

8 May 2015

Consumer Policy Framework Unit
Small Business Competition and Consumer Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

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Extending unfair contract term protections to small businesses

Thank you for the opportunity to comment on the exposure draft legislation to give effect to the above.

About CIO

CIO is one of only two external dispute resolution (**EDR**) schemes approved by the Australian Securities and Investments Commission (**ASIC**) for financial services in Australia.

CIO is a not-for-profit public company, limited by guarantee. It receives no government subsidy and its operations are funded entirely by membership and complaint fees levied on its financial services provider (**FSP**) members.

The key object of CIO is to provide both consumers and small businesses (as defined under the CIO Rules) with a free alternative to legal proceedings for resolving their disputes with FSPs who are members of CIO. In resolving disputes, CIO has regard to relevant legal principles, industry codes of practice, good industry practice and fairness in all circumstances.

CIO's membership of almost 20,000 FSPs is comprised of various industry participants including finance brokers, non-bank lenders, debt purchasers, motor vehicle and consumer goods financiers, payday lenders, time share operators and some financial advice businesses.

Support for legislative extension

CIO supports the Government's proposal to extend the unfair contract term protections currently available to consumers to certain contracts involving small businesses.

We believe the proposed amendments to the Australian Consumer Law and the ASIC Act will afford greater protection to small businesses from the consequences of unfair

contract terms and address some of the gaps that exist in the current laws and regulations in this respect.

Recommendation for compulsory EDR membership

In dealing with consumer complaints about financial services, unfair contract terms legislation is one of the many laws that CIO has regard to. Consequently, if the protections are extended in the proposed manner, CIO will also be able to have regard to those laws in relation to complaints brought by small businesses against their FSP involving unfair contract terms – provided that the FSP is a member of CIO.

At present, membership of an ASIC-approved EDR scheme is compulsory for Australian credit licensees and financial services licensees. This policy setting ensures that retail consumers of those services and their providers can have their disputes dealt with in a forum which is widely-recognised as being a low-cost and more efficient alternative to formal legal proceedings.

However, we note that commercial credit providers are not presently required to join an ASIC-approved EDR scheme if they provide financial services to small businesses.

Accordingly, if the amendments proceed, CIO strongly recommends that providers of goods and services under standard form contracts to small businesses be required to join a recognised EDR scheme (where one is available). This will enable both small businesses and their counterparties under these standard form contracts to avail themselves of the wider benefits that EDR brings in the dispute resolution sphere.

If you have any questions or would like to discuss this further, please feel free to call me on (02) 9273 8480.

Sincerely,



Raj Venga
Chief Executive Officer and Ombudsman