

7 August 2025

Consumer Policy Team  
Building, Resources and Markets  
Ministry of Business, Innovation and Employment  
Wellington  
By email: [consumer@mbie.govt.nz](mailto:consumer@mbie.govt.nz)

## SUBMISSION on Amendments to the Fair Trading Act 1986 – Targeted Consultation Paper

### 1. Introduction

Thank you for the opportunity to make a submission on the Amendments to the Fair Trading Act 1986 – Targeted Consultation Paper (the Consultation). This submission is from Consumer NZ, an independent, non-profit organisation dedicated to championing and empowering consumers in Aotearoa. Consumer NZ has a reputation for being fair, impartial and providing comprehensive consumer information and advice.

Contact: Aneleise Gawn  
Consumer NZ  
Private Bag 6996  
Wellington 6141  
Phone: 04 384 7963  
Email: [aneleise@consumer.org.nz](mailto:aneleise@consumer.org.nz)

### 2. General comments on the Consultation

In general, we support the amendments suggested in the Consultation. However, we are concerned the focus on practical improvements (rather than ‘wholesale reform’) will mean missing the opportunity to improve other long-overdue and necessary changes to the FTA including:

- a) *a supermarket pricing accuracy code* to provide clear rules for supermarkets about pricing and promotional practices, require

automatic compensation for consumers when they get their pricing wrong and higher penalties for misleading conduct. For more information on our 'Price it right' campaign, see: <https://campaigns.consumer.org.nz/supermarkets>. So far, over 25,000 consumers have signed our petition calling for a supermarket pricing accuracy code.

- b) *a prohibition on unfair trading practices* similar to the prohibition being introduced in Australia to better protect consumers from the range of unfair trading practices that harm consumers but that are not currently captured by existing laws (for example, dynamic pricing, hidden fees, manipulation using dark patterns, subscription traps etc). These types of practices are becoming increasingly common but protections under existing laws are insufficient.
- c) *all-inclusive pricing rules*, similar to Australia, to require businesses to display the total price of products and services online, including taxes, duties and unavoidable or pre-selected extras. Our research has found that two-thirds of people have been stung by sneaky fees and the majority of people would support a ban on these fees. See <https://campaigns.consumer.org.nz/no-more-sneaky-fees> for more information.
- d) *better rules about greenwashing* including regulatory oversight of sustainability claims before products go to market and banning ambiguous terms such as 'eco', 'natural', 'green', and 'sustainable' unless the terms are specific, verifiable and independently certified. For more information, see <https://campaigns.consumer.org.nz/greenwashing>.
- e) *consequential amendments required to the FTA* under the Consumer Guarantees (Right to Repair) Amendment Bill to ensure enforcement action is possible where a manufacturer fails to comply with right to repair provisions of the Consumer Guarantees Act.

We therefore urge the Ministry to undertake a wider review of the FTA in the near future.

### 3. Answers to selected questions in the Consultation

Our answers to selected questions in the Consultation are set out below.

***Question 1: Do you have any comments on the problem definition and what Chapter 1 is aiming to achieve?***

We strongly agree the current penalties regime in the Fair Trading Act (FTA) is not as effective and efficient as it could be and does not provide businesses and others with the right incentives to comply.

Consumer NZ has been calling for a stronger FTA penalty regime for many years so we are pleased this is currently being considered. Consumers also support higher penalties, as evidenced by our [‘Price It Right’](#) petition launched on 22 July 2025. As mentioned above, the petition calls for (amongst other things), higher penalties and infringement notice powers under the FTA to address ongoing issues with supermarket pricing errors. So far, over 25,000 people have signed our petition, showing widespread support for a more effective penalties regime.

We also support changes to make it easier to keep product safety regulations up to date by automatically reflecting the latest version of a standard.

We strongly agree that changes are needed to the unfair contract terms provisions of the FTA to allow consumers and small businesses to take direct action if faced with an unfair contract term and ensure businesses are penalised for including unfair contract terms in their terms.

***Question 2: Do you agree with the proposal as set out in Option A, which would replace the majority of criminal offences in the Fair Trading Act with pecuniary penalties subject to civil proceedings? Why or why not?***

Yes, we agree with the proposal to replace the majority of criminal offences with civil pecuniary penalties. We consider the lower burden of proof will make it easier for the Commission to bring successful actions against businesses that have breached the FTA.

We agree criminal proceedings may still be appropriate in particularly egregious cases.

***Question 3: Which options relating to infringement offences (Options C, D and E) do you support (if any)? Why or why not?***

As stated above, we strongly support option B to increase maximum monetary penalties under the FTA. However, we are concerned that if the proposed maximum penalties do not match the penalties in Australia, large entities operating on both sides of the Tasman (such as banks, supermarkets, airlines, construction and building material suppliers, and hardware stores) will face much lower penalties here than they do overseas. We do not think this is acceptable and therefore encourage consideration is given to having penalties similar to those under the Australian Consumer Law, (as set out on page 14 of the Consultation paper) for large multinational corporations. For most other entities, the penalties suggested in the Consultation are likely to be appropriate.

We support option C (expanding the range of infringement offences), option D (increasing infringement fees) and option E (increasing the period under which infringement notices are enforceable).

In our view the Commission needs greater powers to issue infringement notices with meaningful infringement fees for clear-cut breaches of the Act. We agree the FTA should allow flexibility for future adjustments but also consider the infringement fees should be similar to those in Australia (i.e. up to \$165,000 for listed companies).

***Question 4: What additional strict liability offences in the Fair Trading Act (if any) should be included to expand the range of the infringement offences scheme? Why or why not?***

We consider that ignoring a 'do not knock' sticker (section 36RA) and breaching the unfair terms provisions (see our answer to question 18 below) should be infringement offences.

***Question 5: Do you agree that insurance and indemnification against breaches of the Fair Trading Act should be prohibited? Why or why not?***

Yes, we agree insurance and indemnification against breaches of the FTA should be prohibited. If businesses can insure or provide indemnities against penalties then the deterrent effect of the law is undermined and allows larger entities to effectively buy their way out of compliance. A ban

on insurance and indemnification will ensure appropriate accountability for breaches of the FTA.

In our view, businesses will be more likely to invest in compliance systems, staff training and marketing if they know they can't offload the risk of a breach through insurance and indemnities.

***Question 6: If indemnification is prohibited, should this prohibition extend to all provisions of the Act, or only certain ones? Please indicate which provisions you consider should be covered and outline why?***

Yes, we think the prohibition on indemnification should extend to all provisions of the FTA to ensure businesses are appropriately incentivised to comply.

***Question 7: Should harassment and coercion be defined in the Fair Trading Act? If so, how?***

We support the inclusion of a definition of harassment and coercion. In our view, this would provide clarity for both businesses and consumers in understanding what behaviours might constitute harassment and coercion. Vague language undermines consumer protections and allows harmful behaviours to continue.

We support the use of a clear, inclusive definition to help consumers understand their rights, help businesses understand their obligations, and support enforcement by the Commerce Commission. We also consider guidelines should be developed to ensure consumers, traders and advocates know what is and is not acceptable.

The definition should focus on the consumer's experience, rather than the intentions, motives or beliefs of the other person, particularly when the consumer is already vulnerable. It should capture persistent, aggressive or intimidating conduct that goes beyond what's reasonable in the circumstances.

We also think the definition of harassment should include harassment of family members and friends.

Finally, we consider the threatened use of physical force or threat to inflict damage may be express or implied so this should be included in the definition of coercion.

***Question 8: Should harassment and coercion that is prohibited conduct be subject to a civil pecuniary penalty or strict liability offence, with Tier 1 penalties? If so, should the penalties relate to harassment and coercion outright, undue harassment and coercion (as in Australia), or only harassment and coercion that meets certain other conditions?***

We strongly support the introduction of penalties (civil or strict liability) for harassment and coercion to ensure businesses are incentivised to behave appropriately towards consumers. Without these penalties, we are concerned that debt collectors, in particular, will be able to continue to harass and coerce consumers, unchecked.

We consider the penalties should relate to harassment and coercion outright. We do not support the Australian approach of prohibiting 'undue' harassment and coercion. However, if the Australian approach is used, it must be interpreted in a way that protects consumers, not in a way that excuses bad behaviour.

We also do not support only imposing penalties for harassment and coercion that meet certain conditions as this shifts the burden to the consumer to prove the harm and makes enforcement harder. In our view, consumers should not have to prove they were vulnerable or harmed. The conduct itself should be enough to trigger a penalty.

***Question 9: Do you support allowing automatic updates to product safety standards under the Act? Why or why not?***

Yes, we support allowing automatic updates to product safety standards under the Act. We agree allowing automatic updates would reduce delays, improve clarity for businesses and help ensure New Zealand's product safety regime remains aligned with international best practice.

***Question 10: What impacts would this change have on your organisation or sector?***

No comment.

***Question 11: Are there any risks or safeguards that should be considered?***

No comment.

***Question 12: Should MBIE's Chief Executive be able to adopt international standards by notice?***

Yes, we support MBIE's Chief Executive being able to adopt international standards by notice.

***Question 13: What types of standards should be eligible for adoption under this process?***

No comment.

***Question 14: What safeguards or oversight mechanisms should be in place to ensure standards are adopted appropriately?***

No comment.

***Question 15: Do you support allowing private parties to challenge unfair contract terms? Why or why not?***

Yes, we strongly support allowing private parties to challenge unfair contract terms. We have been calling for this amendment to be made to the FTA for many years so are very pleased to finally see consultation on the issue.

At Consumer NZ we receive regular complaints from consumers who have entered standard form consumer contracts with unfair terms. These include contracts from a wide variety of businesses including gyms, telcos, energy retailers, rental car companies, accommodation providers, travel providers, airlines, transport operators, retirement villages and more.

Unfortunately, when faced with an unfair term, the only thing a consumer can currently do is to lodge a complaint with the Commerce Commission. However, the Commission cannot take action on most of these complaints. In effect this means that, although the FTA prohibits unfair terms, the prohibition is essentially meaningless. As a result, businesses are continuing to get away with including and enforcing unfair terms in

their contracts against consumers who have been offered the contracts on a take it or leave it basis.

We agree allowing consumers to challenge unfair contract terms would directly improve access to justice and empower affected parties to seek remedies.

However, it is still important that the Commission can take action in particularly egregious cases or those involving widespread harm.

***Question 16: What types of parties should be able to take action (e.g. individuals, businesses party to a small trade contract)?***

We agree individuals and businesses that are party to a small trade contract should be able to take action themselves.

***Question 17: What impacts would this change have on your organisation or sector?***

This change would help us to educate, assist and empower consumers to take action when faced with an unfair term.

For example, it could mean we are able to help consumers:

- a) cancel gym contracts without having to fill in a particular form,
- b) cancel gym contracts after the gym moves to a different location,
- c) require a retirement village pays for repairs and maintenance of the chattels and fixtures it provides to residents (and retains ownership of),
- d) get out of a fixed term broadband contract that was subject to a price increase part way through the fixed term, and
- e) obtain a refund for an accommodation booking cancelled by the provider, despite a 'no refunds' clause.

***Question 18: Do you support introducing penalties for including unfair terms, even if they haven't been declared unfair by a court in a previous case?***

We strongly support introducing penalties for including unfair terms. At the moment, there isn't a sufficient incentive for traders to exclude unfair terms from standard form contracts. The prospect of being taken to

the Disputes Tribunal by a consumer (or small business) savvy enough to understand their rights is unlikely to be a sufficient deterrent, in itself.

We consider infringement notices would be appropriate for blatantly unfair terms. We suggest a blacklist of blatantly unfair terms is set out in regulation.

In other cases, it would be appropriate for civil pecuniary penalties to apply once a term had been declared unfair by a court.

***Question 19: If so, what types of penalties (e.g. pecuniary penalties, offences) would be appropriate?***

We consider the maximum (tier 1) pecuniary penalties should apply to unfair terms. Only then, will businesses be incentivised to have their contracts reviewed and have unfair terms removed.

***Question 20: Should penalties be restricted to where a business knew or was negligent in using a term that was unfair?***

No, we strongly oppose this restriction. Proving knowledge or negligence would undermine deterrence, let too many businesses off the hook, encourage wilful ignorance about their terms, and make enforcement harder and slower. If the contract contains a term that is found to be unfair (or on a blacklist of unfair terms), the business should face a penalty.

Many other consumer protections operate on a strict liability basis and we see no justification for treating unfair terms differently. For example, consumers do not need to prove a business intended to mislead or deceive them, or that they were negligent about it, just that there was misleading or deceptive conduct.

Courts can consider a business's conduct, knowledge, intent, and efforts to comply when setting the penalty amount.

Thank you for the opportunity to provide comment.

***ENDS***