

EXPOSURE DRAFT

2016-2017-2018-2019

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT

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

No. , 2019

(Treasury)

**A Bill for an Act to amend the law relating to
unfair contract terms and insurance contracts, and
for related purposes**

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1 **A Bill for an Act to amend the law relating to**
2 **unfair contract terms and insurance contracts, and**
3 **for related purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act is the *Treasury Laws Amendment (Unfair Terms in*
7 *Insurance Contracts) Act 2019*.

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with

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1 column 2 of the table. Any other statement in column 2 has effect
2 according to its terms.

3

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	The day after the end of the period of 18 months beginning on the day this Act receives the Royal Assent.	

4 Note: This table relates only to the provisions of this Act as originally
5 enacted. It will not be amended to deal with any later amendments of
6 this Act.

7 (2) Any information in column 3 of the table is not part of this Act.
8 Information may be inserted in this column, or information in it
9 may be edited, in any published version of this Act.

3 Schedules

11 Legislation that is specified in a Schedule to this Act is amended or
12 repealed as set out in the applicable items in the Schedule
13 concerned, and any other item in a Schedule to this Act has effect
14 according to its terms.

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Unfair contract terms in insurance contracts Schedule 1

1 **Schedule 1—Unfair contract terms in**
2 **insurance contracts**
3

4 *Australian Securities and Investments Commission Act 2001*

5 **1 Subsection 12BA(1)**

6 Insert:

7 *Insurance Contracts Act insurance contract* means a contract of
8 insurance to which the *Insurance Contracts Act 1984* applies.

9 **2 At the end of section 12BF**

10 Add:

11 Note: This section applies to Insurance Contracts Act insurance contracts in
12 addition to the *Insurance Contracts Act 1984* (see paragraph 15(2)(d)
13 of that Act).

14 **3 At the end of subsection 12BI(1)**

15 Add:

16 ; or (d) if the contract is an Insurance Contracts Act insurance
17 contract—is a transparent term that:

- 18 (i) is disclosed at or before the time the contract is entered
19 into; and
20 (ii) sets an amount of excess or deductible under the
21 contract.

22 **4 At the end of section 12BI**

23 Add:

24 (4) For the purposes of applying paragraph (1)(a) to an Insurance
25 Contracts Act insurance contract, have regard to the main subject
26 matter of the contract only to the extent that it describes what is
27 being insured.

28 **5 At the end of subsections 12GND(1) and (2)**

29 Add:

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Unfair contract terms in insurance contracts **Schedule 1**

1 (4) Despite paragraphs (2)(a) and (b) and subsection (3) of this section,
2 the amendments do not apply to a contract, or a term of a contract,
3 to the extent that the operation of the amendments would result in
4 an acquisition of property (within the meaning of
5 paragraph 51(xxxi) of the Constitution) from a person otherwise
6 than on just terms (within the meaning of that paragraph of the
7 Constitution).

8 ***Insurance Contracts Act 1984***

9 **7 At the end of section 12**

10 Add:

11 Note: This Part operates in addition to the unfair contract terms provisions of
12 the *Australian Securities and Investments Commission Act 2001* (see
13 paragraph 15(2)(d) of this Act).

14 **8 Subsection 15(2)**

15 Omit all the words after “but does not”, substitute:

16 include:

- 17 (c) relief in the form of compensatory damages; or
18 (d) relief relating to the effect of section 12BF (unfair contract
19 terms) of the *Australian Securities and Investments*
20 *Commission Act 2001*.

21 Note: See Subdivision G (enforcement and remedies) of Division 2 of Part 2
22 of the *Australian Securities and Investments Commission Act 2001* for
23 certain remedies relating to the effect of section 12BF of that Act.

24 **9 Application of amendments of the *Insurance Contracts Act*** 25 ***1984***

26 The amendments of the *Insurance Contracts Act 1984* made by this
27 Schedule apply in the same way as the amendments of the *Australian*
28 *Securities and Investments Commission Act 2001* made by this
29 Schedule.

30 Note: See Part 28 of the *Australian Securities and Investments Commission Act 2001*.