Law Council
OF AUSTRALIA

Business Law Section

Unfair Trading Practices Protections for Small Businesses

The Treasury

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Executive summary

1. The Competition and Consumer Committee (**C&C Committee**) and the Small and Medium Enterprise Committee (**SME Committee**) of the Business Law Section of the Law Council of Australia welcome the opportunity to respond to Treasury's June 2026 Consultation Paper titled *Unfair trading practices—protections for small businesses* (Consultation Paper).[1]

2. The Law Council understands that the Consultation Paper builds on earlier consultation processes concerning unfair trading practices and seeks feedback on the design, targeting and implementation of additional protections for small businesses and franchisees. In particular, the Consultation Paper seeks views on:

   (a) whether the principles-based general prohibition proposed in the Competition and *Consumer Amendment (Unfair Trading Practices) Bill 2026* should be extended, with or without modification, to protect small businesses and franchisees where they acquire goods or services as consumers; and

   (b) whether existing laws and regulations provide adequate protection against unfair trading practices that small businesses and franchisees may experience in business-to-business dealings, whether as purchasers or suppliers.

3. The Law Council acknowledges the Government's objective of ensuring that small businesses are appropriately protected from harmful trading practices, particularly in circumstances involving information asymmetries, resource constraints, or imbalances in bargaining power. The Law Council also recognises that some small businesses—particularly sole traders and franchisees—may, in certain transactional contexts, experience vulnerabilities similar to those experienced by individual consumers when acquiring goods or services as a consumer from larger suppliers.

4. The Law Council received feedback from different Committees to inform this submission. Where one particular Committee expressed a view on a particular topic that view is attributed to that Committee in this submission.

Views of the C&C Committee

5. Consistent with its previous submissions in relation to unfair trading practices, the C&C Committee submits that any extension of the proposed general prohibition to small business consumers should proceed only where a clear and evidenced gap in the existing legislative framework has been demonstrated, and only where the proposed reform is framed in a manner that is clear, proportionate, and consistent with established Australian Consumer Law (**ACL**) concepts.

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[1] Treasury, *Unfair trading practices protections for small businesses* (Consultation Paper, June 2026), pp 3–4, 8–11 ('Consultation Paper'); *Competition and Consumer Amendment (Unfair Trading Practices) Bill 2026*, proposed s 28B.

6. In the C&C Committee's view, the Consultation Paper does not identify a sufficiently clear evidentiary basis for extending the general prohibition to small businesses in circumstances where the ACL and related regulatory regimes already contain significant protections for small businesses.

7. However, more significantly, in the C&C Committee's view, any proposal to protect small business consumers should not be treated as a stepping stone to a broader economy-wide business-to-business unfair trading practices prohibition without separate analysis of necessity, scope, costs and interaction with existing laws.

8. In this respect, the C&C Committee considers that there is very limited evidence or precedent from international jurisdictions that would support the extension of the unfair trading practices regime to business-to-business dealings on an economy wide basis.

Views of the SME Committee

9. The SME Committee considers an additional, general prohibition should be implemented to protect small to medium businesses and franchisees from unfair trading practices where they acquire goods or services as a consumer. By their nature, small as well as medium businesses are inherently exposed to risks in their dealings with larger entities, including through information asymmetries or through a lack of bargaining power. Those risks and vulnerabilities are similar to those faced by consumers in their dealings with larger businesses.

10. The SME Committee agrees that some protections already exist under the Franchising Code, Food and Grocery Code of Conduct, and the Dairy Code. However, those protections are limited only to businesses operating in those sectors. This leaves a significant proportion of small to medium businesses exposed to the same or similar risks, but without the specific protection to address those risks. There are also limits to how effective general protections under the *Competition and Consumer Act 2010* (Cth) (**CCA**) and the ACL can practically be for small to medium businesses with limited capacity or resources to address unfair practices.

11. The SME Committee considers that the correct threshold should be the same as that which applies under the unfair contract terms regime of the ACL: a business that employs fewer than 100 persons or has a turnover for the last income year of less than $10,000,000. This threshold is preferable given that it will capture situations where there is conduct which impacts a small to medium business where there is no supply of goods or services.

12. On remedies, the SME Committee considers that sanctions for a breach of the unfair trading practices provisions should focus primarily on addressing the conduct and potential harm, via injunctions and infringement notice type penalties. The SME Committee considers that the general penalties under the ACL should not apply to the conduct given that they are not appropriate given the nature of the conduct.

Submission

Introduction

13. This submission addresses Treasury's questions and makes the following key points.

Views of the C&C Committee

14. First, the C&C Committee's position is that there is no established foundation for extending the unfair trading practices prohibition to small businesses, given the comprehensive existing protections under the ACL and related regulatory frameworks. The examples of unfair trading practices identified by stakeholders are already subject to existing laws, and the ACCC's enforcement record demonstrates a high success rate in prosecuting unconscionable conduct claims.

15. Second, the C&C Committee's view is that comparative analysis of overseas regimes does not support a broad, economy-wide business-to-business unfair trading practices prohibition in Australia.

16. Third, if, contrary to the C&C Committee's primary position, the Government proceeds with extending the general prohibition to small business consumers, the C&C Committee submits that any such extension should be accompanied by important safeguards. These include:

    (a) ensuring sufficient statutory clarity in key concepts such as "manipulate", "distort" and "economic decision-making";

    (b) carefully tailoring grey list examples to small business acquisition contexts; and

    (c) applying a materiality threshold requiring a significant imbalance in bargaining power between the parties before the prohibition applies in business-to-business dealings.

17. Fourth, it is the C&C Committee's position that any extended prohibition should:

    (a) include an exception for conduct that is reasonably necessary to protect the legitimate interests of the supplier; and

    (b) require proof of actual and material financial detriment to establish a contravention; and

    (c) take a phased enforcement approach, with any civil pecuniary penalties commencing only after a transition period of at least two years, during which regulators should focus on education, guidance and non-pecuniary compliance tools.

18. Finally, it is the C&C Committee's view that the ACCC should publish detailed guidance, including practical examples specific to the small business context, sufficiently in advance of commencement to allow businesses a meaningful opportunity to comply.

19. The C&C Committee's specific observations and recommendations in support of each of these points are set out in the submission below.

Views of the SME Committee

20. The SME Committee's overarching position is that an additional, general prohibition should be implemented to protect small to medium businesses and franchisees from unfair trading practices where they acquire goods or services as a consumer. Whilst sector-specific protections exist under instruments such as the Franchising Code and the Food and Grocery Code of Conduct, these are limited in application and leave a significant proportion of small to medium businesses exposed to substantially similar risks arising from information asymmetries and imbalances in bargaining power, without targeted recourse.

21. The SME Committee considers that the applicable threshold should align with the unfair contract terms regime of the ACL, capturing businesses employing fewer than 100 persons or with an annual turnover of less than $10 million. The submission identifies several categories of conduct warranting particular attention, including systemic payment delays, denigration of small businesses by larger competitors, exploitative franchise practices, interference in licensing and development applications, and harmful conduct in distribution and agency arrangements.

22. With respect to enforcement, the SME Committee considers that sanctions should focus on addressing conduct and potential harm through injunctions and infringement notice type penalties, rather than the general penalty regime under the ACL. Additional compliance costs are expected to be insignificant and far outweighed by the benefit to small to medium businesses, for whom unfair trading practices may, at worst, reduce their ability to trade and risk market failure.

Is there an established foundation for extension of the unfair trading practices prohibition to small businesses?

Is there a "gap" in Australian law?

Focus Questions

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.**

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: …**

- **How are small businesses harmed, and how significant is this harm? Please provide quantitative evidence where possible (including prevalence, and size of harm). …**
- **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? …**

23. The C&C Committee has previously submitted that Australia already has a comprehensive and wide-reaching set of consumer and small business protections regulating conduct of the kind described as unfair trading practices.[2] These protections include the prohibitions on misleading or deceptive conduct, false or misleading representations, unconscionable conduct, unfair contract terms in standard form consumer and small business contracts, misuse of market power, consumer guarantees, harassment and coercion, and various industry-specific codes of conduct. In addition, the ACCC has extensive powers to investigate potential non-compliance and enforce those laws, and regularly does so.

24. The C&C Committee considers that the examples of unfair trading practices identified by stakeholders in the Consultation Paper[3] are likely to be subject to one or more existing laws. Many of the perceived gaps are addressed by existing ACL protections and by other consumer protection reforms that have recently been implemented or are in progress.[4] The Committee further observed that past ACCC enforcement action suggests that much conduct said to distort, manipulate or

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2 Law Council of Australia, *Unfair trading practices – Consultation Regulation Impact Statement* (Submission, 12 December 2023) [63]-[70] (December 2023 Submission).

3 Consultation Paper p 11.

4 Law Council of Australia, *Unfair trading practices – Consultation on the design of proposed general and specific prohibitions* (Submission, 20 December 2024), [17]–[28] ('December 2024 submission').

undermine consumer choice would already be capable of being pursued under existing provisions, including sections 18 and 29 of the ACL.[5]

25. This is also reflected in the Consultation Paper itself, which recognises that the ACL already provides a range of protections for small businesses in business-to-business dealings, including protections against unfair contract terms, misleading or deceptive conduct, unconscionable conduct, undue harassment and coercion, and obligations under consumer guarantees and supplier indemnification provisions.[6]

26. For these reasons, the C&C Committee does not consider that there is a "gap" to be filled by a general prohibition on unfair trading practices for business-to-business conduct.

27. The C&C Committee's view is that there is a question about whether there is general support for the proposed prohibitions relating to small businesses. The Consultation Paper acknowledges that stakeholder views have varied on the existence and extent of gaps in the ACL, with some stakeholders submitting that practices of concern could be adequately addressed through existing ACL protections or other laws.[7]

28. The C&C Committee's position is that the mere fact that a small business may suffer detriment in a commercial transaction does not establish that the detriment arises from a gap in the ACL, or that the most appropriate response is an additional economy-wide conduct prohibition.[8] As Treasury recognises in the Consultation Paper, suboptimal or detrimental outcomes for small businesses can arise for numerous reasons, not necessarily related to the conduct of another business, and one business benefiting more than another is not, of itself, evidence of a problem requiring an ACL amendment.[9]

29. In addition, the C&C Committee submits that Treasury should first identify, with precision, the particular conduct affecting small business consumers that is not adequately addressed by existing ACL protections, industry codes or other laws. Without that analysis, there is a material risk that extending the general prohibition would duplicate existing protections, increase complexity, and impose compliance costs without a commensurate benefit for small businesses.[10]

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5 Law Council of Australia, December 2024 submission. The C&C Committee referred to prior ACCC enforcement action under existing ACL provisions, including conduct said to distort, manipulate or undermine consumer choice.

6 Consultation Paper pp17-21. Treasury identifies existing protections for small businesses in business-to-business dealings, including unfair contract terms, misleading or deceptive conduct, unconscionable conduct, undue harassment and coercion, consumer guarantees and supplier indemnification.

7 Consultation Paper p 25. Treasury notes that stakeholder views varied on the existence and extent of ACL gaps, including submissions that practices of concern could be addressed through existing ACL protections or other laws.

8 Treasury recognises that the benefits and costs of any new provision require careful consideration and may include higher compliance costs, higher input costs, reduced contracting flexibility and chilling effects on efficient bargaining relationships.

9 Treasury states that suboptimal or detrimental outcomes can arise for many reasons and that one business benefiting more than another is not, of itself, evidence of a problem requiring ACL change.

10 Law Council of Australia, December 2024 Submission [14], [22]. The Committee has previously warned that additional general regulation would increase uncertainty and regulatory burden, and that combined approaches may create duplication and complexity in the ACL.

30. The SME Committee takes a different view. It considers that an additional general prohibition should be implemented to protect small to medium businesses and franchisees from unfair trading practices where they acquire goods or services as consumers.

31. The SME Committee also characterises the existing framework as inadequate and piecemeal for many small and medium businesses. It accepts that the Franchising Code, Food and Grocery Code of Conduct and Dairy Code provide some protections, however, those protections are limited only to those businesses operating in those sectors. For example, not all small to medium businesses are franchisees. Not all small to medium businesses supply major supermarkets and have the legal protections covered under the Food and Grocery Code of Conduct. Making further changes to such codes to address the risks faced by small to medium businesses would only serve to protect those businesses captured by relevant codes. This leaves a significant proportion of small to medium businesses exposed to the same or similar risks, arising from information asymmetries and an imbalance in bargaining power, but without the specific protection to address those risks.

Is there a perceived difficulty for the ACCC when prosecuting unconscionable conduct claims?

32. The Consultation Paper refers to feedback from stakeholders that the high threshold required for conduct to amount to unconscionable conduct under sections 20 and 21 of the ACL creates a gap for harmful conduct that is significant and unfair, but not unconscionable.[11] Relatedly, Treasury has previously observed that the ACCC has not been successful in bringing unconscionable conduct cases to date.[12]

33. The C&C Committee's view is that this is not borne out by the ACCC's record. The ACCC has been successful in 31 of the 36 statutory unconscionable conduct cases it has brought since 2013. On three of the five occasions where the ACCC was not successful in proving unconscionable conduct, it was nonetheless successful in establishing misleading or deceptive conduct.[13] In other words, the ACCC has been successful in establishing a contravention of the ACL in 34 of these 36 cases, being a 94 per cent success rate. This record indicates that the ACCC's enforcement strategy has not been constrained by the threshold applying to unconscionable conduct in any meaningful way.

34. Eight of the 36 cases referred to above involved conduct directed at small businesses. The ACCC was successful in establishing unconscionable conduct in six of those eight cases. In one of the two cases involving conduct directed at small businesses where the ACCC was not successful in proving unconscionable conduct, the ACCC was nevertheless successful in establishing misleading or deceptive conduct.[14] That is, the ACCC was successful in establishing a contravention of the ACL in 7 of the 8 cases involving conduct directed at small businesses, being an 87.5% success rate.

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[11] Consultation Paper p 18.
[12] Unfair Trading Practices, Consultation Regulation Impact Statement.
[13] *Australian Competition and Consumer Commission v Jayco Corporation Pty Ltd* [2020] FCA 1672, *Australian Competition and Consumer Commission v Employsure Pty Ltd* [2021] FCAFC 142, and *Australian Competition and Consumer Commission v Mazda Australia Pty Limited* [2023] FCAFC 45.
[14] *Australian Competition and Consumer Commission v Employsure Pty Ltd* [2021] FCAFC 142.

Comparative analysis of overseas regimes

Views of the C&C Committee

35. The C&C Committee recognises that overseas regimes may provide useful points of reference in considering the design of any Australian reforms, although international alignment is not of itself a sufficient reason to introduce new laws in Australia. The commercial and regulatory context in Australia must be carefully considered, including the comprehensive coverage of existing Australian consumer, competition and industry-specific laws.

36. As acknowledged in the Consultation Paper, there is not an abundance of evidence of jurisdictions that seek to regulate unfair trading practices in business-to-business conduct broadly, particularly on an economy-wide basis. That observation is significant because the present consultation concerns not only extending the proposed consumer general prohibition to small businesses acquiring goods or services as consumers, but also whether additional protections should apply in business-to-business dealings involving small businesses.

37. The overseas regimes identified by Treasury do not demonstrate a settled international model for broad, economy-wide regulation of unfair trading practices in business-to-business dealings involving small businesses. Rather, they suggest a spectrum of approaches, ranging from no specific business-to-business unfair trading practices prohibition, to sector-specific rules, to competition-law based prohibitions of specified unfair trade practices.

38. The closest overseas analogues appear to be Japan and South Korea, but the C&C Committee's position is that those regimes are materially different from the proposed Australian reform in significant respects. Both regimes regulate specified categories of unfair trade practices through a competition or fair-trade framework, including conduct involving superior or unfair bargaining power. That is different from introducing an ACL-based prohibition that may apply to small businesses acquiring goods or services as consumers, or potentially to broader business-to-business dealings involving small businesses.

39. Similarly, the C&C Committee's position is that the EU agricultural and food supply chain regime is also materially different from that in Australia. It is confined to a particular supply chain and is directed to specified practices by larger buyers against farmers and small and medium-sized suppliers. This is more analogous to targeted industry code regulation than to a general economy-wide ACL prohibition.

40. The C&C Committee's view is that the regimes in Canada, New Zealand, Singapore and the United Kingdom are of limited assistance in supporting a general business-to-business unfair trading practices prohibition, because (as Treasury identifies) those jurisdictions either do not have a specific unfair trading practices prohibition or have not extended unfair trading protections to business-to-business relationships. Those jurisdictions instead rely on combinations of competition law, consumer law, contract law and implied statutory terms.

41. Again, the C&C Committee's position is that the United States regime is also not directly comparable. Although Section 5 of the Federal Trade Commission Act can apply to business-to-business dealings, this is only to the extent the conduct causes consumer harm or broader harm to competition. That framework is not a general protection for small businesses as commercial counterparties, and it operates without a private right of action under the FTC Act.

42. The C&C Committee therefore submits that caution should be exercised before drawing comparisons between overseas regimes and the proposed Australian reforms, or in relying on overseas regimes as a basis or precedent for extending the unfair trading practices prohibition to business-to-business conduct in Australia.

43. Further detail is set out in **Appendix A: International jurisdictions.**

Views of the SME Committee

44. The SME Committee would add that in the European Union there are prohibitions on businesses discrediting or denigrating other businesses. For example, the Misleading and Comparative Advertising Directive included a prohibition on a business discrediting, denigrating, or defaming the trademarks, trade names, or activities of a competitor. Furthermore, under the Unfair Commercial Practices there is the concept of professional diligence which is used to determine if a business practice is unfair. While this concept creates a standard of special skill and care which a business is reasonably expected to exercise towards consumers, based on honest market practice and good faith, it could be extended from large business to small business conduct. Such protections should be introduced to protect small businesses from such discrediting or denigrating, including businesses posting negative reviews about a small business competitor on social media platforms.

Compliance costs

Focus Questions

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.

11. If the Government were to introduce an economy-wide unfair trading practices prohibition that applies to business-to-business conduct: …

- **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.**

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.

45. The C&C Committee has previously submitted that the introduction of a new general prohibition on unfair trading practices would impose significant compliance costs on businesses, including costs associated with legal advice to ensure conformity, reviewing sales practices and platforms, redesigning websites and IT systems, updating contracts and marketing materials, developing compliance programmes, and training staff.[15]

46. The C&C Committee's concern is that the practical cost of understanding and applying a novel, principles-based prohibition should not be understated, particularly for smaller suppliers and businesses operating across multiple channels or sectors.[16]

47. The C&C Committee has also previously submitted that small businesses may be disproportionately affected by those costs because they often lack dedicated compliance departments, legal teams, or the resources to obtain ongoing expert advice and compliance technology.[17] This remains an important consideration because small businesses would not only be potential beneficiaries of the extended prohibition, but are also potentially required to comply with it.[18]

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[15] The Committee has identified compliance costs including legal consultations, staff training, updating contracts, revising marketing materials, new systems and technology, website and IT redesign, compliance programmes, and reviewing sales practices and platforms.

[16] The Committee has warned that broad, uncertain prohibitions may impose higher relative compliance costs on small businesses.

[17] The Committee has submitted that small businesses may be disproportionately affected because they often lack dedicated compliance departments or legal teams.

[18] The analysis documents identify that small businesses would bear costs both as entities required to comply and as entities that may bring claims.

48. The SME Committee, by contrast, considers that additional compliance costs would be insignificant, because the proposed changes would largely mirror those that are proposed to apply to consumers. To the extent there are any additional costs from additions to the 'grey list', these would be far outweighed by the benefit to small to medium business 'consumers' where the financial and operational impact on that business may be disproportionately felt by that business and ultimately passed on their customers. At worst, the potential impacts on small to medium businesses impacted by unfair trading practices could reduce their ability to trade, and risk market failure.

Extension of the general prohibition on unfair trading practices to small business consumers

49. If, contrary to the C&C Committee's primary position, the Government proceeds with extending the general prohibition to small business consumers, the C&C Committee submits that it is necessary to ensure:

    (a) sufficient statutory clarity in key concepts such as "manipulate", "distort" and "economic decision-making";

    (b) careful tailoring of any grey list examples to small business contexts;

    (c) applying a materiality threshold requiring a significant imbalance in bargaining power between the parties before the prohibition applies;

    (d) including an exception for conduct that is reasonably necessary to protect the legitimate interests of the supplier;

    (e) requiring proof of actual and material financial detriment to establish a contravention; and

    (f) taking a phased approach, with any civil pecuniary penalties commencing only after a transition period of at least two years, during which regulators should focus on education, guidance and non-pecuniary compliance tools.

Scope, clarity of any extension and definitional matters

Focus Questions

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?**

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.**

50. If, contrary to the C&C Committee's primary position, the Government proceeds with extending the general prohibition to small business consumers, the C&C Committee submits that the prohibition must be drafted with sufficient clarity to enable businesses, regulators, courts and small businesses to understand the conduct that is prohibited.

51. The C&C Committee remains concerned that the key concepts underpinning the general prohibition—particularly "manipulate", "distort", "economic decision-making", "wrongful interference", and "generally accepted marketing or sales practices"—are novel or insufficiently defined in the ACL context.[19] Those concerns are amplified if the prohibition is extended to small business consumers, because the range of commercial contexts in which small businesses acquire goods or services is broader and more varied than the ordinary consumer context.[20]

52. As indicated above, the SME Committee's position is supportive of the need for the extension of the general prohibition to small business consumers. However, the SME Committee does agree with the need for clarity in drafting to enable all stakeholders to properly understand, regulate and comply with the redrafted extension of that general prohibition.

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[19] The C&C Committee raised concerns about the meaning of key concepts such as "distort", "manipulate", "economic decision-making", "wrongful interference" and "generally accepted marketing or sales practices" in four prior submissions dated 12 December 2023, 26 February 2026, 20 December 2024 and 29 May 2026.

[20] Treasury notes that business-to-business dealings raise different considerations from business-to-consumer transactions because of the diversity of commercial relationships in which small businesses operate.

Grey list and small business examples

Focus Questions

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.

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. …**

Views of the C&C Committee

53. The Law Council Committee acknowledges that a properly constructed grey list can provide useful guidance to businesses, regulators and courts.[21] However, the C&C Committee has previously cautioned that a grey list may operate in practice as a de facto 'black list', particularly if regulators treat the listed examples as presumptively unfair.[22] The C&C Committee observes that this is how the grey list for unfair contract terms has tended to function.

54. If the general prohibition is extended, the C&C Committee submits that any grey list examples should be carefully tested against small business acquisition scenarios. It should not be assumed that all examples relevant to individual consumers translate directly to small business consumers. Treasury should consider whether any examples are unnecessary, duplicative of existing ACL protections, or insufficiently tailored to small business contexts.

55. The C&C Committee has also previously raised concerns that certain of the proposed grey list concepts are high-level and lack sufficient particularity. For example, it is unclear what "material information" is, what constitutes a "complex, ineffective, unclear, unintelligible, ambiguous, untimely or overwhelming way" and what amounts to "unreasonable pressure", or "obstructing" decision-making.[23]

56. These concerns are particularly relevant in dealing with small business consumers because the appropriate level, form and timing of information disclosure may differ significantly depending on the industry, product, channel, and sophistication of the small business acquirer.

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[21] The Law Council has acknowledged that a properly constructed grey list may provide useful guidance.
[22] The Committee warned that grey lists may function as blacklists in practice.
[23] The Committee raised concerns about high-level and undefined statutory examples in section 28B(6).

57. The C&C Committee submits that concrete and specific examples of conduct that may contravene the extended prohibition should be listed. They should distinguish between conduct that impairs a small business consumer's ability to make independent decisions and conduct that merely reflects ordinary commercial practice (such as a genuine time-limited promotion period). Grey list examples that turn on information disclosure should recognise the need for businesses to balance information overload, rather than exposing suppliers to liability both for disclosing too little and for disclosing too much.[24]

Views of the SME Committee

58. The SME Committee submits that, in addition to the examples on the proposed 'grey list' for the general prohibition, the Committee broadly agrees the examples of unfair trading practices set out in the Consultation Paper warrant careful consideration.

59. The SME Committee also wishes to highlight the following key risks and additional protections that should be included that address particular harm faced by small to medium businesses.

    (a) **Payment and Cashflow Issues for Small to Medium Businesses:** A critical risk for small to medium business consumers relates to payments and cashflow. Currently there are no prohibitions on large businesses delaying payments to small businesses, or discounting invoices without justification or such common practices as claiming an early payment discount after paying an invoice well after the due date. Rather, the only sanction on large businesses for such conduct is a "name and shame" regime under the Australian Payment Times Reporting Scheme which has proven to be highly ineffective. Such poor payment practices, if undertaken on a systemic basis, should constitute an unfair trading practice.

    (b) **Franchise Agreements for Small to Medium Businesses:** Other conduct which could be subject to the new unfair trading practices law could include such conduct as franchisors seeking to force franchisees to enter into subleases for trading areas which are larger than the area the franchisee requires to operate the franchise, franchisors withholding the payment of supplier rebates and incentives during the currency of a Dispute Notice, establishing a competing franchise within an area which is close to an existing franchise without giving the existing franchise an opportunity to exit or receive some level of compensation or unreasonably rejecting or delaying the approval of a prospective buyer of a franchisee so that the franchisee has no option but to sell to the franchisor.

    (c) **Interference Towards Small to Medium Businesses:** Another practice which could constitute an unfair trading practice would be when a large business coordinates, and in some cases funds, local community groups to oppose a development or licence application by a small to medium business. There have been instances of large businesses seeking to mobilise community groups to oppose small businesses from establishing licensed premises or applying for a

[24] The Committee has identified tension between disclosure obligations and information overload, and has said businesses need guidance on how to manage that trade-off.

liquor licence in a particular area in an attempt to protect their own commercial interests.

(d) **Distribution and Agency Arrangements for Small to Medium Businesses**: A major issue for small to medium business is conduct in agency and distribution arrangements that go to past contracts terms. Once a small business is commercially locked into a business the large business can easily cost shift, start up as a competitor to the small business, introduce competitors in the small business's 'area", which generally undermine the ability of the small to medium business to effectively and vigorously compete.

Materiality threshold

Focus Questions

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?

11. If the Government were to introduce an economy-wide unfair trading practices prohibition that applies to business-to-business conduct:

- **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.**

Views of the C&C Committee

60. A materiality threshold requiring that there be a significant imbalance in bargaining power between the parties should apply to any Business-to-Business Unfair Trading Practices prohibition to ensure that such a prohibition captures only conduct that raises a genuine risk of unfairness, and does not capture or deter legitimate or otherwise benign commercial conduct.

61. It is important to recognise that small businesses can be expected to assess the costs and benefits of their commercial arrangements and protect their commercial interests. Small businesses are also in a better position to obtain legal advice than consumers, meaning they are likely to be less susceptible to manipulation compared with consumers. The inclusion of a materiality threshold requiring there to be a significant imbalance in bargaining power between the parties in relation to a Business-to-Business Unfair Trading Practices prohibition would reflect this reality.

62. The need for such a materiality threshold is also supported by Treasury's recognition that an imbalance in bargaining power is a common feature of commercial dealings,[25] and its mere existence will not of itself mean that all practices engaged in by the

[25] Unfair trading practices protections for small businesses, Consultation paper, June 2026, page 15.

stronger party are unfair. It is axiomatic that parties with differing levels of resources regularly reach commercial terms that reflect their respective bargaining positions. A Business-to-Business Unfair Trading Practices prohibition that is not sufficiently confined by a materiality threshold undermines this generally accepted principle.

63. Treasury has recognised that a broad Business-to-Business Unfair Trading Practices prohibition would lead to higher compliance costs and input costs (which may flow through to consumers), reduce contracting flexibility, and risk a 'chilling effect' on efficient bargaining relationships by interfering with legitimate commercial conduct.[26] As noted above, the C&C Committee considers these to be real and substantial costs that militate against a broad Business-to-Business Unfair Trading Practices prohibition, and justify the inclusion of a clear materiality threshold.

64. Evidence from stakeholders shows that the most acute unfair trading practices risks in business-to-business dealings arise in certain circumstances: specifically, where there is a substantial imbalance in bargaining power, where small businesses have limited outside options due to market concentration or relationship-specific investment, where significant information asymmetries exist, and where small businesses are reluctant to enforce existing rights due to limited resources or fear of retribution.[27]

65. Further, not all small businesses are equal and the prohibition should not treat them as such. For example, conduct that can be considered unfair when directed at a business with close to 100 employees and annual turnover of close to $10 million (meeting the definition of 'small business' under the Unfair Trading Practices Bill) is likely to look different to conduct that can be considered unfair when directed at a sole trader with fewer resources and options. A materiality threshold would enable such differences to more readily be taken into account.

66. In light of the above considerations, the C&C Committee considers that any Business-to-Business Unfair Trading Practices prohibition should only apply to circumstances where there is a significant imbalance in bargaining power between the parties. This should be assessed by reference to factors including the size and resources of the relevant small business, the availability of alternative counterparties or sources of supply, and the extent to which the small business is dependent on the counterparty for the supply of relevant goods or services (which may be informed by considerations such as whether the parties are in a long term relationship).

Views of the SME Committee

67. The SME Committee takes an alternative view on threshold and scope to that expressed above by the C&C Committee. It considers that the risks and vulnerabilities faced by small and medium businesses in dealings with larger entities, including information asymmetries and lack of bargaining power, are similar to those faced by consumers.

68. The SME Committee agrees that the correct threshold should be the same as that which applies under the unfair contract terms regime of the ACL to a small business

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[26] Ibid page 11.
[27] Ibid pages 15-16.

contract if one party to the contract is a business that employs fewer than 100 persons or has a turnover for the last income year of less than $10 million.

69. That [current] threshold is preferable given that it will capture situations where there is conduct which impacts a small to medium business where there is no supply of goods or services.

Legitimate interests of the supplier

Focus Questions

11. If the Government were to introduce an economy-wide unfair trading practices prohibition that applies to business-to-business conduct:

- **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.**

70. The C&C Committee submits that the general prohibition should include an exception for conduct that is reasonably necessary to protect the legitimate interests of the supplier.

71. The view of the C&C Committee is that suppliers may have legitimate commercial reasons for engaging in conduct that could otherwise be said to affect a small business consumer's decision-making environment.[28]

72. For example, a supplier may design standardised onboarding processes, require particular verification steps, impose reasonable payment or cancellation procedures, or adopt particular sales and customer management processes to manage fraud, credit risk, operational efficiency, product suitability, or compliance obligations. Without a legitimate interests exception, the C&C Committee is concerned that there is a risk that such legitimate commercial conduct could be challenged merely because it is commercially unfavourable to a small business or makes their preferred course of action less convenient.

73. The C&C Committee contends that this is particularly important where the consumers are small businesses where there is not the same bargaining power imbalance that exists for individual consumers. Unfair trading practices can take advantage of individual consumers and manipulate their ability to decide. Small businesses,

[28] Treasury recognises that imbalances in bargaining power are common and that the existence of an imbalance, even where significant, does not itself make all practices by the stronger party unfair.

however, have a greater ability to protect their own interests, and bargaining power imbalances are generally more accepted in a commercial context.

74. The C&C Committee submits that a legitimate interests exception would provide an important limit on the prohibition and is consistent with existing ACL concepts. It would ensure the extended prohibition does not interfere with routine and legitimate business conduct. Such an exception would allow courts and regulators to distinguish between conduct that is properly characterised as unfair, and conduct that is reasonable in the supply of goods or services in a commercial marketplace.

75. A legitimate interests exception applies to the meaning of unfair in the unfair contract terms regime and is a relevant consideration when assessing unconscionable conduct.

76. Consistent with its February 2026 submission, the C&C Committee submits that the provision could adopt language similar to s 24(1)(b) of the ACL in relation to unfair contract terms. For example, a trading practice is only unfair where it "is not reasonably necessary in order to protect the legitimate interests of the party engaging in the conduct".[29] If a legitimate interests exception is not included in the legislation, it should at least be incorporated into the Explanatory Memorandum as a matter relevant to assessing whether the general prohibition has been contravened.[30]

Requirement for proof of detriment

Focus Questions

11. If the Government were to introduce an economy-wide unfair trading practices prohibition that applies to business-to-business conduct: …

17. Should there be a harm element and, if so, should that harm element include financial and non-financial harm? Please provide reasons and evidence.

- **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?**

77. The C&C Committee's view is that any Business-to-Business Unfair Trading Practices prohibition should include a harm element requiring the small business to have suffered material financial detriment to establish a contravention of the prohibition.

Actual and material detriment

78. The proposed general unfair trading practices prohibition under the Unfair Trading Practices Bill captures conduct that 'causes or is likely to cause detriment (whether financial or otherwise) to the consumer.' In other words, as it is proposed that

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[29] Law Council Australia, February 2026 Submission [27]. The Committee suggested language modelled on paragraph 24(1)(b) of the ACL.

[30] Law Council Australia, February 2026 Submission [28]. The Committee stated that, if not included in the statute, the legitimate interests concept should be included in the Explanatory Memorandum.

consumers will not need to show any actual detriment to establish a contravention of that general prohibition.

79. The C&C Committee considers that any Business-to-Business Unfair Trading Practices prohibition should not adopt a similar 'likely to cause' detriment limb, and that small businesses should instead be required to demonstrate they have suffered actual detriment. It is often the case that one business will be better off than another in a commercial dealing. This is not of itself inherently objectionable and is to be expected as part of ordinary commercial negotiations. Imposing liability on the basis of a risk of harm alone (rather than proof of actual harm) sets an inappropriately low threshold for a prohibition capturing conduct between two commercial parties.

80. For similar reasons, the C&C Committee also considers it is important for any Business-to-Business Unfair Trading Practices prohibition to include a materiality threshold as to the degree of detriment required to be shown. As discussed above at paragraph 62, small businesses are generally less susceptible than consumers to manipulation. This reality should be reflected in the degree of detriment required to establish contravention.

Financial detriment

81. It is the position of the C&C Committee that any Business-to-Business Unfair Trading Practices prohibition should only apply to circumstances where there has been financial detriment. Evidence from stakeholders supports the view that the primary, and in most cases the exclusive, harm that a small business sustains from any unfair trading practice in a business-to-business context is a financial one, including the loss of revenue, a reduction in the value of its business, additional costs incurred in responding to the conduct, or a diminution in the terms on which it is able to trade.

82. In these circumstances, it is the C&C Committee's view that extending the prohibition to cover circumstances leading to non-financial detriment would be disproportionate and create significant legal uncertainty for no meaningful countervailing benefit.

Alignment of transitional period with broader regime

Focus Questions

17. 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?

18. Should there be a transition period before any new laws commence, or before civil penalties apply to any new laws?

83. If contrary to its submissions the prohibition is extended to small businesses, the C&C Committee submits that the reform should include a transition period of at least two years and should be subject to the safeguards discussed below. This approach was taken in relation to the unfair contract terms regime and will allow time for regulatory guidance, education campaigns and business preparation before the penalties apply.

Remedies

84. The C&C Committee has consistently submitted that any new general prohibition should not be subject to immediate civil pecuniary penalties.[31] In its December 2023 submission, the C&C Committee submitted that if a general prohibition were introduced, it should take the same form as section 18 of the ACL: a broad, flexible and principles-based prohibition without pecuniary penalties, with more specific prohibitions attracting penalties where the relevant conduct is defined with greater precision.[32]

85. In its December 2024 submission, the C&C Committee argued that a staged approach to remedies should be adopted so that the regulator, the business community and consumers can understand how the new prohibition will be interpreted before businesses are exposed to significant civil penalties.[33] The C&C Committee noted that this type of phased approach has been adopted in relation to other ACL reforms, including the unfair contract terms regime, under which pecuniary penalties were introduced only after the regime had operated for a significant period.[34]

86. In its February 2026 submission, the C&C Committee opposed the immediate introduction of penalties and recommended a transition period of at least two years to allow sufficient time for an education campaign and business readiness before substantial penalties apply.[35] While this submission was not adopted in the case of

[31] The analysis documents identify a phased or transition approach to penalties, modelled on the unfair contract terms regime, as a consistent Committee position.
[32] The Committee submitted in December 2023 that a broad general prohibition should not be subject to penalties and should take the same form as section 18 of the ACL.
[33] The Committee submitted that a staged approach would allow regulators, businesses and consumers to understand the new prohibition before significant civil penalties apply.
[34] The Committee referred to the staged introduction of penalties in the unfair contract terms regime.
[35] The Committee recommended a transition period of at least two years before substantial penalties apply.

the initial legislation, the C&C Committee reiterates its position that a staged approach is appropriate in relation to any extension of the general prohibition to small business consumers.

87. The June 2026 Consultation Paper notes that the maximum pecuniary penalty for contravention of the proposed general prohibition would align with the maximum penalties available under the ACL, including up to $100 million for a body corporate, three times the value of the benefit obtained, or 30 per cent of adjusted turnover where the benefit cannot be determined.[36] In the C&C Committee's view, the availability of penalties of that magnitude reinforces the need for clear statutory language, appropriate thresholds, a legitimate interests exception, detailed guidance, and a meaningful transition period before penalties apply. The C&C Committee therefore submits that, if the Government proceeds with extending the general prohibition to small business consumers, any civil pecuniary penalties should commence only after a transition period of at least two years. During that period, regulators should focus on education, guidance, warnings, administrative resolution and other non-pecuniary compliance tools, rather than immediate punitive enforcement.

88. The SME Committee considers the sanctions for a breach of the unfair trading practices provisions should focus primarily on addressing the conduct and potential harm, via injunctions and infringement notice type penalties. The SME Committee believes that the general penalties under the ACL should not apply to the conduct given that they are not appropriate given the nature of the conduct.

Guidance and implementation support

89. The C&C Committee previously recommended that any broad prohibition on unfair trading practices be accompanied by detailed and timely ACCC guidance, education programmes and sufficient transitional arrangements.[37] Such guidance should explain how the key statutory concepts should be interpreted, how the grey list examples apply, and how businesses should balance providing sufficient information with avoiding information overload.[38]

90. If the general prohibition is extended to small business consumers, the C&C Committee submits that the ACCC should publish specific guidance addressing the small business context. That guidance should include practical examples across online supply, subscriptions, franchising-related services, professional and business inputs, software and digital platforms, vehicles and equipment, and transactions involving sole traders. It should also identify examples of conduct that is not considered unfair because it is legitimate, proportionate, adequately disclosed, or reasonably necessary to protect the supplier's legitimate interests.

91. The C&C Committee further submits that guidance should be issued sufficiently in advance of commencement to allow businesses to assess and update their practices.

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[36] Treasury identifies the maximum penalties proposed for contravention of the general prohibition.

[37] The Committee has called for detailed and timely ACCC guidance, education programmes and transition periods.

[38] The Committee has called for guidance on relevant elements of the general and specific prohibitions and the grey list items.

Guidance released only at or shortly before commencement would not provide businesses, particularly small businesses, with a meaningful opportunity to comply.

Recommendations

92. The C&C Committee's primary position is that Treasury has not yet demonstrated a clear and evidenced gap in the existing ACL and related regulatory framework that warrants extending the proposed general prohibition on unfair trading practices to small business consumers. The existing framework already provides substantial protections to small businesses, and any additional prohibition risks increasing uncertainty, duplication and compliance burden without a demonstrated net benefit.

93. If Government proceeds with the extension of the unfair trading practices to small businesses, the C&C Committee submits that the reform should be subject to the following safeguards.

    (a) the prohibition should include sufficient statutory clarity in key concepts such as "manipulate", "distort" and "economic decision-making", and any grey list examples should be carefully tailored to small business contexts

    (b) the prohibition should include an express materiality threshold in both the conduct limb and the detriment limb;

    (c) the prohibition should include an exception for conduct reasonably necessary to protect the supplier's legitimate interests;

    (d) the statutory language and Explanatory Memorandum should provide detailed guidance on key concepts and how they apply in a B2B context, including "manipulate", "distort", "wrongful interference", "generally accepted marketing or sales practices", "detriment" and the grey list examples;

    (e) ACCC guidance and education materials should be published well before commencement and should include specific small business acquisition examples;

    (f) civil pecuniary penalties should not apply immediately and should commence only after a transition period of at least two years.

94. These safeguards would assist in ensuring that any reform is targeted, proportionate, and capable of being understood and applied by small businesses, larger suppliers, regulators and courts.

About the Business Law Section

The Business Law Section of the Law Council of Australia provides a forum through which lawyers and others interested in all matters pertaining to business law can discuss current issues, debate and contribute to the process of law reform in Australia, and enhance their professional skills.

The Section:

- prepares almost half of the Law Council's submissions each year, putting the views of the business community and the legal profession directly to the Federal Government and its agencies, and Federal Parliamentary Committees;
- provides a forum for debate of current issues, and assists lawyers to develop and maintain their professional skills and knowledge, through a schedule of regular conferences, workshops and seminars;
- represents the Law Council on a number of bodies—for example, the National Taxation Liaison Group and its sub-committees, the Customs and Border Protection National Consultative Committee and its sub-committees and the ASX Corporate Governance Council; and
- gives its members the opportunity to develop a network of professional contacts in their fields of practice.

About the Law Council of Australia

The Law Council of Australia represents the legal profession at the national level; speaks on behalf of its constituent bodies on federal, national, and international issues; promotes and defends the rule of law; and promotes the administration of justice, access to justice, and general improvement of the law.

The Law Council's Secretariat is based in Canberra. Its website is www.lawcouncil.au.

Appendix A: International jurisdictions

Jurisdiction	*Application and scope of the law*	*C&C Committee comments*
Canada	Application and scope—Canada does not specifically have an unfair trading practices prohibition. The Consultation Paper identifies a combination of federal and provincial protections, including the Competition Act and Sale of Goods Acts adopted in provinces and territories. Penalties/remedies—The Consultation Paper does not identify a dedicated unfair trading practices penalty or remedy regime for business-to-business conduct in Canada, and instead describes protections arising through existing competition, consumer and sale-of-goods frameworks.	Canada does not appear to provide a close analogy for the proposed Australian approach, because it does not adopt a general unfair trading practices prohibition for small business dealings. The Canadian approach appears closer to reliance on competition, misleading conduct and sale-of-goods protections, as already reflected in the Australian legislative framework.
European Union	Application and scope—The EU has a comprehensive framework of consumer protection and unfair trading legislation, comprising multiple directives addressing distinct aspects of consumer and business protection. Consumer protection - The Unfair Commercial Practices Directive (Directive 2005/29/EC) (UCPD)[39] regulates unfair business-to-consumer commercial practices. It prohibits misleading actions, misleading omissions, aggressive practices, and practices contrary to professional diligence which materially distort (or is likely to materially distort) the economic behaviour of the average	The EU's general consumer protection framework (UCPD and Directive 93/13/EEC) applies only to B2C conduct and does not extend to B2B conduct. The EU does not have a general, principles-based prohibition on 'unfair trading practices' equivalent to the Australian regime. Its approach is to use defined categories of prohibited conduct and banned practices lists. There are some material differences between the EU and Australian regimes: *Unfair trading practices:* The EU does not have a single general, principles-based prohibition on 'unfair trading practices'. The

[39] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (Unfair Commercial Practices Directive), OJ L 149, 11.6.2005, pp 22–39.

Jurisdiction	Application and scope of the law	C&C Committee comments
	consumer.[40] An Annex I 'black list' of 31 specific practices are banned in all circumstances (including bait advertising and pyramid schemes). The UCPD was amended by the Omnibus Directive (2019/2161) to introduce penalties of at least 4% of annual turnover for cross-border infringements and individual consumer remedies,[41] and by the Empowering Consumers Directive (2024/825) addressing greenwashing.[42] The Unfair Contract Terms Directive (93/13/EEC) protects consumers against unfair standard terms.[43] B2B Conduct—The above instruments apply only to B2C conduct. The most significant B2B instrument is Directive (EU) 2019/633 - unfair trading practices in business-to-business relationships in the agricultural and food supply chain, which introduced a prohibition on unfair trading practices in B2B dealings in the agricultural and food supply chain.[44] The Directive seeks to address structural imbalances in bargaining power between smaller suppliers and larger buyers in the agricultural and food supply chain. Protection is provided on a tiered basis according to turnover thresholds, covering any supplier with annual turnover up to €350	UCPD uses defined categories of prohibited conduct (misleading, aggressive, contrary to professional diligence) and a banned practices list, rather than a broad standard of 'manipulation' or 'distortion' of consumer decision-making. *UCT Regime:* The EU's UCT regime (Directive 93/13/EEC) is limited to consumer contracts and does not extend to B2B, unlike the Australian UCT regime which covers small business contracts. The EU does not have a statutory prohibition on unconscionable conduct equivalent to section 21 of the ACL. B2B Conduct - EU Directive 2019/633 is the most relevant comparator to the Australian Treasury's June 2026 consultation on extending unfair trading practices protections to B2B dealings with small businesses. However, Directive 2019/633 differs from the Bill in material respects: It is sector-specific—applying only to the agricultural and food supply chain—whereas the Bill proposes an economy-wide prohibition. It prohibits specific listed practices ('black' and 'grey' lists) rather than adopting a broad, principles-based prohibition. Like the UK, the EU maintains a clear distinction between consumer

40 Ibid pp 6–11.
41 Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 (Omnibus Directive), OJ L 328, 18.12.2019, pp 7–28. Applied from 28 May 2022.
42 Directive (EU) 2024/825 of the European Parliament and of the Council of 28 February 2024 (Empowering Consumers Directive), OJ L, 6.3.2024.
43 Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, OJ L 95, 21.4.1993, pp 29–34.
44 Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain, OJ L 111, 25.4.2019, pp 59–72.

Jurisdiction	Application and scope of the law	C&C Committee comments
	million (with differentiated levels of protection below that threshold).[45] This covers farmers, producer organisations, and distributors below the threshold. The Directive also applies where at least one party is established in the EU, and to all public authority purchasers. The Directive distinguishes between 'black' practices (prohibited in all circumstances) and 'grey' practices (permitted only if clearly and unambiguously agreed in advance in the supply agreement or a subsequent agreement).[46] Directive (EU) 2019/633 is more confined than the Australian general prohibition on unfair trading practice. Enforcement - In March 2026 the Regulation (EU) 2026/697 on cooperation among enforcement authorities was published.[47] It establishes a framework for national authorities to cooperate on investigating and penalising unfair trading practices under Directive (EU) 2019/633 with a cross-border dimension. The Regulation will apply from 10 September 2027.	protection (B2C) and targeted B2B interventions.
Japan	Application and scope—The Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade 1947	Japan's 'abuse of superior bargaining position' prohibition under Article 2(9)(v) of the AMA is

[45] Directive (EU) 2019/633, Art 1(2).

[46] Directive (EU) 2019/633, Arts 3(1) (black list) and 3(2) (grey list). Ten black practices are prohibited outright, including: payment later than 30 days for perishable agricultural and food products, or 60 days for other agri-food products; short-notice cancellation of orders for perishable products where the supplier cannot reasonably find an alternative way to commercialise or use them; unilateral changes by the buyer to the terms relating to frequency, method, place, timing or volume of supply, quality standards, payment terms or prices; requiring payments from the supplier that are not related to the sale of the supplier's products; requiring payment for deterioration or loss occurring on the buyer's premises (not caused by the supplier's negligence); refusal by the buyer to confirm supply agreement terms in writing; misuse or unlawful acquisition of the supplier's trade secrets; threats of or actual commercial retaliation against a supplier exercising contractual or legal rights; and requiring the supplier to pay for investigating customer complaints (not caused by the supplier's negligence). Six grey practices are conditionally prohibited, including return of unsold products without payment, supplier payment for the buyer's marketing or advertising, charges for stocking, display or listing of the supplier's products, and supplier payment for the cost of discounting products sold as part of a promotion.

[47] Regulation (EU) 2026/697 of the European Parliament and of the Council of 11 March 2026 on cooperation among enforcement authorities responsible for the enforcement of Directive (EU) 2019/633, OJ L, 20.3.2026. Applies from 10 September 2027.

Jurisdiction	Application and scope of the law	C&C Committee comments
	(Antimonopoly Act or AMA)[48] is Japan's primary competition and fair trading statute, enforced by the Japan Fair Trade Commission (JFTC). The AMA prohibits 'unfair trade practices' (Article 19), which are designated in Article 2(9).[49] Designated practices include concerted refusal to trade, discriminatory and predatory-type pricing, resale price maintenance and (most relevantly) abuse of superior bargaining position. The prohibition also includes a rule-making power for the 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.[50] Article 2(9)(v) prohibits the 'abuse of superior bargaining position' (yūetsu-teki chii no ran'yō)—a provision unique to Japanese competition law. Under Article 2(9)(v), a business operator must not, by making use of its superior bargaining position over a counterparty, unjustly engage in any of the following acts: (1) causing the counterparty in continuous transactions to purchase goods or services designated by the operator; (2) causing the counterparty in continuous transactions to provide money, services or other economic benefits; or (3) refusing to receive goods, returning goods after receipt, delaying payment, reducing payments, or otherwise establishing or changing trading conditions to the counterparty's disadvantage.	the most directly relevant international comparator to the Australian proposal to extend unfair trading practices protections to B2B dealings with small businesses in that it applies to B2B relationships and is specifically designed to address imbalances in bargaining power. This differs from the purpose of the Australian unfair trading practices prohibition, which is designed to target unfair practices, irrespective of the market or bargaining power of a counterparty. Enforcement is through a combination of administrative surcharges, cease-and-desist orders, commitment procedures (including financial restitution to victims), cautions, and sector-specific investigations—providing a flexible enforcement toolkit. Academic commentary and judicial precedents have noted that the Japanese prohibition lacks clear objective standards for identifying 'unreasonable' abuse, potentially leading to excessive regulatory intervention into ordinary and negotiable commercial terms. This is analogous to concerns raised by Australian stakeholders. While compliance standards have become clearer to some extent through JFTC guidelines, enforcement practices, and judicial precedents, criticism remains that the protection of

[48] Act on Prohibition of Private Monopolisation and Maintenance of Fair Trade (Act No. 54 of 14 April 1947) (Japan).

[49] AMA, Art 19 (prohibition of unfair trade practices) and Art 2(9) (designation of unfair trade practices) [tr JFTC]. See JFTC, Guidelines Concerning Abuse of a Superior Bargaining Position under the Antimonopoly Act, 30 November 2010 (revised).

[50] AMA Art 2(9)(vi).

Jurisdiction	Application and scope of the law	C&C Committee comments
	Unlike the EU concept of 'abuse of dominant position' (Article 102 TFEU), the Japanese prohibition does not require market dominance. The key criterion for determining whether a small business qualifies for protection under the AMA is whether it is 'relatively' smaller than its counterparty. The JFTC interprets this criterion very broadly, essentially holding that if a smaller business cannot easily find an alternative business partner, the partner has a 'superior position', even if that partner has relatively low market share.[51] Practically, the difficulty of finding an alternative partner is assessed by asking small businesses how important a certain business partner is for their operation, resulting in an assessment based on small businesses' subjective views. The other categories of unfair trade practices apply regardless of the size of the enterprise and primarily focus on the exclusion of competitors. Penalties: Administrative surcharges of up to 1% of turnover during the infringement period may be imposed for abuse of superior bargaining position (introduced in 2010).[52] The JFTC may also issue cease-and-desist orders and accept commitment procedures (settlements). The JFTC may also issue Warnings or Cautions. These are simplified measures, taken in cases where a formal violation has	small businesses is excessive and unduly restricts the freedom of negotiation. This includes concerns that JFTC interprets the criterion of a 'small businesses' very broadly, essentially holding that if a smaller business cannot easily find an alternative business partner, the partner has a "superior position." Practically, the difficulty of finding an alternative partner is assessed by asking small businesses how important a certain business partner is for their operation, resulting in an assessment based on small businesses' subjective views.

[51] JFTC, Guidelines Concerning Abuse of a Superior Bargaining Position under the Antimonopoly Act, 30 November 2010, Part 2(1). See also T Takigawa, 'Restraining bargaining power through competition law: superior bargaining position regulation in Japan as compared with the EU' in F Di Porto and R Podszun (eds), Abusive Practices in Competition Law (Edward Elgar, 2018) 265–282.

[52] AMA, Art 20-6 (surcharge for abuse of superior bargaining position), introduced by 2009 amendments (effective January 2010).

Jurisdiction	Application and scope of the law	C&C Committee comments
	not been determined, merely requiring corrective actions. They are often accompanied by publications.	
New Zealand	Application and scope—The *Fair Trading Act 1986* (NZ) (NZ FTA) provides a range of consumer protection provisions including prohibitions against misleading and deceptive conduct, unfair contract terms, statutory unconscionable conduct and unsafe products, and by other specific protections against practices similar to those in Chapter 3 of the ACL, such as bait advertising, referral selling and pyramid schemes. These prohibitions apply economy-wide and apply to B2B conduct. There are some differences between the New Zealand and Australian regimes: *UCT regime*: The NZCC must seek a High Court declaration that terms of a standard form contract are in fact unfair before it can take action for breach of those provisions. This effectively limits its enforcement action to investigations, settlements and warnings. The NZ UCT regime applies to small trade contracts (≤ NZ$250,000 per year) but does not apply more widely to contracts with small businesses, insurance contracts and there is no right of private action. *Unconscionable conduct:* The NZCC can only obtain penalties under the NZ FTA if it brings a criminal prosecution. In contrast, the prohibition against unconscionable conduct in Australia is a civil regime and has a correspondingly lower standard of proof.	New Zealand does not have—and does not propose to introduce - an unfair trading practices prohibition. While the NZ FTA contains some consumer protection prohibitions that are similar to existing Australian laws (e.g. prohibitions against UCTs, misleading or deceptive conduct, unconscionable conduct etc.), these laws are more targeted and not as broad as equivalent Australian laws. The UCT regime and the statutory prohibition against unconscionable conduct were introduced in 2021. However, while New Zealand's competition and consumer protection law often follow those in Australia, deliberate choices were made to avoid the introduction of laws that would interfere in everyday, reasonable, commercial transactions and also to narrow the UCT and unconscionable conduct provisions compared to Australia. Critically, the New Zealand Government decided that the threshold for unconscionable conduct should be *"relatively high…[w]e see this as appropriate, given that the Fair Trading Act already prohibits many forms of unfair conduct. In Australia, the courts have found a range of practices to be unconscionable, while avoiding interfering in everyday,*

Jurisdiction	Application and scope of the law	C&C Committee comments
	In addition, criminal penalties under the FTA have been much lower than under the ACL in Australia. Law reform—On 13 May 2026, the New Zealand Government introduced the *Fair Trading Amendment Bill* which is currently before Parliament for consultation and is open to submissions. If passed, the Bill will enable the NZCC to directly enforce UCTs (without first obtaining a declaration), create a private right of action for UCT and introduce an enhanced civil penalty regime for all NZ FTA breaches (including the NZ unconscionable conduct provisions These reforms would align the NZ laws more closely with existing Australian laws but would not extend the application of the NZ FTA to include an 'unfair trading practices' prohibition.	*reasonable, commercial transactions."*[53] Since their introduction, the UCT and statutory unconscionability frameworks in New Zealand have been effective at protecting New Zealand consumers and small businesses. For example: NZCC has prosecuted two B2B unconscionable conduct claims to date.[54] The NZCC was successful in both cases and criminal pecuniary penalties were imposed as a result of a negotiated settlement.
Singapore	Application and scope—the Consumer Protection (Fair Trading) Act 2003 (Singapore) (CPFTA)[55] protects consumers against unfair practices by suppliers in consumer transactions. Singapore does not extend unfair trading practice protections to business-to-business dealings, which are largely governed by competition law and contract law rather than consumer protection laws. The CPFTA defines 'unfair practice' broadly. An unfair practice includes: doing or saying anything, or omitting to do or say anything, that may reasonably result in a consumer being deceived or misled;	Singapore does not have—and does not propose to introduce—an unfair trading practices prohibition. The CPFTA contains consumer protection prohibitions that are broadly similar to existing Australian laws (e.g. misleading and deceptive conduct, unconscionable terms, and specific practices such as bait advertising), but is narrower in scope and enforcement. The CPFTA applies only to business-to-consumer transactions, not business-to-business dealings.

[53] MBIE Cabinet Paper: Unfair Commercial Practices: Policy Decisions dated 19 August 2019

[54] *Targa Capital Ltd v Westpac New Zealand Ltd* [2023] NZHC 230; *Directus South-East Asia Ltd v CNG International Ltd* [2023] NZHC 1161.

[55] Consumer Protection (Fair Trading) Act 2003 (Cap 52A) (Singapore), available at https://sso.agc.gov.sg/act/cpfta2003.

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	making a false claim; taking advantage of a consumer if the supplier knows or ought reasonably to know that the consumer is not in a position to protect their own interests, or is not reasonably able to understand the character, nature, language or effect of the transaction; or engaging in any practices specified in the Second Schedule. (The Second Schedule contains a non-exhaustive list of specific unfair practices, including misrepresentation of quality, false claims about price advantages, bait advertising, use of small print to conceal important facts, and imposing harsh, oppressive or excessively one-sided terms and conditions so as to be unconscionable.) Law reform—The CPFTA has been progressively expanded since its enactment, including to cover financial products and services and to increase the CCCS's investigative and enforcement powers. Enforcement—Enforcement relies on court-ordered injunctions and private consumer actions, not through the administrative penalties the ACL has. This limits the deterrent effect of the regime compared to Australia and the UK.	The CPFTA's definition of 'unfair practice' is broad and principles-based—capturing conduct that might 'reasonably deceive or mislead' consumers. It does not adopt the ACL 'manipulation' or 'distortion' standard. Singapore does not have a dedicated UCT regime for consumer or small business contracts comparable to the Australian or UK models. The CCCS has been increasingly active in enforcing its CPTFTA provisions, including by investigating misleading web interface features ('dark patterns') used by online travel agencies, fake customer reviews, and hard-selling tactics targeting vulnerable consumers, demonstrating growing regulatory focus on unfair commercial conduct in the digital economy. However, there is a limited penalty regime and B2B conduct is excluded. There are some differences between the Singapore and Australian consumer law regimes. First, it is B2C only: a 'consumer' is defined as an individual who, otherwise than exclusively in the course of business, receives or has the right to receive goods or services from a supplier; or has a legal obligation to pay a supplier for goods or services that have been or are to be supplied to another individual.[56] *UCT regime:* Singapore does not have a dedicated statutory regime for unfair contract terms. The Unfair Contract Terms Act

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		protects both business and consumer contracts but is limited to restricting the ability of parties to exclude or limit liability through contract terms—it does not protect against general unfair contract terms. *Unconscionable conduct:* The CPFTA captures conduct involving harsh, oppressive or excessively one-sided terms. This is analogous to, but narrower than, the ACL prohibition on unconscionable conduct. Protection is otherwise limited to common law doctrines such as mistake, misrepresentation, duress, undue influence and illegality.
South Korea	Application and scope—Article 45 of South Korea's *Monopoly Regulation and Fair Trade Act* (MRFTA) prohibits a business from engaging in certain unfair trading practices that are likely to hinder fair trade. The prohibited unfair trade practices are refusal to deal, discriminatory treatment, exclusion of competitors, unfair customer inducement, coercion of transactions, abuse of superior bargaining position, binding or conditional dealing obstruction of another business's activities, and unfair support. B2B conduct—The Consultation Paper identifies South Korea as an example of an international jurisdiction that prohibits certain listed unfair trading practices, including the unfair use of bargaining power in business-to-business transactions. The South Korean regime regulates unfair trading practices on an economy-wide basis, including business-to-business transactions	While South Korea has economy-wide prohibitions relevant to business-to-business conduct, the regime is framed by reference to practices likely to hinder fair trade and specific forms of conduct, including unfair use of bargaining position and disruption of business activities. That structure differs from the proposed Australian approach, which is being considered within the ACL and would sit alongside existing consumer, competition and industry code protections. The Committee further submits that the South Korean regime is most commonly used to capture abuse of superior bargaining position, which s 46 of the ACL already addresses. The South Korean unfair trading practices regime has been criticised for the following reasons: the concept of "unfairness" is unclear and unpredictable making enforcement rare;

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	involving the unfair use of bargaining power to impair a counterparty's decision making or impose a disadvantage. Penalties/remedies—The Korean Fair Trade Commission may make remedial orders, including orders to discontinue the relevant conduct, take measures to prevent recurrence, delete relevant contractual provisions and implement other necessary corrective measures. The KFTC may also impose a fine of up to 4 per cent of sales, or up to one billion won where sales figures are unclear or negligible. Certain conduct, including unfair support, unfair customer inducement, coercion of transactions, abuse of superior bargaining position and obstruction of business activities, may also attract criminal referral and sanctions.	it overlaps with other provisions of the MRFTA leaving some provisions redundant and rarely enforced; and it too often intervenes in what are essentially private disputes.
United Kingdom	Application and scope—The Consumer Protection from Unfair Trading Regulations 2008 (UK) (**CPRs**) implemented the EU Unfair Commercial Practices Directive 2005/29/EC into UK law and prohibited unfair commercial practices by traders directed at consumers. The CPRs provided that a commercial practice is unfair if it contravenes the requirements of professional diligence so as to materially distort (or be likely to materially distort) the behaviour of the average consumer, is a misleading action, misleading omission, aggressive commercial practice or is listed in Schedule 1 to the Regulations.[57] The CPRs applied only to business-to-consumer conduct.	The United Kingdom does not have—and does not propose to introduce—an unfair trading practice prohibition equivalent to the proposed Australian unfair trading practices prohibitions. As far as the Committee is aware the UK government is not consulting on extending unfair commercial practices protections to B2B dealings or small businesses. While the UK Government previously consulted in 2015 on whether the consumer law regime ought to be extended to micro and/or small business (**MSBs**) when purchasing goods and services, the decision was made to implement reforms around specific protections against these

[57] Explanatory Notes, Digital Markets, Competition and Consumers Act 2024 (UK) 18 <https://www.legislation.gov.uk/ukpga/2024/13/pdfs/ukpgaen_20240013_en.pdf>.

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	On 6 April 2025, the CPRs were revoked and replaced by Chapter 1 of Part 4 of the Digital Markets, Competition and Consumers Act 2024 (UK) (**DMCC Act**), which reflects the CPRs with some amendments, including new or more detailed prohibitions on fake reviews and drip pricing. The DMCC Act prohibitions are economy-wide but apply only where a 'consumer' (an individual acting for purposes wholly or mainly outside their business) is involved. Neither the CPRs nor the DMCC Act extended or extend to business-to-business conduct. Some sector specific consumer protection legislation applies to business-to-business interactions: sector-specific regulation, for example: the Groceries Supply Code of Practice (**GSCOP**) protects business buyers of groceries; and Ofcom's General Conditions of Entitlement provide certain protections to small business customers of telecoms services (businesses with fewer than 10 employees); and general commercial protections - there are a number of terms implied into contracts by statute and by common law, including, e.g., that goods sold in the course of business must match their description/sample, be of a satisfactory quality and be fit for purpose, and that services supplied in the course of business are carried out with reasonable care and skill. Separately, the Unfair Contract Terms Act 1977 prevents parties	payments and establishing a small business commissioner. The Government considered a number of factors against applying the existing consumer law regime to small business, including: there was no compelling quantitative or qualitative data to suggest abuses of MSBs as buyers was taking place to justify the proposed extension; the extension may increase costs in identifying whether a counterparty to a transaction falls within the scope of the extension at the point of purchase, thereby hurting small businesses when acting as suppliers to other small businesses; and similar cost consequences could arise from suppliers having to deal with two sets of rights depending on the type of business they are supplying to. There are some differences between the UK and Australian regimes: *General prohibition*: Under the DMCC Act's general prohibition, a commercial practice is unfair if it is likely to cause the average consumer to take a transactional decision that the consumer would not have taken otherwise. The forms of conduct proscribed are misleading acts or omissions, aggressive practices, contravention of the requirements of professional diligence, omissions of material information from invitations to purchase, or those listed in Schedule 20 to the Act.[58] *UCT regime*: Part 2 of the Consumer Rights Act 2015

[58] Digital Markets, Competition and Consumers Act 2024 (UK) s 225.

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	from unreasonably limiting their own liability under business-to-business contracts. Penalties - Under the DMCC Act, the CMA has direct enforcement powers and may impose fines of up to 10% of worldwide annual turnover (or £300,000, whichever is higher). This contrasts the maximum Australian penalties.	provides that unfair terms in consumer contracts are not binding. Unlike the Australian UCT regime, the UK regime does not extend to small business contracts or B2B transactions. *B2B conduct*: The Business Protection from Misleading Marketing Regulations 2008 (**BPRs**) prohibit misleading B2B advertising but do not extend to a general prohibition on unfair trading practices. The Unfair Contract Terms Act 1977 restricts unreasonable exclusion and limitation clauses in B2B contracts. However, neither regime is equivalent to the protections available under the ACL or proposed by the Bill. Since 6 April 2025, the CMA has actively exercised its new direct enforcement powers. The CMA's enforcement focus has been on drip pricing, fake reviews, and online choice architecture.[59] In its first year (April 2025 to April 2026), the CMA opened investigations into 14 businesses, imposed fines totalling £4.7 million, and ordered £760,000 in consumer refunds.[60]

[59] Emma Cochrane, 'Direct Consumer Enforcement: One Year On', Competition and Markets Authority (Blog Post, 17 April 2026) <https://competitionandmarkets.blog.gov.uk/2026/04/17/direct-consumer-enforcement-one-year-on>.

[60] Emma Cochrane, 'Direct Consumer Enforcement: One Year On', Competition and Markets Authority (Blog Post, 17 April 2026) <https://competitionandmarkets.blog.gov.uk/2026/04/17/direct-consumer-enforcement-one-year-on>.

Jurisdiction	*Application and scope of the law*	*C&C Committee comments*
United States	Application and scope—Section 5(a) of the Federal Trade Commission Act (15 USC § 45) (FTC Act) provides that 'unfair or deceptive acts or practices in or affecting commerce … are … declared unlawful'. The FTC Act is enforced by the Federal Trade Commission (FTC). Unlike most other international comparators, the US prohibition applies to both B2C and B2B conduct—it is not limited to consumer transactions.[61] The FTC Act establishes two independent grounds for prohibition: (1) deceptive acts or practices: Under the FTC's Policy Statement on Deception (1983), a practice is deceptive if it involves a material representation, omission or practice that is likely to mislead a consumer acting reasonably in the circumstances.[62] (2) Unfair acts or practices: Under section 5(n) of the FTC Act (codified in 1994), an act or practice is 'unfair' if it: (i) causes or is likely to cause substantial injury to consumers; (ii) is not reasonably avoidable by consumers themselves; and (iii) is not outweighed by countervailing benefits to consumers or to competition.[63] In addition, section 5(a) separately prohibits 'unfair methods of competition'—capturing conduct that	The FTC Act's prohibition differs in formulation from the proposed general prohibition on unfair trading practices in Australia—the US standard focuses on 'substantial injury' and reasonable avoidability rather than 'manipulation' or 'distortion' of consumer decision-making. As noted, the FTC Act's prohibition applies to B2B transactions. However, in practice the FTC's consumer protection enforcement has focused primarily on B2C conduct and there is no private right of action. The 'unfair methods of competition' limb of section 5(a) is the primary mechanism for B2B enforcement, though it is oriented toward competition rather than trading fairness. There are some differences between the US and Australian regimes: (1) scope: The FTC Act's prohibition on unfair or deceptive acts or practices is the broadest international comparator—applying economy-wide to both B2C and B2B conduct. It covers all persons engaged in or whose business affects commerce (with limited exceptions for banks, savings institutions, federal credit unions, and common carriers).[66] This is materially broader than proposed section 28B of the Bill, which is

61 See Australian Government, The Treasury, Unfair trading practices – supplementary consultation paper, November 2024, p 25 (noting the US extends the general protection to B2B transactions). See also Treasury, Protecting consumers from unfair trading practices – Consultation Regulation Impact Statement, August 2023, p 31.

62 FTC, Policy Statement on Deception, 14 October 1983, appended to Cliffdale Associates, Inc., 103 FTC 110, 174 (1984).

63 FTC Act, 15 USC § 45(n). See also FTC, Policy Statement on Unfairness, 17 December 1980 (letter to Senators Ford and Danforth). Congress codified the three-part test in the FTC Act Amendments of 1994.

66 Federal Trade Commission Act (US), 15 USC § 45(a)(2) (exceptions for banks, savings and loan institutions, federal credit unions, and common carriers subject to other federal regulatory Acts).

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	would violate the Sherman Act or the Clayton Act.[64] Penalties and enforcement: the FTC can seek: (i) administrative cease and desist orders; (ii) civil penalties of up to US$53,088 per violation (adjusted annually for inflation) for knowing violations of FTC rules or cease and desist orders; (iii) injunctive relief in district court; and (iv) consumer redress including refunds and restitution.[65] The FTC does not impose penalties directly—it must seek court orders for penalties.	directed at conduct in connection with the supply or possible supply of goods or services to a consumer. (2) The US 'unfairness' standard (substantial injury / not reasonably avoidable / not outweighed by benefits) is a principles-based prohibition, but differs from proposed Australian prohibition formulation of 'manipulation' or 'unreasonable distortion' of consumer decision-making. The FTC unfairness standard focuses on consumer injury and the ability to avoid it, rather than on manipulation of the decision-making environment. Law reform—In January 2026, New York enacted the FAIR Business Practices Act, which expanded the state Attorney General's power to challenge 'unfair' and 'abusive' acts or practices using the federal FTC unfairness framework.[67] The US has not proposed further amendments to the scope of section 5 itself. Enforcement—Recent enforcement has focused on drip pricing, fake reviews, subscription traps (through the 'click-to-cancel' rule under the Restore Online Shoppers' Confidence Act), data privacy and security practices, and dark patterns in digital interfaces.[68] The FTC also brings enforcement actions under sector-

[64] See FTC, Statement of Enforcement Principles Regarding 'Unfair Methods of Competition' under Section 5 of the FTC Act, 13 August 2015.

[65] Federal Trade Commission Act (US), 15 USC §§ 45(l)–(m). See FTC, A Brief Overview of the Federal Trade Commission's Investigative and Law Enforcement Authority, available at https://www.ftc.gov/about-ftc/mission/enforcement-authority. Civil penalty amounts are adjusted annually for inflation per 16 CFR § 1.98.

[67] New York FAIR Business Practices Act, signed into law January 2026, amending New York General Business Law § 349. See Arnold & Porter, 'New York Enacts FAIR Business Practices Act, Expanding State Enforcement Power', January 2026.

[68] See FTC enforcement actions and annual reports, available at https://www.ftc.gov/enforcement.

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		specific statutes that treat violations as unfair or deceptive acts or practices under section 5. The US prohibition has been in force for over 110 years and the three-part unfairness test (codified in 1994) provides a structured framework for assessing liability, unlike the overbroad and likely particularly difficult to apply Australian proposals.