

22 January 2016

Mr Richard Cassidy  
Director, Procurement Transformation Division  
Department of Housing and Public Works  
Level 3B 80 George Street  
Brisbane QLD 4000

**By post and by email: Richard.Cassidy@hpw.qld.gov.au**

Dear Mr Cassidy

***Treasury Legislation Amendment (Small Business and Unfair Contract Terms) Act 2015***

I write to you on behalf of Queensland Law Society (**the Society**) and its Not-for-Profit Law Committee (**the Committee**) in relation to the above Act (**the Act**).

The purpose of this letter is to raise some queries which the Committee would like to discuss with you at its meeting scheduled for 24 February 2016.

The Society has held ongoing dialogue with the Government around its concerns attending its standard suite of contracts for social services and their impact on not-for-profit organisations. This dialogue has most recently (as at February 2015) contributed to the removal of the 'no-advocacy' and 'publication of Chief Executive Officer Remuneration' clauses.

The Productivity Commission's 2010 Report, *Contribution of the Not-for-Profit Sector*,<sup>1</sup> shows that the unilateral imposition of contractual conditions on non-profit organisations by government departments hinders non-profit organisations' ability to carry out their services and their efficiency of contracted community services.

The Act's amendment of Australian Consumer Law to extend unfair contract terms protections to small businesses entering into standard form contracts would seem to apply to both state and federal government departments. Equally, charities and non-profit organisations seem to fall within the reach of this legislation, both as lead contractors for government grants, and falling within the Act's section 12BF(4) definition of a 'small business contract'.

Queries arising from what appears to be a body of new small business / unfair contract term laws applying to the charities and non-profit organisations and the governmental departments with which they enter into contractual arrangements include:

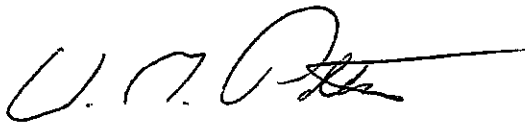
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<sup>1</sup> Research Report (2010) p 72, as cited in Myles McGregor-Lowndes and Amanda McBratney, 'Government community service contracts : restraining abuse of power' (2011) *Public Law Review* 22(4) 279 at 296-7.

- Whether Commonwealth and state departments are bound by the Act (and whether determinations made around this turns on the *Competition and Consumer Act 2010* section 2A reference to 'in so far as it carries on a business'?)
- Whether a funding agreement for delivery of services denotes 'carrying on a business', particularly as governments have moved to a contest funding model with strategies to encourage organisations to be more business-like?
- Whether large non-profit organisations involved in lead contracting arrangements would be subject to government conditions imposed prior to the Act's amended provisions coming into force, while subsequently being caught by those amended provisions when sub-contracting to small non-profit organisations?

We would be pleased to liaise with you further. Should you wish to discuss any aspect of this between the date of receipt of this letter and your meeting with the Committee, please contact Julia Connelly, coordinating Policy Solicitor, Advocacy & Governance, at [J.Connelly@qls.com.au](mailto:J.Connelly@qls.com.au) or on (07) 3842 5884.

Yours faithfully



Bill Potts  
**President**