



Clubs Australia Submission Unfair Contract Terms Reforms

Clubs Australia welcomes the opportunity to provide feedback on the Treasury Laws Amendment Bill 2021: Unfair Contract Terms Reforms (the **exposure draft**).

Clubs Australia represents 6,440 not-for-profit licensed and registered clubs. Many of these clubs are run by volunteers and do not have the same level of sophistication as some of their larger corporate counterparties. Strengthening the unfair contract terms (UCT) scheme will protect smaller clubs against inequitable practices and secure confidence to engage in commercial activity.

Clubs Australia supports the following reforms in the exposure draft:

- Increasing the threshold for a small business from 20 employees to \$10 million in annual revenue for small business or 100 employees. These thresholds are better aligned with businesses that do not have the financial capacity or in-house legal expertise to identify and seek to amend a UCT.
- Strengthening penalties for UCTs by introducing pecuniary penalties for businesses who propose or apply an unfair contract term and expanding the orders that the court is empowered to make in relation to a UCT.

Clubs Australia previously lodged a submission to the Australian Treasury Department on the draft Regulation Impact Statement. In that submission, Clubs Australia recommended that the small business threshold be increased to \$10 million in annual revenue as this threshold better aligns with the types of businesses who are vulnerable to detriment arising from UCTs.

Clubs often enter into contracts with large, multi-billion-dollar revenue corporations that have sophisticated legal and commercial capabilities – such as beverage, gaming, wagering and subscription television suppliers. Clubs within the proposed \$10 million revenue threshold are rarely in a position to renegotiate terms in a standard form contract given the bargaining imbalances between the parties.

Clubs Australia is also concerned that the current UCT scheme does not stop larger businesses from using UCTs in their dealings with small businesses. Clubs Australia submits that the inability of the scheme to deter UCTs is principally due to the procedural difficulties for a small business to void a UCT and the absence of a penalty on larger businesses who use UCTs.

Introducing pecuniary penalties and expanding the courts powers to prevent UCTs is more likely to have the intended effect of shifting large corporations' conduct toward small businesses.



Clubs Australia

As these changes are likely to lead to commercial benefits stemming from fairer contracts, and enhanced protections for small businesses, this further necessitates the extension of the protections by increasing the small business thresholds.

Conclusion

Clubs Australia believes these reforms will better deter large businesses from capitalising on their dominant position by using UCTs in their contractual relationships with small businesses. In turn, deterring UCTs will strengthen the safeguards for small businesses and promote commercial activity between businesses.

Clubs Australia Incorporated
ABN 32 691 361 915

Level 8, 51 Drutt Street
Sydney NSW 2000
P 02 9268 3000 F 02 9268 3066