SIGNIFICANT CHANGES FOR AUSTRALIAN COMPETITION AND CONSUMER LAWS: DOUBLING OF PENALTIES TO AU$100 MILLION (PER OFFENCE) AND UNFAIR TRADING PRACTICES TO BE PROHIBITED

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Australia Antitrust, Competition and Trade Regulation Alert

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Parliament has passed the *Treasury Laws Amendment (Doubling Penalties for ACCC Enforcement) Bill 2026* (Amendment Bill).

The Amendment Bill doubles the maximum civil and criminal penalties for breaches of both the *Competition and Consumer Act 2010* (Cth) (CCA) and certain sections of the Australian Consumer Law (ACL). It is the latest step in recent legislative reform aimed at deterring conduct by businesses that is anticompetitive or harmful to consumers.

We set out the key aspects of the Amendment Bill below, along with some salient changes to the *Competition and Consumer Amendment (Unfair Trading Practices) Bill 2026* (UTP Bill) that was introduced on 1 April 2026 following a consultation draft circulated in February 2026.

IN BRIEF

WHAT'S NEW UNDER THE AMENDMENT BILL?

The explanatory statement to the Amendment Bill notes that it is intended to *"strengthen the penalty regime under the CCA, including the ACL, to deter non-compliant conduct and reduce the financial benefits and incentives for businesses to engage in conduct in breach of competition and consumer law".*

The Amendment Bill doubles the value of the first limb of this test from AU$50 million to AU$100 million (as part of the below three limb test), which increases the maximum penalty that can be imposed for a breach.

The maximum penalties are now *the greater of*:

- AU$100 million per contravention (previously AU$50 million);
- Three times the value of any benefit obtained from the contravening conduct; or
- 30% of adjusted turnover during the breach period (if the value of the benefit cannot be determined).

These increased penalties apply to a range of key provisions in the CCA and ACL, including:

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Competition Law Provisions	Consumer Law Provisions
▪ Cartel conduct (making and giving effect to cartel provisions); ▪ Misuse of market power; ▪ Resale price maintenance and exclusive dealing (without authorisation or notification); and ▪ Anticompetitive mergers.	▪ False or misleading representations or conduct; ▪ Unconscionable conduct; ▪ Unfair contract terms and from 1 July 2027, unfair trading practices; and ▪ Breaches of consumer product safety standards or bans.

Key Changes to the UTP Bill

Following an earlier exposure draft circulated in February 2026, the UTP Bill was introduced into the Australian House of Representatives on 1 April 2026 and will be moving through parliament in the coming weeks.

The key changes to the UTP Bill from its previous exposure draft are:

Issue	Position in Exposure Draft	Change in UTP Bill
Unfair Trading Practices	"Unfair trading practices" was not a defined term.	Introduces a definition as to what constitutes unfair trading practices in section 28B(2) of the ACL, being conduct that: ▪ Does, or is likely to: ▪ Manipulate a consumer; or ▪ Unreasonably distort the environment in which the consumer makes, or is likely to make, a decision; and ▪ Causes, or is likely to cause, detriment (whether financial or otherwise) to the consumer.
	Unfair trading practices involve conduct that unreasonably manipulates the consumer.	The UTP Bill has broadened the first limb of what constitutes "unfair trading practices" by removing the "unreasonable" element. Rather, the standard is now lowered from conduct that '"unreasonably" manipulates the

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		consumer to conduct that simply manipulates the consumer. The UTP Bill's explanatory statement clarifies that: ▪ Legitimate, reasonable or generally accepted marketing or sales practices are not manipulation of a consumer; and ▪ Manipulation of a consumer captures wrongful interference with a consumer that results in a change to the consumer's behaviour, decision-making or action that is contrary to the consumer's interests.
Drip Pricing	There was a requirement to disclose whether a transaction based charge "will or may apply to the supply".	This requirement has been amended to require disclosure of whether a transaction based charge "is or may be payable". We do not consider that this materially alters the position. The explanatory statement to the UTP Bill clarifies that this "is intended to account for circumstances where there are multiple transaction methods for a good or service to be acquired (such as online, or in person), and not all methods attract a transaction based charge."
	Definition of "transaction based charge".	The UTP Bill has added an additional limb to the definition of what constitutes a transaction based charge (see *(b)* below). A charge will be a transaction based charge if: *"*(a) *it is or may be payable by the purchaser for the supply of the goods or services; and* *(b) it is not an amount payable for the*

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		goods or services themselves; and (c) it is, or would be, payable at the same time as an amount payable for the goods or services themselves."
	Excluded from the scope of "transaction based charges" any charges that are payable in relation to sending goods from the supplier to the purchaser.	The express exclusion of charges payable in relation to the sending of goods from the supplier to the purchaser (i.e., delivery fees) has been removed in the UTP Bill. This suggests that any applicable delivery fees must be prominently displayed in close proximity to the base price of a product.
	N/A	Introduction of new section 48A(9), which provides that the regulations may prescribe: ▪ That a charge (or part of a charge) is prescribed only in specified circumstances; and ▪ Different circumstances for different charges (or parts of charges).
Subscription Contracts	Bespoke definitions for different types of subscription contracts.	The UTP Bill inserts a "catch-all" definition for "subscription contracts", being any contracts under which there is a recurring or continuing supply of goods or services for: ▪ An indefinite period; or ▪ A fixed period, or at a higher price after: ▪ An initial free period; or ▪ An initial discount period, and which are not an 'excluded subscription contract'.
	Broader list of "excluded subscription	The list of "excluded subscription

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	contracts".	contracts" in the UTP Bill has narrowed from the version included in the exposure draft. The list no longer includes the following: ▪ A contract for the supply of a public utility; and ▪ A contract for the supply of prescription healthcare products.
	In addition to certain prescribed information set out in ACL s 48D(4), there was a requirement under ACL s 48B(4) to specify what kind of subscription contract the contract would be (i.e. fixed term, indefinite term, free trial or promotional period).	The requirement in the exposure draft to specify the kind of subscription contract has been removed from the UTP Bill. Under the UTP Bill, suppliers must simply note that if entered, the contract would be a subscription contract and provide the prescribed information under section 48D(4).
	Specific disclosure requirements that were unique to each type of subscription contract.	The UTP Bill has simplified the disclosure requirements such that certain information must be provided in respect of all kinds of subscription contracts. The time at which this information is communicated will be prescribed.
	Requirement for suppliers to provide a way for the subscriber to end the contract that is easy to find, straightforward, and only requires the subscriber to take steps reasonably necessary to end the contract (Simple Exit Mechanism). Where a subscriber entered a contract online, this method of exiting the contract must also be online.	The UTP Bill broadens the requirements set out in the exposure draft. <u>Methods of Exiting Subscription Contracts</u> While the exposure draft required suppliers to provide subscribers with a way to end the contract that is a Simple Exit Mechanism, the UTP Bill requires that *each* way that the supplier provides for a subscriber to end a contract is a Simple Exit Mechanism.

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		Online Exit Mechanisms The exposure draft stated that if a subscriber entered a contract online, the supplier must provide the subscriber with an online way to exit the contract (whether or not the supplier also allows the subscriber to end the contract in other ways). The UTP Bill expands this requirement so that it must ensure that *"one of the ways the supplier provides for the subscriber to end the contract is online"*, whether: ▪ The subscriber entered the contract online; or ▪ The supplier provides an online way of entering into a subscription contract for the same kind of goods or services. That is, if a supplier offers subscription contracts for goods or services online, a subscriber to those goods or services must have an online means of exiting their subscription contract *even if they did not enter into their specific subscription contract online.*

The UTP Bill specifies (at section 21) that the amendments introduced by it will be reviewed two years after coming into effect.

What Does This Mean for Your Business?

Doubling of Penalties Under the Amendment Bill

The increase in penalties from AU$50 million to AU$100 million under the Amendment Bill, alongside the prospective provisions enacted by the UTP Bill, continues the shift in the regulatory and enforcement landscape toward imposing heavier penalties for violations of the CCA or ACL.

With significantly increased penalties, the ACCC is expected to take a more assertive approach to its enforcement activities and pursue higher penalties in future. Courts will also be in a position to order even steeper penalties to businesses found to have violated the CCA or ACL (as has been the trend in recent years).

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Businesses should take stock of their existing compliance frameworks and take a proactive approach to building and strengthening their internal compliance culture. To "get their house in order", businesses should:

- *Assess* the business's risk exposure against the sections of the CCA and ACL that the penalty increase applies to—identifying higher risk activities or practices and considering whether an updated risk assessment would be appropriate;
- *Consider* the existing compliance and governance programs of the business against the new penalties—are the current frameworks sufficient to protect the business?;
- *Examine* the need for any additional risk training for business personnel (both senior executives and regular staff) to encourage awareness and visibility of key risks to the business under the CCA and ACL; and
- *Remember* to inform the ACCC about any acquisitions that must be reported under the new merger rules, which started in January 2026, before completing the transaction or putting it into effect.

Prospective Changes Under the UTP Bill

Should the UTP Bill be passed, its provisions will become effective *from 1 July 2027.*

In anticipation of the UTP Bill's provisions becoming law, businesses should conduct a thorough evaluation of their operations and procedures to confirm compliance with the new disclosure obligations.

Our previous Insight article here reporting on the UTP Bill's exposure draft sets out some practical considerations in relation to the UTP Bill's various aspects to guide businesses in assessing their compliance.

If you require assistance in carrying out any of the above or have any queries about how your business may be affected, please contact us and we can assist you further.

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