

Unfair Contract Terms: Important Notice

Unfair Contract Laws to apply to "standard form" insurance contract from 5 April 2021

Following the Banking and Financial Services Royal Commission, existing Unfair Contract Term (UCT) laws have now been extended to apply to standard form insurance contracts taken out by consumers and small businesses¹ with effect from 5 April 2021. The Insurance Contracts Act 1987 will be amended so that all contracts of insurance that are subject to the ICA will now be subject to the UCT laws.

A term will be considered unfair and could not be legally enforceable if it:

- would cause a significant imbalance in the parties' rights and obligations arising under the contract;
- is not reasonably necessary in order to protect the legitimate interests of the party that would be advantaged by the term; and
- would cause detriment to a party if it were to be applied or relied on.

The only exceptions to the above rule are that the unfair contract provisions do not apply to:

- a term to the extent that it describes the "main subject matter of the contract" (e.g. what is being insured);
- a term that describes the upfront price payable under a contract (i.e. premiums payable). However, it does not include any amount that is contingent on the occurrence, or non-occurrence of a particular event. Any interest payable under the contract is not to be considered;
- a term if it sets the amount of the excess or deductible, provided the term is "transparent" and is disclosed at or before the contract is entered into; or
- terms required, or expressly permitted, by a law of the Commonwealth or a State or Territory are not covered by the UCT regime.

The above is a summary of the new UCT laws provided for general information purposes. It is not intended to be relied upon as legal advice or otherwise.

What do the new UCT laws mean for your policy renewal?

Your insurer has released a revised policy wording to assist it comply with the new UCT laws that will apply from renewal of your policy. A copy of the policy wording and endorsements have been provided to you as part of your renewal. Generally speaking, the nature of the changes are designed to ensure that the insurance contract is more reasonable and fairly protects the interest of both parties with the following changes specifically negotiated for UCT compliance:

- **Clarity around the Consequential Loss exclusion:** Exclusions for consequential losses in insurance policies is usual but not an easily understood term due to ambiguity in how the concept is drafted. Your policy now provides further clarity around what is considered consequential loss, including specific examples, so you're aware of what is not covered as a consequential loss.
- **Insurer consent not to be unreasonably withheld:** Your policy previously required you to obtain the insurer's consent before taking action under certain clauses, such as before commencing repairs of damaged property, prior to seeking legal advice, etc. Your policy now clearly stipulates that an Insurer's consent for these situations is not be unreasonably withheld.
- **Claims payments only affected where Insurer is disadvantaged:** While the policy generally provides that you have an obligation not to delay claim resolution processes, your policy has been updated to clarify that where delays are caused by the insurer

Generally speaking, the changes set out above are advantageous for insureds and represent enhancements to your policy wordings. If you would like any further information in relation to the above, please let us know.

¹ A small business is a is one where at least one party is a business that employs fewer than 20 people and the upfront price payable under the contract is below \$300,000 for a contract of less than one year's duration or \$1,000,000 for a contract that is one year or longer in duration.

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