



PROTECTING CONSUMERS FROM UNFAIR COMMERCIAL PRACTICES



INTRODUCTION

The government is considering whether the protections for consumers against unfair commercial practices should be strengthened and we want to hear from you.

Submissions are due by 9am on 25 February 2019. You can email us your views via competition.policy@mbie.govt.nz

Please note that we intend to upload submissions to our website, and submissions will be subject to the Official Information Act 1982. If your submission contains information that is confidential or you otherwise do not want it to be published, please let us know.

WHAT ARE UNFAIR COMMERCIAL PRACTICES?

What is 'unfair' is highly subjective. However, it can broadly be grouped into two categories:

- **Unfair contract terms** may include contract terms which allow a business to vary the price of a contract without a consumer's agreement, make it difficult for consumers to terminate a contract, or are otherwise very one-sided in favour of the business.
- **Unfair conduct**, which relates to things other than a contract itself. This may include businesses using pressure tactics, lying or misleading consumers, or enforcing a contract in a harsh way.

Our focus for this consultation is on unfair **conduct**.

Unfair commercial practices are a problem because they can:

- Reduce consumer confidence
- Lead to consumer hardship
- Lead to wasted time, inconvenience, and increased stress.

Because of this, there are already laws that protect consumers from a range of unfair practices. For example, the Fair Trading Act prohibits harassment, coercion, misleading and deceptive conduct, and unfair contract terms.

However, we do not think it is the role of government to protect consumers from every transaction that they might ultimately regret.

IS THERE A PROBLEM?

We have been told about a few examples of where businesses have treated consumers very unfairly, without necessarily breaching existing laws. For example, we have heard about:

- A business using aggressive sales tactics in shopping malls to sell skincare products to vulnerable people, including people with autism and the elderly.
- A business which approached young parents in shopping malls to take photos of their children without clearly specifying the total price, and imposing high cancellation fees once a contract had been signed.
- A mobile trader which entered a mental health unit and signed up nearly all the clients to unreasonable contracts for phones and PlayStation consoles.

We also want to hear about whether you have been treated unfairly.

Question 1:

Have you been treated unfairly by a business in the last few years? If so, please tell us what happened.

ADDRESSING UNFAIR CONDUCT

We are considering introducing a new protection against conduct that is highly unfair. While there are various ways that a protection could be designed, the basic effect of any new protection would be to target the worst conduct by businesses towards consumers. It would be unlikely to affect everyday interactions and transactions between businesses and consumers.

Overseas, similar protections have been used in relation to, for example:

- The sale of vacuum cleaners to elderly consumers in their homes, under the pretence of performing a maintenance check on consumers' existing vacuum cleaner.
- The promotion and supply of medical services and medications to men suffering from sexual dysfunction. The companies took advantage of vulnerable consumers by frightening them about the effects of not agreeing to treatment.

- The handling of complaints about quality issues with cars. The company involved told customers that their concerns were a result of their driving style and refused to provide refunds or replacements, despite knowing that there were quality issues with the cars.

Question 2:

Should the government introduce additional protections for consumers against unfair conduct? Why/why not?

