



SMALL BUSINESS ORGANISATIONS AUSTRALIA

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Director, Consumer Policy and Currency Unit,
Market Conduct Division, Treasury,
Langton Cres, Parkes ACT 2600
Via email UCTprotections@treasury.gov.au

Summary

Unfair Contract Terms (UCT) are being strengthened in law with amendments to the Australian Consumer Law as set out in Schedule 2 to the *Competition and Consumer Act 2010* and the *Australian Securities and Investments Commission Act 2001*. The Bill *Treasury Laws Amendment (Measures For A Later Sitting) Bill 2021: Unfair Contract Terms Reforms*.

COSBOA supports the extension of protections in the proposed Amendments.

COSBOA commends the Treasury for its consultation resulting in the proposed new amendments which address significant concerns of small business people. On the amendments, we are overwhelmingly supportive. Our comments therefore are brief, given our history of advocacy for these changes.

Increased powers for the ACCC

The amendments extensively increase court powers to address UCT. This doesn't help if the business does not take the matter to court. Increasing the allocated resources and the power of the ACCC to investigate these matters would be valuable to small business people.

Power to the Ombudsman or a Tribunal

Given that these changes still require the small business person to go to court, or obtain the interest of the regulator, there's room for an alternative pathway that would be effective for small business people. There needs to be a tribunal or ombudsman for small business people to attend and have their complaint determined initially. Complaints with merit could then be referred to the regulators whose role tends towards systematic issue pursual and resolution.

Review in 12 months

COSBOA recommends that Treasury undertake a formal review of the workability of the amendments 12 months after their implementation. Previous laws were not effective. These amendments have taken several years to develop. COSBOA is keen to ensure the time frame to adjust is more reasonable.

Impact on independent contractors

COSBOA represents the interests of hundreds of thousands of independent contractors and notes the ATO's recent work to upgrade the classification of workers for taxation purposes. The Australian National University's College of Law is currently calling for papers on Private Law and the Gig Economy. Issues of fairness, the law's ability to keep up with rapidly changing technologies and ensuring employment practices are currently being investigated. As such, COSBOA understands the UCT changes may be tested in the context of independent contractor agreements. It is COSBOA's view

that an ongoing discussion, as suggested in the 12-month review, will be important in terms of any tests to independent contractors' agreements under UCT amendments.

Commitment to communications

Change without communication inhibits the effectiveness of these laws. We encourage Treasury, associated departments, the ACCC and ASIC to work together to ensure that both big and small business are aware of and are practicing their responsibilities and rights.

Publishing breaches

COSBOA welcomes the new provisions that will extend the court's power to issue public warning notices and make orders disqualifying a person from managing a corporation, and allowance of "adverse publicity orders." COSBOA believes there could be greater clarity around publishing details of people committing breaches; for example, the establishment of a known register where business people could go to check details. This has a precedent in the Payment Times Reporting Framework.

Yours sincerely,

Alexi Boyd
Chief Executive Officer

Council of Small Business Organisations Australia (COSBOA)

ABOUT COSBOA

The Council of Small Business Organisations Australia (COSBOA) is the national peak body representing the interests of small business. Collectively, COSBOA's members represent an estimated 1.3 million of the 2.5 million small and family businesses that operate in Australia.

COSBOA is the big voice for small businesses people since 1977. As a collaboration of peak organisations, we promote small business with independent, tenacious advocacy to powerful decision-makers to get a better deal for millions of small businesses people and a better economy for all Australian people.

Small and medium sized enterprises (SMEs) are major contributors to the Australian economy. SMEs employ 68% of Australia's workforce. In GDP terms SMEs together contribute 56% of value added. For this reason, small and medium businesses will be the key partners with Government in re-building the Australian economy.