

23 August 2019

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

By email: InsuranceConsultations@treasury.gov.au

Dear Manager

Exposure Draft Treasury Laws Amendment (Unfair Terms in Insurance Contracts) Bill 2019

Legal Aid NSW welcomes the opportunity to provide a submission to the Treasury consultation on the Exposure Draft Treasury Laws Amendment (Unfair Terms in Insurance Contracts) Bill 2019 (**Exposure Draft Bill**).

Legal Aid NSW previously made a submission to the Treasury consultation on the proposal to extend unfair contract terms to insurance contracts. This submission is attached, for information.

We broadly support the proposed legislative amendments in the Exposure Draft Bill and make the following comments.

- (i) Legal Aid NSW agrees with the proposed narrow definition of ‘main subject matter’ of an insurance contract.
- (ii) Legal Aid NSW maintains our position that the quantum of excess should not be excluded from the Unfair Contracts Terms (UCT) regime. The proposal provides that terms which set the quantum of the excess or deductible in an insurance contract are excluded from the UCT regime, provided they are presented transparently. We are concerned about how this will be applied to third party beneficiaries who are unlikely to have been made aware of these terms and their level of transparency, when the insurance contract was entered into by the parties. The *Insurance Contracts Act 1984* (Cth) allows for third parties to claim, in certain circumstances, as if they were the insured, and the new legislation should be more specific as to the third parties’ ability to rely on the UCT in relation to the quantum of excess.
- (iii) Legal Aid NSW remains concerned that consumers with insurance through group insurance policies, such a travel insurance linked to a credit card, will not

be covered by the UCT regime under the new legislation. This creates an inconsistency which could unfairly disadvantage consumers of these products.

Thank you for the opportunity to comment on the Exposure Draft Bill. If you have any questions about our letter, please contact Anastasia Krivenkova, Manager, Strategic Law Reform Unit, on (02) 9219 5632 or at anastasia.krivenkova@legalaid.nsw.gov.au.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Brendan Thomas', with a stylized, cursive script.

Brendan Thomas
Chief Executive Officer