

20 September 2021

Email: UCTProtections@treasury.gov.au

Strengthening Unfair Contract Term Protections

We thank Treasury for inviting Direct Selling Australia (DSA) to consult on Draft Exposure legislation to amend the Australian Consumer Law in respect of unfair contract terms in small business contracts.

DSA represents, nationally, approximately 65 corporate entities using the direct sales channel for retailing a wide range of consumer products and services. Its members enjoy a prominent and growing presence in the cosmetics, skin and personal care, nutritional and therapeutic products and household products markets. In the last financial year, our 65 member companies had a combined total revenue of \$1.4 billion, retailing through a network of over 400,000 independent salespeople (ISPs).

As noted in our submission dated 27 March 2020, Half of DSA's membership are currently classed as small businesses as are the microbusinesses of the independent contractors they engage to distribute products. Both parties to many distribution contracts are therefore small business. Whilst our members are very conscious of seeking to comply with all their legal obligations, the compliance spend of most small businesses is not as great as larger businesses with ready access to either in-house or external legal counsel. It would be alarming for these small businesses currently caught by the provisions to inadvertently fail to comply and then be subject to significant penalties (up to \$10 million if the penalties were to be brought in line with the ACL.) For direct sellers, there are potentially thousands upon thousands of historic contracts which would need to be reviewed depending upon when distributors had contracted with a company so the potential legal spend for some small businesses would be well beyond what they would be able to afford, particularly in the current economic climate. DSA is extremely concerned about the impact of significant penalties on small business where both parties are small businesses but one party uses a standard form contract. DSA continues to advocate for dispensation from harsh penalties in circumstances in such circumstances. It would produce an awkward outcome if small businesses with a turnover of \$50 million contracting with a microbusiness were to be subject to the same penalties as a major corporate with a turnover ten times that amount. DSA advocates strongly for clarification as to how penalties would be determined for small business to small business transactions governed by a standard form contract.

Please feel free to contact us should you require further clarification on any of the points raised above.

Kind regards

Gillian Stapleton

Chief Executive Officer