Article Information

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Service: Commercial Contracts, Corporate & Commercial

Detail of unfair trading practices prohibitions released

For over 6 years the Australian Competition and Consumer Commission has been agitating for specific legislative provisions prohibiting unfair trading practices. Following public consultation by Treasury in 2023, further consultation in 2024, and the issuing of a Decision Regulation Impact Statement in December 2025, Treasury has now released an exposure draft of amendments to the Australian Consumer Law to address certain unfair trading practices.

The exposure draft legislation published by Treasury does not include a general prohibition unfair trading practices (à la the prohibitions against unfair contract terms and unconscionable conduct, and as foreshadowed during earlier consultation), but instead focuses on 4 separate types of conduct, set out below. It is proposed that the prohibitions will commence on 1 July 2027.

The new prohibitions are civil penalty provisions, attracting a significant maximum penalty: at least $50,000,000 for companies and $2,500,000 for individuals, in line with the penalties for unfair contract terms and unconscionable conduct. Other penal orders (e.g., disqualification from managing companies) will also be available.

Treasury's consultation is open for only 2 weeks (until 23 February 2026). The brief period of consultation likely indicates that the government will introduce legislation substantially in that form shortly.

Though there is likely to be a lengthy period before the new provisions commence, affected businesses should start considering and adapting their processes.

1 Dark patterns

There are two limbs to the new prohibition.

First, the conduct must, or must be likely to "unreasonably manipulate the consumer" or "unreasonably distort the environment in which the consumer makes, or is likely to make, a decision".

Second, the conduct must cause or be likely to cause financial other detriment to the consumer.

Though there are specific examples of the conduct identified in the legislation, the bespoke and novel wording of the prohibitions (focussing on unreasonable manipulation or unreasonable distortion), which departs from the existing prohibitions on unconscionable conduct and unfair contract terms, is likely to cause uncertainty pending judicial consideration.

Further, it is apparent that the legislation is not intended to prohibit all dark patterns. The exposure draft explanatory memorandum accepts that "the use of a single dark pattern may not, on its own [fall within the prohibition]", but notes that "businesses often [*sic*] use or combine multiple dark patterns".

The dark patterns prohibition is limited to conduct towards individuals (i.e., not companies) not in the course of carrying on a business: i.e., it is directed to typical consumer conduct. However, Treasury has said "further consultation is proposed be undertaken to determine the best approach to ensuring small businesses are adequately protected from unfair trading practices".

2 Drip pricing

A new provision specifically addresses “drip pricing”: i.e., the advertising or initial disclosure of a low headline price, to which other fees, charges, or components are added affecting the actual price payable. The provision specifically requires up-front disclosure of certain transaction-based charges (with some exclusions, including payment surcharges).

The new provision is limited to goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption. However, it does not limit existing provisions in the Australian Consumer Law about pricing (e.g., that a single price must be specified in certain circumstances, as well as the misleading or deceptive conduct prohibition).

3 Subscription contract disclosures

Specific provisions require parties entering into (or who have entered into) subscription contracts with consumers and small businesses to provide certain prescribed information (including the term, any automatic renewal provisions, when any promotional period ends and what pricing applies after the promotional period ends).

The details and timing for information depend on the nature of the contract (e.g., for indefinite term subscription contracts, certain information must be disclosed every 6 months).

4 Ending subscription contracts

A supplier under a subscription contract must provide an “easy to find” and “straightforward” way for a subscriber to end a subscription contract. Importantly, where the subscriber entered the contract online, the supplier must also provide a way to end the contract online.

A supplier may only require the subscriber to take steps “that are reasonably necessary to end the contract and protect the subscriber’s interests”. The explanatory memorandum indicates that the requirements may only be “minimal”.

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