

**Submission to the
Senate Economics Legislation Committee**

**Inquiry into Treasury Legislation Amendment
(Small Business and Unfair Contract Terms) Bill 2015**



Prepared by the National Retail Association

28 August, 2015

1.0 Overview of Proposed Amendments

The National Retail Association (NRA) endorses the Federal Government's proposed amendments to the *Australian Securities and Investments Commission Act 2001*.

We believe the amended legislation will help to protect small business owners who are vulnerable to unfair terms in standard form contracts. These proposed amendments will particularly help protect small business owners who do not have the resources to understand and negotiate contract terms for low-value, day-to-day contracts and will more equitably distribute risks between businesses in low-value contracts.

2.0 The Need for Specific Contract Term Protections

The NRA supports the expansion of protections for small businesses for 'unfair' contract terms, building on protections that exist around 'unfair' business dealings.

For example, a member has alerted us to a contract with a waste collection company which contained an automatic rollover extending the initial three-year contract period to six years. This rollover was triggered without notice, because the purchaser had not issued a notice to end the contract after the initial period. The new contract fee was set at a significantly higher rate. The penalties associated with breaking the contract were prohibitive and, in the retailer's view, out of all proportion with the likely costs to the supplier.

While the purchaser in this case had a responsibility to end the contract after the initial period if they wanted to do so, the fact that three years had passed since the initial agreement creates a reasonable chance that the contract anniversary date may be forgotten or overlooked. Indeed, given the lack of warning that the contract was about to renew, a cynic might suggest that it was designed with precisely that outcome in mind.

Automatic rollover clauses are an example of the type of contractual terms against which small business owners need similar protection to individual consumers. We believe the same level of sophistication which is applied to legislation surrounding business to consumer contracts must therefore be applied to amended legislation regarding business to business contracts, to ensure they adequately address imbalances of bargaining power.

Under the proposed amendments to the *Australian Securities and Investments Commission Act 2001*, this small business would be protected against these unfair contract terms, not simply the unfair behaviour of another business.

3.0 Extending Protections to Small Business

The NRA is alerted regularly to cases in which unfair terms have been built into business-to-business contracts across a number of different industries, particularly when standard form supply contracts are used. Examples of these instances are most frequently in service delivery areas, such as telephone or internet services.

The mechanics of this type of law have already been tried and tested, and are currently operating successfully within the consumer space. However, a large proportion of small businesses are, in

fact, operating as microbusinesses – as ‘mum and dad’ types of operations, with no need for additional staff to be employed. Such businesses have, in effect, a bargaining position no different from that of an individual consumer. For this reason, we believe they require the same level of protection as an individual consumer.

The NRA supports the current definitions of a small business, which is a business that employs fewer than 20 persons, and a low-value contract which is either \$100,000 or \$250,000 for a contract with a duration of more than 12 months.

For larger contracts, the NRA supports the Federal Government’s view that it is reasonable for individual business owners to undertake their own due diligence, which includes seeking (and acting on) independent legal advice.

4.0 About the Submitter

The National Retail Association (NRA) is a not-for-profit industry organisation providing professional services and critical information and advice to the retail, fast food and broader service industry throughout Australia. The NRA is Australia’s largest and most representative retail industry organisation, representing more than 19,000 stores and outlets.

The NRA’s membership is comprised of members from all the sub-categories of retail including fashion, groceries, department stores, home wares, hardware, recreational goods, newsagents, fast food, cafes and personal services like hairdressing and beauty. It also includes both large and small businesses, including the majority of national retail chains, as well as independent retailers and franchisees, and other service sector employers. The NRA has represented the interests of retailers and the broader service sector for almost 100 years. The NRA’s aim is to help Australian retail businesses grow.

5.0 Contact information

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