## Submission template: Protecting businesses and consumers from unfair commercial practices

### Your details

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| **Name** | Click here to enter text. |
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*For more detail on how MBIE proposes to release submissions, please see page 3 of the discussion paper.*

I would like my submission (or specified parts of my submission) to be kept confidential, and attach my reasons and grounds under the *Official Information Act 1982* that I believe apply, for consideration by MBIE.

### Responses to discussion paper questions

Your submission may respond to any or all of the questions from the discussion paper. There is an additional box at the end for any other comments you may wish to make. *Text boxes will expand as you complete them.*

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| **Issue 1: Unfair business-to-business contracts** | |
|  | What types of unfair business-to-business contract terms are you aware of, if any? How common are these? |
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|  | What impact, if any, do these unfair contract terms have? |
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|  | Is government intervention to address unfair business-to-business contract terms justified? Why/why not? |
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| **Issue 2: Unfair business-to-business conduct** | |
|  | What types of unfair business-to-business conduct are you aware of, if any? How common is this type of conduct? |
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|  | What impact, if any, does this conduct have? |
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|  | Is government intervention to address unfair business-to-business conduct beyond existing legislative protections justified? Why/why not? |
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| **Issue 3: Unfair business-to-consumer conduct** | |
|  | What types of unfair business-to-consumer conduct are you aware of, if any? How common is this type of conduct? |
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|  | What impact, if any, does this conduct have? |
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|  | Is government intervention to address unfair business-to-consumer conduct beyond existing legislative protections justified? Why/why not? |
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| **Objectives** | |
|  | Do you agree with our proposed high-level objectives and criteria for assessing any potential changes to the regulatory framework governing unfair practices? If not, why not? |
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| **Option 1: Introduce a high-level protection against unfair conduct** | |
|  | Should a high-level prohibition against unfair conduct be introduced? Why/why not? |
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|  | What are the advantages and disadvantages of Options 1A, 1B, and 1C (Refer to Annex 1 for more information)? Which option, if any, do you support? |
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|  | If unconscionable conduct were prohibited (Option 1A), should a definition of unconscionability be included in statute, and if so, how should it be defined? |
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|  | Is it appropriate to require businesses to act in good faith (as per Option 1C – see Annex 1)? Are there situations in which doing so could have negative economic outcomes? |
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|  | Are there any other variations on Option 1 that we should consider? |
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|  | If a version of Option 1 is selected, should it also extend to matters relating to the contract itself? |
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|  | Should any protection against unfair conduct apply to consumers only, consumers and some businesses (and if so, which ones?), or all consumers and businesses? |
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| **Option 2: Extend unfair contract terms protections to businesses** | |
|  | If the UCT protections are extended to businesses, do you agree that the current consumer UCT provisions should be carried over without major changes? If not, why not? |
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|  | If the UCT protections are extended to businesses, should the FTA’s ‘grey list’ for consumer UCTs be carried over ‘as is’? Are there any existing examples of unfair terms that should be removed from the list, or any new examples that should be added? |
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|  | Should the protections against UCTs apply to consumers only (as at present), consumers and some businesses (and if so, which ones?), or all consumers and businesses? |
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|  | If the protections against UCTs are extended to businesses, should a transaction value threshold be introduced, above which the protections do not apply? If so, what should the threshold be? |
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|  | Should there be penalties for breaching any new provisions regarding UCTs, and should there be civil remedies available, even if unfair terms have not previously been declared by a court to be unfair? How should any penalties and remedies be designed? |
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| **Other options** | |
|  | Are there other options to address unfair conduct or unfair contracts that we should consider? If so, what are these? |
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| **Options packages** | |
|  | Do you have a preferred options package? If so, which is your preferred package, and why? |
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| **Impact analysis** | |
|  | Do you agree with our assessment of the impact of each package against the criteria? If not, why not? Do you have any further evidence on the costs and benefits of this option? |
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| **Other comments** | |
|  | Do you have any other comments? |
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