

**INQUIRY INTO UNFAIR TERMS IN CONSUMER
CONTRACTS**

Organisation:

Name: Mr Michael Blay

Telephone:

Date Received: 17/11/2006

17 November 2006

Ms Victoria Pymm
Standing Committee on Law and Justice

Dear Ms Pymm

Re: Unfair terms in consumer contracts

I refer to my emailed letter of the * instant, wherein I advised that I read of your committee's current enquiry on this subject only recently, and so was unable to meet the 11 October deadline for submissions, and drew attention to an oppressive term in Real Estate Institute management agreements.

I have since remembered another matter that is relevant to your committee's task.

Attached is a copy of a letter that I wrote to the NRMA 5 years ago drawing attention to extremely unfair and unreasonable restrictions contained in the NRMA motor vehicle comprehensive insurance policy. I eventually received a reply from the NRMA legal section that the amendments referred to in my letter were indeed intended to remove the protection given previously.

The terms referred to in my letter are reproduced in a slightly different from in the current NRMA policy at page 69 as follows—

We may refuse a claim, cancel this policy, or do both if at the time of the incident

your vehicle was being driven or was attached to a vehicle being driven by a person who was under the influence of any alcohol or drug

your vehicle was being driven or was attached to a vehicle being driven by a person who was not licensed or permitted to drive it

your vehicle was being driven or was attached to a vehicle being driven by a person who, in the last five years

- has had any driver's licence cancelled, suspended or special conditions imposed
- has been convicted of a criminal offence relating to fraud, theft or burglary, arson, criminal or wilful damage, *unless*

we have been advised of the relevant circumstances and we have specifically agreed to cover that person under your Policy

We may refuse a claim, cancel this policy, or do both if at the time of the incident

your vehicle was

- in an unsafe condition, or was being towed by a vehicle in an unsafe condition
- being driven or was attached to a vehicle being driven in an unsafe condition
- towing a trailer or caravan illegally
- towing a trailer or caravan that was in an unsafe condition

your vehicle was being used or was attached to a vehicle being used

- in a race, trial, test or contest
- for unlawful purposes
- for hire, unless you have told us you will be hiring out your vehicle and we have agreed to cover it

your motor vehicle or motorcycle was being used for a driver education course, *unless* you have told us your vehicle will be used for this purpose and we have agreed to cover it

For the reasons given in my letter, these restrictions are extremely inappropriate. Insurance is taken out to remove risk from the activity insured and the public should be able to rely on

policies, particularly consumer policies from major companies, to protect them against all risks that can arise. The ones referred to above would not be apparent to many people and the first time they would learn of the effects of the above limitations would be when they claim on the policy.

In any event, the very small number of claims covered by the limitations would be insignificant from an insurer's point of view, although they could be financially disastrous for an insured.

Yours faithfully
Michael Blay

12 February 2001

The Manager NRMA Insurance
388 George St
SYDNEY NSW 2000
Dear Sir

URGENT
Re: New Policy Wording—MOTO79051670

I am concerned to see that the new policy that accompanies my renewal gives your company the right to refuse a claim if—

- (a) (pages 27 and 29) the driver has in the last 5 years—
 - (i) been refused vehicle insurance etc;
 - (ii) had a licence cancelled etc; or
 - (iii) been convicted of certain offences; or
- (b) (page 29) the driver was unlicensed or unauthorised to drive the vehicle.

These exclusions means that the policy is of no use if the vehicle if being driven by an employee of a service station that has temporary custody of the vehicle and comes within the exclusions even though his insurance and driving record is unknown to the insured.

The last policy that I can find (December 1998) did not contain any of the above exclusions other than for an unlicensed driver and even that exclusion did not apply if the insured had no reason to suspect that the driver was unlicensed (page 20 of that policy).

The exclusion of anyone unauthorised would exclude damage caused by a thief and he would be doubly excluded if he fell within any of the other exclusions above.

It is most unreasonable that the policy should not cover the above situations and most insured would be alarmed if they thought through the implications of the new wording, although few people would be likely to do so until too late.

At the foot of page 29 of the new policy an exclusion applies where the vehicle is in an unsafe condition. The corresponding exclusion on page 20 of the old policy provided that the exclusion did not apply if the insured can show that it was reasonable for him not to know of the unsafe condition, but this is not contained in the new policy.

A vehicle could easily become unsafe without any fault on the part of the owner eg a service station may fail to tighten a wheel nut or leave the brakes or suspension in a defective condition or the wheel or suspension could be damaged by a pot hole without the driver's knowledge.

This is precisely the type of risk that most people expect to be covered by a policy. The exclusion is most unreasonable.

On page 31, the new policy has an exclusion where the vehicle has rust or other problems but omits the provision on page 22 of the former policy that the exclusion does not apply if the insured can show that it was reasonable for him not to know of the rust etc.

Once again, this is most unreasonable.

It may be that the amendments to the policy were not intended, in which case I would appreciate your written confirmation that the exclusions do not apply in the circumstances referred to above and the correction of the policy when next reprinted. A *plain English* should say what it means.

If the changes are intended (presumable because of a change of direction by your company as a result of demutualisation, resulting in a lower degree of care for policyholders), the changes should be well publicised so that policyholders can make informed decisions on whether to renew.

Please ensure that this letter reaches a senior executive as it raises matters of importance for your company as well as for policyholders.

I look forward to your early reply.

I would add that after wasting considerable time trying to e-mail this letter using your enquiry form, it twice failed to work. Why not simply supply an e-mail address instead of a troublesome form?

Yours faithfully

M A Blay