

## **VACC Submission: Strengthening Protections Against Unfair Contract Terms 2021**

Dear Members

The Victorian Automotive Chamber of Commerce (VACC) welcomed the opportunity to comment on the Government's [Draft legislation](#) and Explanatory Materials regarding unfair contract terms (UCT). This exposure **draft legislation** would amend the Australian Consumer Law (ACL) [\[1\]](#) and, for financial products and services, the *Australian Securities and Investments Commission Act 2001* (ASIC Act).

VACC welcomes the Government strengthening protections for consumers and small businesses against unfair contract terms (UCT). VACC's [submission](#) commends the Government's initiative to amend the ACL and the *ASIC Act* to implement the agreed reforms as per the exposure draft legislation. These reforms have a direct bearing on the 72,521 automotive businesses that represent Australia's automotive industry, of which over 95 per cent are small and family-owned automotive retail, service, and repair businesses.

However, whilst VACC supports the UCT reforms and the draft legislation in principle, VACC believes that some aspects of the exposure draft legislation require further clarity and amendment, particularly as they apply to small businesses within the automotive industry. VACC's submission reviewed both the exposure draft legislation and explanatory materials and suggests 8 recommendations in key areas for further development within each.

The proposed changes, incorporating any tweaks that might arise from the public consultation process, should be legislated in the first half of 2022.

### **What is the significance of the draft legislation for Victorian automotive businesses?**

If you have standard-form contracts with consumers or with other businesses, and you or the other business have less than 100 employees or less than A\$10 million annual turnover, you should review the terms of any standard-form contracts. If they have previously been reviewed, it would be prudent to check if any changes or amendments have been made since that review.

Non-compliance with the proposed amendments is not an option given the legal risks of "getting it wrong". The exposure draft legislation makes it clear that businesses will soon face very serious consequences if they are found to have contravened the UCT laws – particularly given the risk of multiple contraventions.

The draft legislation strengthens the remedies and enforcement of the regime via the court process if a small business or consumer want to challenge a term of their contract, which could be to apply for a court to declare the term unfair either under the ACL or ASIC Act.

Ultimately, only a court or tribunal (not the ACCC) can decide that a term is unfair.

### **If you think a term in your contract is unfair**

- Ask the other party to remove the term or amend it so it is no longer unfair.
- Contact the Australian Small Business and Family Enterprise Ombudsman, or the Small Business Commissioner in your state.
- Contact your local state or territory consumer protection agency.

- Contact the ACCC (or the Australian Securities and Investments Commission (ASIC) if the contract relates to financial products and services.

The Australian Financial Complaints Authority (AFCA) can also receive complaints if the contract relates to financial products and services. Currently AFCA have not released any guidance on UCT and the VACC is speaking to AFCA about this.

Should you have any questions, please contact Kathy Zdravevski [kzdravevski@vacc.com.au](mailto:kzdravevski@vacc.com.au) or 0418 329 527.

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[1] As set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth).