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Draft UCT laws need further consideration

The Insurance Council of Australia (ICA) is concerned the draft *Treasury Laws Amendment (Unfair Terms in Insurance Contracts) Bill 2019*, if enacted, will create too much legal uncertainty and lead to poor consumer outcomes.

ICA CEO Rob Whelan said: “The general insurance industry has broadly supported allowing consumers to challenge insurance contracts for unfairness, so long as this does not undermine the commercial certainty necessary for the stable and sustainable long-term performance of the general insurance industry.

“However these laws, if introduced to Parliament and passed in their current form, will harm rather than improve consumer outcomes. They will create far more uncertainty and operate more severely than the UCT regime applying to other sectors.

“These draft laws demonstrate that despite numerous inquiries, not enough weight has been given to industry insights that show how applying broad-brush UCT protections would detrimentally affect insurance customers. In particular, the proposed narrow definition of the main subject matter makes almost every term in an insurance contract legally contestable. This is not what is applied in other sectors.

“Our concerns, as expressed at the Royal Commission hearings, are that if insurers cannot rely on the legitimate terms of their contracts, they will have to price in the additional risk. This will be passed onto consumers. Insurers will have to reassess their risk appetite in many regions of Australia, and this may result in reduced competition, products with fewer beneficial features and a reassessment of pricing.

“The Insurance Council of Australia will need to consult widely on this draft, including with members, regulators, consumer groups and the Australian Financial Complaints Authority. We urge Treasurer Josh Frydenberg to extend the timeframe for consultation on this bill. The government should be open to redrafting this bill to ensure UCT protections genuinely assist customers without undermining our competitive risk-based insurance market.”

EDITORS NOTE: HOW THE PROPOSED LAWS COULD AFFECT CONSUMERS

At present, some insurers exclude flood cover in home building and contents policies. A customer who believes they do not have flood risk, or are prepared to accept the risk in return for a lower premium, buys a policy that excludes flood. During the time the policy is in force, the customer's home is flooded and is extensively damaged. Under the proposed laws, the customer can challenge this exclusion on the basis that it was unfair.

As a result, insurers could be forced to rewrite policies to remove consumer choice relating to flood cover. They would pass on the cost, including risk uncertainty, to consumers. This could significantly increase the price of home building insurance and reduce its availability in high-risk regions while failing to improve most consumers' outcomes.

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