

27 March 2020

Committee Secretariat
Economic Development, Science and Innovation Committee
Parliament Buildings
Wellington

By email: eds@parliament.govt.nz

**SUBMISSION on
Fair Trading Amendment Bill**

1. Introduction

Thank you for the opportunity to make a submission on the Fair Trading Amendment Bill. This submission is from Consumer NZ, New Zealand's leading consumer organisation. It has an acknowledged and respected reputation for independence and fairness as a provider of impartial and comprehensive consumer information and advice.

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2. Comments on the Bill

We strongly support new measures to strengthen the protections for consumers against unfair commercial practices.

We also strongly support the introduction of new provisions requiring uninvited direct sellers to leave a property when directed to do so and creating an offence for failure to comply with a direction to leave or not enter.

Specific comments on the Bill are set out below.

New sections 7 and 8

We support the introduction of a ban on unconscionable conduct.

We consider New Zealand consumers deserve better protection from unfair business-to-consumer conduct than currently provided. However, we are concerned the new provisions may not have their intended effect if interpreted narrowly, as unconscionable conduct provisions have been in Australia.

We therefore consider the Bill should include a definition of unconscionable conduct to ensure the provisions work as intended and to avoid division about the meaning of the term, as there has been in Australia. Including a definition would also make it easier for consumers and businesses to understand, and courts to apply, the term.

We also consider the effectiveness of the provisions should be reviewed in two years. This is particularly important given Australia is considering the effectiveness of their regime and a potential expansion to a prohibition against unfair conduct.

New section 36RA

As mentioned above, we welcome the introduction of new provisions strengthening the ability of consumers to require uninvited sellers to leave their property and creating an offence for those who fail to leave when requested to do so.

We have been calling for these changes since 2014 so are very pleased to see these provisions included in the Bill. However, we are concerned the direction to leave can only be made by a resident or someone acting under the authority of a resident. Under Australian Consumer Law, the direction can be made by anyone with whom negotiations are being conducted. We consider the same approach should be taken in New Zealand.

Finally, under new section 36RA, if the direction to not enter or leave is a specific one (for example, a spoken direction) the person must not re-enter the premises for two years after the direction is given. We agree this is appropriate. However, it is unclear whether the person may re-enter when there is a general standing direction (for example, when they approach a home displaying a do not knock sticker on the door).

For the avoidance of doubt, we recommend the Bill clarifies that a general standing direction continues to apply indefinitely.

Thank you for the opportunity to make a submission on the Bill. If you require any further information, please do not hesitate to contact me.

Yours sincerely

Aneise Gawn
Consumer Advocate