

20 March 2026

Our ref: KB&HF:FrLC&CC

Consumer Policy Unit
The Treasury
Langton Crescent
Parkes ACT 2600

By email: [REDACTED]

Dear Consumer Policy Unit

Review of the Amended Unfair Contract Terms Protections

Thank you for the opportunity to contribute to the Review of the Amended Unfair Contract Terms Protections.

This submission has been informed by members of the Queensland Law Society's (QLS) Franchising Law Committee and Competition and Consumer Law Committee.

In addition to the short timeframe within which to participate in this Review, we note that the new protections only came into effect on 9 November 2023. Further, so far as the UCT regime relates to the franchising sector, we note the Competition and Consumer (Industry Codes—Franchising) Regulations 2024 (**Franchising Code**) was remade, coming into effect on 1 April 2025, with some provisions applying from 1 November 2025. Notwithstanding the legislative requirement for a review after two years, we consider it is too soon for the impacts of the changes to the UCT regime to be assessed. Importantly, there is very limited jurisprudence in relation to the changes and effects; there has only been one notable Queensland case since commencement.

Competition and Consumer Law Committee Feedback

Question 1: How effective have the new remedies and enforcement provisions been in discouraging the use of UCT? Please provide evidence where possible.

Members report that the new regime has already contributed to a noticeable reduction in the number of unfair contract terms (UCT) appearing in standard-form contracts, which is a positive development and clearly to the benefit of consumers. However, members also report that UCTs remain prevalent in many sectors. This appears to reflect varying levels of awareness and understanding of the strengthened UCT provisions and their implications for compliance.

As the reforms have only been in effect for a relatively short period, the full impact is still emerging. Ongoing monitoring and enforcement by the ACCC will be essential to ensure continued progress and to support further improvements in industry compliance.

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Question 2: To what extent do you think the introduction of the civil penalty regime has impacted the prevalence of UCT in consumer and small business standard form contracts? Have there been any unintended consequences?

Members have stated the amendments are beginning to have a significant impact; however, there are practical barriers for consumers seeking to challenge UCTs as this can only be resolved by a court. Many Queensland consumers seek to bring a UCT claim in QCAT which does not have jurisdiction to make such a declaration and where representation is not guaranteed. QLS recommends additional guidance for consumers and that further reviews consider enforcement avenues.

Question 3: Should paragraph 12GNF(1)(b) be extended to give ASIC the ability to seek orders for completed contracts?

Members expressed the view that such applications should be reserved solely to the parties themselves, consistent with section 12GNE(3).

Question 4: Has there been any increase or decrease in class actions related to UCT?

Members have observed an increase in class actions related to UCT claims. A recent example is the Federal Court decision in *AghaeiRad v Plus500AU Pty Ltd (Stay Application)* [2025] FCA 1602.

Question 5: To what extent has expanding the definition of small business contracts increased the number of contracts subject to UCT protections?

Members have observed the increase is likely substantial.

Question 6: Is the 100 full-time equivalent (FTE) and \$10 million threshold established within the expanded definition under the ACL appropriate, or are further amendments required?

Yes, members have stated that no further amendments are required.

Question 7: Is the upfront price payable threshold increased under the ASIC Act appropriate, or are further amendments required?

Yes, members have stated that no further amendments are required.

Question 8: Has the removal of the upfront price threshold as a criterion in determining if the contract is a small business contract under the ACL been beneficial in protecting small businesses from UCT? Has it resulted in any unintended consequences?

Yes, members have stated that there are no unintended consequences identified.

Question 10: Do the amended provisions give sufficient clarity on whether a contract is a 'standard form' contract?

Members suggested that the provisions could be strengthened by legislating that a contract is presumed to be a standard form contract by the "repeated use of the contract" in identical terms.

Franchising Law Committee Feedback

Question 13: What kinds of franchise agreements fall outside the current UCT small business contract definition? Please provide examples of any types of UCT that are being included in these agreements.

We note the Government's intention for all franchising arrangements to broadly be captured by the UCT regime. In our view, this is the case with the exception, potentially, of multi-site agreements and some automotive dealerships which may fall outside the annual turnover threshold in section 23(4) of the *Australian Consumer Law (ACL)*. In respect of these agreements, there is generally not the same power imbalance between the parties (including associated entities) as there may be in other types of franchise arrangements. It is a policy question for the Government as to whether there should be any further amendment to bring these agreements within the regime.

We also note that franchising agreements will typically be *standard form contracts*, and that a minor change to these agreements is unlikely to affect this classification.

Question 14: What is the appropriate mechanism to extend UCT protections to those franchisees? Should this be through amendments to the ACL provisions, or would franchising sector specific UCT be better addressed through amendments to the Franchising Code (for example, by prohibiting certain terms being included in franchise agreements)?

As stated, it is a policy question for government as to whether any further expansion is needed. In our view, the objective of the UCT regime is to protect vulnerable parties from unfair terms and we submit in the case of multi-site arrangements and automotive dealerships, the parties are unlikely to be in such a vulnerable bargaining position. We also note the application of existing requirements in the Franchising Code to these arrangements and submit there are already suitable protections for these franchisees, noting further, the regular review and reform of the Code to ensure adequate protections are in place for all those in the franchising industry.

The question asks about the appropriateness of these laws in the ACL as opposed to the Franchising Code. While we are cognisant of the ills of duplication in statutes, on balance we see value in these provisions being within the Franchising Code to ensure the franchisors and franchisees are aware of their respective rights and obligations, particularly as they intersect with other requirements within the Code. If, however, UCT provisions are not inserted into Franchising Code, we recommend the inclusion of a safe harbour provision confirming that terms in franchise agreements that are required by, or consistent with the Franchising Code, are not treated as unfair under the UCT provisions.

The UCT provisions should not be viewed as a 'one size fits all'. They should be tailored to suit the franchising industry. Consideration ought to be given to the fact that franchisees buy into a franchising system for its particular systems and policies, which is what creates the long term value for both the franchisor and its franchisee. Examples of specific franchising industry requirements could include:

- i. Refurbishment or upgrade timeframes for retail or equipment reliant operations to ensure the wider franchise network is consistent with the required standards including health and safety requirements.
- ii. Determining when and what notice is required for a franchisor to unilaterally amend a franchise network's Operations Manual.

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- iii. Restraint of trade clauses, or similar clauses, necessary to protect the franchisor's intellectual property and goodwill of the franchise network (noting the new restrictions on how far restraints can extend in the recent amendments to the Franchising Code).
- iv. Audit power clauses required to maintain quality assurance, employee law compliance (especially given potential joint liability franchisors face under the Fair Work vulnerable worker laws) and financial integrity across the system.
- v. Withholding and set off clauses used to manage financial obligations within the franchise relationship.

Question 15: If changes were implemented through the ACL, would any other reforms to the UCT provisions (e.g. to the definition of a standard form contract) be required in respect of franchising to ensure franchisees were protected?

As stated, our preference is for provisions relating to the franchising sector to be placed in the Franchising Code.

We also consider it is premature to amend the UCT provisions further at this time. If any amendments are progressed, we note the current unfairness test assesses terms on a bilateral basis between franchisor and franchisee, and does not account for the multilateral nature of franchise networks where a term that may appear to disadvantage one franchisee may be necessary to protect the interests of all other franchisees in the system. Any reform should address this gap.

We recommend, unless there are any significant unintended consequences identified now, a further review is undertaken in three to four years to determine effectiveness.

Further, any extension of the UCT regime to all franchisees should be accompanied by an adequate transitional period of no less than 12 months to allow franchisors to obtain legal advice, review and where necessary, amend and update documents and compliance systems.

Further guidance

Our members have identified a need for further guidance which should be addressed now. We note section 25 of the ACL provides examples of terms which may be considered unfair. Some of these terms are arguably inconsistent with what is permitted in the Franchising Code and therefore provide limited assistance to franchisors and franchisees. For example, termination within 7 days' notice on grounds for which a franchisee may not notify dispute is permitted under the Code if there are specific grounds that apply. One such ground includes matters relevant to serious contraventions of the *Fair Work Act 2009* (Cth) by a franchisee (see section 57 of the Code). This term could appear to be unfair under the UCT provisions in the ACL.

It would be useful for there to be more legislative guidance on what will and will not be an unfair term in the franchising context. This will assist parties and enable the court to have regard to these factors when deciding cases. We suggest a similar approach to that undertaken in relation to the unconscionable contract provisions would be appropriate.

We note the work undertaken by the ACCC to produce the [Unfair contract terms in franchise agreements: Key findings of targeted compliance checks on franchisors](#) report in December 2023. This provides some useful guidance as it is specific to the franchising industry. However, it predates the commencement of both these amendments and the new Franchising Code. We consider this work should be reviewed and inserted into Code, or at least promoted more to franchisees and franchisors, to ensure it is an accurate and useful resource.

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We also note the ACCC has not litigated any of these matters to date, noting that franchisees may not have the resources to bring these matters before a court. Any enforcement taken by the ACCC would provide further guidance.

As noted in the consultation paper, the Schaper Review recommended developing best practice guidance and education to ensure the sector is adequately informed about the impact of the UCT regime. We consider more can be done to implement this recommendation. The impact on a term being unfair in a franchise agreement has broad impact across the entire franchising system, affecting other franchisees and associated parties.

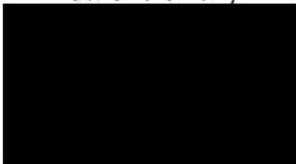
Question 16: What regulatory costs will businesses incur if UCT protections are extended to all franchisees?

The UCT regime, including the recent amendments, has generally increased costs for franchisors. Any extension of the regime will result in similar outcomes. Precise details on the extent of the additional compliance costs are unknown at present due to the limited time that has passed since the commencement of the amendments and the new Franchising Code.

As stated, uncertainty about obligations and compliance leads to increased costs and this has a broad impact on the sector, with costs likely passed on by franchisors to franchisees, including associated entities.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on [REDACTED] [REDACTED]

Yours faithfully



Peter Jolly
President