

Fair Trading Amendment Bill

The Fair Trading Amendment Bill aims to better protect consumers and small businesses.

A Bill to amend the Fair Trading Act 1986 was introduced to Parliament on 17 December 2019. The Bill aims to better protect consumers and small businesses from 'unfair' commercial practices.

Three key changes are proposed:

- prohibiting unconscionable conduct in trade;
- extending the Fair Trading Act's ban on unfair contract terms to cover additional contracts; and
- strengthening consumers' right to keep uninvited salespeople off their properties.

Prohibiting unconscionable conduct in trade

The Fair Trading Act prohibits misleading and deceptive conduct in trade. The Bill would extend this to also prohibit 'unconscionable conduct'.

What is unconscionable?

Unconscionable is not defined, but the Bill does include some guidance on how to assess whether conduct has been unconscionable. It lists factors that a Court may take into account when determining this, including:

- the parties' relative bargaining power;
- the extent to which each party acted in good faith;
- whether the affected person was reasonably able to protect their interests and to understand any documents provided by the trader;
- if there is a contract, how that contract was entered into, the terms of the contract and the parties' conduct;

- whether unfair pressure or tactics were used by the trader; and
- whether the trader unreasonably failed to disclose their intended conduct or certain risks.

Unconscionable conduct is prohibited by Australian consumer protection legislation. Their unconscionable conduct law has been used to protect consumers who are particularly vulnerable or disadvantaged and to target outstandingly bad conduct.

The Bill provides for fines of up to \$600,000 for a body corporate and \$200,000 for an individual where unconscionable conduct is found.

Extending the ban on unfair contract terms

The Fair Trading Act prohibits businesses from including unfair contract terms in their standard form consumer contracts. The Bill proposes widening this prohibition to also apply to small trade contracts.

Small trade contracts would be defined as a contract between two or more parties engaged in trade where the value of their trading relationship was worth no more than \$250,000 per annum.

Unfair contract terms are terms that:

- would cause significant imbalance in the parties rights and obligations;
- are not reasonably necessary to protect the legitimate interests of the party who would be advantaged; and
- would cause detriment (whether financial or otherwise) to a party if they were applied, enforced, or relied on.

If a term in a standard form small trade contract is held to be unfair, it cannot be applied, enforced or relied on.

Article title

Fair Trading Amendment Bill

The rights of consumers to keep salespeople off their property

The Bill would also add mechanisms for people to keep uninvited salespeople off their properties. Salespeople would be prevented from entering any premises if they are directed not to by a resident or someone acting on behalf of a resident. This direction can be verbal, written or in any other visual form e.g. a notice on a gate or front door stating that salespeople are not to call or not to knock.

Next steps

Once the Bill passes its first reading, it will go to the Select Committee where there will be an opportunity to make submissions.

Want to know more?

If you have any questions about the Bill please contact our [Corporate Law](#) specialists.