secondly, it serves as a disincentive for specialist contractors to engage expensive legal advice due to the material impact on price competitiveness and overall project profitability.

**With this in mind, we respectfully request that Treasury consider raising the annual turnover threshold within the Act.**

In support of this position, we note that a threshold of \$50 million has recently been used when determining eligibility for JobKeeper and as a basis for the SME Commercial Leasing Principles during COVID-19.

Thank you once again for the opportunity to provide feedback. The AMCA would welcome the opportunity to discuss further any of the opinions raised in this submission.

Sincerely,

Scott Williams  
Chief Executive Officer