



23 March 2026

Ms Nicole Ryan  
Director  
Consumer Policy Unit  
The Treasury  
Langton Crescent  
Parkes ACT 2600

via email: [consumerlaw@treasury.gov.au](mailto:consumerlaw@treasury.gov.au)

Dear Ms Ryan,

### **Review of the amended Unfair Contract Terms Protections**

The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) welcomes the opportunity to make a submission to Treasury's review of the amended Unfair Contract Terms (UCTs) protections (the UCT amendments) set out in the Australian Consumer Law and the *Australian Securities and Investments Commission Act 2001* (ASIC Act).

Small businesses make a critical contribution to the Australian economy:

- approximately 97% of all Australian businesses are small businesses
- 39% of the private sector workforce are employed by small businesses
- approximately one-third of Australia's GDP is attributable to small businesses<sup>1</sup>
- 92% of small businesses have a turnover of less than \$2 million.<sup>2</sup>

This highlights that most Australian small businesses operate on a small or micro scale with resources and capabilities that differ markedly from those of larger enterprises.

Contracting with larger businesses through standard form contracts is a routine but critical aspect of the life of a small business. The ability to enter into such a contract with the confidence that it is free of any unfair terms is crucial.

In the ASBFEO's 2021 submission on the exposure draft for the UCT amendments, we welcomed the proposed UCT amendments which we saw as a significant step towards a more robust system of redress for small businesses whose unequal bargaining power makes them vulnerable to imposition of UCTs.

The ASBFEO's view is that the UCT amendments have been beneficial for small businesses and are largely operating as intended. In particular, we welcome the expanded definition of small business to fewer than 100 employees or an annual turnover of under \$10 million. Although many contracts still contain what can be UCTs (most commonly autorenewal and expansive restraint of trade clauses), anecdotally our experience is that fewer disputes tend to centre on these clauses and,

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<sup>1</sup> Australian Small Business and Family Enterprise Ombudsman (ASBFEO), *Small Business Data Portal: Number of small businesses in Australia; Contribution to Australian Gross Domestic Product; Contribution to Australian Employment*, ASBFEO, 2025, accessed 18 March 2026.

<sup>2</sup> ASBFEO, *Number of small businesses in Australia*, ASBFEO, 2025, accessed 18 March 2026.



when they do, parties are more open to addressing these issues where we identify that a clause may be an UCT.

The removal of contract limits and clarification about standard form contracts have also provided greater certainty in this regard.

### **Consideration needs to be given to the interaction between UCT protections and the development of new protections for small business against unfair trading practices**

Small businesses can be subject to unfair practices that, while not relating directly to a specific UCT or other contractual term, are nonetheless related to the standard form contract which they enter into, and which can result in their detriment. This can take the form of:

- inadequate disclosure of terms in a contract
- verbal representations of terms and conditions made prior to entering into a standard form contract that are later found not to be in the contract.

It is not uncommon for us to see ‘whole of agreement’ terms used to allow sales touts to be made prior to contract entry that are then not included in the contract, and upon which small businesses cannot rely under the terms of the contract.

For example, the ASBFEO recognises that the scope of the UCT amendments substantially covers provision of credit contracts through ‘non-AFCA’ lenders — that is, lenders who are not required to hold a financial services or credit licence and are therefore not a member of the Australian Financial Complaints Authority (AFCA). The ASBFEO’s experience assisting small businesses who borrow from non-AFCA lenders highlights practices that could fall within the scope of UCT or unfair trading practices.

The ASBFEO Assistance team receives requests for help from distressed small businesses to resolve a dispute with non-AFCA lenders. These cases are often in relation to unfair or egregious behaviour by financial service providers who have provided loans to vulnerable small business owners without clarity on interest rates, fees and charges, securities that will be taken. These included at least one case in which the AFCA lender which negotiated the contract was substituted with an affiliated non-AFCA lender on execution of the contract.

For example, the ASBFEO assisted a small business owner who had borrowed \$6000 from a non-AFCA lender for a period of a few months. Just weeks after the loan period had expired, this debt had ballooned to nearly \$60,000. The interest, masked by being quoted at a daily rate, amounted to 240% per year on our calculations.

The ASBFEO has also responded to requests for assistance involving standard form contracts containing inconspicuous, and seemingly innocuous, terms relating to contractual rollover, that is, extension of contracts. This issue arises most frequently in relation to online subscriptions, or ‘subscription traps’. While these terms are not in and of themselves unfair, the ASBFEO’s view is that they are often applied in a manner which masks their significance for the contracting small business. This means small businesses are too often subject to the burden of contractual obligations for a much longer period than they intend.<sup>3</sup> The extent of this problem was recognised

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<sup>3</sup> It is worth noting that, in a recent decision which held a term of a contract to be unfair, the Federal Court found that if no efforts are made to draw attention to a term, it is likely to be lacking in transparency,



through Minister Leigh's recent announcement of a nationwide crackdown on unfair trading practices, focussing on hidden transaction fees and subscription traps.<sup>4</sup>

### **Strengthen educational support on scope and implications of UCT provisions**

The regulatory regime for UCT protections is complex, covering a range of instruments, including the ACL, the *ASIC Act 2001* and — potentially — the *Franchising Code of Conduct* (the Franchising Code). While the UCT amendments do not of themselves pose a compliance burden for small businesses, the ability of many small businesses to understand the range of rights and obligations they provide can be challenging given their lack of resources to interpret and apply detailed provisions set out in legislative instruments. This makes education and guidance an especially important aspect of regulatory effectiveness.

The ASBFEO notes that the ACCC and ASIC have developed a range of clear, concise sources of guidance on the practical implications of the UCT amendments for small business. While this is important, the ASBFEO considers there is further scope for helping small businesses to better understand the UCT amendments by adopting a more systematic, strategic approach to providing educational support.

Such an approach should be informed by understanding the most effective modalities for dissemination, whether for the purpose of awareness-raising, learning or exchanging experiences. For example, in the Franchising Review, it was found that stakeholders generally considered that prospective franchisees' engagement with available education materials and professional advice was poor — even though many stakeholders indicated the ACCC's information and education was comprehensive and useful.<sup>5</sup> It also found that educational materials provided an 'overwhelming' amount of information, which needed to be mitigated through more dynamic, fit-for-purpose modes of dissemination.<sup>6</sup>

In a recent survey conducted by the Council of Small Business Organisations Australia, small business respondents expressed strong support for guidance, with 67% willing to use toolkits and 55% open to attending webinars or workshops. Similarly, the ASBFEO's Small Business Pulse August 2025 found that small business owners are most interested in workshops or face-to-face meetings as the way to explore future business prospects in preference to online tools and resources.

Engagement with educational sources should also be designed in a way which reflects and is attuned to the diverse characteristics of small business owners. ASBFEO research indicates, for example: 40% of sole traders are women — who bear a disproportionate burden of caring responsibilities — and this has grown by 31% over 5 years; 37% of sole traders identify as being

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particularly in long and complex contracts: *Australian Securities and Investments Commission v PayPal Australia Pty Limited* [2024] FCA 762.

<sup>4</sup> The Hon Dr Andrew Leigh MP, *Government targets hidden fees and subscription traps in crackdown on unfair trading practices* [media release], Department of the Treasury, 9 February 2026, accessed 18 March 2026.

<sup>5</sup> M Schaper, *Independent Review of the Franchising Code of Conduct*, report to the Australian Government Department of the Treasury, December 2023, p 47.

<sup>6</sup> M Schaper, *Independent Review of the Franchising Code of Conduct*, report to the Australian Government Department of the Treasury, December 2023, p 48.



culturally or linguistically diverse; and, a quarter of sole traders operate outside major cities.<sup>7</sup> Engagement is also made more difficult by the multiplicity of authoritative sources of guidance on the UCT amendments, including ASIC, ACCC and Treasury.<sup>8</sup>

### **Extending the UCT protections to all franchisees**

The ASBFEO recognises that the use of UCTs in franchising agreements can arise across the franchising sector and supports the proposal to extend the UCT protections to all franchisees. Consistent with the ACCC's findings, the ASBFEO understands that there are very few franchisees – primarily large automotive dealers or those holding multiple franchised businesses – who are not covered by the current definition of small business<sup>9</sup>, but is in support of providing full coverage of the sector.

The ASBFEO does not have a strong view on the appropriate mechanism through which this extension should be made but considers that making an amendment to the Franchising Code may be an effective way of making clear to the sector the application of the UCT protections to all franchisees.

If you require any further information, please do not hesitate to contact the Policy and Advocacy teams via email at [advocacy@asbfeo.gov.au](mailto:advocacy@asbfeo.gov.au).

Yours sincerely

**Lynda McAlary-Smith**

Australian Small Business and Family Enterprise Ombudsman

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<sup>7</sup>ASBFEO, *Enterprising Australians deserve better: Spotlight on sole traders* [media release], ASBFEO, 29 January 2026, accessed 18 March 2026.

<sup>8</sup> M Schaper, *Independent Review of the Franchising Code of Conduct*, report to the Australian Government Department of the Treasury, December 2023, p 53.

<sup>9</sup> Australian Competition and Consumer Commission (ACCC), *Unfair contract terms in franchise agreements: Key findings of targeted compliance checks on franchisors*, Australian Government, December 2023, p 2.