



9 July 2026

Consumer Law Unit
The Treasury

By email: consumerlaw@treasury.gov.au

Dear Sir/Madam

Unfair trading practices protections for small businesses

The Insurance Council of Australia (Insurance Council) welcomes the opportunity to provide a submission on behalf of our members in response to Treasury's consultation paper on *Unfair trading practices protections for small businesses* (the Paper).

The Insurance Council is the representative body of Australia's general insurance industry. Our members account for approximately 90 per cent of total premium written by general insurers and reinsurers. As a foundational component of the Australian economy, the general insurance industry writes 90 million policies a year, paying out \$58.9 billion in claims in 2025, an average of \$226 million every working day.

The Insurance Council supports appropriate protections and regulation to safeguard consumers and small business from harmful unfair trading practices. We note that *Competition and Consumer Amendment (Unfair Trading Practices) Bill 2026* (the Bill), establishing a legislative unfair trading practices prohibition to protect consumers passed Parliament on 2 July. The Paper is consulting on two proposals to potentially extend the prohibition as passed; to apply the prohibition to small business as consumers and in their business-to-business dealings with larger businesses.

As noted in the Paper, the Australian Consumer Law (ACL) does not apply to consumers (including small business consumers) of financial services and products, which is separately regulated under the Australian Securities and Investments Commission (ASIC) Act. The Insurance Council has already engaged with Treasury on the potential mirroring of the unfair trading practices prohibition in the ASIC Act for financial services and products. In our previous submissions, we cautioned against a broad-based application of a prohibition to financial services as the consequent overlapping of the prohibition with extensive financial services law would increase complexity in the regulatory regime. We understand further consultation will take place on any reforms to the ASIC Act, including protections for small businesses as consumers. We look forward to this further consultation and will limit our comments in this submission to the questions in the paper on business-to-business dealings.

Given the potential for these provisions to be extended to financial services in the future, the Insurance Council seeks clarity on the specific consumer harms Treasury is seeking to address for small businesses and the regulatory gap these changes are intended to fill. This is particularly important, given the provisions will apply to business partners of general insurers, despite financial services themselves being excluded. We also seek clarification about how extending the UTP to small business would interact with existing regulatory frameworks, including the Unfair Contract Terms regime (UCT).

Insurers' business-to-business dealings with small business

The Insurance Council welcomes Treasury's focus on commercial and supplier relationships, and the need for reform to provide protections to small business from unfair trading practices in their business-

to-business (B2B) arrangements. General insurers enter into arrangements with a diverse range of businesses, particularly for the provision of goods and services in the handling of general insurance claims. For example, insurers engage providers such as hydrologists, engineers, builders, motor repairers and many other types of business in the assessment and fulfilment of insurance claims. Many of the businesses insurers engage are small businesses, particularly following a natural catastrophe where local small businesses play a critical role in rebuilding communities.

Supplier procurement in the general insurance value chain can be more complex than most B2B arrangements. General insurers operate under a comprehensive regulatory regime, which has a significant impact on the procurement of suppliers, including small businesses. For example, insurers have broad obligations under the law to handle claims honestly, efficiently and fairly and highly prescriptive obligations such as in relation to complaints handling and cash settling claims. The Australian Prudential Regulation Authority (APRA) also sets regulatory requirements on third party operational risk, impacting how suppliers are engaged and oversighted. These regulatory obligations applying to insurers means that suppliers, often contracted through insurer panels, are required to meet specific performance standards. The ability of insurers to set performance standards and undertake consequent management action is critical to meeting regulatory obligations as well as ensuring the quality and effectiveness of claims handling for general insurance consumers.

Applying the unfair trading practices prohibition to insurers engaging small business suppliers

Australia's existing regulatory architecture already provides comprehensive, targeted protections for small businesses, including small business suppliers dealing with insurers. The enhanced unfair contract terms (UCT) regime, which commenced in November 2023, applies to standard form procurement contracts with small business suppliers, with penalties up to \$10 million for unfair terms including unilateral price variation and one-sided termination rights. The unconscionable conduct prohibition under section 21 of the Competition and Consumer Act applies to all B2B dealings, the Payment Times Reporting Act 2020 addresses late payment practices, and the ACCC's enforcement priorities explicitly include small business protections and industry codes of conduct. These are in addition to the regulation of insurers under the *ASIC Act 2001*, the *Corporations Act 2001*, the *Privacy Act 1988* and sector-specific legislation including the *Insurance Contracts Act 1984*. The combined obligation of this regulatory environment aligns closely with that as proposed in the Paper.

Given the complexity of the procurement process in the insurance value chain, we are concerned about how a broad unfair trading practices prohibition would interact with existing regulatory obligations that insurers are required to comply with. An overly broad "unfairness" standard may create opportunities for underperforming suppliers to challenge legitimate quality-based decisions, leading to unnecessary friction in procurement processes and decision-making. This would undermine critical quality assurance mechanisms, ultimately harming the policyholders whose claims depend on competent, timely service delivery. By way of example, we consider the following could be inadvertently captured:

- insurers allocation of work to repairers, builders, tow providers and assessors based on performance metrics, examples quality, capacity, complaints, safety and service outcomes;
- insurers requirements that service providers to meet standards on service levels, pricing, audits, customer communication and vulnerability expectations, which may also affect subcontractors;
- insurers withholding or disputing payment where work quality, scope, invoice accuracy or compliance issues need to be resolved; and
- insurers changes panel arrangements, rates or service expectations through negotiation in response to claims volumes, disasters, customer outcomes or cost pressures.

More generally, we note that commercial procurement is fundamentally different to consumer transactions. A small business supplier engaging with an insurer-buyer is participating in a commercial market. While we acknowledge that, in some circumstances, a small business may not have the same capacity as a larger business to negotiate terms, regulatory intervention through a general “unfairness” standard in this space risks distorting procurement markets and reducing buyer efficiency without addressing any genuine market failure.

Further clarity is needed to ensure ordinary and legitimate supplier management activity is not unintentionally captured as an unfair trading practice merely because a supplier or subcontractor is a small business, particularly where the insurer is acquiring services to manage claims outcomes for customers.

Rather than a broad economy-wide unfair trading practices prohibition, the Insurance Council submits that any regulatory intervention should be targeted and evidence-based. We note that the Bill as passed is very much consumer-focused and oriented towards protecting parties in their capacity as purchasers of goods and services from businesses that employ behavioural exploitation techniques. Any extension of the prohibition will need to be tailored to ensure it is appropriate for business-to-business engagements.

The scope is ambiguous in relation to distributors or claims fulfilment providers. This is important given the consultation paper notes that any extension to the UTP regime to financial services will be considered separately, while also suggesting the proposal may apply to insurers’ supplier partners. This creates uncertainty as to whether relationships between insurers and small business suppliers, that do not provide financial services would fall within the expanded UTP regime.

The Insurance Council and our members support measures that protect small businesses from UTP but warn that unnecessary or inefficient regulation could increase costs, reduce insurance availability and create unintended impacts that could outweigh the possible benefits of an economy-wide prohibition. Given the UCT regime outlines a regulatory framework that deals with commercial exchanges, the Insurance Council seeks clarity about how UTP will intersect with all other frameworks, particularly with the UCT. Ultimately, the principal concern is not whether insurers are subject to strong conduct regulation, but how to consolidate and avoid duplication that reduces clarity and effectiveness.

The Insurance Council welcomes further consultation from Treasury with industry to specifically address ambiguities in the general insurance context.

If you have any questions related to our submission, please contact Eamon Sloane, Senior Strategic Policy Adviser, at esloane@insurancecouncil.com.au.

Regards,



Andrew Hall
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