Review of Amended Unfair Contract Terms Protections

AICM, Australian Credit Forum, & ACDBA | Joint Submission | 17 March 2026

This submission is made jointly by Australian Credit Forum, Australian Institute of Credit Management (AICM), and Australian Collectors & Debt Buyers Association (ACDBA) (collectively **The Bodies**) who jointly represent credit and debt professionals in Australia.

About AICM

AICM is the peak professional body for credit managers, risk professionals, and trade credit and debt recovery organisations across Australia. We made a detailed submission on the proposed UCT amendments in 2021. This submission is informed by a member consultation forum held on 5 March 2026 and draws directly on the experience of credit professionals operating under the amended provisions since November 2023. Quotes are de-identified in accordance with confidentiality undertakings given at the forum.

AICM members are experienced credit professionals who understand their legal obligations and take them seriously. They engage with the UCT regime not as a constraint imposed upon them, but as practitioners who recognise the importance of fair dealing in sustaining healthy credit markets. The UCT regime was designed to address businesses that deliberately or negligently include terms that exploit the weaker bargaining position of small business customers. AICM members are not those businesses.

This distinction matters. Compliance costs fall disproportionately on organisations already acting fairly. A well-calibrated regime targets conduct that causes genuine harm — it does not impose ongoing regulatory burden on those who have demonstrated they do not need to be regulated into fairness.

About the Australian Credit Forum

The Australian Credit Forum (ACF) was established in the early 1970s by a group of senior credit professionals who recognised the need for an association where members could meet regularly to exchange ideas and strengthen industry standards. The ACF meets on a regular basis to discuss and review existing and proposed changes to Federal and State Government legislation that may affect members' credit policies and practices.

ACF members are drawn from across the credit profession, including senior credit managers, legal practitioners, insolvency practitioners, credit insurance underwriters and brokers, mercantile agents, and credit reporting agencies. The depth and diversity of experience among ACF members ensures that a broad cross-section of the credit industry considers the impact of all relevant legislation.

Australian Collectors and Debt Buyers Association

The Australian Collectors and Debt Buyers Association (ACDBA) was established in 2009 to represent businesses engaged in the collection, purchase and sale of debt. Its members represent the majority of the Australian debt collection market and operate within a highly regulated environment. Accounts managed by members are typically handled either through debt purchase arrangements or on a contingent (agency) basis.

Executive Summary

The 2023 UCT amendments are working. Contracts have been tightened, practices improved, and our members accept the regime. The Bodies' position is clear: no further legislative change is warranted at this time.

The compliance cost of transitioning to the 2023 regime was substantial — well beyond what regulatory impact assessments typically capture. Businesses are still absorbing those changes. Any further amendment imposes those costs again. The case for stability is strong and the case for further reform has not been made.

Critically, cost of transition falls hardest on organisations that were already doing the right thing. The UCT regime exists to deter deliberate or negligent misuse of standard form contracts. The Bodies' members are experienced practitioners who engage with the regime in good faith and are not the intended targets. Treasury should be careful not to design a regime that imposes ongoing costs on responsible operators while its actual targets remain unaffected.

Two specific proposals in the consultation paper require particular attention:

- Tactical misuse — UCT is being raised in debt recovery disputes to delay or avoid legitimate obligations, not because terms are genuinely unfair. This is confirmed and needs to be addressed in enforcement guidance.
- Completed contracts — The Bodies opposes the proposed extension of ASIC's lookback powers to completed contracts. The uncertainty, compliance burden, and disproportionate impact on the debt collection sector make this a change whose costs clearly outweigh any benefit.

1. Remedies and Enforcement (Q1–4)

Q1 How effective have the new remedies and enforcement provisions been?

Effective. Members proactively reviewed and amended their standard form contracts following the 2023 commencement — a direct behavioural response to the penalty regime. The tightening of terms and practices is a genuine positive outcome.

However, the legislation's higher profile has created an unintended opportunity for tactical misuse. One member with direct court experience reported:

> *"As soon as the legislation changed, we started getting people trying it. We have had legal challenges in the courts citing unfair contract terms — both times we actively defended them successfully."*
> **— Member, forum participant**

Both challenges were dismissed. The terms were not unfair — UCT was raised to complicate and delay legitimate debt recovery. This validates the concern AICM raised in 2021.

Q2 Have there been unintended consequences from the civil penalty regime?

Yes — two. First, tactical use of UCT claims as a debt avoidance mechanism (see Q1). Second, material compliance costs that extend well beyond legal review (see Q9).

Both consequences point in the same direction: the regime needs time to bed down, not further amendment. There is also a more fundamental calibration problem. The organisations bearing the highest compliance cost are those that engage with the regime in good faith — experienced credit professionals who take their obligations seriously and have invested significantly in compliance. Meanwhile, the businesses the legislation was actually designed to address — those that deliberately or negligently include exploitative terms — impose those costs on their customers regardless.

The Bodies recommends that enforcement guidance explicitly address tactical misuse — UCT is not a mechanism to avoid legitimate payment obligations — and that penalties and remedies be reserved for cases where there is clear evidence of intent to harm or negligence resulting in detriment to customers.

Q3 Should s.12GNF(1)(b) be extended to give ASIC powers for completed contracts?

No. The Bodies oppose this extension. The proposed power would introduce significant uncertainty across the credit sector at a time when businesses have only recently adapted to the 2023 reforms. The costs — in compliance burden, commercial unpredictability, and disruption to established debt recovery practices — clearly outweigh any regulatory benefit.

The impact on the debt collection sector is a particular concern that we do not believe has been adequately considered. Debt purchasers and collection agents operate on debts they did not originate. They had no role in drafting the original contract terms, no ability to influence them, and — critically — no contractual recourse against the original creditor if a historical term is later declared unfair. Exposing these parties to retrospective regulatory action for contracts they inherited is both unjust and commercially destabilising.

> *"The money has gone through us, and it will very much involve us in a way that could be quite detrimental from a compliance basis — but really, there would be no recourse to us from our client."*
> **— Jacob, forum participant**

More broadly, the proposed power creates open-ended uncertainty for any organisation that has ever used standard form contracts. The inability to close out historical exposure — to know that a completed transaction is genuinely finalised — undermines commercial confidence and increases the cost of providing credit.

> *"I think we all accept commercial realities that regulators can go back a short period of time — but how far they can go back is always the open question."*
> **— Jacob, forum participant**

If, contrary to our position, this extension proceeds, we submit that the following conditions are the minimum necessary to make it workable:

1. A strictly defined and short lookback period — no more than 12 months from contract completion.
2. Enforcement limited to cases where the term was actually relied upon and caused demonstrable detriment — not merely present in a completed contract.
3. Explicit legislative protection for third-party debt purchasers and collection agents.
4. Fairness assessed against conditions at the time the term was used, not current standards.

Q4 Has there been any change in class actions related to UCT?

The Bodies has no direct evidence of changes in class action activity in the trade credit sector. We note that any extension to completed contracts (Q3) could create conditions for class actions against credit providers in respect of historical standard form contracts — a risk the current limitation to on-foot contracts substantially mitigates.

2. Expanded Class of Contracts (Q5–9)

Q5 Has the expanded small business definition increased coverage?

Significantly. The move from 20 FTE to 100 FTE has materially expanded the share of member customer portfolios subject to UCT protections. Many members have responded by applying reformed terms universally across all customers regardless of size — a pragmatic workaround that represents over-compliance, but reflects the absence of a practical identification mechanism.

Q6 Is the 100 FTE / $10M threshold appropriate?

The Bodies do not seek to reduce the threshold. However, a credit provider has no reliable way to verify whether a counterparty meets it — this information is not publicly available in a standardised form.

The result: providers must either accept uncertainty, conduct intrusive enquiries, or apply UCT-compliant terms to everyone. We recommend that Treasury develop a safe harbour for providers who make reasonable enquiries about customer size and act on the information provided.

Q7 Is the ASIC Act upfront price threshold appropriate?

AICM's members are primarily trade credit providers operating under the ACL. We do not have sufficient evidence to comment on the $5M ASIC Act threshold.

Q8 Has removing the ACL upfront price threshold been beneficial?

Yes. The previous threshold created arbitrary distinctions between economically similar transactions. Removal is supported.

The principal unintended consequence — combined with the expanded FTE/turnover threshold — is that the scope of covered contracts has become significantly harder to determine in practice, reinforcing the identification problem at Q6.

Q9 What compliance costs were incurred? Please quantify.

Compliance costs were materially higher than typical regulatory impact assessments would suggest, and extended well beyond legal review.

One member described a contract redrafting project already underway in 2023 that was extended by three months once the amendments took effect — requiring changes across customer service, warehousing, distribution, and finance, not just legal terms. Another adopted a blanket approach (applying reformed terms to all customers regardless of size) to eliminate identification complexity, requiring a full review and reissuance of terms across their customer base.

Illustrative cost range for a mid-sized trade credit operation:

- Legal review and contract redrafting: $15,000–$50,000+
- Operational changes (IT, training, process, communications): $20,000–$100,000+
- Customer re-engagement and re-execution of terms: $10,000–$30,000+

These costs will be incurred again with any further amendment. AICM's position is that no further legislative change to the UCT framework is warranted at this time. The regime needs stability, not further disruption.

3. Clarifying Provisions and Franchising (Q10–16)

The 2022 clarifications to the standard form contract definition are workable in practice. The more pressing clarity issue for trade credit providers is identifying whether a counterparty qualifies as a small business — not the definition of 'standard form'.

The Bodies' membership does not primarily operate in the franchising sector and we do not make a substantive submission on Q13–16. We would welcome early consultation on any franchising changes that may affect the contractual context in which trade credit relationships operate.

Summary of Recommendations

1	No further legislative change to the UCT framework is warranted at this time. The 2023 reforms are working. Businesses across the credit sector are still absorbing the compliance cost of those changes — further amendment imposes those costs again, disproportionately on responsible operators who engage with the regime in good faith.
2	Issue enforcement guidance explicitly addressing tactical misuse of UCT claims in debt recovery. UCT is not a mechanism to avoid legitimate payment obligations.
3	Penalties and remedies should be reserved for cases where there is clear evidence of intent to include harmful terms or negligence resulting in actual detriment to customers — not applied to the mere presence of a clause or to organisations demonstrably committed to fair dealing.
4	Oppose the extension of s.12GNF(1)(b) to completed contracts. The uncertainty, compliance burden, and disproportionate impact on debt purchasers and collection agents make this change unjustifiable. If it proceeds contrary to this submission, it must be subject to: (a) a maximum 12-month lookback; (b) actual reliance and detriment required; (c) explicit protection for third-party debt purchasers and agents; (d) contextual assessment at the time the term was used.
5	Provide a safe harbour for credit providers who make reasonable enquiries to determine whether a counterparty qualifies as a small business under the 100 FTE / $10M threshold.
6	Accompany any future UCT amendments with adequate transition periods. Compliance costs are material, operational, and will recur.

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