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Consumer Policy Unit
The Treasury
Langton Crescent
PARKES ACT 2600

By email: consumerlaw@treasury.gov.au

Review of the Amended Unfair Contract Terms Protections

The Council of Australian Life Insurers (CALI) welcomes the opportunity to contribute to Treasury's review of the amended Unfair Contract Terms (UCT) protections.

The life insurance industry supports a strong and effective legislative framework that delivers meaningful customer protections, promotes confidence in financial products, and provides appropriate regulatory certainty for long-term insurance contracts. Our members¹ are committed to meeting their regulatory obligations and supporting positive outcomes for our customers.

Life insurers have invested substantial resources to implement the original UCT reforms, including reviewing policy terms, strengthening governance processes, and reassessing product design practices. While CALI and our members recognise the importance of robust enforcement and remedies, early experience of the regime highlights areas of practical uncertainty that may not fully align to the original policy intent of the reforms.

Our submission focuses on these practical issues and opportunities for greater clarity in relation to:

- the operation of strengthened remedies and civil penalties;
- the applicability of the protections to life insurance in superannuation arrangements (Group Insurance) in the context of the expansion of the 'small business' definition;
- the definition and application of 'completed contracts' in relation to life insurance; and

¹ <https://cali.org.au/about-us/#our-members>

- the definition of 'standard form' contracts and the applicability of the relevant exemptions to such contracts.

The nature of life insurance contracts

A defining feature of life insurance policies in Australia is guaranteed continuation of the contract, commonly referred to as guaranteed renewability. Once a policy is issued, life insurers cannot, under most circumstances, cancel cover as long as premiums continue to be paid. This is a core protection that ensures customers retain access to life insurance cover at the time they are most likely to need it. As a result, life insurers must manage risk and sustainability at the portfolio level, through contractual mechanisms that respond to emerging claims experience, medical developments and long-term morbidity and longevity trends. As life insurance is a risk-rated product, this ensures the long-term accessibility, affordability and sustainability of life insurance cover for all Australians.

We submit that this structural feature is particularly relevant to the operation of the UCT regime. Clauses that support portfolio-level risk management are not designed to disadvantage individual consumers, but to ensure the long-term sustainability of guaranteed renewable products.

Guaranteed renewability also means that multiple generations of policies operate concurrently, as 'legacy products'. Legacy life insurance products are in-force policies that have been closed to new business and continue to operate in accordance with guaranteed renewability and by reference to their original contractual terms, design features and pricing structures, which reflect the regulatory, medical and market context at the time they were written.

For these reasons, CALI submits that the application of the UCT regime to life insurance must appropriately take into account the structural characteristics of life insurance, such as long term contracts with guaranteed renewability. Clauses relating to risk pooling, claims assessment and long-term sustainability are fundamental to guaranteed renewable products and play an important role in supporting consumer access to protection against death, disability and serious illness.

Consultation timeframe

This submission reflects industry input provided within the timeframe set by Treasury. CALI members support strong regulatory oversight and positive consumer outcomes, however, given the complexity of the issues under consideration, the 16-business-day consultation period has limited the opportunity for more detailed industry input. Shortened timeframes can constrain the ability of stakeholders to fully consider and respond to complex reforms which may in turn affect the quality of policy development. Consistent with the Commonwealth Office of Impact Analysis guidance, CALI would generally expect a consultation period of at least 30 business days for matters of this complexity.

Further information and next steps

We welcome the opportunity to discuss this matter further. For any queries, please contact Prue Wilson at prue.wilson@cali.org.au

Kind regards



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About the Council of Australian Life Insurers (CALI)

CALI is the leading voice of life insurance in Australia. We support Australians to make informed choices about their future and help them live in a healthy, confident and secure way over their lifetime.

Our members' products and services give people peace of mind when making important decisions and provide a financial safety net during life's biggest challenges.

We advocate for national policy settings that expand Australians' access to the life insurance protection that suits them when they need it most.

CALI represents all life insurers and reinsurers in Australia. The Australian life insurance industry is today a \$26.4 billion industry, employing thousands of Australians and paying billions of dollars of benefits each year.

For more information, visit www.cali.org.au

Detailed response

Improved remedies and enforcement

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

CALI members acknowledge the importance of a robust UCT regime in deterring unfair terms. The introduction of new UCT remedies and enforcement powers operates alongside an already comprehensive regulatory framework governing insurer conduct. Life insurers have long been subject to extensive obligations under the Corporations Act and the ASIC Act, including requirements to act efficiently, honestly and fairly, prohibitions on misleading or deceptive conduct, and the duty of utmost good faith. These obligations have shaped life insurers' approaches to product design, contract terms and customer outcomes well before the extension of the UCT regime.

In this context, the UCT reforms represent an additional layer of regulation that reinforces existing expectations around fairness. The introduction of policy voidance under the UCT regime is considered a powerful deterrent for life insurers because of the nature of life insurance contracts and how risk is managed and priced across long durations and pooled populations. Its impact goes well beyond the removal of an isolated contractual clause.

The initial UCT extension to life insurance contracts in 2021 prompted extensive internal reviews across life insurers' operations and products subject to the new UCT regime. These reviews included assessment of policy wording and product disclosure statements to ensure they accommodated the new UCT regime.

The current remedies are an effective and sufficient deterrent, driving proactive compliance behaviour across the industry, demonstrating that the regime supports good customer outcomes.

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?

As outlined in our response to question 1, CALI and its members consider the introduction of the civil penalty regime to be sufficient and supports good customer outcomes.

The application of the regime to Group Insurance is unclear. The uncertainty has significant impact in the context of the civil penalty regime as life insurers must assess and manage potential enforcement or exposure where circumstances are ambiguous.

CALI notes that our members have previously sought a clear legislative exemption for group life policies issued to superannuation trustees from the definition of “small business”, reflecting the negotiating and bargaining power of trustees. While the Explanatory Memorandum indicates a policy intention that such group life policies are not subject to the UCT regime, this position is not legally certain on the face of the legislation in the absence of an express exemption.

This lack of clarity has practical consequences for the operation of Group Insurance arrangements. In particular, the interaction between the UCT regime and Group Insurance structures is not well aligned with existing concepts under the Corporations Act, including the definition of a small business based on employee numbers. Uncertainty also arises as to whether individual members insured under a group policy may seek to rely on the regime, despite not being a party to the contract, which is typically owned and negotiated by a superannuation trustee. This creates legal ambiguity around standing and enforceability and increases the risk of fragmented outcomes where terms intended to operate uniformly at a fund level may be challenged on an individual basis.

Clarifying the application of the UCT regime to group life policies would reduce this uncertainty, better reflect the commercial reality and bargaining position of trustees, and align with the existing prudential and consumer protection framework governing Group Insurance.

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

CALI and our members note the reference to “completed contracts”, however, this term is not defined and is capable of multiple interpretations, particularly in the context of life insurance. While the consultation materials suggest that the intent is to address contracts that are ‘no longer on foot’, this concept provides limited guidance for long-term life insurance contracts.

For the purposes of this submission, we have proceeded on the basis that “completed contracts” refers to contracts that have been fully discharged, including where all claims have been finalised and paid, or where policies have expired or lapsed with no remaining rights or obligations on foot. On that basis, our members do not support extending paragraph 12GNF(1)(b) to give ASIC the ability to seek orders in relation to completed contracts. Our members consider that retrospective intervention of this kind would undermine legal certainty and the commercial finality of life insurance contracts that have been fully discharged.

Extending ASIC's powers to completed contracts raises significant concerns about the legal certainty of settled contractual arrangements and could erode commercial confidence in the finality of contracts more broadly. For life insurers, the ability to rely on the completion of a contract as the end of legal exposure is a fundamental feature of commercial certainty.

Our members also note that such an extension appears inconsistent with the policy intent underpinning the existing exemptions for legacy life insurance products. Life insurance contracts issued prior to 5 April 2021 were not developed or priced in contemplation of the UCT regime, and specific exemptions were introduced in 2022 to clarify that the regime does not apply to certain transactions and alterations affecting those legacy policies. Allowing ASIC to seek orders in respect of completed contracts would appear at odds with that policy intention.

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

Our members have limited direct exposure to enforcement action to date and have not experienced a material increase in litigation. Our members also note that, while there has been some suggestion that class action exposure may increase over time, this has not yet translated into a direct increase in class actions against life insurers.

Expanded class of contracts (protections to small businesses)

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

CALI members consider that the expanding the definition of 'small business contract' now brings a materially larger cohort of Group Insurance contracts within scope than was originally anticipated. Operationally, this has increased compliance effort and due diligence activities for life insurers, particularly at the onboarding stage, where determining whether a policy meets the 'small business contract' definition.

The expanded definition risks extending UCT protections beyond the class of vulnerable contracting parties the regime was originally designed to protect. This UCT exposure may lead life insurers to reassess their appetite to offer group corporate policies to small business customers, particularly where standard corporate policy terms may be susceptible to challenge.

In practice, small business customers may be excluded from group corporate arrangements and instead offered retail policies, which are typically more expensive. This outcome risks reducing access to more affordable Group Insurance options and represents a potential unintended consequence of the expanded definition.

Clarifying and Strengthening Provisions

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

Our members consider that determining whether a life insurance policy is a standard form contract remains challenging, particularly where optional benefits, negotiated commercial terms, or legacy variations exist. This uncertainty often results in cautious interpretation and the default assumption that most contracts are standard form. In practice, contract terms focus on minimising regulatory or enforcement risk, in which potentially results in reduced flexibility for customers.

Similar concerns arise in relation to the lack of clarity around the concepts of 'reasonably necessary' and 'legitimate interests'. Our members continue to face uncertainty about what evidence is sufficient to demonstrate these elements and how they should be applied in risk-priced sectors such as life insurance. Terms which reflect risk-pricing and risk-rating are critical to supporting sustainable, affordable and accessible life insurance products for all Australians.