

Let's talk shop.

Unfair trading practices – Exposure draft

February 2026

The Australian Retail Council (ARC) welcomes the opportunity to provide feedback on the exposure draft of the *Competition and Consumer Amendment (Unfair Trading Practices) Bill 2026*.

ARC represents a \$444 billion sector and employs 1.4 million Australians, one in ten workers, making retail the nation's largest private sector employer and a cornerstone of the Australian economy.

Our membership spans the full breadth of Australian retail: from family-owned small and independent businesses, which comprise 95 per cent of our membership, to the largest national and international retailers that support thousands of jobs and sustain communities across both metropolitan and regional Australia. Our industry operates more than 155,000 retail outlets nationwide, with the majority of those also represented by an online or e-commerce presence.

A strong retail sector delivers widespread benefits to all Australians, with a significant portion of every dollar spent in retail flowing back into employees, suppliers, superannuation funds, and local communities. We are united in advocating for the policy settings, reforms and collaboration that will drive growth, resilience, and long-term prosperity for Australian retail and the millions who rely on it.

Executive Summary

ARC supports the Government's objective of strengthening consumer protections and addressing conduct that undermines consumer trust and confidence. ARC also recognises the importance of ensuring the Australian Consumer Law (ACL) continues to evolve in response to changes in digital commerce, subscription models, and pricing practices.

ARC supports targeted reforms in the exposure draft to:

- improve transparency and consumer control in subscription arrangements, including clearer disclosure and streamlined cancellation processes; and
- strengthen disclosure requirements for mandatory transaction-based charges to address drip pricing and improve fee transparency.

However, ARC does not support the introduction of a broad, principles-based general prohibition on unfair trading practices, as proposed in the exposure draft.

Based on member feedback and our previous submissions on unfair trading practices, ARC remains concerned that the proposed general prohibition is overly broad, relies on inherently subjective concepts, and risks capturing legitimate retail conduct already regulated under existing ACL provisions. In a civil penalty regime, this creates material legal uncertainty, increases compliance and litigation risk, and may chill legitimate competition without clear evidence of regulatory gaps.

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Regulatory context and cumulative reform impacts

Retail operates in one of Australia's most heavily regulated environments, spanning consumer law, competition law, workplace relations, leasing, payments, data, and sustainability regulation. Retailers operate across physical and digital channels, across jurisdictions, and across a wide range of business models and sizes.

In this context, legal certainty and clarity of obligation are critical. Even modest changes to ACL standards can have significant downstream impacts when applied across:

- thousands of retail outlets,
- complex online pathways,
- integrated point-of-sale and pricing systems, and
- large and diverse workforces responsible for frontline compliance.

ARC's members support strong consumer protections, but consistently emphasise that broad, subjective standards, particularly when paired with significant civil penalties, create compliance risk that is difficult to manage in practice. Where reforms are necessary, they should be targeted, clearly defined, and supported by guidance, rather than relying on open-ended prohibitions that expand regulator discretion without clear boundaries.

This context is particularly relevant to the proposed general prohibition, which would introduce novel legal concepts into the ACL without the benefit of established precedent or clear statutory limits.

General prohibition on unfair trading practices

ARC does not support the introduction of a general prohibition on unfair trading practices as proposed in the exposure draft.

The proposed prohibition would prohibit conduct that "unreasonably manipulates" consumers or "unreasonably distorts the environment" in which consumers make decisions, where that conduct causes or is likely to cause detriment. These concepts are inherently subjective, lack established precedent in the ACL, and would require courts and regulators to make value-laden judgments about ordinary commercial behaviour.

In our view, this represents a significant departure from the existing ACL framework, which is grounded in:

- objective tests (misleading or deceptive conduct),
- well-developed standards (unconscionable conduct), and
- clearly defined prohibitions (false representations, unfair contract terms).

Introducing a new, broadly framed prohibition risks undermining the coherence of the ACL and increasing uncertainty for businesses seeking to comply with the law.

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Risk of unintended capture of legitimate retail conduct

Retail competition depends on businesses being able to communicate value, reduce friction for consumers, and influence purchasing decisions in lawful ways. ARC is concerned the proposed prohibition could inadvertently capture, or create doubt around, legitimate and widely accepted retail practices, including:

- store layout, merchandising, lighting, music and product placement designed to guide customer flow and improve experience;
- time-limited promotions, seasonal campaigns, and scarcity messaging, including countdown timers and low-stock notifications that accurately reflect genuine time or inventory constraints;
- loyalty program prompts, incentives and personalised offers;
- digital interface design and “choice architecture” intended to simplify transactions or reduce drop-off;
- standard customer service processes that balance convenience with fraud prevention and identity verification.

While the explanatory materials state the prohibition is not intended to capture legitimate marketing, the Bill does not provide clear statutory boundaries or objective criteria to distinguish lawful influence from prohibited manipulation. In a civil penalty regime, intent statements are not enough to manage compliance risk. This is particularly acute in digital settings, where the explanatory materials cite “artificial urgency” techniques, including countdown timers and low-stock notifications. False or misleading urgency representations should be addressed, but are already capable of being regulated under existing ACL provisions, including sections 18 and 29. Without clearer boundaries or guidance, retailers may face an invidious choice between not disclosing genuine time or stock constraints (risking omission concerns) or disclosing them in a way that could be characterised as “artificial urgency” under the new prohibition. In a civil penalty regime, businesses cannot rely on intent statements alone to manage compliance risk; if Government proceeds, ARC strongly recommends clear regulator guidance and worked examples distinguishing legitimate time-limited and stock-based offers from “unreasonable manipulation”, including clarification on whether any specific design features (such as countdown timers) are intended to be prohibited.

Overlap with existing ACL protections

ARC notes that the ACL already provides a comprehensive suite of protections capable of addressing the types of conduct the proposed prohibition seeks to target, including:

- misleading or deceptive conduct;
- unconscionable conduct;
- unfair contract terms; and
- specific prohibitions relating to false or misleading representations.

These provisions are broad, well understood, and supported by established precedent. They already enable regulators to take action where consumers are misled, pressured, exploited, or treated unfairly.

In ARC’s view, the proposed general prohibition risks duplicating these existing protections while introducing a new, broadly framed standard centred on subjective concepts such as “unreasonable manipulation” and

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“unreasonable distortion”. This creates material legal uncertainty for compliant businesses and increases the likelihood of inconsistent interpretation and enforcement, without a clear demonstration that existing ACL tools are insufficient. Regulatory duplication is, by definition, an avoidable compliance burden, particularly for a sector operating at scale across both physical and digital channels.

ARC has not seen compelling evidence that current ACL protections are inadequate in practice, or that any genuine enforcement gaps cannot be addressed through targeted amendments, improved regulator guidance, or focused enforcement action. Recent ACCC enforcement action and infringement outcomes demonstrate that existing ACL provisions are capable of addressing a wide range of unfair or harmful conduct in practice. On this basis, ARC considers the case for introducing an additional, overlapping general prohibition is not made out.

If Government proceeds

If Government proceeds with a general prohibition despite these concerns, ARC strongly encourages Treasury to adopt safeguards to reduce uncertainty and avoid over-capture, including:

- **Narrow and clarify the legal test (reduce subjectivity)**
 - Confine the prohibition to clearly harmful conduct by tightening key concepts (including clearer statutory boundaries around “manipulation” and “distortion”).
 - Replace “unreasonably” with a more objective threshold (for example, “materially”) to reduce reliance on subjective judgments.
 - Require a clear causal connection to detriment, and clarify that the detriment must be more than trivial or speculative.
 - Include express recognition of legitimate business interests, including ordinary promotional practices, merchandising, and user-interface design undertaken in good faith.
- **Provide statutory examples and practical carve-outs (reduce over-capture)**
 - Include non-exhaustive statutory examples of conduct intended to be captured (eg, coercive or deceptive choice architecture), and examples of conduct not intended to be captured (generally accepted retail practices).
 - Provide explicit carve-outs/safe harbour-style protections for legitimate marketing and customer experience practices where there is no deception, coercion, or exploitation.
- **Implementation and enforcement approach (reduce compliance shock)**
 - Commit to comprehensive ACCC guidance well before commencement, including practical scenarios relevant to both online and physical retail, and clear interaction with existing ACL provisions.
 - Adopt an education-first approach for an initial period, particularly for small and medium retailers, before any penalty-based enforcement.
 - Adopt a staged penalty implementation model (similar to how major ACL reforms have previously been implemented), where the prohibition commences first but civil penalties apply only after an initial transition period, to allow regulator guidance, business education and early test cases to establish clearer boundaries around novel concepts.

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- **Governance and review (ensure proportionality over time)**
 - Include a statutory post-implementation review within two years of commencement to assess whether the prohibition is operating as intended, including enforcement experience and any unintended impacts on competition and legitimate commercial practices.

Subscription practices

ARC supports targeted reforms to improve transparency and consumer control in subscription arrangements, including:

- clearer disclosure of key terms at the point a subscription is offered;
- timely reminders and notifications throughout the subscription lifecycle; and
- a requirement for an easy-to-find and straightforward cancellation process, including online cancellation for subscriptions entered online.

These measures address well-recognised consumer pain points and are consistent with feedback ARC has received across multiple consultations.

To ensure the reforms are workable across diverse retail models, ARC encourages Treasury to provide clear guidance, particularly given the subjectivity of proposed cancellation concepts such as “easy to find”, “straightforward”, “reasonably necessary”, “unreasonably hindered”, and “unreasonably delayed”, on:

- how the requirements apply to different subscription and membership models, including bundled offerings and “subscribe and save” arrangements;
- what constitutes objectively reasonable cancellation steps, recognising that businesses must balance ease of cancellation with legitimate needs for identity verification and fraud prevention, and to disclose material consequences of cancellation (for example, benefits or discounts that will be lost) without that disclosure being characterised as “hindering” cancellation; and
- expectations for disclosures across channels (online, in-store sign-ups, call centres), to avoid duplication and consumer overload while achieving transparency objectives.

Transaction-based charges and drip pricing

ARC supports reforms to improve disclosure of mandatory transaction-based charges and address drip pricing practices that obscure the total price payable.

Clear and timely disclosure supports informed consumer decision-making, reduces disputes, and strengthens trust in retail pricing practices.

ARC emphasises the importance of flexibility where:

- transaction-based charges depend on information not available early in the purchase journey (for example, delivery location or fulfilment method); or
- charges cannot reasonably be calculated at the point a base price is displayed.

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In these circumstances, disclosure of a clear calculation method should be sufficient.

We also encourage clarity on how the new requirements interact with existing ACL pricing obligations, including single-price rules, to avoid duplication or inconsistent compliance expectations.

Small business and implementation impacts

Small and independent retailers, who make up the majority of ARC's membership, often operate with limited compliance resources and rely heavily on clear, well-defined legal standards.

ARC is concerned that a broad general prohibition, if introduced, would disproportionately affect small businesses, who may lack the resources to interpret subjective standards or seek legal advice on evolving enforcement expectations. Targeted reforms, supported by clear guidance and education, are more likely to deliver consumer benefits without imposing disproportionate compliance costs on small retailers.

ARC recommends that if the general prohibition proceeds, it should initially exclude body corporates and consumers carrying on business (consistent with the approach in s28B(2)-(3)). Any extension to small businesses should be staged, following the precedent of the UCT regime which initially applied to consumers only (2010) and was extended to small businesses only after 2016, following a 12-month transition period from November 2015. This staged approach allows compliance frameworks, case law, and regulatory guidance to develop before extending obligations to businesses with limited compliance resources.

ARC also notes that a broadly framed and subjective prohibition may drive overly cautious, standardised approaches to marketing and digital design as businesses seek to minimise enforcement risk. This could reduce differentiation and innovation over time, with flow-on impacts for competition and consumer experience.

Commencement and transition

ARC notes the proposed commencement date of 1 July 2027. However, given the novel and undefined concepts introduced by the general prohibition, ARC strongly recommends a staged penalty implementation, not merely delayed commencement. The UCT regime provides clear precedent as it commenced in 2010 but penalties only applied from November 2023, allowing 13 years for case law and ACCC guidance to develop. This approach is particularly important given that Australia's proposed maximum penalties (\$50M or 30% of turnover) significantly exceed comparable EU frameworks (4% turnover) that influenced this Bill. ARC recommends an initial period of at least 2-3 years where the prohibition takes effect without civil penalties, accompanied by comprehensive ACCC guidance and an education-first enforcement approach, before penalty provisions commence.

Conclusion

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ARC supports targeted reforms to improve subscription practices and enhance transparency around mandatory transaction-based charges. However, ARC does not support the introduction of a broad, principles-based general prohibition on unfair trading practices as drafted. Recent enforcement action under existing ACL provisions demonstrates these tools are already effective in addressing problematic conduct, and the case for an additional, overlapping prohibition with subjective standards and disproportionate penalties has not been made out. ARC encourages Treasury to focus on targeted, clearly defined measures that address evidenced consumer harm while preserving legal certainty and supporting competitive retail markets.

ARC welcomes continued engagement with Treasury as these reforms progress. Any queries in relation to this submission can be directed to our policy team at policy@retail.org.au.