

UNREASONABLE MANIPULATION, UNREASONABLE DISTORTION (DARK PATTERNS) TO BE BANNED—STRONGER PROTECTIONS REGARDING SUBSCRIPTIONS AND DRIP PRICING— UNFAIR TRADING PROHIBITION PROPOSED

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Australia Antitrust, Competition and Trade Regulation Alert

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As it had foreshadowed, the Australian Government has released an exposure draft of the *Competition and Consumer Amendment (Unfair Trading Practices) Bill 2026* (Bill).

The Bill seeks to introduce a general prohibition on unfair trading practices (UTP) into the existing Australian Consumer Law (ACL), along with other prohibitions relating to subscription products and drip pricing.

We set out below the key aspects of these proposed new laws which are proposed to commence from 1 July 2027, along with some practical considerations for businesses to consider going forward.

IN BRIEF

The Bill proposes:

- To prohibit UTP conduct toward consumers defined as conduct that:
 - Unreasonably manipulates consumers; or
 - Unreasonably distorts the environment in which the consumer makes a decision; and
 - Is likely to cause detriment.

These prohibitions only apply to conduct toward consumers that are individuals and only where the individual is not carrying on a business.

- *New disclosure obligations for subscription contracts*, including point-of-offer disclosures, reminder notices during the subscription and clear cancellation pathways, with obligations varying depending on whether the contract is for a fixed-term, indefinite-term or includes a free trial or promotional period.

These obligations apply where the counterparties are individuals and small businesses (where the "consumer requirement" or the "small business requirement" is met).

- *Stronger protections against "drip pricing"* by requiring prominent, proximate disclosure of any transaction-based charges whenever a base price for goods or services is displayed, to ensure consumers are aware of mandatory per-transaction fees throughout a consumer's purchase journey.

These obligations apply where the goods or services the subject of the prices being displayed are ordinarily acquired for personal, domestic or household use or consumption.

Importantly, these measures are intended to complement, and are in addition to, existing ACL provisions prohibiting misleading or deceptive conduct, unconscionable conduct and unfair contract terms. They seek to "close" gaps in the ACL where the conduct may result in consumer harm, exposed by evolving marketplace practices and technologies.

They will be subject to the civil penalty provisions in the ACL.

KEY OBLIGATIONS AND DISCLOSURE REQUIREMENTS

General Prohibition – Unfair Trading Practices

The Bill proposes to insert a new prohibition against unfair trading practices toward consumers into the *Competition and Consumer Act 2010* (Cth).

A person is prohibited from engaging in conduct that does (or is likely to do) the following:

- Unreasonably manipulate the consumer; or
- Unreasonably distort the environment in which the consumer makes, or is likely to make, a decision; or
- Engaging in conduct that causes, or is likely to cause, detriment to the consumer.

The Explanatory Memorandum to the Bill (Explanatory Memorandum) clarifies a number of key concepts relevant to this general prohibition:

- *"Unreasonable manipulation"* of a consumer refers to conduct that exploits common cognitive or behavioral biases that result in a change in behaviour, decision-making or action against the consumer's interests.

General, legitimate and accepted marketing practices are not intended to be captured by this prohibition. Instead, this provision intends to target and regulate unreasonable behaviour.

- "Unreasonable distortion of the environment" refers to conduct that encourages a consumer to make economic decisions about proceeding with a transaction, when they would have been unlikely to do so otherwise.
- "Detriments" include financial loss, wasted time or other negative effects on a consumer. It is sufficient that conduct "likely" causes detriment, instead of causing actual detriment to occur.

Some examples of unlawful conduct include:

- Interference with a consumer's ability to exercise legal rights or seek legal remedies; and

- Providing customers with excessive or confusing information that makes key information difficult to find or understand.

Importantly, this general UTP prohibition on unfair trading practices only applies where the consumer is an individual (not a body corporate) and not where the individual is relevantly carrying on business – these prohibitions are not currently intended to capture business-to-business conduct.

Penalties

Contraventions of this general prohibition by an individual may be subject to a maximum pecuniary penalty of AU\$2.5 million.

For contraventions by a body corporate, the penalty is the greater of:

- AU\$50 million;
- Three times the value of the benefit resulting from the contravention; or
- 30% of the body corporate's adjusted turnover.

Infringement notices may also be issued for alleged contraventions of the general prohibition on unfair trading practices.

Subscription Contracts

The Bill requires suppliers to make certain statements and provide certain information:

- When offering goods or services under a subscription contract (i.e. prior to entering the subscription contract); and
- During the term of the subscription contract.

When Offering Goods or Services Under a Subscription Contract

The Bill requires suppliers to disclose a statement informing the counterparty that if entered, the contract would be for a subscription and that it would be for a fixed term, indefinite term, free trial period or promotional period (as applicable).

At the same time, the supplier must disclose the below information:

- Liabilities to pay that the counterparty would or may incur under the contract;
- The period of the contract;
- The renewal of the contract;
- The notice required before the counterparty can end the contract;
- How the counterparty can end the contract; and
- Any matter prescribed in the regulations.

The abovementioned statement and information must be disclosed:

- In a comprehensible, audible and unambiguous way within a reasonable time before a person could agree to enter the contract; or
- In a legible, prominent and unambiguous way, near where a person can agree to enter the contract.

While Various Subscription Contracts are in Effect

The Bill provides that suppliers must also provide counterparties with certain information while fixed term, indefinite term, free trial and promotional period subscription contracts are in effect.

The required information to be disclosed is substantially identical to that required to be disclosed when offering goods or services prior to entering into the subscription contract (noted in bold in the section above).

The timing requirements for the information disclosures vary according to the subscription contract type. The relevant timing for each type is set out in the following table:

Subscription Contract Type	Timing Requirements
Indefinite term subscription contract (only)	Each 6 months while the contract is in effect.
Fixed term subscription contract (only)	A reasonable time before the earlier of: ▪ The last time at which the subscriber can stop the contract renewing at the end of the initial term of the contract; and ▪ The end of the initial term of the contract. In addition, ▪ If the contract is renewed for a period of less than 12 months: each six months until the contract is renewed for a period of 12 months or more; or ▪ If the contract is renewed for a period of 12 months or more: a reasonable time before the earlier of: ▪ The last time at which the subscriber can stop the contract renewing at the end of that period; and ▪ The next renewal of the contract.
Free trial or promotional period subscription contract (only)	A reasonable time before the earlier of: ▪ The last time at which the subscriber can

	end the contract before: ▪ For a free trial period: liability to pay is incurred; or ▪ For a promotional period: liability to pay at the higher rate is incurred; and ▪ The end of the free trial period or promotional period.	<u>Ending Subscription Contracts</u> Under the Bill, suppliers of goods or services under subscription contracts must provide a way for the subscriber to end the contract that is both easy to find and straightforward.
Free trial or promotional period subscription contract <i>and</i> Indefinite term subscription contract	In addition to the requirements noted in bold in row three, each six months while contract is in effect (including for any free trial or promotional period). Unless, at the point the notification is due, the notification under the third row has not been made or has not been required to be made.	Subscribers should only need to take necessary steps to end the contract and protect their interests. The Explanatory
Free trial or promotional period subscription contract and Fixed term subscription contract.	In addition to the noted in bold in row three: ▪ If the contract is renewed for a period of less than 12 months: each six months until the contract is renewed for a period of 12 months or more, or ▪ If the contract is renewed for a period of 12 months or more: a reasonable time before the earlier of: ▪ The last time at which the subscriber can stop the contract renewing at the end of that period; and ▪ The next renewal of the contract.	Memorandum clarifies that what is "reasonably necessary" depends on the nature of the subscription product or service, and the relevant industry. If the subscriber entered the contract online, the supplier must provide a way for the contract to be terminated online. <i>Importantly</i>, these obligations apply to

subscriptions where the counterparties to the contracts are either individuals or small businesses (meeting the "consumer requirement" or the "small business" requirement).

Penalties

Contraventions of these disclosure requirements are also subject to a civil penalty under the new laws.

The maximum pecuniary penalty for such contraventions is the same as that for contraventions of the general prohibition on UTP (discussed above).

Transaction-Based Charges or Drip Pricing – Disclosure Requirements

Drip pricing is the practice of advertising a base price for goods or services and then revealing additional mandatory charges later in the purchasing process.

The Bill introduces disclosure obligations for transaction-based charges which are intended to strengthen protections against "drip pricing".

- A "base price" refers to the amount payable by a purchaser for the supply of goods or services.
- A "transaction-based charge" refers to an amount that is or may be payable by a supplier on a per transaction basis.

The disclosure requirements surrounding "drip pricing" apply only where the relevant supply is of goods or services ordinarily acquired for personal, domestic or household use. However, the disclosures do not apply if an offer to supply is made exclusively to a body corporate.

The Explanatory Memorandum states that these information disclosure requirements are to ensure potential buyers are aware of mandatory transaction-based charges and can make informed decisions throughout the transaction.

Disclosure Obligations

Where a supplier offers goods or services for supply to which a transaction-based charge applies, whenever the base price is displayed, the supplier must display the following information:

- The amount of the transaction-based charge (or if unknown at the time, the method for calculating the transaction-based charge);
- That it is a per transaction charge;
- Whether the transaction-based charge will or may apply to the supply; and
- Whether or not the base price disclosed includes the transaction-based charge.

The above information must be displayed legibly, prominently, clearly, and in close proximity to the base price.

The disclosure obligations apply whenever the base price is displayed. The Explanatory Memorandum further clarifies that an offer to supply (including through advertising, marketing and promotion) is sufficient to trigger the disclosure obligations.

However, there are some exclusions. For example, the disclosure obligations do not apply in the following circumstances:

- Verbal offers to supply (as the base price would not be "displayed"); and
- An offer to supply that is made exclusively to a body corporate.

Importantly, these obligations apply where the good or services the subject of the prices being displayed are ordinarily acquired for personal, domestic or household use or consumption.

Penalties

Contraventions of these disclosure requirements are also subject to a civil penalty under the new laws. The maximum pecuniary penalty for such contraventions is the same as that for contraventions of the general prohibition on unfair trading practices (discussed above).

Effective Timing

The new unfair trading laws proposed by the Bill are currently set to commence on 1 July 2027.

Practical considerations for businesses

General Considerations

- Is accessible customer service support provided to customers, such that they can exercise their legal rights or seek legal remedies (including enforcing their rights under the ACL)?
- Has all material information been disclosed to the customer? Has this disclosure been made in a manner that is complex or ineffective for customers?
- Are changes to a good or service (or the terms on which the good or service is provided) disclosed to the customer in a reasonable time?
- Consider the environment in which a customer makes their decision (e.g. online consumer interfaces and design elements).
 - Is there unreasonable pressure placed on the customer?
 - Is the customer obstructed from making or fulfilling their decision?
 - Is relevant guidance for the customer available (e.g. guidance on how to cancel supply of goods or services)?
- Consider the business's user interface(s) that customers interact with.
 - Are there any elements that may be considered to be dark patterns?
 - Are there any design elements, functions or features of the user interface that possibly coerce, steer or deceive customers into making unintended decisions?
 - For example, "opt-out" check boxes for additional products or add-ons.
 - For paid subscriptions - is the sign-up process easy, but the cancellation process difficult (e.g. due to a lengthy and confusing process)?

Subscription Contracts

- Consider to whom information relating to subscription contracts is disclosed. That is, to whom is the good or service being offered?
 - Do disclosures only need to be made to the individual prospective subscriber?
 - If the offer is made to the public at large, has the disclosure also been provided to the public at large?
- For a subscriber to end their subscription contract, what steps do they need to take?

- Are there any steps in this process that are likely to unreasonably hinder them from their contractual right to exit the contract? (e.g. will they have to attend a branch in person to end the contract despite having moved overseas?)
- For subscription contracts entered into online, is there a way for the subscriber to end the contract online (regardless of whether the subscriber can end the contract in other ways)?

Transaction-Based Charges

- Consider where information on transaction-based charges is displayed.
 - Is the information noticeable?
 - Is the information hidden in fine print or obscured? (e.g. are people required to visit another webpage or pop-up to find further information?)

WHAT'S NEXT?

We expect Treasury to take on board submissions and finalise amendments in consultation with States and Territories and introduce a bill providing for a transition period with the effective date being 1 July 2027.

It is during this period that businesses need to "get their house in order" to mitigate risk, as we expect that this will be a significant Enforcement Priority of the Australian Competition and Consumer Commission next year.

Watch this space – in the meantime, if you have any queries about how the proposed laws may affect your business, please contact us and we can assist you.

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