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Review of the Amended Unfair Contract Terms (UCT) Protections Consultation - Australian Securitisation Forum submission

On behalf of the Australian Securitisation Forum (ASF) and its members, we are writing in response to Treasury's consultation paper entitled "*Review of the Amended Unfair Contract Terms Protections*" (February 2026).

1. Australian Securitisation Forum

   The ASF is the peak industry association representing the securitisation and covered bond sectors in Australia and New Zealand. The ASF's role is to promote the development of securitisation and covered bonds in Australia and in New Zealand by facilitating the formation of industry positions on policy and market matters, representing the industry to local and global policymakers and regulators and advancing the professional standards of the industry through education and market outreach opportunities. Further information on the ASF and its activities can be found at www.securitisation.com.au

2. ASF response

   a) Small business contracts under unfair contract terms (UCT) regime

   We are aware of a widespread view in the finance industry that the definition of "*small business contracts*" is inappropriate by focussing on the number of employees of the parties to the contract. The number of employees of a company is not a reliable test of its financial standing or sophistication – large financial transactions often involve special purpose companies, one member of a larger corporate group in which employees are employed by a related entity rather than the contracting party, or otherwise financially sophisticated parties whose businesses do not require a large number of employees.

A related problem is the definition of the upfront price of the contract, where the exclusion of contingent or uncertain amounts may lead to high value financial contracts falling below the threshold for exclusion as a small business contract.

b) Securitisation specific issues

One (but not the only) way the issues outlined in paragraph (a) above are relevant to securitisation transactions is in the potential application of the UCT regime to ISDA Master Agreements (ISDAs). ASIC has addressed concerns of this nature by publishing a class no-action letter confirming that it does not intend to take regulatory action in respect of the application of the UCT provisions to contracts between institutional market participants, including ISDAs between wholesale securitisation counterparties. While we welcome this as a constructive and pragmatic recognition of the questions raised by the application of the UCT regime in the institutional derivatives context, it does not fully resolve the underlying uncertainty. A no-action letter does not alter the statutory framework and does not affect the rights of private parties to seek to rely on the UCT provisions in civil proceedings, in which ASIC's stated enforcement position would not be determinative.

The ASF would support legislative amendments to address the above issues and ensure that the application of the UCT regime is confined to those businesses falling properly within the policy goals of the legislation, noting that the existing no action positions in relation to wholesale industry standard contract documentation should also be carried over into legislation.

If you have any queries or would like to discuss any aspect of this letter, please do not hesitate to contact either Chris Dalton, Chief Executive Officer at cdalton@securitisation.com.au or Robert Gallimore, Policy Director at rgallimore@securitisation.com.au

Yours sincerely,

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