Australian Government
The Treasury

Unfair trading practices protections for small businesses

Consultation paper

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About this consultation process

The Government has committed to extending unfair trading practices protections to small businesses and franchisees, and is consulting on the most effective and proportionate way to deliver this reform.

This paper seeks feedback on the design and implementation of extended unfair trading practices protections, which are currently being considered by the Senate,[1] to small businesses and franchisees.

In September 2022, Australian, state and territory consumer ministers agreed that the Commonwealth would lead a public consultation on options to address unfair trading practices on behalf of all jurisdictions.

Treasury released the Protecting Consumers from Unfair Trading Practices Consultation Regulation Impact Statement (Consultation RIS) in August 2023,[2] seeking evidence on the nature and extent of unfair trading practices and detriment to consumers and small businesses arising from potential gaps in the Australian Consumer Law (ACL).

In late 2024, Treasury consulted on the design of general and specific prohibitions targeting unfair practices impacting consumers.[3] After a vote of state and territories, in April 2026, the Government introduced the Competition and Consumer Amendment (Unfair Trading Practices) Bill 2026 (the Bill) into Parliament.[4] The Bill proposes a new general consumer protection against unfair trading practices, stronger consumer protections against drip pricing, and new protections against unfair subscription practices for both consumers and small businesses.

This paper builds on the earlier consultations and focuses on how additional protections should be designed, targeted and implemented to protect small businesses and franchisees from unfair trading practices. This reflects the Government's broader reform agenda to ensure markets operate fairly and that small businesses are appropriately protected from harmful practices. It seeks feedback on whether the principles-based general prohibition proposed in the Bill should be extended (with or without modification) to protect small businesses and franchisees where they purchase goods or services as a consumer.

The paper also seeks feedback on unfair trading practices that small businesses and franchisees experience in their trading relationships with other businesses, whether as a purchaser or a supplier. It discusses and seeks views on the extent to which the ACL or other laws and regulations already provide protections against such practices, or whether there would be a net benefit from additional protections under the ACL.

Once consultation has concluded, Treasury expects to develop a Decision Regulation Impact Statement (Decision RIS) to inform government decision-making on the final design of reforms. In accordance with the Intergovernmental Agreement for the Australian Consumer Law, any proposal to amend the ACL would be considered and agreed in consultation with states and territories.

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[1] Parliament of Australia, Senate Inquiry into the Competition and Consumer Amendment (Unfair Trading Practices) Bill 2026, May 2026.

[2] Department of Treasury, *Unfair trading practices - Consultation Regulation Impact Statement*, August 2023, Australian Government (UTP CRIS).

[3] Department of Treasury, *Unfair trading practices – supplementary consultation paper*, November 2024, Australian Government (UTP supp consult). This followed an announcement by Government that it would take action to address various unfair trading practices. The Hon Anthony Albanese MP, Albanese Government to stop the rip offs from unfair trading practices [media release], 16 October 2024, Australian Government, accessed 4 May 2026.

[4] Competition and Consumer Amendment (Unfair Trading Practices) Bill 2026.

Request for feedback and comments

Treasury welcomes written submissions on the issues raised in this consultation paper.

All submissions to the consultation process will be published, unless authors have indicated they would like all or part of their submission to remain confidential. Specifically, all information (including name and address details) contained in submissions will be made available to the public on the Treasury website, unless it is indicated that you would like all or part of your submission to remain confidential. A request made under the Freedom of Information Act 1982 for a submission marked 'confidential' to be made available will be determined in accordance with that Act.

Interested parties are invited to provide responses to one or more of the consultation questions outlined in this paper by **10 July 2026**.

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Please upload your submission to the Treasury consultation website page linked below.

Online	https://consult.treasury.gov.au/c2026-764649
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Background

In March 2025, the Government announced that it would strengthen protections against unfair trading practices across the economy, including by extending protections beyond consumers to small businesses and franchisees, subject to consultation. These reforms are intended to promote fairer markets, strengthen competition and deliver a more level playing field for small businesses.

The Government announced that it would address unfair trading practices affecting small businesses and would consult on the design of a principles-based prohibition and targeted measures to address unfair trading practices and whether specific unfair trading practices should be targeted.[5] The Government also announced that it would extend unfair trading practices protections to franchising, subject to consultation.[6]

This follows the Government's work to introduce an unfair trading practices protection for consumers, which is currently being considered by the Senate. The Bill proposes a new general consumer protection against unfair trading practices, which is designed to capture conduct that manipulates consumers, or unreasonably distorts consumers' economic decision-making, leading to consumer harm. It also includes stronger consumer protections against drip pricing, and new protections against unfair subscription practices for both consumers and small businesses. More background on the broader unfair trading practice reforms is at Appendix A.

Throughout consultation on unfair trading practices, stakeholders have expressed a range of views on the appropriate scope and design of protections for small businesses. At the same time, submissions have consistently identified harmful practices affecting small businesses, particularly in situations involving information asymmetries and significant imbalances in bargaining power. Business-to-business dealings can raise different considerations to business-to-consumer transactions, reflecting the diversity of commercial relationships in which small businesses operate, both as purchasers and suppliers.

While differences in bargaining power are a common feature of these relationships, they can increase the risk of unfair practices where they are substantial and not appropriately constrained. Existing legal frameworks, including the Australian Consumer Law, competition law and industry codes, provide important protections, but stakeholder feedback indicates they may not fully address all forms of harmful or unfair conduct, particularly in evolving and complex markets.

This consultation therefore seeks further evidence on the prevalence, nature and impact of unfair trading practices affecting small businesses, to inform the design of reforms that address harm while supporting well-functioning markets.

Now that the form of the Government's proposed general prohibition to protect consumers from unfair trading practices (as set out in the Bill) is known, it is timely to consider how similar protections should be extended to small businesses and the form they should take. This consultation paper has two main parts:

- First, it considers small businesses as consumers, and what unfair trading practices protections may be beneficial in this context.
- Second, the paper considers small businesses in business-to-business dealings, the types of unfair trading practices that may occur, and the benefits and risks from protections to address these types of conduct given existing protections that also go to this conduct.

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[5] The Hon Julie Collins MP, Albanese Labor Government to extend unfair trading practice protections to small businesses [media release], 14 March 2025, Australian Government, accessed 5 May 2026.
[6] The Hon Julie Collins MP, Albanese Labor Government taking further action to support the franchising sector [media release], 18 March 2025, Australian Government, accessed 5 May 2026.

Small businesses as consumers

There are over 2.6 million small businesses in Australia, comprising more than 97 per cent of all businesses, with over half of all Australian businesses being sole traders.[7] Within the franchising sector, almost all franchisees are small businesses.[8]

During past consultations, stakeholders have submitted that in certain transactional contexts, some small businesses face many of the same vulnerabilities as consumers when acquiring goods or services from large businesses. Like consumers, small businesses, such as sole traders,[9] may face information asymmetries and resource and power imbalances.[10] Moreover, small business owners from culturally and linguistically diverse backgrounds can share the same types of vulnerabilities as individual consumers of the same cohorts.[11]

As such, stakeholder feedback suggests that in some situations (e.g. subscriptions, digital platforms, standard terms), small business purchases resemble consumer-made purchases, and that small businesses may be exposed to the same unfair trading practices and resulting harms as individual consumers.[12]

Submissions to earlier consultations identified examples of potential unfair trading practices faced by small businesses when they acquire goods or services as consumers, including:

- Dark patterns, for example, confusing or complex menus with pre-selections or indicators suggesting elevated demand or supply constraints, which have the capacity to affect small businesses in the same or similar ways as consumers.
- Failing to disclose changes to a product in circumstances where a small business customer would reasonably expect that change to be disclosed.
- Online businesses using choice architecture and other practices designed to get small businesses to agree to unfair or unfavourable contract terms, with limited opportunity for small businesses to be informed about their rights and obligations.
- Practices that seek to dissuade small businesses from exercising their legal rights.

These are similar to types of practices that the general prohibition proposed in the Bill seeks to address for consumers. Accordingly, this raises the question of whether the ACL should be amended to provide small businesses with the same protections from unfair trading practices as consumers when they acquire a good or service as a consumer. This would be one way of extending unfair trading practices protections to small businesses.

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[7] Australian Small Business and Family Enterprise Ombudsman (ASBFEO), *Number of Small Businesses in Australia*, June 2025, Australian Government.
[8] Dr Michael Schaper, *Review of the Franchising Code of Conduct final report*, 8 February 2024, Department of Treasury, accessed 28 April 2026.
[9] Dr Mark Giancaspro submission to the Unfair Trading Practices Exposure Draft legislation consultation, 2026 (UTP ED).
[10] Australian Competition and Consumer Commission (ACCC) submission to UTP supp consult; ASBFEO submission to UTP ED; Consumer Policy Research Centre submission to UTP supp consult, Entrepreneurial & Small Business Women Australia submission to UTP CRIS.
[11] ASBFEO submission to UTP supp consult.
[12] ACCC submission to UTP supp consult; Council of Small Business Organisations Australia (COSBOA), and Rob Nicholls submissions to the UTP ED.

Policy proposal

Extend the proposed consumer general prohibition on unfair trading practices to also protect small businesses where they acquire goods or services as a consumer.

This proposal would involve extending the proposed unfair trading practices general prohibition contained in the Bill (section 28B) to also apply if a consumer (as defined in section 3 of the ACL) is carrying on a small business.[13]

The proposed business to consumer general prohibition

The unfair trading practices general prohibition proposed in the Bill prohibits conduct in connection with the supply of, or an offer to supply, goods or services to a consumer, that does or is likely to:

- manipulate the consumer *or* unreasonably distort the environment in which the consumer makes, or is likely to make, a decision, *and*
- cause detriment (financial or otherwise) to the consumer.

A 'grey list' is included in the proposed prohibition, providing examples of conduct which may, depending on the circumstances, contravene it. The proposed grey list items are:

- impeding the consumer's ability to exercise legal rights, or seek legal remedies
- failing to disclose material information to the consumer
- disclosing material information to the consumer in a complex, ineffective, unclear, unintelligible, ambiguous, untimely or overwhelming way
- creating an environment (including by using design elements in digital interfaces) which places the consumer under unreasonable pressure in relation to, or obstructs the consumer from, making or fulfilling the consumer's decision.

The proposed prohibition in the Bill does not apply if the consumer in question is a body corporate or if the supply is in the course of a consumer carrying on a business.[14] This includes circumstances where that business is a small business.

Protecting small businesses as consumers

The intent of extending the prohibition would be to provide a consumer that is carrying on a small business with the same protections as individual consumers, where their transactions resemble those of individual consumers.

While the precise form would be determined during legislative drafting, under this option, the requirement for an unfair trading practice to be in connection with supply, or an offer to supply, goods or services to a consumer would be retained. This would have the effect of extending the reach of the proposed prohibition to apply if the supply or offer to supply the relevant goods or services, is in the

[13] Section 28B is proposed to be inserted by item 7 of Schedule 1 to the Competition and Consumer Amendment (Unfair Trading Practices) Bill 2026.
[14] Proposed subsections 28B(3) and (4).

course of the consumer carrying on a small business, but the scope of relevant goods or services would continue to be limited to those acquired as a consumer as defined in section 3 of the ACL.

This means that small businesses would be protected in relation to the acquisition, or potential acquisition, of goods or services by them where:

- the amount paid or payable for the goods or services is below the relevant monetary threshold (currently $100,000),[15] or
- the goods or services were of a kind ordinarily acquired for personal, domestic or household use or consumption, or
- the goods consisted of a vehicle or trailer acquired for use principally in the transport of goods on public roads.

However, as set out in subsection 3(2) of the ACL, the small business would not be taken to acquire goods as a consumer if they acquired (or held themselves out as acquiring) the goods for the purpose of re-supply, or for the purpose of using them up or transforming them in trade or commerce in the course of:

- a production or manufacturing process, or
- repairing or treating other goods or fixtures on land.[16]

The proposed unfair trading practice protection would extend to consumers carrying on a business that is a small business, which is proposed to be characterised as a business that:[17]

- has fewer than 100 employees, or
- makes less than $10 million in annual turnover.

Extending the unfair trading practices prohibition to protect small businesses in this way would address conduct that does, or is likely to, manipulate the small business and/or unreasonably distort the environment in which they make a decision, and which results in, or is likely to result in, detriment to the impacted small business.

Having the same test apply for unfair trading practices in connection with consumer purchases, whether or not the consumer is carrying on a small business, may also limit the extent of any additional compliance burden for businesses as the same protections would apply across the economy to both groups. It may also reduce complexity for small businesses, in particular sole traders, as the same protections would apply to their transactions when purchasing as a consumer or for their small business.

[15] Note the *Treasury Laws Amendment (Acquisition as Consumer—Financial Thresholds) Regulations 2020* increased the threshold amount in ACL subparagraph 3(1)(a)(i) from $40,000 to $100,000 effective 1 July 2021.
[16] Subsection 3(2).
[17] These thresholds align with the thresholds for 'small business' in the ACL Unfair Contract Terms provisions and proposed UTP consumer provisions (See *Treasury Laws Amendment (More Competition, Better Prices) Act 2022*, amending subsections 23(4) and (5) of Schedule 2) and the Competition and Consumer Amendment (Unfair Trading Practices) Bill 2026.

Focus Questions – protecting small businesses as consumers

1. Should the proposed general prohibition (section 28B) be extended to also protect small businesses where they acquire goods or services as a consumer? Please include examples or case studies of conduct that this extension could address including, where possible, evidence of its impact (including financial impact) on small businesses.
2. Should any adjustments be made to the proposed general prohibition when extending it to apply in respect of supply to small businesses? For example, should it:
   - only apply where there is a bargaining power imbalance between the supplier and the small business?
   - only capture conduct that causes, or is likely to cause, financial detriment to the small business?
   - not capture a supplier's conduct if the conduct is reasonably necessary to protect the supplier's legitimate interests?
3. Would it be appropriate to use the same small business threshold as is currently used in the unfair contract terms provisions of the ACL (i.e., characterising a small business as one with fewer than 100 employees and/or less than $10 million annual turnover), or is another threshold appropriate?
4. Noting that most franchisees in Australia would be captured as small businesses, are there similar issues that impact franchisees that are not small businesses when they acquire goods or services as a consumer? If so, would any such issues be best addressed through reform to the ACL, or through other regulatory frameworks such as the Franchising Code?
5. Are there interactions with other regulatory frameworks (including industry codes or other sector-specific laws) that should be considered in relation to this option? If so, how should these be managed?
6. Are there any examples of conduct on the 'grey list' for the proposed general prohibition that are not relevant where the consumer is a small business? Are there any additional examples that should be included where the consumer is a small business? If possible, please include evidence of the conduct's impacts (including prevalence and financial impact) on small businesses.
7. What would be the likely benefits to small businesses from extending the proposed general prohibition to small businesses? Would there be broader economic impacts from the extension? Where possible, please provide quantitative information or examples.
8. Would there be any *additional* compliance costs for businesses if the proposed general prohibition was extended to protect small businesses, noting the Bill if passed would already require businesses to comply in respect of supply to consumers? Please provide quantitative information or examples where possible.

Business-to-business dealings

Stakeholder views have been divided on the question of whether the ACL should be amended to protect small businesses from unfair trading practices in business-to-business dealings. In submissions received in response to the Consultation RIS, 2024 Supplementary Consultation Paper and the exposure draft legislation in 2026, several stakeholders expressed support for a general unfair trading prohibition applying to business-to-business dealings.

Other stakeholders opposed any prohibition applying to business-to-business dealings arguing that such arrangements are sufficiently covered by existing frameworks, and that businesses are better positioned to make informed decisions than consumers and do not require additional oversight through the ACL. Some expressed concern that extending protections may impede the principles of freedom of contract in commercial arrangements and cause uncertainty for businesses that engage with small businesses.

The benefits and costs of any new provision also require careful consideration, and these will depend on the exact form of the provision. If a new protection addressed bargaining power imbalances, for example, this could have dynamic efficiency benefits by protecting small businesses against hold up problems, with implications for longer-term productivity and innovation. It could also potentially reduce entry costs, boost competition and improve supply chain resilience. However, a new provision could also have costs, such as higher compliance costs and higher input costs, which could result in higher prices for consumers. It could also reduce flexibility in contracting, which could lead to worse outcomes for one or both trading parties and reduced allocative efficiency. There is also a risk that it could have a chilling effect on efficient bargaining relationships including by interfering with legitimate commercial conduct.

Accordingly, this paper seeks updated feedback on the type and extent of unfair trading practices in business-to-business dealings. This includes whether recent reforms or developments in the Court's interpretation of the ACL, industry codes or other laws have lessened the need for, or impacted the appropriate timing to consider introduction of, any additional unfair trading practices protections for small businesses in business-to-business dealings. The paper also seeks current evidence on the harm to small businesses of unfair trading practices and cost incurred by small businesses from unfair trading practices (including in seeking to avoid them). It also seeks additional feedback on the costs and benefits of an unfair trading prohibition specific to business-to-business dealings. This updated feedback will help inform any potential policy responses including the design of targeted reforms or an economy-wide approach.

Feedback from previous consultation

Submissions to the 2023 consultation included a range of examples of potential unfair trading practices that can arise in business-to-business dealings. Common themes about the context in which such practices can arise included:

- The conduct happens within medium to long-term business relationships, or hard to avoid business relationships (such as when there is only one supplier or acquirer in the market).
- The presence of an imbalance in bargaining power between the small business and the other business.
- That small businesses are unlikely to instigate legal action or complain, either because they lack resources or they fear retribution.

However, stakeholder views varied considerably on whether such practices in these business-to-business relationships should be addressed through any unfair trading practices protection under the ACL.

Multiple submissions in response to the Consultation RIS and 2024 Supplementary Consultation Paper considered that changes to the existing legislative framework are not necessary. Some stakeholders responded that there are no gaps in the law to justify further regulation of business-to-business conduct,[18] with some noting the protections already provided to businesses by detailed sector or industry specific regulation.[19] Concerns were also raised that an economy-wide provision to address 'unfairness' in business dealings would interfere with the general principle of freedom of contract[20] and add compliance costs or other business transaction costs that may ultimately be borne by consumers.[21]

On the other hand, some submissions supported the introduction of protections in the ACL to address unfair practices in business-to-business conduct. Several submissions highlighted that existing sector-specific mechanisms, such as industry codes, have not always been sufficient to address the unfair conduct arising from systemic power imbalances present in certain business-to-business dealings,[22] with the ACCC arguing that an economy-wide protection could operate as a 'safety net', capturing unfair practices that are not adequately addressed elsewhere in the law.[23]

Further, several reforms and reviews relevant to the trading relationship between businesses have happened since consultation began in August 2023, including in key sectors where alleged unfair practices were raised. This includes reviews of, and changes to, industry codes (such as the Food and Grocery Code of Conduct), the commencement of strengthened unfair contract terms protections in the ACL and ASIC Act, and forthcoming reforms, such as those to strengthen the ACL's consumer guarantee and supplier indemnification provisions.[24]

Types of potentially unfair conduct

In submissions to the earlier consultations, stakeholders provided examples of types of potentially unfair conduct that occurs in business-to-business relationships. Not all such conduct would necessarily be viewed by others as unfair. Suboptimal or detrimental outcomes for small businesses can arise due to numerous reasons, not necessarily related to the conduct of other businesses. Further, in some business-to-business relationships, one business may benefit more than the other which, of itself, is not evidence of a problem requiring a change to the ACL.

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[18] Australian Banking Association and Housing Industry Association submissions to UTP CRIS.
[19] Federal Chamber of Automotive Industries, Franchise Council of Australia, and Grain Trade Australia submissions to UTP CRIS.
[20] Housing Industry Association and Franchise Council of Australia submissions to UTP CRIS.
[21] Federal Chamber of Automotive Industries and Housing Industry Association submissions to UTP supp consult.
[22] WA Farmers submission to UTP CRIS; NSW Farmers submission to UTP supp consult.
[23] See ACCC submission to UTP CRIS, p. 3.
[24] The Hon Dr Andrew Leigh MP, Stopping unfair trading: subscription traps and hidden fees targeted [media release], 23 November 2025, Australian Government, accessed 7 May 2026.

Examples of unfair trading practices identified by stakeholders

Using threats of, or actual, commercial retaliation against a small business

- Dissuading small businesses with inferior bargaining power from exercising their rights by threatening retribution or commercial retaliation. For example, a large retailer threatening a small business supplier with delisting for seeking a price increase or for raising concerns about the buyer's conduct, including their compliance with legislation or regulation.

Interfering with, limiting or denying a small business rights or remedies they are entitled to

- Systemic actual or effective refusal to provide remedies to small businesses that they are legally entitled to, or a failure to act, in instances where a small business relies on that act to access a resolution.

Denying a small business payments that they are entitled to

- Withholding payment, excessively late payments, or charging hidden payments or fees (including deductions from invoices).

Unilateral action, including with insufficient notice, relating to a material aspect of the agreement that results in detriment to the small business

- This includes delisting products, or cancelling or rejecting perishable goods, at short notice, unilaterally changing pricing, targets or supply terms, or ending contracts abruptly.

Pressuring or requiring additional payments from a small business

- For example, unforeseen requirements for retail spends, or requests that suppliers offer promotions as a precondition for product ranging decisions.

Engaging in conduct permitted under an agreement that results in detriment

- Examples include imposing unrealistic sales or performance targets, and imposing financial penalties when they are not met, or requiring suppliers to adhere to standards and guidelines without compensation.

Pressuring small businesses to agree to, or not challenge, changes to existing agreements where that change results in detriment to the small business

- Larger businesses using their superior bargaining power to pressure smaller businesses to amend ongoing contracts resulting in worse outcomes for the smaller business (such as lower prices for a smaller supplier, or a retailer having to take on additional stock to sell).

Aggressive commercial practices including potential undue influence to enter a transaction

- For example, withholding payment that a small business is entitled to receive for completed work until a new contract is signed.

Stakeholders also provided examples of conduct that are likely to be better addressed through other ACL protections, including:

- Contract terms that may be captured by existing unfair contract term provisions, such as terms in standard form contracts that inappropriately allocate risk to another party or require unreasonable exclusivity.[25]

- Conduct that is likely to be captured by existing protections against misleading and deceptive conduct and false and misleading representations, such as competitors impersonating another business or making misrepresentations about another business on an online platform.[26]
- Conduct that is likely to be captured by reforms to improve the current consumer guarantees and supplier indemnification regime, such as refusing to honour consumer guarantee claims or indemnify suppliers.

Sector-specific issues

In submissions to the 2023 Consultation RIS and 2024 Supplementary Consultation, several stakeholders provided examples of potential unfair trading practices occurring in business-to-business relationships specific to their sector. Sectors highlighted by stakeholders included construction, agriculture, franchising and automotive retailing.

In the construction industry, some stakeholders submitted that subcontractors face challenges exercising their legal rights when contracting with larger entities due to a power imbalance between the parties. For example, payment time delays from larger businesses.[27]

In response to the 2023 Consultation RIS, the National Farmers Federation Horticulture Council listed some of the unfair trading practices identified in the ACCC's perishable agricultural goods inquiry report. The submission highlighted fear of commercial retribution by supermarkets and big box stores, including de-listing, contract termination, or reductions in volumes in response to supplier requests for price increases as relevant to the horticulture industry.[28]

The Western Australian Small Business Development Corporation (WA SBDC) provided a range of examples from franchising due to power imbalances between franchisors and franchisees. Examples included the sudden termination of contracts, representations relating to the success of the business, as well as payment, supply and marketing issues.[29]

The Australian Automotive Dealer Association (AADA) submitted that the automotive sector faces unfair trading practices when engaging in commercial transactions with multinational manufacturers as part of a franchising relationship. The AADA provided examples including terminating dealer agreements and pressuring dealers to accept inadequate compensation within very tight deadlines, and making unilateral significant changes to the business model with little to no negotiation.[30]

The next section looks at existing protections and their role in addressing unfair trading practices in business-to-business dealings.

Business relationships

Stakeholders were largely consistent in their view that the context in which a small business operates, specifically, the nature of its relationship with the larger counterparty, is a key factor in determining its exposure to an unfair trading practice.

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[25] National Electrical Communications Association submission to UTP supp consult; NSW Farmers Association UTP supp consult.
[26] Law Council of Australia submission to UTP CRIS.
[27] National Electrical and Communications Association submission to UTP supp consult; Master Electricians Australia submission to UTP ED.
[28] National Farmers' Federation Horticulture Council submission to UTP CRIS, p. 2.
[29] WA Small Business Development Corporation submission to UTP CRIS, pp. 2, 5-6.
[30] Australian Automotive Dealer Association (AADA) submission to UTP CRIS, pp. 11-12.

Some submissions suggested that unfair trading practices can develop and become normalised in medium and long-term arrangements. In situations where a small business depends on an ongoing business relationship to remain viable, it may be reluctant to raise concerns about unfair treatment for fear of damaging that relationship. Submissions described this dynamic across a range of industries, including franchising and agricultural supply chains.[31]

Submissions also raised concerns about the vulnerability of small businesses seeking to exit or avoid entering such arrangements, irrespective of their duration. In this context, the degree of market concentration and geographic constraints were identified as underlying market features which can weaken a small business' negotiating position.[32]

Evidence provided to the Consultation RIS also highlighted that unfair trading practices are not only limited to conduct occurring during ongoing business relationships. Submissions identified harmful conduct across a broader range of circumstances, such as during the formation of a business relationship (e.g. negotiations, onboarding or procurement processes).[33] A handful of submissions noted unfair trading practices may also affect small business in the absence of a direct relationship, such as through the actions of competitors.[34]

Bargaining power imbalances

A common theme across many submissions that detailed unfair trading practices affecting small businesses was an imbalance in bargaining power between a small business and their counterpart.[35] Submissions identified that an imbalance of power between businesses can give the business in the stronger position opportunities to engage in unfair practices and increase the risk of such practices occurring.[36]

Imbalances in bargaining power are common and can affect businesses of all sizes. Bargaining power is relevant throughout the business relationship, not just at contract negotiation. Where the imbalance in power between businesses is only marginal, it is more likely that each business can freely bargain and protect its own commercial interests. However, the existence of an imbalance in bargaining power, even where significant, will not itself mean that all practices engaged in by the stronger party are unfair.

Factors identified in submissions that may heighten bargaining power imbalances included:

- **Limited outside options.** Participants in more concentrated markets typically have greater market power and there are fewer alternative options for small businesses to buy from or sell to in those markets.[37] Stakeholders highlighted industries that are becoming progressively more concentrated, as well as instances where businesses have a monopoly or monopsony position over essential inputs or outputs of small businesses.[38] Sizeable relationship-specific investments were also cited as a reason for small businesses being unwilling to exit business relationships, as these investments would not be recoverable outside of the relationship.[39]

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[31] AADA and Queensland Farmers' Federation submissions to UTP CRIS.
[32] ACCC submission to UTP CRIS.
[33] WA Small Business Development Corporation submission to UTP CRIS.
[34] See for example Law Council of Australia submission to UTP CRIS.
[35] See ACCC and Master Electricians Australia submissions to UTP supp consult; Australian Grape and Wine, Australian Travel Industry Association, AUSVEG, Freshmark and the Queensland Farmers' Federation submissions to UTP CRIS.
[36] Australia Travel Industry Association submission to UTP CRIS; ACCC submission to UTP supp consult.
[37] ACCC and National Farmers' Federation submissions to UTP CRIS.
[38] National Farmers' Federation submission to UTP CRIS.
[39] See AADA submission to UTP CRIS.

- **Size differences.** Larger businesses have greater resources available, such as legal expertise or revenue. Stakeholders raised that these resources can be used to prepare standard form contracts or utilise contract terms to their advantage.[40] Small businesses without these resources may be disadvantaged as they are more reliant on the outcomes of a particular negotiation.[41]
- **The nature of the product**, for example perishable goods. The ACCC's perishable agricultural goods inquiry report, cited in several submissions, identifies producers of perishable agricultural goods as having weaker bargaining power, as they are often compelled to accept unfavourable terms to avoid product spoilage.[42]
- **Information asymmetries**, where one party has better information relative to the other party, can also contribute to bargaining power imbalances.[43]
- **Uncertainty or risk**. Stakeholders raised that small businesses particularly in agriculture need to make capital investments or business decisions well in advance of prices or supply agreements being firmly set, meaning they bear the risk of market uncertainty.[44]

Capacity to take legal action

Submissions also noted some common characteristics of small businesses that generally do not change based on who they are dealing with, including having limited time and resources, or access to expertise.[45] Small businesses often do not instigate legal action to defend their commercial interests due to the risk of delays and costs of the legal process.[46]

Fear of retribution or commercial retaliation can also limit a small business' willingness to complain or contest detrimental actions by a business customer or supplier, particularly if that party is one that they must continue to deal with or significantly depend on.[47] While an unfair trading practices regime could prohibit commercial retribution, challenges are likely to remain for regulators in finding small businesses willing to give evidence against other businesses that they must deal with in the future.

Small business harms

Stakeholders cited a range of apparent harms and impacts resulting from unfair trading practices, including economic harm, harm to consumers, and financial harm to small businesses.

Submissions pointed to economic harm in specific industries. For example, distortions in economic investment decisions, misallocation of resources, and the risk of stranded assets in agriculture.[48] In construction, National Electrical and Communications Association (NECA) submitted unfair trading practices contribute to instability by exacerbating project delays, increasing costs, and creating

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[40] See AADA submission to UTP CRIS.
[41] See Consult Australia submission to UTP CRIS.
[42] Perishable agricultural goods include meat products, eggs, seafood, dairy products, and horticulture goods. See National Farmers' Federation submission to UTP CRIS, citing ACCC, *Perishable agricultural goods inquiry report*, 10 December 2020, Australian Government.
[43] See ACCC submission to UTP supp consult.
[44] See AUSVEG and Australian Grape and Wine submissions to UTP CRIS.
[45] ASBFEO and Queensland Small Business Commissioner submissions to UTP supp consult; EastAusMilk submission to UTP CRIS.
[46] ASBFEO submission to UTP supp consult.
[47] See National Farmers' Federation submission to UTP CRIS.
[48] National Farmers' Federation and NSW Farmers submissions to UTP CRIS.

adversarial relationships. This instability makes it difficult to retain skilled labour and progress projects.[49]

The Queensland Small Business Commissioner submitted that unfair trading practices in business-to-business dealings involving a small business can also indirectly impact consumers. When small businesses are harmed by unfair practices, their ability to deliver their products or services may be impacted, ultimately leading to a reduction in market competitiveness and consumer choice.[50]

Many stakeholders highlighted financial losses for small businesses from alleged unfair practices. This can have a material impact on a small business as they may not have resources to respond to unanticipated cashflow issues or financial losses. The Telecommunications Industry Ombudsman (TIO) submitted case studies of small businesses paying for services that do not provide value.[51] Individual small businesses and industry groups outlined the significant effect of withheld, delayed, or reduced payments on small businesses.[52] The National Farmers' Federation submitted that consumers and small businesses bear the costs of unfair trading practices, and that this has flow on effects that are less visible. Reduced farm incomes mean investment, jobs, resilience and productivity are lower than what they would be if farmers did not experience increased costs through the imposition of unfair trading practices.[53]

Other harms were also noted, for example, requiring a small business to sign an additional agreement to obtain payment for work already performed and agreed upon,[54] generating additional risk for the small business. WA SBDC provided a case study of alleged malicious legal action against a small business that resulted in financial harm, business disruption, and significant emotional distress.[55] Submissions also identified that the fear of commercial retaliation can result in financial harm as a business may decide not to take any action to protect its own commercial interests, instead absorbing financial losses.[56]

Existing protections and other laws

In considering the appropriate design of protections for small businesses, it is important to recognise that the *Competition and Consumer Act 2010* (CCA) already contains a range of protections against unfair, or anti-competitive, conduct in business-to-business dealings. These include protections relating to misleading or deceptive conduct, unconscionable conduct, unfair contract terms and industry-specific regulation.

At the same time, stakeholder feedback from previous consultations suggests that these existing frameworks may not fully address all forms of harmful or unfair trading practices affecting small businesses, particularly in markets characterised by information asymmetries and significant bargaining power imbalances.

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[49] National Electrical and Communications Association submission to UTP supp consult.
[50] Queensland Small Business Commissioner submission to UTP supp consult.
[51] TIO submission to UTP supp consult.
[52] See EastAusMilk, WA Small Business Development Corporation submissions to UTP CRIS; Australian Grape and Wine, Master Electricians Australia and National Electrical and Communications Association submissions to UTP supp consult.
[53] National Farmers' Federation submission to UTP CRIS.
[54] Consult Australia submission to UTP CRIS.
[55] WA Small Business Development Corporation submission to UTP CRIS.
[56] See Queensland Farmers Federation submission to UTP CRIS.

This raises the question of how the current framework can be strengthened to more effectively address identified harms, while ensuring that any reforms remain proportionate and deliver a net benefit to the community.

Further information on the existing provisions of the ACL and the CCA, and outcomes of recent industry code reviews, can be found in Appendix B.

Australian Consumer Law

The ACL (located in Schedule 2 of the CCA) currently provides a range of protections for small businesses in business-to-business dealings, including through protections against unfair contract terms, misleading or deceptive conduct, unconscionable conduct, undue harassment and coercion, and obligations under the consumer guarantees and supplier indemnification provisions.

During previous consultations, stakeholder views varied on the existence and extent of gaps in the ACL. A range of stakeholders submitted that current ACL and CCA provisions provide inadequate protections for small businesses from certain unfair trading practices,[57] while other stakeholders considered that practices of concern could be addressed through the existing ACL protections or other laws.[58]

Some stakeholders submitted that section 18 of the ACL, which prohibits misleading and deceptive conduct, does not address certain harmful practices such as conduct that distorts consumer and small business choice, that is not misleading.[59]

Several stakeholders noted the high threshold required for conduct to amount to unconscionable conduct under section 20 and section 21 of the ACL, and considered this high bar creates a gap for harmful conduct that is significant and unfair, but not unconscionable.[60]

Chapter 3 contains specific protections against a variety of practices, for example, wrongly accepting payment, bait advertising, certain practices with unsolicited supplies and pyramid schemes. Also in Chapter 3, section 50 of the ACL prohibits businesses from, among other things, using undue harassment or coercion in connection with the supply or possible supply of, or payment for, goods or services. There is no requirement in section 50 that coercion or undue harassment involve a threat of an illegal act.

These provisions in Chapter 3 have specific elements that must be present for a contravention. Not all harmful conduct meets each specific element. Where harmful conduct does not contravene one of these provisions, or the general protections of misleading and deceptive conduct, unconscionable conduct or unfair contract terms in Chapter 2, the conduct will not be captured by the ACL.[61]

In response to the 2024 Supplementary Consultation, the ACCC submitted that unfair practices could arise in relation to non-standard form contracts, conduct around the negotiation of contract terms, and unfair conduct engaged in pursuant to a contract term that is, on the face of it, a reasonable term, and that conduct in these situations would not be covered by the unfair contract term provisions.[62]

If the Bill, which was introduced to Parliament on 1 April 2026, comes into effect as drafted, this would also protect small businesses (as well as consumers) from unfair subscription practices. This would

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[57] ACCC and National Farmers' Federation Horticulture Council to UTP CRIS.
[58] DIGI submission to UTP supp consult and Business Council of Australia submission to UTP CRIS.
[59] See, for example, ACCC submission to UTP CRIS, p. 5.
[60] National Farmers' Federation Horticulture Council submission to UTP CRIS, p. 2; ACCC submission to UTP CRIS, p. 6; Australian Grape and Wine submission to UTP supp consult, p. 2.
[61] ACCC submission to UTP CRIS, p. 6.
[62] ACCC submission to UTP CRIS, p. 6.

require businesses offering subscriptions to disclose material information prior to customers signing up for a subscription, notify customers at key points of the subscription, and remove barriers to cancellation.

The subscription protections proposed in the Bill would apply to subscription contracts that meet the small business requirement. A contract meets the small business requirement under subsection 48G(2) of the Bill if:

a. it is a standard form contract for the supply of goods or services; and
b. the subscriber satisfies either or both of the following conditions:
    i. the subscriber makes the contract in the course of carrying on a business and at a time when the subscriber employs fewer than 100 persons;
    ii. the subscriber's turnover, worked out under subsection (4) for the subscriber's last income year (within the meaning of the Income Tax Assessment Act 1997) that ended at or before the time when the contract is made, is less than $10 million.

Competition laws

Australia's competition laws prohibit certain conduct that damages competition. Types of anti-competitive conduct that are prohibited include cartel behaviour, imposing a minimum resale price, and conduct by a firm with a substantial degree of market power which has the purpose, effect or likely effect of substantially lessening competition. Business behaviour substantially lessens competition when it interferes with or damages the competitive process in a market in a meaningful way.

Examples of conduct by a party with a substantial degree of power in a market that could potentially constitute a misuse of market power in contravention of section 46 of the CCA include refusal to deal, restricting access to an essential input, predatory pricing, and tying or bundling. Whether this amounts to a misuse of market power depends on the specific circumstances, including the business's purpose or likely effect of the conduct on competition.

The CCA also enables collective bargaining, which involves small businesses jointly negotiating with suppliers or customers about terms, conditions or prices, to take place in certain circumstances. Where the small business's conduct is allowed under an authorisation, collective bargaining notification or class exemption from the ACCC, it will be protected from legal action under the competition law.[63] However, the target business does not have to agree to jointly negotiate and can continue to deal with individual small businesses. Collective boycotts, where businesses jointly refuse to buy or sell unless an agreement is reached, are not covered by the ACCC's collective bargaining class exemption and require ACCC approval on a case-by-case basis.[64]

Industry codes of conduct

Additionally, the CCA enables the Government to prescribe industry codes that regulate the conduct of participants in an industry towards other participants or towards consumers. Codes aim to address sector-specific issues by setting mandatory standards of conduct and information disclosure in specific sectors. This is in addition to voluntary codes developed and maintained by industry bodies as a form of self-regulation.

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[63] ACCC website, Collective Bargaining Class Exemption, Australian Government, accessed 28 April 2026.
[64] ACCC, *Collective Bargaining Class Exemption: Guidelines* [PDF 294 KB], 3 June 2021, Australian Government, accessed 28 April 2026.

Industry codes are designed to improve industry practices and resolve commercial issues, particularly problematic behaviours between industry participants that can occur when there is an imbalance in bargaining power.[65]

The Industry Codes of Conduct Policy Framework outlines the Government's approach to introducing and amending industry codes prescribed under the CCA.[66] Under the Framework, industry codes are to be introduced only where 'absolutely necessary' to support the efficient operation of markets or the welfare of consumers. This includes in circumstances where there is a demonstrated market failure, self-regulation has been attempted, and an industry code is both an appropriate and the best regulatory intervention.

Since the initial consultation on unfair trading practices in August 2023, there have been several changes to, and reviews of the protections provided to small businesses under industry codes under the CCA. This includes reviews or amendments to the franchising, horticulture, dairy and food and grocery industry codes and the announcement of a new mandatory winegrape purchases code of conduct.[67] In particular:

- Amendments have been made to the Franchising Code of Conduct to improve protections for franchisees in relation to early termination and requirements that franchise agreements provide an opportunity to make a return on investment.
- The Food and Grocery Code of Conduct is now mandatory, with heavy penalties for breaches of the code and new obligations including a prohibition on retribution and strengthened dispute resolution mechanisms. New obligations were also introduced in relation to fresh produce suppliers, to provide greater certainty for fresh produce suppliers that sell to supermarkets.

While it will take time for the impacts of these recent changes to be felt, it is expected that these amendments will have gone some way to addressing some issues raised by stakeholders in these industries in earlier unfair trading practices consultations.

Other laws

Some stakeholders also identified other laws that already seek to address conduct identified as unfair trading practices. For example, section 47A of the New South Wales *Fair Trading Act 1987*, the *Independent Contractors Act 2006* and various state and territory retail leasing laws.[68] The AADA also noted the example of the New South Wales *Motor Dealers and Repairers Act 2013* which specifically protects car dealers in NSW from unjust or unfair conduct.[69] However, the relevance of these laws will generally depend on where conduct occurs.

Payment times

Commissioned in 2017, the review of Security of Payment Laws (the Murray Review) examined ways to improve consistency in state and territory security of payment legislation and enhance protections

[65] Department of Treasury, *Industry Codes of Conduct Policy Framework* [PDF 1.03 MB], November 2017, Australian Government.
[66] Department of Treasury, *Industry Codes of Conduct Policy Framework* [PDF 1.03 MB], November 2017, Australian Government.
[67] The Hon Dr Andrew Leigh MP and the Hon Julie Collins MP, *Joint media release: New wine code to level playing field* [media release], 22 December 2025, Australian Government, accessed 4 May 2026.
[68] See Business Council of Australia, Housing Industry Association of Australia, and Shopping Centre Council of Australia submissions to UTP CRIS.
[69] See AADA submission to UTP supp consult.

to ensure subcontractors get paid on time for work they have done.[70] Following the Murray Review, the Commonwealth Payment Times Reporting Scheme (the Scheme) was created. The Scheme requires large businesses and large government enterprises with an annual total income of over $100 million to publicly report on their payment terms and practices for their small business suppliers.[71]

In response to previous consultations, NECA raised that unfair conduct in relation to payment times and 'pay-when-paid' clauses are still present in construction contracts.[72] Master Electricians Australia (MEA) also noted that despite recent reforms following the Murray Review non-payment remains an issue for construction industry subcontractors including electricians.[73]

In the 2023 statutory review of the *Payment Times Reporting Act 2020* (the review), the Hon Dr Craig Emerson recommended prohibiting unfair conduct relating to the payment of small business suppliers by larger businesses through the ACL. The review found that such conduct could result in financial and non-financial costs, deny small businesses effective choice and cause them harm.[74]

The review provided examples of potential unfair payment related practices faced by small businesses, including:

- systemic late payments (payments that exceed contractually agreed payment terms)
- deliberate withholding of payments (for example, until the head contractor has been paid by its client)
- predatory use of supply chain finance
- mandatory use of supplier portals that charge usage fees or carry onerous administrative requirements.

International approaches

Few international jurisdictions seek to broadly regulate unfair trading practices in business-to-business conduct, particularly on an economy-wide basis.

Japan and South Korea are examples of international jurisdictions that address unfair trading practices in business-to-business conduct in some way. Japan prohibits certain listed unfair trade practices on an economy-wide basis including amongst others, the unjust use of a superior bargaining position to take certain actions towards another party, in light of normal business practices. South Korea similarly prohibits certain listed unfair trading practices economy-wide including the unfair use of bargaining power in business-to-business transactions.

The European Union has a sector-specific prohibition against unfair trading practices in the agricultural and food supply chain, with some conduct targeted similar to issues sought to be addressed in Australia through industry codes.

The US has a prohibition against 'unfair or deceptive acts or practices' in or affecting commerce, which focuses on consumer protection, but can also apply to business-to-business dealings to the extent that the conduct causes consumer harm or broader harm to competition. More information on protections in international jurisdictions can be found in Appendix C.

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[70] Department of Employment and Workplace Relations website, Review of Security of Payment Laws, Australian Government, accessed 11 May 2026.
[71] Explanatory Memorandum, Payment Times Report Bill 2020 (Cth), p. 4.
[72] See National Electrical and Communications Association submission to UTP supp consult.
[73] See Master Electricians Australia submission to UTP ED.
[74] Australian Government, *Statutory Review of the Payment Times Reporting Act 2020 - final report*, 2023, p. 95-98.

Focus Questions – unfair trading practices in business-to-business dealings

9. What types of unfair trading practices are occurring in business-to-business dealings, and what harm does this cause small businesses? For each example:
    - Please provide details of the types of industries in which the conduct is occurring, and the types of business relationships (e.g. whether there is an ongoing relationship, whether there is an imbalance of bargaining power and whether the small business is a supplier or purchaser in such relationships).
    - How are small businesses harmed, and how significant is this harm? Please provide quantitative evidence where possible (including prevalence, and size of harm).
    - Are there particular stage(s) of the business dealing in which unfair trade practices occur most often (e.g. pre-contractual, during an agreement)?
    - Is this conduct already subject to existing protections, for example, industry codes? To what extent could this conduct be addressed by extending the general prohibition proposed in the Bill to protect small business?
    - What types of protections could be introduced to address these issues and what would be the benefits and costs of these?
10. What factors affect whether a small business is likely to be harmed by unfair trading practices in business-to-business dealings (e.g. bargaining power imbalances, whether it is a medium or long-term relationship, whether the small business is a purchaser or supplier, whether an industry code applies)?
11. If the Government were to introduce an economy-wide unfair trading practices prohibition that applies to business-to-business conduct:
    - What types of conduct should be captured and are there any specific forms of conduct that should be protected against (for example in a 'grey list')? Please provide reasons and evidence.
    - Should it apply to all business-to-business dealings involving a small business, or just a subset of these (for example, where there is a significant power imbalance between the parties, where there is a medium or long-term relationship between the parties, and/or where the small business is a supplier or purchaser)? Please provide reasons and evidence.
    - Should there be an exception for conduct that is reasonably necessary to protect the legitimate business interests of the party engaging in it? Please provide reasons and evidence.
    - Should there be a harm element and, if so, should that harm element include financial and non-financial harm? Please provide reasons and evidence.
    - What would be the potential costs and benefits? Please provide reasons and evidence.

- What costs (including time, money, or forgone opportunities) are currently incurred by small businesses in guarding against or attempting to avoid being harmed by unfair trading practices? Please provide examples and evidence.

12. Would a new economy-wide unfair trading practices prohibition that applies to business-to-business conduct interact with other existing laws and regulations (such as industry codes)? How should any overlap or duplication be managed?
13. What costs or impacts would a new economy wide unfair trading practices prohibition that applies to business-to-business conduct have on businesses (e.g. compliance costs, changes to contracting practices or prices) and who would bear these costs? Please provide estimates where possible.
14. Previous consultations identified barriers that prevent small businesses from enforcing their rights, including cost of legal action, fear of retaliation, and knowledge of rights. How would such barriers affect the effectiveness of any new protection?
15. Should unfair trading practice protections apply in respect of franchisees who exceed the proposed small business threshold (i.e. franchisees with 100 or more employees and more than $10 million annual turnover)? Please provide reasons, including addressing the questions above where relevant.
16. If unfair trading protections were to apply to franchisees who exceed the small business threshold, what is the most appropriate mechanism to do this?

Other considerations

Remedies for breach of a general prohibition

ACL regulators have a range of compliance and enforcement tools available to address potential contraventions of the law, including guidance materials, education and outreach activities, dispute resolution, warnings, administrative resolutions, infringement notices, enforceable undertakings and legal action.

Submissions in response to the Consultation RIS generally supported the availability of the full range of remedies for breaches of a general prohibition on unfair trading practices applying to small businesses, including civil pecuniary penalties.[75] In particular, some stakeholders emphasised that substantial penalties are required to ensure the regime is effective at deterring conduct and to allow regulators and the courts to take action.[76] Several stakeholders also argued in support of aligning unfair trading practices remedies with those available under the unfair contract terms regime.[77] Public enforcement mechanisms were also viewed as an important, such as action by the ACCC.[78]

[75] See ACCC, Queensland Small Business Commissioner and Victorian Automotive Chamber of Commerce submissions to UTP CRIS.
[76] See ACCC, WAFarmers and AUSVEG submissions to UTP CRIS.
[77] See Victorian Automotive Chamber of Commerce submission to UTP CRIS.
[78] Queensland Farmers' Federation submission to UTP CRIS.

The penalties for the proposed general prohibition on unfair trading practices in the Bill align with the maximum penalties available under the ACL. The maximum pecuniary penalty for a contravention of the proposed general prohibition is:

- If the person is a body corporate, the greater of the following amounts:
  - $100 million[79]
  - 3 times the value of the benefit that resulted from the contravention
  - 30 per cent of the body corporate's adjusted turnover if that value cannot be determined.
- If the person is not a body corporate, $2.5 million.

An infringement notice may also be issued for an alleged contravention of the proposed general prohibition on unfair trading practices.

Focus Questions – Remedies

17. If a general prohibition that addresses the unfair trading practices affecting small businesses was introduced, should the full range of remedies, including civil pecuniary penalties, be available? Why, or why not?
18. What is the maximum civil penalty a court should be able to impose for a breach of any such provision? Should this be aligned with the maximum penalties available for other key provisions under the ACL?
19. Should there be a transition period before any new laws commence, or before civil penalties apply to any new laws?

Financial services

This paper seeks feedback on a proposal to amend the ACL to extend unfair trading practice protections to small businesses and franchisees. In response to the Consultation RIS, some stakeholders argued in favour of extending any unfair trading practices prohibitions to financial services regulated by the *Australian Securities and Investments Commission Act 2001* (ASIC Act) to ensure alignment between the ACL and financial services law.

There are differences between the ACL and financial services law in Australia which mean that mirroring any changes to the ACL requires careful consideration. Once options to amend the ACL have been considered and agreed in consultation with states and territories, the Government will consider what changes are required to financial services regulated by the ASIC Act to ensure appropriate alignment across the ACL and financial services laws.[80]

[79] On 28 March 2026, the *Treasury Laws Amendment (Doubling Penalties for ACCC Enforcement) Act 2026* came into effect, increasing the maximum pecuniary penalties available under the ACL from $50 million to $100 million.

[80] Department of Treasury, Unfair trading practices – supplementary consultation paper, November 2024, Australian Government, p. 25-26.

Appendix A: Background of unfair trading practices reforms

The unfair trading practices reforms included in the Bill have been informed by multiple rounds of consultation and stakeholder engagement. A key milestone in this process was the release of the Consultation Regulation Impact Statement (RIS).[81]

The Consultation RIS released in August 2023 sought evidence on the nature and extent of unfair trading practices, and the extent of any consumer and small business harm arising from potential gaps in the ACL. Four policy options were presented for consideration:

- Option 1: Status quo (no change).
- Option 2: Amend statutory unconscionable conduct.
- Option 3: Introduce a general prohibition on unfair trading practices.
- Option 4: Introduce a combination of general and specific prohibitions on unfair trading practices.

In addition to receiving submissions, Treasury held bilateral meetings and roundtables, which were attended by consumer, small business and industry groups, academics and government stakeholders.

Stakeholders' views varied on the existence and extent of gaps in the ACL, with a range of stakeholders submitting that there was conduct and practices of concern impacting consumers and small businesses which were unlikely to be captured by existing protections in the ACL.

In respect of small business, the issues raised by stakeholders tended to fall under four general themes: small businesses as consumers, imbalances in bargaining power between suppliers and purchasers, conduct by businesses with monopsony-like power, and sector-specific unfair practices particularly in the food and grocery, franchising and automotive sectors. Other stakeholders considered that practices of concern could be adequately addressed through existing ACL protections or other laws.

Option 4, which proposed combining a general and specific prohibitions, received the most stakeholder support, with proponents considering that it would provide the most comprehensive regulation of unfair trading practices, while also providing clarity around compliance obligations.

Unfair trading practices protections for consumers

In November 2024, building on Option 4 outlined in the Consultation RIS, the Government released the 2024 Supplementary Consultation Paper seeking stakeholder views on the design of general and specific ACL prohibitions to address unfair trading practices impacting consumers. That feedback informed Treasury's preparation of the *Decision Regulation Impact Statement - Protecting Consumers from Unfair Trading Practices*[82] (Decision RIS), which assessed the benefits and regulatory costs associated with each option.

[81] Department of Treasury, Unfair trading practices - Consultation Regulation Impact Statement, August 2023, Australian Government.

[82] The Decision RIS is available at Office of Impact Analysis, *Protecting consumers from unfair trading practices*, December 2025, Australian Government.

In November 2025 the Hon Dr Andrew Leigh MP, Assistant Minister for Productivity, Competition, Charities and Treasury, announced that following agreement by the states and territories, the Government would move forward with reforms to protect consumers from unfair trading practices.[83]

On 1 April 2026, following the consultation on an exposure draft of the proposed legislation, the Bill was introduced into Parliament. The Bill proposes a general principles-based provision to protect consumers from unfair trading practices, and specific protections against subscription traps and drip pricing.

The general prohibition is designed to capture conduct that manipulates consumers, or unreasonably distorts consumers' economic decision-making, leading to consumer harm.[84] The principles-based approach is intended to provide flexibility to address evolving marketplace conduct, including practices that may not be captured by existing consumer protections but nonetheless undermine consumer decision-making and lead to consumer harm.

The specific protections in the Bill seek to address or enhance protection against:

- unfair subscription practices which can make it difficult for consumers and small businesses to exit subscriptions, including through complex cancellation processes
- drip pricing, where unavoidable fees or charges are disclosed to consumers incrementally during the purchasing process

While the general prohibition proposed in the Bill protects consumers, the Bill extends the subscription protections to small businesses in recognition that they often experience the same issues as consumers in respect of subscriptions.[85]

[83] The Hon Dr Andrew Leigh MP, Stopping unfair trading: subscription traps and hidden fees targeted [media release], 23 November 2025, Australian Government, accessed 7 May 2026.
[84] Section 28B.
[85] Subsection 48G(2).

Appendix B: Existing protections

Australian Consumer Law

The ACL sets whole-of-economy minimum baseline standards for businesses to promote fair trading by creating a range of rights and protections.

Misleading or deceptive conduct

Section 18 of the ACL prohibits a person (including a corporation), acting in trade or commerce, from engaging in conduct that is misleading or deceptive or is likely to mislead or deceive. This prohibition applies regardless of whether the person intended to mislead or deceive.

In determining whether conduct is misleading or deceptive, the courts apply an objective test. The question is whether the conduct would, or be likely to, mislead or deceive a reasonable person, or a reasonable member of the relevant class of persons to whom the conduct is directed.

Although section 18 does not expressly refer to omissions, silence may nevertheless be considered misleading when there is a reasonable expectation that a fact, if it exists, will be disclosed. This provision was previously contained in section 52 of the *Trade Practices Act 1974* (Cth) and continues to be interpreted in light of the substantial body of case law developed under that section.

Unconscionable conduct

The ACL provides two protections against unconscionable conduct.

- Section 20 reflects the law of equity and applies where one party takes advantage of another's special disadvantage (e.g. age, illness or illiteracy). The transaction must also be sufficiently harsh or oppressive, and the weaker party may be able to have it set it aside
- Section 21 of the ACL extends the concept of unconscionable conduct beyond equity. It is not confined by the unwritten law and applies to conduct in connection with the supply or acquisition of goods or services. This provision allows courts to consider the values and norms of acceptable commercial behaviour and whether the given conduct falls outside of such norms. Section 22 sets out a non-exhaustive list of factors that courts may consider when determining whether conduct is unconscionable. This includes factors such as the bargaining positions of the parties, undue influence or pressure, unfair tactics, failure to disclose key risks, availability of alternative suppliers, and whether parties acted in good faith. No single factor is determinative.

Unfair contract terms

The unfair contract terms regime found in Part 2-3 of the ACL prohibits the use and reliance on unfair contract terms in standard form consumer and small business contracts and enables the Court to impose significant penalties for contraventions. A term of a contract is unfair if it:

- causes a significant imbalance in the parties' rights and obligations arising under the contract
- is not reasonably necessary to protect the legitimate interests of the party that would be advantaged by the term, and
- would cause detriment (whether financial or otherwise) to a party if it were to be applied or relied on.

On 9 November 2023, changes to the unfair contract term protections came into effect including the introduction of pecuniary penalties for breaches, expansion of the class of contracts covered, and clarifying provisions regarding the meaning of standard form contracts. On 24 February 2026, the Government announced a review into the operation and effectiveness of the amendments, and whether any changes are required. The consultation paper also sought feedback on whether UCT protections should be extended to all franchisees.[86]

Harassment and coercion

Section 50 of the ACL prohibits businesses from, among other things, using undue harassment or coercion in connection with the supply, or possible supply, of goods or services or payment for goods or services.

Generally, coercion refers to force or compulsion, or threats of force or compulsion that restrict another's choice or freedom to act.[87] It can also refer to the exploitation of known facts or circumstances to force the other party to do something.[88] In order to constitute 'coercion' the conduct does not necessarily have to be repetitive or ongoing.[89]

Industry codes of conduct

Industry codes are a set of rules or standards of conduct for an industry, including the relationship between industry participants or their customers.

Franchising Code

The Franchising Code of Conduct is a mandatory code under the CCA that regulates the conduct of parties in franchising to address power imbalances, improve standards of commercial conduct through enhanced disclosure and clearer contractual requirements, and provide fair dispute resolution processes.

Dr Michael Schaper conducted an independent review of the code in 2023-24. The final report published on 8 February 2024 made 23 formal recommendations and 34 implementation suggestions for Government. The Government response published on 7 May 2024 agreed to all recommendations. The remade Code commenced on 1 April 2025 (with some rules applying from 1 November 2025).

Key protections in the Franchising Code of Conduct include requirements for parties to act in good faith (section 18), that a franchisor must not enter into a franchise agreement unless it provides the franchisee a reasonable opportunity for return on investment (section 44), and for franchisors to provide comprehensive disclosure documents to prospective and current franchisees to support informed decision-making.

Since 2020 the Code has included specific provisions relating to new vehicle dealership franchises.

Food and Grocery Code

On 12 December 2024, the Government made the new mandatory Food and Grocery Code of Conduct, which came into force on 1 April 2025, replacing the voluntary code. The code regulates the

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[86] The Hon Dr Andrew Leigh MP, the Hon Dr Anne Aly MP, and the Hon Dr Daniel Mulino MP, Albanese Labor Government moves to extend Unfair Contract Terms ban to protect all franchisees [media release], 24 February 2026, Australian Government, accessed 28 April 2026.
[87] *Hodges* v *Webb* [1920] 2 Ch 70 at pp. 85–87.
[88] ACCC website, Unfair Business Practices, Australian Government, accessed 25 April 2026.
[89] *ACCC v The Maritime Union of Australia* (2001) 114 FCR 472.

conduct of large grocery businesses and their suppliers. ALDI, Coles, Metcash and Woolworths are large grocery businesses currently covered by the code.[90]

This followed the release, on 24 June 2024, by the Treasurer, the Minister for Agriculture, Fisheries and Forestry, and the Assistant Minister for Competition, Charities and Treasury of the written report of the independent review of the Food and Grocery Code of Conduct, conducted by the Hon Dr Craig Emerson. The Government Response to the Review, which supported all of Dr Emerson's recommendations, was released at the same time.

Horticulture Code

The Horticulture Code of Conduct regulates trade between growers and traders of horticulture produce to ensure transparency and clarity of transactions.

On 28 January 2026, Minister for Agriculture, Fisheries and Forestry, the Hon Julie Collins launched the independent review of the Horticulture Code of Conduct. A final report is due to be provided to Government by mid-2026.[91]

Dairy Code

The Dairy Industry Code (the Dairy Code) is a mandatory industry code that commenced on 1 January 2020. The Dairy Code provides a fairer process for negotiating contractual arrangements between dairy farmers and dairy processors. It improves the balance in bargaining power between dairy farmers and processors. The Dairy Code also includes dispute resolution and mediation processes.[92]

Mandatory Code of Conduct for Winegrape Purchases - January 2027

On 22 December 2025, the Australian Government announced the Mandatory Code of Conduct for Winegrape Purchases. The final code will come into effect on 1 January 2027 and will set clear and consistent minimum standards for contracts, pricing and obligations of both winegrape growers and large winemakers.[93]

Competition law in Part IV of the CCA

The CCA prohibits various forms of anti-competitive conduct, including misuse of market power by firms with a substantial degree of market power, and exclusive dealing.

The misuse of market power provision in section 46 of the CCA prohibits a firm with a substantial degree of market power from engaging in conduct that has the purpose, effect or likely effect of substantially lessening competition in a market.

The exclusive dealing provision in section 47 of the CCA prohibits exclusive dealing, which occurs where a supplier or buyer imposes conditions that restrict the other party's freedom to choose who it deals with, what it buys or sells, or where it trades, including by refusing to supply or acquire goods or services unless certain conditions are met. Exclusive dealing can take various forms, such as

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[90] ACCC website, About the food and grocery code, Australian Government, accessed 30 April 2026.
[91] Department of Agriculture, Fisheries and Forestry website, Horticulture Code of Conduct, Australian Government, accessed 22 April 2026.
[92] Department of Agriculture, Fisheries and Forestry website, Dairy Industry Code, Australian Government, accessed 28 April 2026.
[93] Department of Agriculture, Fisheries and Forestry website, Mandatory Code of Conduct for Winegrape Purchases, Australian Government, accessed 22 April 2026.

requirements not to deal with competitors, full or third line forcing, or territorial or customer restrictions. Such conduct is captured only if it can be demonstrated that it substantially lessens competition.[94]

[94] ACCC website, Exclusive dealing, Australian Government, accessed 5 May 2026.

Appendix C: International jurisdictions

Canada

Canada does not specifically have an unfair trading practices prohibition, but does provide some consumer and competition law protections to business-to-business dealings through a combination of federal and provincial statutes. For example, the *Competition Act* (R.S.C., 1985, c. C-34) prohibits misleading advertising, price-fixing agreements, and abuse of a dominant market position by a large supplier to the disadvantage of smaller competitors, and there are some other protections in Sale of Goods Acts adopted in provinces and territories.

European Union – Protections in the Agricultural and Food Supply Chain

The European Union introduced protections against unfair trading practices in the agricultural and food supply chain through Directive (EU) 2019/633, which came in force in 2021 after being incorporated into the laws of member countries.[95] This framework aims to protect farmers and small and medium-sized suppliers from unfair practices by larger buyers, who possess greater bargaining power. The framework bans ten 'black' unfair trading practices including late payments, unilateral contract changes, commercial retaliation, and short-notice cancellations of perishable products. It also restricts six 'grey' practices unless they are clearly agreed to in advance, including supplier payments for promotion, marketing, and advertising.

Each of the 27 EU Member States has a designated enforcement authority empowered to investigate complaints and impose penalties for breaches of these protections.[96]

The European Commission released the first evaluation of the Directive on 1 December 2025.[97] Although conducted shortly after implementation, the evaluation found early evidence of farmer benefits, fewer reports of unfair trading practices, and increased enforcement activity. In February 2026, the European Parliament adopted new measures to strengthen the framework including allowing member states to intervene in cross-border unfair trading practices without needing a complaint, expanding protections to unfair trading practices by non-EU buyers and allowing cross-border information exchange between national enforcement authorities.[98]

Japan

The *Antimonopoly Act 1947* includes an economy-wide prohibition on 'unfair trade practices' which whilst not limited to, does focus on business-to-business conduct. Rather than broadly defining 'unfair', the prohibition lists various types of conduct that constitute unfair trade practices.[99] This includes concerted refusal to trade, discriminatory and predatory-type pricing, resale price maintenance and abuse of superior bargaining position.[100] The prohibition also includes a rule-making

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[95] European Commission, *Unfair Trading Practices in the Food Chain*, European Union, accessed 28 April 2026.
[96] European Union, *Directive (EU) 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain*, 17 April 2019, Official Journal of the European Union L111/59.
[97] European Commission, *Evaluation of the Directive (EU) 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain*, 1 December 2025, European Union.
[98] European Parliament News, *New rules to protect farmers against unfair trading practices* [media release], 12 February 2026, European Union, accessed 4 May 2026.
[99] *Act on Prohibition of Private Monopolization and Maintenance of Fair Trade* (Act No. 54 of April 14, 1947), Arts 19, 2(9). ('*Antimonopoly Act*').
[100] *Antimonopoly Act*, Art 2(9)(i)-(iv).

power for the Japan Fair Trade Commission (JFTC) to designate further practices as unfair, either economy-wide or for specific sectors and industries, which must pass an additional requirement of tending to impede fair competition.[101]

The abuse of superior bargaining power limb covers the unjust use of a 'superior bargaining position' to take certain actions towards another party, in light of normal business practices.[102] Under this part of the prohibition, the JFTC has taken action against business-to-business conduct such as forced discounts, unilateral contract changes, delayed payments, compulsory provision of services or manpower, and unjust returns of goods.[103]

Enforcement remedies for the prohibition are mainly administrative and include cease-and-desist orders, mandatory compliance measures, and monetary surcharges, with unjust use of a superior bargaining position attracting fines of up to 1% of the relevant transaction value.[104]

New Zealand

New Zealand does not specifically have an unfair trading practices prohibition, however the *Fair Trading Act 1986* protects consumers in New Zealand by prohibiting misleading and deceptive conduct, unconscionable conduct, unsafe products and providing specific protections against practices similar to those in Chapter 3 of the ACL such as bait advertising, referral selling and pyramid schemes. The Act applies to anyone in trade, including all commercial activities, overseas businesses supplying goods or services in New Zealand, and online sales.

Singapore

Singapore has not extended unfair trading practice protections to businesses. Business-to-business unfair trading is largely governed by competition law and contract law rather than consumer protection laws. The Competition and Consumer Commission of Singapore tackles anti-competitive conduct like abuse of dominant position (e.g. predatory pricing and price discrimination) under the *Competition Act 2004*. Unfair contract terms are addressed through the *Unfair Contract Terms Act 1977* which provides some protections to businesses against unreasonable exclusions or restrictions of liability.

South Korea

Article 45 of the *Monopoly Regulation and Fair Trade Act* prohibits a business from engaging in certain unfair trading practices that are likely to hinder fair trade, including making transactions by unfairly taking advantage of its bargaining position, imposing terms and conditions that unfairly restrict the business activities of the counterparty, unfairly disrupting the business activities of other business entities, and unfairly forcing or enticing a competitor's customers towards its own business.[105]

To enforce the prohibition, the Korean Fair Trade Commission (KFTC) may make a range of remedial orders to the relevant business including orders to discontinue the relevant practice, to take measures to prevent recurrence, to delete relevant contractual provisions, and to implement any other

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[101] *Antimonopoly Act*, Art 2(9)(vi).
[102] *Antimonopoly Act*, Art 2(9)(v).
[103] Japan Fair Trade Commission enforcement action in cases such as *Sanyō Marunaka*, *Toys'R'Us*, and *Edion*. Simon Vande Walle and Tadashi Shiraishi, *Competition Law in Japan*, November 2023, pp. 15-16.
[104] *Antimonopoly Act*, Art 20-6.
[105] *Monopoly Regulation and Fair Trade Act* (Law No. 3320, Dec 31, 1980)('MRFTA)' Art 45.

necessary corrective measures.[106] Further, the KFTC may impose a fine on businesses that engage in unfair trading practices of up to 4% of sales (or up to one billion won where sales figures are unclear or negligible).[107]

United Kingdom

While the UK has the *Consumer Protection from Unfair Trading Regulations 2008*, these protections do not extend to business-to-business relationships, and there is no other specific legislation addressing unfair trading practices between businesses. As such, protection against unfair conduct for businesses is limited to contract principles in common law, and terms implied into contracts by statutory laws. The implied terms into business-to-business contracts under statutory laws provide for baseline standards in commercial transactions including that goods sold in the course of business match their description, are of a satisfactory quality and are fit for purpose,[108] and that services supplied in the course of business are carried out with reasonable care and skill.[109]

United States

The Federal Trade Commission (FTC) is an independent regulatory agency of the United States Government that enforces antitrust and consumer protection laws. Section 5 of the *Federal Trade Commission Act* (FTC Act) empowers the FTC to prevent unfair methods of competition, and unfair or deceptive acts or practices in or affecting commerce.[110] Whilst this provision focuses on consumer protection, it does apply to business-to-business dealings to the extent that the conduct causes consumer harm or broader harm to competition. Under the FTC Act, an act or practice is only unfair if it 'causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition'.[111]

Enforcement of this prohibition is carried out by FTC alone, as the FTC Act does not confer a private right of action. The FTC may only commence civil action for breaches of the prohibition if the party had actual or fairly implied knowledge that their practice was unfair or deceptive, or where the practice continues after the FTC issues a final civil cease-and-desist order to the party.[112] The maximum civil penalty, which is adjusted for inflation each year, is currently $50,120 per offence.[113] However the total penalty applied to a breach may be higher as each day of a continuing breach is treated as a separate offence.

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[106] MRFTA Art 49.
[107] MRFTA Art 50; KTFC Public Notice on Detailed Guidelines for Imposing Penalty Surcharges No. 2024-21
[108] See *Sale of Goods Act 1979* (UK) sections 13-14.
[109] *Supply of Goods and Services Act 1982* (UK) section 13.
[110] *Federal Trade Commission Act* 15 U.S.C. §§ 41-58.
[111] *Federal Trade Commission Act* 15 U.S.C. §§ 45(n).
[112] *Federal Trade Commission Act* 15 U.S.C. §§ 45(m).
[113] Federal Trade Commission, *Notices of Penalty Offences*, United States Government, accessed 4 May 2026.