

27th of July 2018

Manager, Insurance and Financial Services Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

RE: EXTENDING UNFAIR CONTRACT TERMS PROTECTIONS TO INSURANCE CONTRACTS

By Email: UCTinsurance@treasury.gov.au

The Australian Lottery and Newsagents' Association (ALNA) is the national industry body representing Lottery Agents and Newsagents' who along with our affiliated state lottery association, the Lottery Retailers Association (LRA), represent approximately 2000 small businesses in almost every rural town, regional centre, urban and metropolitan shopping centre in Australia.

There are over 4000+ Lottery Agents and Newsagents' in Australia. They are an important and trusted part of Australian communities and approximately 2.5 million Australians shop at their local agency every day. Our members therefore make a significant contribution to the Australian economy, employing over 20,000 people and generating an estimated annual turnover of \$6 Billion. Agencies have commercial relationships with over 25,000 other businesses, further demonstrating their valuable contribution. We are one of the largest and independent retail channels in our community.

The Australian Lottery and Newsagents' Association (ALNA) strongly supports the application of Unfair contract Terms Protections (UCT) to insurance. It has always been puzzling to us and our members that it was excluded from UCT provisions in the first place.

Insurance is in many ways the industry of endemic unfair contracts, it insures for risk, but they exclude risk, it uses the English language in an impure way. All risk is not 'all risk', indemnifies is not 'indemnifies', comprehensive is not 'comprehensive', Total loss is not 'total loss'.

Through exclusions, they undermine the very basis of the contract of insurance, eg: loss of income insurance contains a clause to negate it, if there is a technical recession. Loss of luggage insurance is negated if somehow it is the insured's fault.

Careful drafting of contracts and Court decisions has made insurance almost an unfair product, and the insurance industry is one where reliance on contracts is the most common way of avoiding claims.

There is also the underlying problem, where those who sell the insurance, are not the same as those who assess claims. Promise much, deliver little.

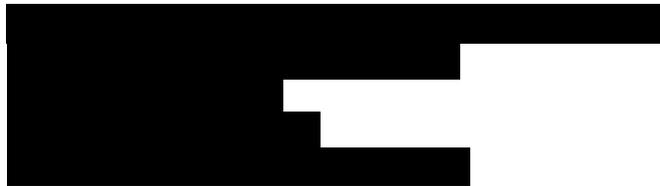
It is true that the Insurance Contracts Act has softened some of the harsher effects of insurance contracts and court decision. However, UCT should most definitely apply to insurance, in both consumer and business contracts.

We have addressed our further comments to the points in the *'summary of proposed model'* below and as highlighted.

On behalf of ALNA members, we appreciate your time and consideration of these important issues and their impacts on our industry and the Australian community.

CONTACT:

Ben Kearney



See *'summary of proposed model'* below

SUMMARY OF THE PROPOSED MODEL

It is proposed that the existing UCT regime in the ASIC Act apply to insurance contracts regulated by the IC Act. The key elements of the model are:

- Amending section 15 of the IC Act to allow the current UCT laws in the ASIC Act to apply to insurance contracts regulated by the IC Act.

ALNA Comment- *Agree, but it is hoped that there is no gap between ASIC role and ACCC roles in insurance.*

- The UCT provisions in the ASIC Act being tailored in their application to contracts of insurance to accommodate specific features of these contracts, in particular:

- the ‘main subject matter’ of an insurance contract will be defined narrowly as terms that describe what is being insured, for example, a house, a person or a motor vehicle;

ALNA Comment- *We trust that the definition does not include exclusions that apply to the ‘main subject matter’.*

- clarification will be provided that the ‘upfront price’ will include the premium and the excess payable and that these will not be subject to review;

ALNA Comment- *There is a concern that on the renewal of a policy there might be unfair additions that are covered by the “upfront price” definition.*

- a contract will be considered as standard form even if the consumer or small business can choose from various options of policy coverage;

ALNA Comment - Agree

- when determining whether a term is unfair, a term will be reasonably necessary to protect the legitimate interests of an insurer if it reasonably reflects the underwriting risk accepted by the insurer in relation to the contract and it does not disproportionately or unreasonably disadvantage the insured;

ALNA Comment - Agree

- examples specific to insurance will be added to the list of examples of kinds of terms that may be unfair, which could include terms that permit the insurer to pay a claim based on the cost of repair or replacement that may be achieved by the insurer, but could not be reasonably achieved by the policyholder;

ALNA Comment- *Agree, but we hope that examples are not too narrow, as there is now some Court precedents on what might be unfair in the wider commercial environment.*

- where a term is found to be unfair, as an alternative to the term being declared void, a court will be able to make other orders if it deems that more appropriate;

ALNA Comment- *Agree, but a penalty should be an option as well.*

- the definition of ‘consumer contract’ and ‘small business contract’ will include contracts that are expressed to be for the benefit of an individual or small business, but who are not a party to the contract;

ALNA Comment- Agree

- for life policies, as defined by the Life Insurance Act 1995, which are guaranteed renewable, it will be made clear that a term which provides a life insurer with the ability to unilaterally increase premiums will not be considered unfair in circumstances in which the premium increase is within the limits and under the circumstances specified in the policy.

ALNA Comment- Agree, and should this apply to all policies of more than 12 months and where premiums can be varied.