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Treasury consultation paper:  
Extending Unfair Contract Term  
Protections to Small Businesses

COMMUNICATIONS ALLIANCE SUBMISSION  
August 2014

Communications Alliance welcomes the opportunity to provide a short submission in response to the Treasury consultation paper, *Extending Unfair Contract Term Protections to Small Businesses*.

Communications Alliance is the primary telecommunications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, equipment vendors, IT companies, consultants and business groups.

Its vision is to provide a unified voice for the telecommunications industry and to lead it into the next generation of converging networks, technologies and services. The prime mission of Communications Alliance is to promote the growth of the Australian communications industry and the protection of consumer interests by fostering the highest standards of business ethics and behaviour through industry self-governance. For more details about Communications Alliance, see <http://www.commsalliance.com.au>.

We note that that the government is committed to extending consumer unfair contract term protections to the small business sector as part of its *Real Solutions Small Business Policy*. In this context, we support the government's commitment to ensure that any changes made do not impede or duplicate existing industry regulatory protections; we also support the government's intent to minimise business compliance costs.

Ensuring alignment with existing regulatory protections is especially important in the telecommunications sector given that, as noted in the consultation paper (p.53), the Telecommunications Consumer Protections (TCP) Code 2012 already applies to businesses and non-profit organisations that have an annual spend with a telecommunications provider for non-resale services of \$20,000 or less.<sup>1</sup>

The TCP Code applies to all Carriage Service Providers (CSPs) that supply telecommunications products to customers in Australia and, as noted in the consultation paper, is enforceable by the Australian Communications and Media Authority. Furthermore, an independent body, Communications Compliance, monitors compliance with the Code and provides guidance to CSPs regarding their obligations.

With respect to the government's planned changes, Communications Alliance's considered view is that the government should employ a spend threshold-based definition. This would offer consistency with other provisions in the Australian Consumer Law (ACL) and the TCP Code and, as such, would help mitigate the additional compliance costs that these changes will impose on businesses. Communications Alliance's preference is that the parameters of such a threshold-based definition mirror those already contained in the TCP Code.

A spend threshold-based definition would also be the most consistent with the government's policy objective of addressing unequal

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<sup>1</sup> TCP Code 2012, Section2: Definitions and Interpretation, p.14

bargaining power. This is because it is not just small businesses that are unable to negotiate contract terms with their suppliers. For example, many businesses that sell business-to-business goods and services are themselves subject to standard contractual terms with their own suppliers and it is appropriate that protections should also be available for them. Conceptually, this is similar to part 274 of the ACL dealing with manufacturer indemnities to retailers.

Communications Alliance would not support defining a small business as, for example, a business that is not publicly listed, or by applying annual turnover and/or employee number thresholds. A business's listing status is not a reliable indicator of its size or comparative position in its sector. And defining a small business on the basis of its annual turnover and/or employee numbers would create significant administrative burdens on businesses providing goods and services to them, firstly with respect to gathering this information, and secondly in terms of being required to apply different standard form contracts to otherwise similar transactions. Such an outcome would also be at odds with the government's red tape reduction agenda.



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