



Credit and Investments Ombudsman

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Senate Standing Committees on Economics
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Extending unfair contract term protections to small businesses: Treasury Legislation Amendment (Small Business and Unfair Contract Terms) Bill 2015 [Provisions]

Thank you for the opportunity to comment on the above Bill.

About CIO

CIO is one of only two external dispute resolution (**EDR**) schemes approved by the Australian Securities and Investments Commission (**ASIC**) for financial services in Australia.

CIO is a not-for-profit public company, limited by guarantee. It receives no government subsidy and its operations are funded entirely by membership and complaint fees levied on its financial services provider members.

The key object of CIO is to provide both consumers and small businesses (as defined under the CIO Rules) with a free alternative to legal proceedings for resolving their disputes with financial services providers who are members of CIO.

CIO's decision-making process is independent. It is not a consumer advocate, nor does it represent industry. In resolving disputes, CIO has regard to relevant legal principles, industry codes of practice, good industry practice and fairness in all circumstances.

CIO's membership of more than 20,000 financial services providers is comprised of various industry participants including finance brokers, non-bank lenders, debt purchasers, motor vehicle and consumer goods financiers, small amount lenders, time share operators and some financial advice businesses.

Although CIO has jurisdiction to deal with complaints made by small businesses, this does not extend to complaints against financial services providers which are not required by law to join an EDR scheme. So for example, a finance company that offers only business loans, and not also consumer loans, is not presently required to join an EDR scheme.

This is unfortunate because many small businesses are 'Mum and Dad' businesses that often put up their family home as security for a business loan. Despite this, they are not entitled to the statutory protections afforded to other consumers.

Support for legislative extension

CIO supports the intention of the Bill to extend the unfair contract term protections currently available to consumers to certain contracts involving small businesses.

We believe the proposed amendments to the Australian Consumer Law and the ASIC Act will afford greater protection to small businesses from the consequences of unfair contract terms and address some of the gaps that exist in the current laws and regulations in this respect.

Recommendation for compulsory EDR membership

In dealing with consumer complaints about financial services, unfair contract terms legislation is one of the many laws that CIO has regard to. Consequently, if the protections are extended in the proposed manner, CIO will also be able to deal with complaints about unfair contract terms brought by small businesses against financial services providers – provided, however, that the financial services provider is a member of CIO.

At present, membership of an ASIC-approved EDR scheme is compulsory for Australian credit licensees and their authorised representatives and Australian financial services licensees.

This policy setting ensures that retail consumers of those services and their providers can have their disputes dealt with in a forum which is widely-recognised as being a low-cost and more efficient alternative to formal legal proceedings.

Before the establishment of EDR schemes, consumers and small businesses would have had no effective means of having their complaints against financial services providers resolved without resorting to costly and lengthy legal proceedings. The reality is that the cost of legal proceedings is prohibitive and beyond the means of many ordinary Australians, including small businesses.

Without EDR, consumers and small businesses in regional areas would find it even more difficult to access dispute resolution mechanisms, given that legal and other advisory services are either not available or difficult to access.

However, as noted above, commercial credit providers that offer only business loans, and not also consumer loans, are not presently required to join an EDR scheme.

Accordingly, if the amendments proceed, CIO strongly recommends that providers of goods and services under standard form contracts to small businesses be required to join a recognised EDR scheme (where one is available).

This will enable both small businesses and their counterparties under these standard form contracts to avail themselves of the wider benefits that EDR brings in the dispute resolution sphere.

If you have any questions or would like to discuss this further, please feel free to call me on [REDACTED].

Sincerely,

Raj Venga
Chief Executive Officer and Ombudsman