

Unfair contracts

Are you a small business with less than 20 employees? Do you have standard form contracts with large businesses?

If yes, then you have protections against unfair contract terms in standard form contracts entered into or renewed on or after 12 November 2016.

Standard form contracts, also known as 'take-it-or-leave-it' contracts, are those where you cannot negotiate to change terms.

What is 'unfair'?

An unfair contract may include:

- a term that is detrimental to one party and beneficial to the other
- a condition that significantly puts one party at an advantage in a certain event, such as terminating the contract at any time.

What can you do?

- Read your contracts carefully before signing them.
- Ask the owner of the business in writing to remove the unfair clause or term.
- Raise issues you think are unfair with the other party.
- Alternatively, get support to approach the company about the unfair contract terms. If necessary, get advice from your industry association, ASBFEO, the Australian Competition and Consumer Commission or a lawyer.

Australian Small Business and Family Enterprise Ombudsman
1300 650 460

Australian Competition and Consumer Commission
1300 302 502

Know your rights

Forced to remove unfair conditions

In late 2017, the ACCC brought charges against JJ Richards Waste Management and Disposal citing a number of unfair contract terms that were in their standard form contracts. The contracts allowed JJ Richards to:

- increase its prices without agreement or discussion
- remove liability for JJ Richards where it could charge even though they had not provided service if hindered in any way
- charge customers for services not rendered for reasons that are beyond the customer's control
- charge the customer (unlimited indemnity) for damage caused by someone else.

The courts found these terms unfair and forced JJ Richards to remove them from all their contracts.

The case has sent a strong message to businesses about unfair contract terms and gives small business a strong foundation to challenge such terms.

case study

