

**MASTER  
GROCERS  
AUSTRALIA**

**Submission by**  
**MASTER GROCERS AUSTRALIA**  
**to the**  
**Consumer Affairs Australia and New  
Zealand (CAANZ)**

**1 August 2014**

**LIQUOR  
RETAILERS  
AUSTRALIA**

Independent Liquor Outlets

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## **1 ABOUT MASTER GROCERS AUSTRALIA / LIQUOR RETAILERS AUSTRALIA**

- 1.1 Master Grocers Australia / Liquor Retailers Australia ('MGA') is a National Employer Industry Association representing independent grocery and liquor stores in all States and Territories. These businesses range in size from small, to medium and large, and make a significant contribution to the retail industry, accounting for approximately \$15 billion in retail sales.<sup>1</sup>
- 1.2 There are 2,700 branded independent grocery stores, trading under brand names such as; Supa IGA, IGA, IGA Xpress, FoodWorks, Foodland, Supabarn, Friendly Grocers, and SPAR, with a further approximately 1,300 independent supermarkets trading under their own local brand names. In addition, there are numerous independent liquor stores operating throughout Australia and trading under names such as Cellarbrations, The Bottle O, Bottlemart, Duncans, Liquor Legends and Local Liquor, which are either single or multi-store owners.
- 1.3 On behalf of its Members, MGA wishes to thank the Consumer Affairs Ministers and the Australian Treasury on behalf of Consumer Affairs Australia and New Zealand (CAANZ), for the opportunity to make a submission concerning the extension of unfair contract term protections to small businesses.

## **2 MGA RESPONSE TO THE ISSUES RAISED IN THE CONSULTATION PAPER**

- 2.1 Many of our members apply standard form contracts in their commercial operations. Such contracts are relied upon to minimise costs and overcome time constraints when engaging in contractual arrangements.
- 2.2 The use of such contracts is not limited to low value contractual arrangements, and as is often the case with small businesses, the financial ramifications in the context of a breach, repudiation or termination of a contract, can be quite substantial.
- 2.3 MGA would estimate that almost all of the contractual arrangements which are entered into by our members are either wholly standard form, or contain a number of standard form terms following several negotiated terms.
- 2.4 The perceived advantage of such arrangements is that smaller businesses consider that there is no need to invest in further legal and commercial advice on such contracts, as bigger businesses will have already invested significantly to ensure such contracts are equitable.
- 2.5 In most instances, such arrangements do not cause difficulties for our members, and are advantageous as they reduce the need for smaller businesses to incur significant legal costs during the drafting of the contract.
- 2.6 The value of standard form contracts bears little influence over our members' decisions to engage legal services prior to signing the contract. Alternative

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<sup>1</sup> PricewaterhouseCoopers, *The economic contribution of small to medium-sized grocery retailers to the Australian economy, with a particular focus on Western Australia* (June 2007), p iv

considerations such as the prevalent use of the contract within our industry, and/or the reputation of the company providing the contract is of greater consideration before engaging legal services. That is, the belief that the contract has been widely used by other (larger) companies, or is provided by a reputable company, diminishes the seeming necessity for legal assistance.

- 2.7 MGA members have experienced very few issues in their contractual arrangements by virtue of the terms themselves. Any issues have stemmed predominantly from a failure to properly read and understand the provisions prior to entering into the relevant arrangements, or to properly comprehend the level of risk associated with the arrangement. Alternatively, concerns have emanated due to one party to the contract failing to comply with their contractual and/or statutory obligations. This has resulted in some members experiencing significant financial constraints (including the payment of exorbitant exit fees) when seeking to withdraw from a contractual arrangement.
- 2.8 MGA supports any additional protections for small businesses when they encounter unfair contract terms, including the extension of the Australian Consumer Law UCT provisions to all transactions and contexts, including the acquisition and supply of goods and services. The provision of these protections to small businesses will mitigate the problems arising from failing to read or understand the contractual terms prior to entering into any such commercial arrangement, and assist in ensuring a level playing field.

### **3 CONCLUSION**

- 3.1 MGA sincerely thanks CAANZ for this opportunity to make a submission in response to the May 2014 Consultation Paper which has invited stakeholders and interested parties to make comment on the impact of unfair contract terms in standard form business contracts, and the options to curtail the use of unfair contract terms.
- 3.2 MGA members generally have not experienced any problems pertinent to the issues raised in the Consultation Paper. Nevertheless, MGA supports the inclusion of any additional protections to safeguard the interests of small businesses and prevent the exercise of unfair contract terms.

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**1 August 2014**