

Protecting Small Businesses from Unfair Contract Terms



Small businesses often find themselves with little option but to sign up to contracts with unfair provisions, causing detriment to themselves, the broader economy and, as a result, throughout the community.

The Commonwealth Government is committed to extending to small businesses the kind of protections against unfair contract terms that are available to consumers.

We want to hear about your experiences with unfair contract terms. This will help us better understand the extent of the problem and design protections to suit the diverse needs of small businesses.

The Hon Bruce Billson MP

Are you offered contracts on a 'take it or leave it' basis?

Small businesses are often offered standard form contracts on a 'take it or leave it' basis. These contracts are used for a wide range of transactions including for straight-forward office equipment purchases, leasing of office space, supply agreements and longer-term commercial relationships.

Due to an imbalance in bargaining power or commercial size, small businesses may have little scope to negotiate the terms in these contracts, and may lack the time or legal expertise to critically review them.

These contracts often include unfair terms. There have been persistent accounts over recent years of small businesses being vulnerable to these unfair terms.

Do these contracts include unfair terms?

We want to know if you have encountered terms in contracts which have disadvantaged your business and that go far beyond what is reasonably necessary to protect the legitimate business interests of the other business.

While the upfront price and basic qualities of goods or services may be clear, unfair terms can be buried in the fine print of contracts. For example, a term that allows the bigger business to unilaterally change the price or other key terms during the course of the contract may be considered unfair in certain circumstances.

Another example might be a term that denies a small business the right to terminate a contract when the bigger business can or inappropriately limits the bigger business's contractual liability to a small business.

How might the protections work?

The Small Business Minister and Consumer Affairs Ministers across the country are considering extending the unfair contract terms protections for **consumers** to small businesses.

Businesses that offer standard form contracts to small businesses would have to comply with a new law. This law would allow a court to cancel out terms it finds unfair. The ACCC would initially take a collaborative, compliance based approach to ensure businesses conformed to the laws.

We would like your feedback on whether a particular business or a particular contract should be covered by these protections, for example based on the turnover of the business, the size of the transaction or some other criteria.

How can I have my say?

There are three key ways you can get involved:

1. Take a short 10-15 minute **survey**.
2. Provide brief **feedback** via the website
3. Lodge a **formal submission** or encourage your industry body to lodge one.

You can provide feedback until 1 August 2014.

www.treasury.gov.au/ConsultationsandReviews/Consultations

If you need more information you can read the **discussion paper** on the website.

This consultation process is focused on the unfairness of the terms in contracts rather than how a contract is negotiated. The legal protections for small business against unfair and unconscionable conduct are being considered as part of the **Competition Policy Review**.