



27 May 2016

Mr Aidan Storer
Manager, ACL Review Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

By email: ACLReview@treasury.gov.au

RE: Australian Consumer Law Review: Issues Paper

Suncorp welcomes the opportunity to provide a submission in response to the review of the Australian Consumer Law (ACL).

Executive Summary

The Issues Paper raises a range of questions relating to the coverage, administration and future requirements of the ACL.

Suncorp believes the ACL provides important protections for consumers and we understand the importance of periodic reviews of how the ACL is operating, and how it can improve.

Overall, Suncorp has not observed any significant issues that would necessitate changes to the application of the ACL to financial services.

Any move to change the application of the ACL to financial services must be based on clear evidence of a problem that is not resolved by the current regulatory regime.

The impact of new regulatory and enforcement powers, such as ASIC's incoming product intervention powers, should also be considered.

This submission provides Suncorp's feedback on several aspects of consumer law raised in the Issues Paper, including:

- unfair contract terms in relation to insurance contracts;
- other general and specific protections under the ACL;
- administration, enforcement and dispute resolution in relation to the ACL; and,
- disclosure and transparency.

Unfair Contract Terms for Insurance Contracts

Suncorp recognises the importance of Unfair Contract Terms (UCT) legislation for most consumer contracts.

However, there are already a range of strong consumer protections in place for insurance contracts, which make it unnecessary to extend UCT to insurance products.

Applying UCT to insurance contracts would create a significant compliance burden for industry without improving consumer outcomes.

At best, the ability to challenge the fairness of policy terms would increase claims complexity for individuals. At worst, it would create a level of volatility in the industry that would significantly impact on the ability of insurers to offer an affordable product.

In the absence of clear evidence that current protections are insufficient, and that UCT provisions will meaningfully alter consumer outcomes, Suncorp does not believe there should be any change to existing regulations.

Existing legislative protections

The regulatory regimes governing insurance, including the *Insurance Contracts Act 1984* (the IC Act), already contains provisions to ensure consumers are protected to the same level, or higher, than the ACL.

The Insurance Council of Australia's submission explains in detail the regulatory framework that protects consumers entering into general insurance contracts.

In addition to the provisions within the IC Act, the *Life Insurance Act 1995* (the LI Act) also includes protections that make void certain terms within a life insurance contract that may be considered unfair. These include sections voiding certain terms unless the consumer agrees to be bound by them, and sections that limit the circumstances in which a contract can be cancelled.

These provisions effectively legislate against the inclusion of unfair contract terms in life insurance contracts.

The Life Insurance Code of Practice, scheduled for introduction on 1 July 2016, will place additional consumer protection obligations on life insurers to ensure their contracts remain fair. This includes a proactive review of medical definitions within certain timeframes.

Despite these safeguards for general and life insurance contracts, a range of arguments have been made to advocate for the extension of UCT to insurance contracts.

However, we are yet to be presented with a clear example that demonstrates:

- any specific term in an insurance contract that would be considered 'unfair'; and,
- how UCT provisions would provide a consumer outcome different from that achieved through existing dispute resolution mechanisms.

Including unfair terms in our contracts would breach Suncorp's obligation to act with utmost good faith. This duty extends beyond the scope of a UCT regime, and under recent changes to the IC Act, ASIC has been provided broader powers to deal with such breaches.

UCT adds complexity without increasing protection

Insurance contracts are a unique type of contract. This is recognised in the industry-specific legislation applying to insurance contracts, which intentionally exempts them from UCT legislation.

In practice, any extension of UCT to insurance contracts is likely to create additional cost, complexity and confusion, without significantly expanding consumer protections.

Insurance contracts differ from other consumer contracts because an insurance contract constitutes the product itself, rather than involving a tangible asset.

This is important because the UCT provisions under the ACL exclude the "main subject matter" of a contract.

When legislation was drafted to introduce UCT provisions to the IC Act in 2013, there was significant difficulty in establishing a clear definition of the main subject matter of insurance contracts.

The nature of insurance contracts means that the majority of the contract, including most terms relating to coverage, would be likely to fall within the definition of "main subject matter". These clauses would therefore not be open for challenge on the basis of fairness.

For example, some consumer advocates have flagged that they believe certain exclusions in some policies are unfair.

Under a logical application of UCT, exclusions would be considered part of the main subject matter of the policy, as they are central to the insurer's ability to limit risk and define cover. However the duty of utmost good faith, and other protections, would still apply.

Effectively, there would be no additional avenue for consumers to challenge these exclusions – UCT would not solve the perceived problem.

If the “main subject matter” of an insurance contract were to be narrowly defined, such as to carve out policy exclusions, this would have negative consumer impacts.

The ability to challenge the fairness of policy terms would significantly increase the level of underwriting risk carried by insurers. This would result in increased reinsurance costs, and a potentially destabilised industry. For consumers, the cost of cover would significantly increase to cover this increased volatility.

Other features of insurance contracts also make it difficult to comply with a UCT regime. For example, a life insurance contract is a long term contract. Because it is not renewed annually like general insurance, it cannot be varied the same way as other contracts.

Given the existing regulatory safeguards for consumers entering into insurance contracts, and the strong dispute resolution mechanisms already in place, there is no clear reason to introduce additional regulation in this space.

Other protections under the ACL

The Issues Paper seeks feedback on the range of general and specific protections provided under the ACL. These are replicated in the ASIC Act for financial services products.

We are not aware of any current concerns relating to these provisions as they apply to the financial services sector.

We also do not believe it is necessary to extend consumer guarantee provisions to financial services, or specifically prohibit unfair commercial practices in relation to this sector.

As the Insurance Council of Australia's submission notes, this kind of change would merely duplicate existing financial services regulation, and would not provide any clear benefit to consumers.

Suncorp would be happy to respond to any specific concerns raised relating to these powers and their application to the financial services sector.

Administration, Enforcement and Dispute Resolution

The Issues Paper includes commentary on the administration and enforcement of the ACL.

To date, Suncorp has not observed significant issues with the interaction of the ACL and the ASIC Act.

In order to simplify compliance, we encourage ongoing alignment with the ASIC Act as amendments are made to the ACL.

Similarly, Suncorp has not observed any major issues with current complaint handling processes.

Any issues relating to administration, enforcement and dispute resolution mechanisms should be dealt with through these dedicated review processes:

- the Productivity Commission's review of Consumer Law Enforcement and Administration; and,
- the Federal Government's review of the financial system dispute resolution framework announced in April 2016.

Disclosure and Transparency

The Issues Paper discusses a range of emerging issues in the consumer protection space, particularly in relation to data access and transparency of business practices.

Suncorp supports access to data which delivers demonstrable benefits for consumers, within a regulatory regime that supports innovation.

While access to information is generally seen as positive for consumers, too much information presented in the wrong way can lead to disengagement. Care needs to be taken to ensure information is provided in a way that supports improved knowledge and understanding.

Suncorp has been working closely with other insurers to find better ways to manage disclosure and transparency, and ensure we are providing the right information to help our customers make informed decisions.

In 2015, the Insurance Council of Australia's Effective Disclosure Taskforce made a series of recommendations that are guiding the insurance industry's approach to improving the way information is made available to consumers.

Conclusion

Suncorp would be pleased to provide further information or assistance to the Review on request.

We look forward to the release of the interim report, and working with Government to ensure the ACL continues to offer a high level of protection to consumers.

Should you have any further questions regarding our submission, please contact Jane Macnamara, Public Policy Advisor, on 0419 617 854 or jane.macnamara@suncorp.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Duncan Bone', with a stylized flourish at the end.

Duncan Bone
Executive Manager, Corporate Affairs – Insurance/Bank & Wealth