



**Small Business
Development Corporation**

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

via email UCTprotections@treasury.gov.au

STRENGTHENING PROTECTIONS AGAINST UNFAIR CONTRACT TERMS

The Small Business Development Corporation (SBDC) welcomes the opportunity to comment on the proposed reforms to strengthen and clarify unfair contract term (UCT) protections for consumers and small businesses.

As an independent statutory authority of the Government of Western Australia (WA), the SBDC supports and facilitates the growth and development of small businesses in the state¹. One of the SBDC's key strategic objectives is to advocate for a fair operating environment and in this regard, we regularly contribute to policy and legislative reviews, inquiries and regulatory reform proposals undertaken across all tiers of government.

The SBDC has long-argued that many small businesses in Australia have suffered detriment as a result of a UCT being enforced against them, whether its financial loss, additional compliance tasks, reputational damage or loss of business opportunity. As such, the SBDC has strongly supported legislative reform to the Australian Consumer Law and *Australian Securities and Investments Commission Act 2001* to protect small businesses against UCTs in standard form contracts.

As detailed in our submission to the earlier Consultation Regulation Impact Statement (CRIS) process, the SBDC continues to see unfair terms being used despite UCT protections having been extended to a wider range of small business contracts.

To address power imbalances and better protect small businesses, the SBDC strongly argued for the introduction of further reforms to the UCT protection regime.

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

In particular, the SBDC advocated for unfair terms to be made illegal and pecuniary penalties to be introduced to discourage the use of UCTs in standard form contracts. As outlined in the CRIS, the consequences for including unfair terms do not presently deter businesses to ensure their contracts are free from UCTs.

In this regard, the SBDC wholeheartedly welcomes the Federal Government's proposed reforms, specifically the decisions to prohibit the use, application and reliance on unfair terms and to enable courts to impose financial penalties for contraventions of the UCT small business protections. We believe these reforms will lead to better small business outcomes and help address this unwelcome behaviour in corporate Australia.

The SBDC has reviewed the exposure draft legislation and explanatory materials and supports the amendments as drafted. The Federal Government and the Commonwealth, State and Territory Consumer Affairs Ministers should be commended for agreeing that reforms are necessary to improve UCT protections for small businesses in Australia.

Yours sincerely

David Eaton
SMALL BUSINESS COMMISSIONER

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