



Australian Government
The Treasury



Decision Regulation Impact Statement

Protecting consumers from unfair trading practices

December 2025

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In the spirit of reconciliation, the Treasury acknowledges the Traditional Custodians of country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all Aboriginal and Torres Strait Islander peoples.

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Executive Summary

The Commonwealth Government, in agreement with Australian Consumer Ministers, is pursuing reforms to address unfair trading practices. Public consultations in August 2023 and November 2024 identified examples of unfair business practices causing harm that are not currently prohibited or adequately addressed under the Australian Consumer Law (ACL). These examples include, but are not limited to, manipulative or distortive conduct particularly in an online context, unfair subscription practices and drip pricing practices.

Stakeholders noted that businesses are increasingly using manipulative or distortive practices that fall into gaps in the ACL to unfairly influence consumer behaviour or decision-making. These practices can occur in both offline and online settings, although stakeholders frequently cited businesses' use of 'dark patterns' in some digital interfaces as an example of unreasonable manipulation that could cause harm.

Stakeholders also raised concerns about a range of subscription practices which can cause consumer and small business harm. These include businesses not providing consumers with material information they need to make informed decisions about a subscription and practices which make cancelling a subscription difficult. Feedback was also provided by stakeholders on unfair drip pricing practices that may not be adequately addressed by existing provisions of the ACL. The most cited example involves businesses disclosing late in a purchasing process any mandatory fees that are applied on a per transaction basis ('per transaction' fees).

The Government considered 4 options to address unfair trading practices:

- Option 1: Status quo (no change)
- Option 2: Amend statutory unconscionable conduct (not progressed)
- Option 3: Amend the ACL to introduce a general prohibition on unfair trading practices
- Option 4: Amend the ACL to introduce a combination of general and specific prohibitions on unfair trading practices.

This Decision Regulation Impact Statement (RIS) assesses the regulatory impact of the policy options with the exception of Option 2 (amend statutory unconscionable conduct) which was not progressed following the outcomes of, and feedback to, the August 2023 Consultation Regulation Impact Statement.

Treasury analysed the proposals and feedback from stakeholders and recommends Option 4 as the preferred policy option. This option proposes the introduction of a general principles-based prohibition on unfair trading practices into the ACL, and additional reforms to the ACL to address unfair subscription practices and drip pricing.

The proposed general prohibition would target unreasonable business conduct which manipulates or distorts a consumer's behaviour and causes detriment. Examples may include omitting key information or providing overly complex disclosures to a customer that impedes their ability to make informed decisions, using high-pressure sales tactics that may not be outright misleading or unconscionable, and dissuading consumers from exercising their contractual or other legal rights. The proposed general prohibition also seeks to address 'dark patterns' which manipulate or undermine consumers' decisions primarily in digital interfaces.

The proposed prohibition would be principles-based and is intended to be flexible to address new and emerging unfair trading practices that harm consumers. To provide guidance on interpretation to businesses, regulators and consumers, it is proposed that it be accompanied by examples of conduct that may, depending on the circumstances, breach the general prohibition.

The unfair subscription practices reform proposal would require businesses to prominently display key information about a subscription at the point of sale, notify consumers at key points in a subscription contract and remove barriers to cancelling subscriptions. Specific reform is also proposed to better address drip pricing practices, so that businesses are required to disclose any mandatory per transaction fees prominently and upfront.

The following specific reform options were consulted on but do not form part of the policy proposal:

- Dynamic pricing where the price increases during the purchasing process in response to factors such as demand. Specific reform is not proposed because the conduct is likely already sufficiently addressed by the ACL.
- Barriers to accessing customer service. Reform which mandates particular sorts of customer support requirements could result in significant regulatory burden for businesses. It is instead proposed to address unfair post-sale conduct through the general prohibition.
- Requirement to create an online account to make a purchase. There was a lack of stakeholder support for specific ACL reform, with stakeholders viewing the issue as primarily privacy-related (specifically, the collection and use of personal information).

Option 4 has been assessed as the most effective reform to reduce instances of consumer harm arising from unfair trading practices, without disproportionate associated costs. Implementation of this option is expected to benefit consumers by increasing their confidence in making purchasing decisions due to strengthened protections against manipulative or distortive practices.

It is also expected that this option will promote fair trading among businesses, as consumer demand is redirected to businesses with competitive goods and services, rather than those businesses that are most proficient at manipulating or distorting consumer choice to attract and retain customers. In turn, this can promote well-functioning markets, improve economic efficiency and encourage innovation and productivity growth across sectors. The potential costs to business from this option have also been assessed and are considered in this paper.

Implementation of this proposal would require legislative amendments to the ACL, which would be agreed with states and territories under the *Intergovernmental Agreement for the Australian Consumer Law* (the IGA).

Background

This Decision RIS presents an analysis of the costs and benefits of a proposal to reform the ACL to protect consumers from unfair trading practices (UTPs).

In their 6 November 2020 meeting, Commonwealth, State and Territory Consumer Affairs Ministers agreed that unfair trading issues warranted further exploration through a regulation impact assessment process.¹ This decision followed the release of the final report of the Australian Consumer Law Review in 2017, which found there was significant stakeholder interest in the introduction of a general prohibition against unfair trading. The report committed to exploring how an unfair trading prohibition could be adopted within the Australian context to address potentially unfair business practices.²

In September 2022, Commonwealth, State and Territory Consumer Ministers agreed that the Commonwealth would lead a public consultation on options to address UTPs in the ACL on behalf of all jurisdictions. This resulted in 2 consultations:

- Consultation Regulation Impact Statement³ (August 2023) (Consultation RIS)
- Unfair trading practices - Consultation on the design of proposed general and specific prohibitions⁴ (November 2024) (the Supplementary Consultation).

In March 2025, the Australian Government announced it would separately consult later in 2025 on extending unfair trading practices protections to small businesses.⁵

Consultation Regulation Impact Statement

The August 2023 Consultation RIS sought evidence on the nature and extent of UTPs, and the extent of any consumer and small business harm arising from potential gaps in the ACL.

Four policy options were presented for consideration:

- Option 1: Status quo (no change)
- Option 2: Amend statutory unconscionable conduct (not progressed)
- Option 3: Amend the ACL to introduce a general prohibition on unfair trading practices
- Option 4: Amend the ACL to introduce a combination of general and specific prohibitions on unfair trading practices.

Treasury received 79 submissions from a wide range of stakeholders and held bilateral meetings and roundtables attended by consumer and industry groups, academics and government stakeholders. Stakeholder views varied on the existence and extent of gaps in the ACL. A range of stakeholders submitted that there is conduct or practices of concern which are unlikely to be captured by existing

¹ 6 November 2020, Meeting of Ministers for Consumer Affairs Communique.

² Consumer Affairs Australia and New Zealand, [Australian Consumer Law Review - Final Report](#), Australian Government, 2017.

³ Department of Treasury (August 2023) [Unfair trading practices - Consultation Regulation Impact Statement](#), Australian Government, 2023.

⁴ Department of Treasury (November 2024) [Unfair trading practices – supplementary consultation paper](#), Australian Government, 2024.

⁵ See: The Hon. Julie Collins MP, [Albanese Labor Government to extend unfair trading practice protections to small businesses](#) [media release], Commonwealth Government, 14 March 2025, accessed 4 August 2025.

protections in the ACL. Other stakeholders considered that practices of concern could be addressed through the existing ACL protections.

Option 4, which proposed combining a general and specific prohibitions, received the most stakeholder support. Proponents of Option 4 considered that the combination would provide the most comprehensive regulation of UTPs, while also providing clarity around compliance obligations. Option 2 received the least support.

Supplementary Consultation

The Supplementary Consultation sought feedback on the design of a principles-based general prohibition to address UTPs, as well as on whether particular UTPs could be addressed by introducing specific prohibitions or by reform to existing provisions of the ACL.⁶

The Supplementary Consultation focussed on a range of practices potentially causing consumer harm:

- Business conduct that unreasonably distorts or manipulates the economic decision-making or behaviour of a consumer
- Unfair subscription practices, including practices which make cancelling a subscription difficult
- The use of ‘dark patterns’ which manipulate or undermine consumers’ decision-making in primarily digital interfaces
- ‘Drip pricing’ practices, where fees are hidden or added through the stages of a purchase
- Dynamic pricing, where a product’s price changes during the purchasing process in response to factors such as demand
- Requiring consumers to set up an account to make an online purchase
- Where a business makes it difficult for a consumer to access customer support.

The consultation also sought further information on the likely benefits to consumers and costs for businesses associated with the proposal.

Treasury received 59 stakeholder submissions and held bilateral meetings and roundtables attended by consumer and legal groups, industry associations and academics.⁷ Stakeholder feedback on the proposed general prohibition was mixed. Stakeholders who supported a general prohibition on UTPs were largely in favour of a principles-based prohibition, although some suggested amendments to the formulation of the prohibition presented in the Supplementary Consultation. Stakeholders who did not support a general prohibition raised concerns that it may create uncertainty for businesses and increase the cost of providing services to consumers.

Stakeholders were generally supportive of using a ‘grey list’ of examples to provide greater certainty and guidance to businesses and regulators on the types of conduct that may be captured by the general prohibition.

Stakeholder feedback was mixed on whether the general prohibition should apply to protect small businesses as well as consumers.

⁶ See: The Hon. Stephen Jones MP, [Consultation underway to ban business practices ripping off Australians](#) [media release], Commonwealth Government, 15 November 2024, accessed 1 May 2025.

⁷ Treasury received a total of 59 stakeholder submissions, including 6 confidential submissions.

There was broad stakeholder support for reform addressing unfair subscription practices, which would provide consumers with sufficient information to make an informed choice about entering into (or continuing with) a subscription and remove unnecessary barriers to cancellation. Views were mixed on specific reform to address drip pricing practices, the requirement for customers to create accounts to make online purchases, and barriers to obtaining customer support. Proponents of strengthening protections against drip pricing supported requiring businesses to disclose any 'per transaction' fees prominently and upfront. Most stakeholders opposed specific reform targeting dynamic pricing as defined in the paper on the basis that it is not occurring in Australia, and the ACL would already address potential consumer harm associated with this conduct.⁸

Stakeholder responses to the Supplementary Consultation are discussed in further detail throughout this Impact Analysis.

⁸ Stakeholders who opposed specific reform to address dynamic pricing included the Australian Competition and Consumer Commission, Australian Chamber of Commerce and Industry, the Competition & Consumer Committee of the Law Council and Live Performance Australia. A small number of stakeholders supported specific reform, including the Australian Live Music Business Council, Consumer Policy Research Centre and Music Australia.

The problem

The Consultation RIS sets out in detail the problems that this reform process seeks to address, and the Supplementary Consultation further expanded on this with details of specific practices of concern.

In summary, during these consultation processes a range of stakeholders have identified that the existing provisions of the ACL are inadequate to protect consumers against harm, or potential harm, arising from certain types of UTPs that fall into gaps or ‘grey areas’ in the law.⁹

Although the ACL provides various protections against unfair practices (outlined in Appendix A), stakeholders noted that these provisions are outdated in some respects and therefore may be ill-equipped to address newer, emerging forms of misconduct. For example, the emergence of ‘dark patterns’¹⁰ in online transactions that distort or manipulate consumer choice. Although these practices can cause substantial harm to consumers by unduly influencing, obstructing or impeding choice in decision-making, the subtlety of such manipulation can make it difficult to establish a breach of the misleading or deceptive conduct provisions of the ACL given the lack of overt misleading conduct involved in some ‘dark pattern’ conduct.

Australia faces similar challenges to other countries in terms of adapting consumer protection laws in the context of technological change. Other international jurisdictions, such as the United Kingdom, the European Union and the United States have a general prohibition on UTPs, although these provisions include some similar protections to those available under the existing ACL (such as protections against misleading or deceptive conduct). These legislative provisions in overseas jurisdictions have resulted in some stakeholders advocating for UTP reforms in an Australian context to combat problems that are particularly prevalent in, but not limited to, online commerce.

Examples of potential UTPs that exist in gaps or grey areas of the ACL impacting consumers, identified during consultation and in other research, can be broadly categorised as follows:

- Conduct that distorts, manipulates or undermines consumer choice
- Unfair subscription practices, including practices which make it difficult for consumers to cancel a subscription
- Pricing-related practices, including drip pricing and dynamic pricing
- Post-sale practices, including imposing unreasonable barriers to accessing customer support.

Manipulative conduct

Many UTPs that operate within ACL gaps or grey areas involve some form of manipulation of consumers, or manipulation or distortion of their decision-making or behaviour, resulting in harms and costs to consumers’ finances, time and/or broader wellbeing.

Such manipulation or distortion can occur in both offline and online environments. For example, a business may entice consumers into buying an item in-store by omitting or obscuring key information about the product or service offered for sale. By the time the consumer realises the item does not match their expectations, high-pressure sales tactics may have been applied by staff to manipulate the consumer into making a purchase they do not want or that costs more than they intended to pay.

⁹ In September 2022, Commonwealth, State and Territory Consumer Ministers agreed that the Commonwealth would lead a public consultation on options to address UTPs in the ACL on behalf of all jurisdictions. This resulted in the consultation processes referred to in this paper.

¹⁰ Dark patterns are further discussed at page 8 and in the policy Option 3 section from page 22.

Depending on the circumstances, the business's conduct in this instance may not amount to a breach of the ACL despite harm being caused to the consumer.

Other examples of manipulative practices that occur in both online and offline environments, but which may fall into gaps in the ACL, include business practices that:

- dissuade a consumer from exercising their contractual or other legal rights
- provide ineffective and/or complex disclosure of key information when obtaining consent or agreement to enter into contracts
- exploit or ignore the behavioural vulnerabilities of consumers that are present in the 'choice architecture' of products or services (digital or otherwise).¹¹

Since its introduction, the ACL has been generally effective at responding to evolving consumer harms caused by changes in technology and the economy, however it is important to ensure it continues to appropriately respond to such changes. As consumers are increasingly exposed to new technology they are also exposed to new vulnerabilities and challenges. For example, in purchasing a new product or service consumers may be presented with large volumes of information, from contractual terms to ongoing payment obligations for multiple service providers. It can be difficult and time-consuming for consumers to understand and assess the quality of the information that is being provided to them.¹²

At the same time, the increased sophistication of digital marketplaces can present advantages for consumers that may increase their confidence in purchasing and provide other benefits, such as convenience or access to valuable information. For example, comparator or review sites provide tools and information that enable consumers to more easily compare product or service offerings online to determine good value for money. Consumers may also benefit from being actively offered products or services that are targeted and relevant to their needs (such as ads on items similar to past purchases). However, when these benefits are counteracted by the use of unfair practices in any individual situation, consumers may be harmed. For example, where consumer decision-making is impaired by information overwhelm or distortion, including through the use of dark patterns.

Digital trends including the rapid uptake of e-commerce, increasing complexity of online transactions, and proliferation of 'dark patterns' all have the capacity to present vulnerabilities for consumers.¹³ It has been observed and argued that consumer vulnerability now extends to a wider cohort than what is traditionally considered, where certain groups were regarded as inherently vulnerable because of specific characteristics. New emerging practices in the digital age has expanded the scope of consumers that may be vulnerable to harm.¹⁴

The dangers of manipulative practices, particularly in an online context have also been well-documented in research and consultation focusing on 'dark patterns'.¹⁵

⁹ ACCC (Australian Competition and Consumer Commission) submission to the UTPs Consultation Regulation Impact Statement, p. 9.

¹² CPRC (Consumer Policy Research Centre), [The Digital Checkout](#), CPRC, 2021, pp. 16-17, accessed 1 May 2025.

¹³ OECD (Organisation for Economic Co-operation and Development), ['Consumer Vulnerability in the Digital Age'](#), *Digital Economy Papers*, OECD, 2023, pp. 14-15, referencing Helberger, N. et al. (2021), 'Choice Architectures in the Digital Economy: Towards a New Understanding of Digital Vulnerability', *Journal of Consumer Policy* 2021, pp. 1-26.

¹⁴ OECD, ['Consumer Vulnerability in the Digital Age'](#), p. 5.

¹⁵ See for example OECD, ['Dark commercial patterns'](#), *Digital Economy Papers*, OECD, 2022, No. 336; CPRC, [Duped by design – manipulative online design: dark patterns in Australia](#), CPRC, 2022; CPRC, [Made to Manipulate: The impact of deceptive online design practices on wellbeing and strategies to mitigate harm](#), CPRC, 2025; United States FTC (Federal Trade Commission), [Bringing Dark Patterns to Light](#), US FTC, 2022; CMA (Competition and Markets Authority), [Online choice architecture: how digital design can harm competition and consumers – discussion paper](#), UK Government, 2022.

Dark patterns, also known as **deceptive patterns**, refer to design elements used in consumer-facing digital interfaces (such as websites and apps) to manipulate user decisions.

Some patterns impose obstacles and complexity which frustrate and exhaust consumers, for example confusing or complex menus with pre-selected checkboxes. These patterns can make it easy for consumers to confirm business-favoured choices, while other options (like rejecting third-party cookies or finding an option to cancel a subscription) may be difficult for consumers to access. In some cases, businesses may force consumers into a particular action by not providing alternatives, or by omitting or obfuscating material information. These obstructive tactics require consumers to work to overcome obstacles to reach their preferred outcome which may differ from the business's preferred outcome.

Another group of dark patterns of concern are those designed to exert unreasonable pressure on consumers during a purchase. Examples of these practices include the display of countdown timers or low stock notifications. Businesses use these methods to create a heightened sense of urgency and scarcity, for the purposes of provoking more impulsive consumer action. Another example is 'confirmshaming' where a consumer is unfairly made to feel bad about a choice (including stoking guilt).

The use of a single dark pattern may not, on its own, unreasonably distort consumer choice or result in material consumer detriment. However, when businesses combine multiple dark patterns to confuse, shame, direct, obstruct or frustrate consumers into making (or not making) a particular decision when transacting online, it can be much more difficult for the consumer to identify and/or resist these techniques to avoid harm.

Dark patterns can exploit cognitive and behavioural biases, influencing consumer behaviour without their full awareness. They are sometimes described as 'tricks' used in websites and apps to get people to do things they otherwise would not do.¹⁶ These patterns are typically aimed at benefiting the business, often by nudging or pressuring consumers into actions they might not intend or usually take, as opposed to 'bright patterns' which use design choices to prioritise consumer wellbeing.¹⁷ Many dark patterns also intersect with other potentially unfair practices highlighted in this paper, including unfair subscription and pricing-related practices.

Dark patterns can result in a range of consumer harms, including financial detriment arising from additional purchases and recurring payments that the consumer did not initially intend to make or sign up for. Other harms could be caused by the loss of personal time, the emotional toll of these tactics and cognitive load it takes to avoid them.

The 2023 Australian Consumer Survey asked respondents to consider their experiences over the last 2 years including with purchases made online. The findings of this survey revealed the prevalence of a range of conduct types resembling dark patterns that consumers reported encountering. Over half of the problems respondents raised were from online purchases (51 per cent), and in the preceding 2 years, 68 per cent of consumers experienced one or more issues when making online purchases

¹⁶ H Brignull, M Leiser, C Santos, and K Doshi, [Deceptive patterns – user interfaces designed to trick you](#), Deceptive Patterns, n.d., accessed 11 July 2025.

¹⁷ The opposing concept to dark patterns, bright patterns refer to design choices that prioritise user goals and wellbeing ahead of organisation/business goals. For example, this may be in the form of displaying greater contextual transparency for pricing, clearer explanations of complex terms to improve consumer understanding, and straightforward pathways for consumers to update preferences and settings, including for cancelling a subscription.

(noting 28 per cent reporting none of the issues listed when purchasing online and 4 per cent having not made any online purchases). Ten per cent of respondents reported that they felt their choices had been manipulated.

Australian Consumer Survey Finding ¹⁸	Response
Online provider manipulated my choices	10%
Found it difficult to tell if I was purchasing a product from overseas	33%
Charges added during a transaction that weren't disclosed at the start	26%
Time limits used to motivate fast choices	23%
Ineffective or complex information in terms and conditions or contracts	17%
Information provided was too lengthy or complex	15%
Items that were added to my cart without my consent	6%

The International Consumer Protection and Enforcement Network coordinated with the Global Privacy Enforcement Network to conduct a global internet sweep in 2024 of websites and mobile apps and their use of dark patterns in the marketing of subscription services.¹⁹ Consumer protection agencies across 26 nations including Australia participated in the sweep and found that of 642 traders swept, 75.7 per cent made use of at least one dark pattern and 66.8 per cent made use of multiple dark patterns when marketing their subscriptions (using the Organisation for Economic Co-operation and Development (OECD) taxonomy²⁰ of dark commercial patterns). The sweep found that potential sneaking practices, such as the inability for a consumer to turn off auto-renewal of a subscription service within the purchase flow (found in 81 per cent of the traders swept who provide subscriptions that renew automatically), and interface interference, such as presenting a false hierarchy to more prominently place subscriptions advantageous to the trader (found in 38.3 per cent of traders swept who offer subscriptions that do not start as a free trial), were encountered especially frequently.

Other reports and publications including from the OECD,²¹ European Commission,²² the Consumer Policy Research Centre (CPRC) and the Australian Competition and Consumer Commission (ACCC) highlight dark pattern prevalence and capacity for harm. The CPRC found in their survey of 2,000 Australians that 20 per cent have spent more than they intended, 17 per cent felt pressured into buying something and 9 per cent had accidentally bought something, all in connection with a range of apparent dark patterns.²³ A consumer survey research report commissioned by the ACCC in 2025 found that 72 per cent of online marketplace shoppers had encountered a potentially unfair practice

¹⁸ Kantar Public, [Australian Consumer Survey 2023 - Final Report](#), report to the Department of Treasury, 2023, pp. 79-80.

¹⁹ International Consumer Protection and Enforcement Network, [ICPEN Dark Patterns in Subscription Services Sweep Public Report](#), ICPEN, 2024.

²⁰ OECD, 'Dark commercial patterns'.

²¹ OECD, 'Dark commercial patterns'.

²² F Lupiáñez-Villanueva, A Boluda, F Bogliacino, G Liva, et al., [Behavioural study on unfair commercial practices in the digital environment – Dark patterns and manipulative personalisation – Final report](#), Publications Office of the European Union, 2022.

²³ CPRC, [Duped by design – Manipulative online design: Dark patterns in Australia](#)<https://cprc.org.au/report/the-digital-checkout/>, CPRC, 2022, p. 27, accessed 1 May 2025.

in the last 12 months, for example, discovering fees or charges at the checkout that were not disclosed beforehand (including delivery fees).²⁴

Stakeholders highlighting harms from dark patterns to Treasury's consultations have included consumer advocates, consumer and other regulators, and academics.²⁵ In its submission to the Supplementary Consultation, the Telecommunications Industry Ombudsman (TIO) highlighted how telecommunication providers can make it difficult to find information about low-cost plans and have a tendency to refer consumers to use their apps which contain less information than on the provider's website. Academics from the Centre for Artificial Intelligence and Digital Ethics at the University of Melbourne in their submission highlighted the impacts of various dark pattern types including false hierarchies, and the use of visual prominence and obstructive interfaces to pressure consumers, redirect their attention, and ultimately favour business-advantageous selections rather than options that are in the best interests of the consumer.

Stakeholders that expressed caution or contested the extent or likelihood of harm were generally from industry. In their submissions to the Supplementary Consultation, the Australian Chamber of Commerce and Industry and Live Performance Australia both raised scarcity cues like low stock counters and countdown timers, noting that these tools can provide useful information to reflect situations such as stock being reserved or on hold for the consumer, or can be used for managing inventory.²⁶ Retail Drinks Australia in its submission cautioned that some reasonable customer guidance such as customers' voluntarily shared tastes and preferences for wine should not be conflated with dark patterns.

Subscription practices

Subscription contracts are common for digital services such as online publications, digital content, streaming services, and software-as-a-service products. Some offline products and services, such as gym memberships, meal delivery and beauty treatment subscriptions, operate on a similar model. A common feature of a subscription contract is a provision enabling businesses to continue to charge for products and services unless the consumer takes affirmative action to cancel the contract.²⁷ For many consumers subscription contracts can be a convenient and efficient way to purchase products or services, while businesses offering subscription products and services benefit from an ongoing revenue stream. However, consultation identified a range of subscription practices which can cause consumer harm, including:

- Businesses not providing customers with the material information they need to make informed decisions about a subscription. For example, not providing key information about the subscription contract at the point of sale.
- Practices which make it difficult for customers to cancel their subscription. This can include cancellation processes that are difficult to navigate, overly complex, or which require cancellation through a particular channel (such as in person).

²⁴ ACCC, [Digital platform service inquiry – Final Report](#), ACCC, 2025, p. 5.

²⁵ Joint Consumer Advocates submission to the Supplementary Consultation, pp. 17-19; Centre for Artificial Intelligence and Digital Ethics, The University of Melbourne submission to the Supplementary Consultation; Telecommunications Industry Ombudsman submission to the Supplementary Consultation, p. 4.

²⁶ Australian Chamber of Commerce and Industry submission to the Supplementary Consultation, p. 3; Australian Live Performance Australia submission to the Supplementary Consultation, pp. 5-6; Retail Drinks Australia submission to the Supplementary Consultation, p. 2.

²⁷ The US Federal Trade Commission's 2024 'Click-to Cancel Rule' applied to negative option programs. The rule defines a negative option feature as a term or condition that allows a seller to interpret a customer's silence or failure to take an affirmative action as acceptance.

- Subscription contracts which renew or automatically rollover from a free trial or promotional period to a paid or full price subscription, without the customer's awareness.

The ACCC²⁸ and Consumer Advocates jointly²⁹ submitted that these subscription-related practices can distort consumer choices and result in consumers paying for subscriptions they do not want or no longer use.

The ACCC noted in its submission to the Supplementary Consultation that while subscriptions can offer genuine benefits, it has received many complaints from consumers and small businesses about the issues outlined above.³⁰ Similarly, the TIO submitted that it has received complaints from consumers experiencing difficulties cancelling a subscription, including where their provider would not accept their cancellation request unless the cancellation was done in a specific way, and where a provider did not cancel services despite receiving a cancellation request.³¹

In the 2023 Australian Consumer Survey, 25 per cent of respondents reported difficulty cancelling subscriptions.³² A survey conducted by the CPRC in 2024 found that 75 per cent of Australians with subscriptions have had a negative experience when trying to cancel a subscription.³³ The CPRC survey also found that 48 per cent of Australians with subscriptions have spent more time than intended trying to cancel a subscription, and 32 per cent have felt pressured into keeping a subscription they wanted to cancel.³⁴

In the ACCC 2025 DPSI Consumer Survey Research Report, 26% of consumers who had spent money on games in the past 2 years said they had thought they made a one-off gaming purchase that turned out to be a paid subscription, while the same proportion (26%) had paid subscriptions for games which they no longer use because they forgot to cancel them.³⁵ In relation to optional paid subscriptions for online market places, 41% of those who used or considered using these subscriptions believed online marketplaces should do more to make the costs and benefits of the subscriptions clearer.³⁶

Research Commissioned by the UK's Competition and Markets Authority (CMA) in 2022 found that 7 out of 10 UK adults had experienced misleading online practices, with 83 per cent of these adults reporting their biggest concern was about subscription traps.³⁷ 2024 research from UK Charity Citizens Advice found that over 13 million people (26 per cent of UK adults) had accidentally taken out a subscription in the last 12 months. Of those who ended up with an accidental subscription, the most common reason was because it auto-renewed without their knowledge (40 per cent). This was followed by people who took out a subscription for a free trial but forgot to cancel later (39 per cent).

²⁸ ACCC submission to the Supplementary Consultation, p. 15.

²⁹ Joint Consumer Advocates submission to the Supplementary Consultation, p. 23. Submission made jointly by Consumer Policy Research Centre, and the following: AMES Australia, Australian Communications Consumer Action Network, Care, CHOICE, Consumer Credit Legal Service (WA)/WA Consumer Advocacy Network, Consumers' Federation of Australia, Energy Consumers Australia, Financial Counselling Australia, Financial Rights Legal Centre, Mob Strong Debt Help, Mortgage Street Victoria, QLD Consumers Association, Redfern Legal Centre, Super Consumers, Westjustice.

³⁰ ACCC submission to the Supplementary Consultation, p. 15.

³¹ Telecommunications Industry Ombudsman submission to the Supplementary Consultation, p. 5.

³² Kantar Public, *Australian Consumer Survey 2023 - Final Report*, p. 79.

³³ Consumer Policy Research Centre, [Let me out - Subscription trap practices in Australia](#), CPRC, 2024, p. 4.

³⁴ CPRC, *Let me out - Subscription trap practices in Australia*, p. 6.

³⁵ Lonergan Research, [ACCC DPSI Consumer Survey Research Report \[PDF\]](#), report to the ACCC, 2025, p. 57.

³⁶ Lonergan Research, *ACCC DPSI Consumer Survey Research Report*, p. 83.

³⁷ Competition and Markets Authority, [7 out of 10 people have experienced potential rip-offs online, worrying new CMA research reveals](#) [press release], UK Government, 9 February 2022, accessed 11 July 2025. In this press release, "subscription trap" was defined as misleading a customer into signing up to, and paying for, an unwanted subscription that can be difficult to cancel.

24 per cent of people who ended up in an accidental subscription thought they were making a one-off purchase.³⁸

Research commissioned by ING Australia in 2022 found that Australians could save an average of \$1,261 a year by cutting back on subscriptions and other regular outgoings they have forgotten about or don't use.³⁹

The UK Government's 2023 Impact Assessment for the *Digital Markets, Competition and Consumer Act 2024* estimated 8.4 million subscription contracts are unwanted in the UK, costing consumers around £1.6 billion a year.⁴⁰ While such analysis is not available for Australia, the scale of the problem as a proportion of the consumer base is assumed to be similar, perhaps even greater given continued growth in the subscription products and services since 2023.⁴¹

Pricing-related practices

Stakeholders have also raised concerns about pricing practices that obscure the true cost of goods or services, but which may not be adequately addressed in the ACL. One such example is drip pricing practices, where businesses gradually add fees during the purchasing process. Under the ACL, while there are requirements that businesses must not engage in misleading conduct or misleading representations about prices, there is no specific requirement for businesses to disclose mandatory fees charged on a 'per transaction' basis prominently and upfront. This means that, provided businesses are not misleading consumers regarding prices or otherwise engaging in a breach of the ACL,⁴² businesses can choose to display per transaction fees later in the purchasing process.

Stakeholders have submitted that where per transaction fees are 'dripped' in this way, as opposed to being disclosed upfront, consumers are more likely to proceed with a purchase given the time and effort already invested in the purchasing process. In its submission, the ACCC noted that once a consumer selects an advertised product or service and begins the payment process, the behavioural economic theory of 'loss aversion' suggests that consumers form an expectation and attachment to the idea that the purchase will be completed.⁴³ By the point that non-optional prices are 'dripped', and the consumer realises the product or service is more expensive than advertised, terminating the transaction can feel like a 'loss'.⁴⁴

Stakeholders also considered that this type of drip pricing impairs the consumer's ability to make informed purchasing decisions prior to entering the transaction process. Without full pricing information at their disposal, consumers are less likely to shop around for a better price or assess their

³⁸ Citizens Advice, [Consumers spend £688 million on unused subscriptions in the last year](#), Citizens Advice, 8 March 2024, accessed 11 July 2025.

³⁹ ING Australia, [Unused subscriptions and forgotten outgoings could cost each Aussie up to \\$1,261 a year](#), ING Newsroom, 30 January 2023, accessed 11 July 2025. Total sample size was 1,075 Australians over the age of 18. Research based on 'scheduled outgoing payments' which is likely to be a broader category of products and services than subscription contract proposed to be in scope of the subscriptions.

⁴⁰ Department for Business and Trade (United Kingdom) (DBT UK), [Impact Assessment for the Digital Markets, Competition and Consumers Act: Subscription traps: annex 2 impact assessment](#), UK Government, 2023, p. 20.

⁴¹ ING Australia, [Unused subscriptions and forgotten outgoings could cost each Aussie up to \\$1,261 a year](#). The research cited above found 56% of respondents with outgoing payments continue to sign up to new subscriptions, spending an additional \$48 per month on average in 2022.

⁴² Such as the requirement in section 48 of the ACL that a business not represent part of the price for a good or service without also disclosing the minimum quantifiable price, at least as prominently.

⁴³ ACCC submission to the Supplementary Consultation, p. 20; referencing Daniel Kahneman and Amos Tversky, 'Prospect theory: analysis of decision under risk', *Econometrica*, 1979; Brendan Markey-Towler, 'Explainer: what is loss aversion and is it real?', *The Conversation*, 21 August 2018.

⁴⁴ ACCC submission to the Supplementary Consultation, p. 20; referencing Ralf Steinhauser, 'Junk fees and drip pricing: underhanded tactics we hate yet still fall for', *The Conversation*, 2023.

willingness to pay additional transaction fees in a neutral setting devoid of the psychological pressures outlined above.

Findings from the 2023 Australian Consumer Survey showed that 68 per cent of Australian consumers experienced problems when making online purchases in the last 2 years. Of those consumers, 26 per cent of consumers said they had experienced undisclosed charges being added during a transaction.⁴⁵ A 2022 UK CMA report stated that drip pricing has been shown in several experimental, theoretical and real-world scenarios to lead consumers to buy more, overspend, underestimate the total price, make mistakes when searching, and be less happy with their purchases.⁴⁶ For example, analysis of the effects of displaying fees at different points in the transaction process suggested that fees shown at the end of a transaction process makes price comparisons more difficult for consumers.⁴⁷

Further, in research estimating the prevalence and impact of online drip pricing commissioned by the UK Department for Business and Trade, analysis of the purchasing process of a sample of online providers identified that service fees (fees charged to receive or purchase a service, such as booking or processing fees) tend to consistently meet multiple criteria of harm.⁴⁸ This conclusion was formed on the basis that service fees are the most likely fee type to be mandatory (99 per cent of the sample) with 74 per cent of these fees presented late in the checkout process.⁴⁹

Dynamic pricing, where a business increases the price of a good or service during the purchasing process based on factors such as demand, is another practice that can harm consumers. Dynamic pricing as defined in this paper is distinct from surge pricing, where a business may change the price of a good or service in response to factors such as demand, but the price is agreed to and set before the transaction commences.

Dynamic pricing (as defined above) involves a business increasing the purchase price over a short period of time, often far beyond the price initially displayed for that item, with the final price not being revealed until close to, or at, the point of purchase. Where the true price of the item is masked in this way until late in the transaction, consumers can feel trapped into continuing with the purchase at the increased price out of pressure or fear of missing out, particularly if some time has been spent waiting to purchase and/or the product or service on offer is in limited supply. This can distort consumer choice so that consumers end up spending more than they initially intended.

While consultation and research did not reveal evidence of this kind of dynamic pricing being used in an Australian context, concerns around dynamic pricing practices have arisen in overseas markets particularly within online ticketing transactions. Some stakeholders have therefore raised concerns about the potential for this practice to be applied in Australia.

⁴⁵ Kantar Public, *Australian Consumer Survey 2023 - Final Report*, p. 79.

⁴⁶ CMA, [Online Choice Architecture: how digital design can harm competition and consumers - Discussion Paper](#), UK Government, 2022, p. 30; referencing Tom Blake, Sarah Moshary, Kane Sweeney and Steve Tadelis, 'Price salience and product choice', *Marketing Science*, 2021; Marckus Dertwinkel-Kalt, Mats Köster, Matthias Sutter, 'To buy or not to buy? Shrouding and partitioning of prices in an online shopping field experiment', *CESifo Working Paper 7475*, (2019); Steffen Huck and Brian Wallace, 'The impact of price frames on consumer decision making: experimental evidence', *Experimental evidence*, 2015; Thomas Robbert and Stefan Roth, 'The flip side of drip pricing', *Journal of Product & Brand Management*, 2014.

⁴⁷ Blake et. al., [Price Salience and Product Choice](#), *Marketing Science*, 2021, 40(4):619-636, p. 620.

⁴⁸ Alma Economics, [Estimating the prevalence and impact of online drip pricing](#), report prepared for UK Department for Business and Trade, 2023, pp. 8-9. The sample in the report included 525 online and mobile app providers across the entertainment, hospitality, retail, transport and communication sectors.

⁴⁹ Alma Economics, *Estimating the prevalence and impact of online drip pricing*, p. 34.

Other practices

Some online retailers may provide consumers with the option to make an online purchase as a 'guest', but for other retailers, setting up an account (with login) and providing personal information is a prerequisite for making a purchase. This can result in consumers being required to disclose more personal information than is reasonably necessary to purchase the product or service.

The Supplementary Consultation sought feedback on whether specific reform is needed to address potential harm for consumers arising from mandatory account creation for online purchases. It also sought feedback on potential reform options, such as requiring retailers to provide a guest check-out option.

Feedback was also sought on whether specific reform is needed to address barriers to consumers accessing customer support, including if businesses should be required to provide a specific point of contact or respond adequately to general consumer queries. Concerns raised include post-sale practices employed by businesses which seek to impede consumers' access to customer support when they have a problem with a good or service.⁵⁰ Examples include designing customer service systems in a manner which makes it difficult for consumers to contact a business (such as not providing a point of contact for consumers or requiring consumers to use a particular service channel, like a chat bot), requiring consumers to provide unnecessary information in order to access benefits or obtain a remedy, and unreasonably long delays in providing customer service. While businesses are not specifically prohibited from failing to provide a direct point of contact, businesses must meet certain obligations under the ACL when a consumer requests a remedy for a faulty good or service under the consumer guarantee provisions of the ACL.⁵¹

⁵⁰ ACCC submission to the Supplementary Consultation, p. 22; Consumer Policy Research Centre submission to the Supplementary Consultation, p. 29.

⁵¹ Division 1 of Part 3-2 of ACL.

Case for government action and the objective of reform

Government action is required to ensure a whole-of-economy response to address consumer harm from UTPs. Without government intervention, consumers will continue to bear the financial and non-financial costs of UTPs.

The ACL is the established framework for whole-of-economy regulations for unfair behaviour and conduct in the Australian context. The ACL has been instrumental in supporting and protecting consumers from different forms of unfair, high pressure and exploitative conduct. Practices specifically targeted through the ACL range from the use of bait advertising to unsolicited consumer agreements, and the promotion of pyramid schemes. However, these provisions currently either do not prohibit, or inadequately address all harmful practices.

UTPs that cause (or are likely to cause) consumer harm have been found to occur across a range of sectors throughout the economy. UTPs are often targeted at exploiting consumers' cognitive and behavioural biases or distorting consumer understanding. For example, by omitting material information which makes it difficult for consumers to make informed decisions⁵² or creating unreasonable barriers to cancelling subscriptions, exploiting consumers' myopia.⁵³

A consistent theme that presented across the consultation process is the difficulty for industry-led mechanisms alone to effectively address such a wide range of conduct at scale that is occurring across the economy. Some industries have used different mechanisms such as guidance and voluntary regulations or standards to encourage best practice and reduce the occurrence of unfair practices.⁵⁴ However, these sector-specific responses do not require compliance and are limited in ability to effect change across the economy. It is unlikely that without government intervention those unfair practices operating in ACL gaps will resolve, leaving consumers exposed to harms. The nature of human vulnerabilities and range of unfair practices identified, suggest that a principles-based and adaptive response would be appropriate.

Consumer-friendly design and user interfaces are available to businesses, as are convenient options for subscription management. Their use can enable competitive differentiation between providers of goods and services. However, some businesses are incentivised to implement more obstructive practices that snare or disadvantage consumers and frustrate their attempts to remove themselves from unwanted services. For example, businesses that provide inadequate information disclosure to customers about their subscription may charge higher fees than customers expect, while those that utilise unnecessarily complex cancellation processes may reduce customer churn, obtaining more revenue than they otherwise would.

⁵² Examples of these cognitive biases may include default bias (a preference to maintain the status quo), the scarcity heuristic (the tendency for individuals to place higher value on goods or services that are rare), social proof bias (the tendency for individuals to be influenced by others and to conform) or framing effects (the bias toward picking an option viewed as a gain over one that is viewed as a loss, even if both options would lead to the same result): OECD, 'Dark commercial patterns', p. 8.

⁵³ Consumer preferences can be biased towards the present at the expense of future implications of their choice (myopia). When applying that to subscriptions, consumers may only be able to see the present benefits of subscriptions and the cost in time of cancelling and not consider their value or the value of money saved in the future: Department for Business and Trade (UK), [Impact Assessment for the Digital Markets, Competition and Consumers Act: Subscription traps: annex 2 impact assessment](#), UK Government, 2023, p. 20., p. 9.

⁵⁴ For example, voluntary industry-led codes have been developed to provide a standard for Australian influencer businesses and advertisers on disclosure of advertising. These codes include the Australian Association of National Advertisers (AANA) Code of Ethics, which is administered by Ad Standards, and the Australian Influencer Marketing Council (AiMCO) Influencer Marketing Code of Practice.

Reforms to the ACL to address unfair trading practices would impose new obligations on affected businesses, which they will need to factor into their processes. Potential costs and other impacts from new requirements have been explicit considerations through this consultation process, and proposals have been updated given stakeholders' concerns regarding compliance and uncertainty. Most notably, proposals for principles-based prohibitions have been clarified to target manipulative or distortive conduct – which is a major theme of highlighted practices of concern.

The ACCC and other ACL regulators have emphasised that under current settings, consumers remain at risk of exploitation both at present and potentially increasingly into the future due to increasingly sophisticated technology and business practices. While some stakeholders have advocated for regulators to increase their efforts to address these problems, such as through issuing additional guidance material or taking targeted enforcement action, this will not be effective if there are gaps in the law. Regulators are only capable of taking action when the necessary legislative framework is in place to empower them to address the relevant harms.

In their submissions, consumer advocates have also provided case studies and examples of business practices causing harm to consumers that are not sufficiently addressed by the ACL. These advocates support UTP reform to bolster the ACL to ensure it remains fit-for-purpose and capable of protecting a broad spectrum of consumers from manipulative or distortive practices. Additionally, Australia's Consumer Ministers have collectively affirmed support for reform to address UTPs.⁵⁵

While government intervention has been identified as appropriate for UTPs, environmental factors may challenge or constrain government and regulator capacity to respond. This includes the increasing complexity and emergence of new service delivery and business models, the increasing use of intermediary services, and where traders are based online and/or outside Australia. While a principles-based prohibition has been assessed as appropriate, there may be emerging specific types of conduct that are yet to be observed or identified as harmful and which could fall outside existing or proposed ACL settings, demonstrating the need for ongoing and active monitoring of market conduct.

The aim for government action would be a response that addresses Australian consumer harm from unfair distortive or manipulative business conduct across the economy. Government reform targeting unfair subscription and drip pricing practices would reduce the amount that consumers spend on unwanted subscriptions and improve pricing transparency so that consumers can make more informed purchasing decisions. These outcomes should be observable in various measures including a likely reduction in associated consumer complaints and harms in the medium to long-term, including reduced numbers of consumers reporting unwanted subscriptions, and improved capacity for ACL regulators to bring enforcement actions against conduct of this type.

The benefits to consumers would also be expected to flow into greater confidence in, and higher engagement with, service providers that do not use unfair practices and tactics, rewarding those businesses whose processes are more consumer-centric and consumer-friendly.

⁵⁵ The Hon. Stephen Jones MP [Consumer Affairs Ministers renew commitment to protecting consumers, with an ambitious agenda for 2025](#) [media release], Commonwealth Government, 10 December 2024, accessed 12 June 2025.

Policy options and impact analysis

This paper evaluates the expected relative costs and benefits of the policy options, and how well each option might address the policy problem. Costs and benefits are assessed against the status quo.

The Consultation RIS set out 4 policy options:

Option 1: Maintain the status quo

Option 2 (no longer for consideration): Amend statutory unconscionable conduct

Option 3: Introduce a general prohibition on UTPs

Option 4: Introduce a combination of general and specific prohibitions on UTPs.

The insights and feedback from the Consultation RIS and Supplementary Consultation and analysis have informed the preferred policy options in this Impact Analysis. This paper presents impact analysis and consultation outcomes on **Options 1, 3 and 4**.

Option 2 was not considered viable or likely to be effective in addressing UTPs and no impact analysis is presented below, although stakeholder feedback is summarised.

Option 1 – Maintain the status quo

This option proposes no change to the existing legislative framework. The ACL would continue to protect consumers against misleading or deceptive conduct, unconscionable conduct, unfair contract terms, and specific unfair practices that are prohibited by Part 3–1 of the ACL (for example, pyramid selling and bait advertising). ACL regulators would continue to monitor and enforce the existing consumer protection policy framework and case law on the statutory unconscionable conduct prohibition would continue to develop gradually. However, any gaps in the ACL would persist, and regulators would be limited in their ability to respond to UTPs, as identified in the Problem section.

Consultation outcomes

A number of stakeholders advocated for this option in response to the 2023 Consultation RIS.⁵⁶ Some stakeholders, including Digital Industry Group Inc.⁵⁷ and the Law Council of Australia’s Competition & Consumer Committee,⁵⁸ considered that practices of concern could be addressed through the existing ACL protections (including misleading or deceptive conduct) and industry-specific regulation (such as existing industry codes) and through reform to the *Privacy Act 1988* (Cth) (the Privacy Act). Those that supported maintaining the status quo also generally contended that new prohibitions represented a high compliance burden that would undermine business certainty.

The 2024 Supplementary Consultation sought additional feedback on more specific conduct and on proposals for unfair trading prohibitions. Stakeholders who did not support the introduction of new provisions were largely business and industry groups, reiterating the view that the existing ACL protections are sufficient and that new provisions represented new compliance burdens and uncertainty. Other business and industry groups however did support government action, as discussed for Options 3 and 4.

Potential Benefits

The primary set of benefits in maintaining the status quo are that the conditions are well-known, particularly in terms of compliance and enforcement. The existing set of standards-based and specific provisions would continue regulating business behaviour and protecting consumers.

Maintaining existing protections under the ACL would provide certainty for businesses. Businesses would not need to consider and potentially obtain legal advice for compliance purposes in respect of new obligations that would arise from the introduction of additional prohibitions targeting unfair trading practices.

Potential Costs

Maintaining the status quo would also maintain a range of ongoing costs primarily borne by consumers. This extends beyond potential financial detriments to include time-based and cognitive costs from conduct not presently prohibited under existing ACL regulations.

The extent of costs would vary between consumers, however all consumer cohorts are anticipated to encounter greater exposure to service channels and business models with increasing complexity and

⁵⁶ Stakeholders who advocated for option 1 include BCA (Business Council of Australia), Australian Banking Association, Australian Retailers Association, Digital Industry Group Inc., Tech Council of Australia and the Insurance Council of Australia.

⁵⁷ Digital Industry Group Inc. submission to the Consultation RIS (Regulation Impact Statement), pp. 4-12, 21-22.

⁵⁸ LCA (Law Council of Australia) submission to the Consultation RIS, pp. 18-28.

the capacity to overwhelm and confuse.⁵⁹ Consumers would also, for example, continue to experience harm from a range of unfair subscription practices, including practices that make it difficult for consumers to cancel their subscription.

⁵⁹ OECD, '[Consumer Vulnerability in the Digital Age](#)', *OECD Digital Economy Papers*, 2023, p. 16.

Option 2 (no longer for consideration) – Amend statutory unconscionable conduct

Statutory unconscionable conduct under section 21 of the ACL prohibits a person from engaging in conduct that is unconscionable in ‘all the circumstances’. The ACL does not define unconscionable conduct, although section 22 of the ACL contains a list of matters or factors that a court may have regard to when determining whether conduct was unconscionable.

Generally, to be considered unconscionable the conduct must be against good conscience as judged against the norms of society. In determining whether the conduct breaches section 21, courts may have regard to a broader range of considerations than those traditionally applied by courts under the equitable doctrine of unconscionability.

Courts have consistently interpreted statutory unconscionable conduct as requiring a very high threshold of misconduct. Generally, the courts have held that conduct that is objectively harsh, unfair, unjust or wrong is not enough to establish unconscionable conduct.⁶⁰ This can make it difficult for consumers and regulators to pursue businesses for harmful conduct.⁶¹

To overcome these issues, Option 2 proposed to broaden the scope of the statutory prohibition to address unfair conduct that results in consumer detriment but falls short of the threshold for unconscionability.

Under this option, it was proposed that the core prohibition on unconscionable conduct would be retained but ‘unfair conduct’ must be assessed in determining whether conduct is unconscionable in connection with the supply or acquisition of goods or services (currently, the courts *may* consider it). An alternative proposal was to add the concept of unfairness to the unconscionable conduct provision itself.

Consultation outcomes

This policy option received the least support among stakeholders in submissions responding to the Consultation RIS.

The few stakeholders in favour of amending statutory unconscionable conduct suggested that Option 2 would be a reasonable and proportional approach to address unfair business conduct, targeting evolved community expectations about what should be considered unconscionable behaviour. Some stakeholders were of the view that this option would allow unfair conduct to be addressed under a legal mechanism that industry is already familiar with.⁶²

Those who were against amending statutory unconscionable conduct did so for numerous reasons including that: there is no deficiency in the law and there are recent examples where unconscionable allegations have been proved; the proposed amendments would risk the integrity of the framework for statutory unconscionability; and there have been past efforts to expand the scope of unconscionable conduct which have not had the effect of addressing unfair conduct in line with

⁶⁰ For example, *Australian Competition and Consumer Commission v LG Electronics Australia Pty Ltd* [2019] FCA 1456; *Australian Competition and Consumer Commission v Medibank Private Limited* [2018] FCAFC 235.

⁶¹ In its submission, the ACCC noted that it has discontinued investigations into businesses where it considered conduct caused significant harm to consumers or small businesses, but was unlikely to meet the threshold of unconscionable, and otherwise was not misleading or deceptive: ACCC submission to the Supplementary Consultation, p. 26.

⁶² Stakeholders who supported option 2 include the Australian Automotive Dealer Association, Caravan Industry Association of Australia and Telstra.

modern community expectations and the outcomes this reform process seeks to address.⁶³ Accordingly, these stakeholders expressed doubts that this option would achieve the desired policy outcome, and argued that amending the threshold would involve substantial cost without achieving the intended benefits.

In agreement with most stakeholder feedback, Treasury considers it likely that the costs would outweigh the benefits if this approach were implemented and so **this proposal is not being progressed as an option for consideration.**

⁶³ Stakeholders who did not support option 2 include Professor Bryan Horrigan, Dr Luke Nottage, and Swetha Meenal Ananthapadmanaban and Jeannie Marie Paterson of the Centre for AI and Digital Ethics at The University of Melbourne.

Option 3 – Introduce a general prohibition on unfair trading practices

A new general prohibition in the ACL on UTPs would apply to businesses across the economy and be a flexible, principles-based intervention. This would align with the largely principles-based nature of the ACL, ensuring the provision stays robust as new practices emerge, and addressing a range of gaps in the current ACL protections.

At this time, it is not proposed that the general prohibition would be mirrored in the *Australian Securities and Investment Commission Act 2001* (Cth)(ASIC Act). As outlined in the Supplementary Consultation paper, there are important differences between the ACL and financial services law in Australia which means that mirroring any unfair trading prohibition requires careful consideration. Once options to amend the ACL have been considered and agreed in consultation with States and Territories, consideration will be given to what changes, if any, are required in respect of financial services regulated by the ASIC Act to ensure appropriate alignment.

Policy context

The most common theme among problematic UTPs not presently adequately covered by ACL provisions is that they involve the manipulation of consumers or distortion of consumer choice, causing them detriment or harm.

While businesses will always attempt to influence consumers to promote and sell products and services, the tactics used on consumers can stray beyond traditional advertising and marketing practices into harsher behaviour that is unreasonably manipulative and unfair. The ACL already provides consumers protections against certain unfair behaviours by businesses in a range of contexts, however as commercial practices change and develop, new ways of interacting with consumers, often digitally, have become more prevalent. Increasing complexity and sophistication of digital products, services and marketplaces and associated technologies provide new opportunities for businesses to influence consumer decision-making.

Modern consumers are subjected to unprecedented volumes of, and channels for, commercial interactions and are more susceptible to being steered, confused, and overwhelmed which provides opportunity for exploitation. Manipulative and distortive conduct exploits inherent human biases and heuristics – the mental shortcuts people use when making decisions and solving problems. Consumers’ reliance on these shortcuts can increase when they are under stress or pressure, resulting in more impulsive decisions. Potential harms observed can range from financial to other losses like time, mental work and exertion.

While the types of conduct businesses engage in differ based on their individual business models, channels and technologies, principles-based interventions set a behavioural standard that protects consumers regardless of how technologies and business practices evolve over time.

The general protections contained in Chapter 2 of the ACL are principles-based provisions regulating behaviours across different circumstances and industries. These provisions, including against misleading or deceptive conduct, and unconscionable conduct, have proven to offer enduring protections as commercial practices evolve.

Dark patterns

Dark patterns, as described above in the Problem section, provide businesses with the opportunity for quick and highly targeted interactions with consumers. They can be deployed on a large scale using

modern technology and digital interfaces. This unprecedented speed and scale, and opportunities for targeting individual preferences and behaviours, distinguish dark patterns and their impacts from more conventional marketing practices. Exploitation can be subtle and highly contextual to take advantage of perceptual and comprehension vulnerabilities of consumers. This can shift the function of marketing and the user journey away from persuasion towards manipulation, often at the expense of transparency and consumer autonomy. The automation of updates to user experiences and interfaces (such as through iterative A/B testing)⁶⁴ means that dark pattern occurrences may not always be intentional but when left unchecked they can have a significant impact on consumer behaviour or decision-making i.e. they can be profitable ‘accidents’ for a business. Additionally, while individual dark patterns can be harmful, often it is the cumulative effect of these patterns that has the largest impact to manipulate or distort consumer choices and behaviours and cause harm.

Consultation Outcomes

Overall, there was support for a principles-based prohibition on UTPs. Most stakeholders suggested amendments to the proposed formulation to better achieve the policy objectives, however there was significant variance in the suggestions. Support was strongest from government, consumer advocates and academic stakeholders. Industry stakeholders generally did not support a general prohibition, arguing that:

- practices identified by Treasury as examples of UTPs are already effectively addressed by existing protections in the ACL
- the proposed prohibition creates uncertainty for businesses which will increase the cost and complexity of providing services and products to consumers
- the problematic issues identified are primarily in the digital space and should be addressed through sector-specific or targeted reform, such as regulation of digital platforms.

Design of a general prohibition

The Supplementary Consultation paper proposed the general prohibition capture a business’s conduct where it:

- unreasonably distorts or manipulates, or is likely to unreasonably distort or manipulate, the economic decision-making or behaviour of a consumer and
- causes, or is likely to cause, material detriment (financial or otherwise) to the consumer.

There was no clear consensus from stakeholders on the most appropriate concepts to incorporate into the general prohibition. In particular, there were mixed views on proposed design elements including use of the concepts of ‘unreasonably’, ‘distorts’, ‘consumer’ and ‘manipulates’, and the requirement for ‘material detriment’.

The Law Council of Australia and the Shopping Centre Council of Australia submitted that requiring conduct to be ‘unreasonable’ introduces an objective standard and an assessment of the relevant facts and circumstances,⁶⁵ and consideration of the regular practices of an industry.⁶⁶ Dr Benjamin Hopper considered that the notion of ‘unreasonableness’ is unnecessarily vague in the context of the

⁶⁴ In user interface contexts, A/B testing refers to a user research method where two versions (version A and version B) of a design (such as in a website or application) are presented to users to test what performs better. This could take the form of minor layout variations including changes to language, colours, sizes and other interface elements. Performance can relate to higher user engagement, click-through, and sale conversion rates, for example.

⁶⁵ Law Council of Australia submission to the Supplementary Consultation, p.10.

⁶⁶ Shopping Centre Council of Australia submission to the Supplementary Consultation, p.4.

ACL, making it difficult for businesses and consumers to determine when conduct breaches the proposed prohibition.⁶⁷

The Business Council of Australia (BCA) instead supported incorporating a 'legitimate business interest' element (importantly, not phrased as a rebuttable presumption), submitting that it is already used in respect of the ACL's unfair contract terms prohibition and will lead to greater certainty than 'unreasonable'.⁶⁸ Other stakeholders, including National Legal Aid and the Joint Consumer Advocates, opposed this approach arguing it focuses on the intentions of the business rather than the impact on the consumer, and does not sufficiently protect consumers.⁶⁹

The Centre for Artificial Intelligence and Digital Ethics (the University of Melbourne) submitted that conduct that 'distorts' the economic decision-making or behaviour of consumers encompasses all the kinds of behaviours and practices raised in the Supplementary Consultation paper.⁷⁰ The Australian Chamber of Commerce and Industry (ACCI) submitted that the terms 'unreasonably distorts or manipulates' is very subjective and their inclusion will lead to greater uncertainty for businesses.⁷¹ A few stakeholders raised concerns that targeting conduct that 'unreasonably manipulates' may unintentionally capture legitimate design and marketing conduct, as marketing is intended to influence consumer behaviour.

Dr Luke Nottage and the Competition & Consumer Committee of the Law Council considered that the use of 'decision making' is duplicative as a decision is a kind of behaviour.⁷²

The BCA submitted that there is uncertainty as to who is 'a consumer' and recommended the prohibition clarify the test is an average consumer.⁷³ Other stakeholders cautioned against limiting protection to the average consumer, stating this standard could disadvantage vulnerable consumers. The University of Melbourne considered an average consumer standard ignores the reality that consumers are a heterogeneous group, experiencing and engaging with information and the marketplace in varying ways (especially given rapid developments in information provision and the digital marketplace).⁷⁴

A number of industry stakeholders, including the BCA and the Tech Council of Australia,⁷⁵ supported a requirement for detriment to be material. The Tech Council of Australia argued a general prohibition should focus on material detriment to consumers rather than on cases where it is unclear if there has been detriment at all.⁷⁶ Other stakeholders argued it raises the statutory threshold too high and is inconsistent with the UCT provisions, which can cause confusion for businesses and courts.⁷⁷ The Law Council of Australia considered limiting the prohibition to only those cases where detriment is material may fail to address potentially harmful practices that affect consumers in subtle, long-term or collective ways.⁷⁸ Concerns were also raised about the combination of the 'unreasonableness'

⁶⁷ Dr Benjamin Hopper submission to the Supplementary Consultation, p. 2.

⁶⁸ BCA submission to the Supplementary Consultation, pp. 7-8.

⁶⁹ Joint Consumer Advocates submission to the Supplementary Consultation, p. 9; National Legal Aid submission to the Supplementary Consultation, p. 3.

⁷⁰ Centre for Artificial Intelligence and Digital Ethics submission to the Supplementary Consultation, p. 2.

⁷¹ Australian Chamber of Commerce and Industry submission to the Supplementary Consultation, p. 2.

⁷² Dr Luke Nottage submission to the Supplementary Consultation, p. 2; Law Council of Australia submission to the Supplementary Consultation, p. 12.

⁷³ BCA submission to the Supplementary Consultation, p. 8.

⁷⁴ Centre for Artificial Intelligence and Digital Ethics submission to the Supplementary Consultation, pp. 3-4.

⁷⁵ Business Council of Australia submission to the Supplementary Consultation, p. 8; the Tech Council of Australia submission to the Supplementary Consultation, p. 5.

⁷⁶ The Tech Council of Australia submission to the Supplementary Consultation, p. 5.

⁷⁷ ACCC submission to the Supplementary Consultation, p. 10; Dr Mark Giancaspro submission to the Supplementary Consultation, pp. 3-4.

⁷⁸ Law Council of Australia submission to the Supplementary Consultation, p. 13.

requirement in the conduct element and the material detriment requirement in the detriment limb, potentially creating too high a statutory threshold.

The ACCC supported including reference to detriment other than financial loss.⁷⁹ The Law Council of Australia submitted the definition of detriment could be expanded to include psychological, emotional, and trust-based harms, arguing many unfair practices may not lead to immediate or large financial losses but can cause significant harm to consumers' trust, decision-making, and long-term well-being.⁸⁰ Consult Australia and the Tech Council argued detriment should be limited to financial detriment only, rather than subjective concepts of detriment including emotional detriment.⁸¹

Grey list

The Supplementary Consultation also proposed that the ACL specify a non-exhaustive and illustrative list of examples of conduct ('grey list') which may, depending on the circumstances, meet this test to provide guidance. The suggested grey list items to support the prohibition include:

- The omission of material information
- The provision of material information to a consumer in an unclear, unintelligible, ambiguous or untimely manner, that overwhelms, or is likely to overwhelm, a consumer
- Impeding the ability of a consumer to exercise their contractual or other legal rights, or
- Use of design elements in online consumer interfaces that unduly pressure, obstruct or undermine a consumer in making an economic decision.

Stakeholders were generally supportive of the grey list approach, submitting that its inclusion would provide greater certainty and guidance to businesses and regulators on how the prohibition will be interpreted. Consumer Advocates jointly considered that it balances the benefits of a principles-based law to stop unfair business practices with the benefits of clarifying key matters to make the law easier to apply.⁸² Consult Australia submitted that the grey list is too open-ended, too vague and seemingly can apply to any conduct.⁸³ BCA was concerned the grey list in practice will become a 'black list' – i.e. interpreted by some stakeholders as a comprehensive list of prohibited conduct – and recommended items be incorporated in the explanatory memorandum rather than the legislation itself.⁸⁴

Some stakeholders suggested additions to a grey list, such as:

- Post-sale practices and failing to provide an accessible and effective point of customer service support.⁸⁵
- Specific practices such as misleading countdown timers, pre-ticked boxes or preselection, default opt-in subscriptions,⁸⁶ false hierarchy, and confirmshaming.⁸⁷

⁷⁹ ACCC submission to the Supplementary Consultation, p. 11.

⁸⁰ Law Council of Australia submission to the Supplementary Consultation, p. 13.

⁸¹ Consult Australia submission to the Supplementary Consultation, p. 5; Tech Council of Australia submission to the Supplementary Consultation, p. 5.

⁸² Joint Consumer Advocates submission to the Supplementary Consultation, p. 10.

⁸³ Consult Australia submission to the Supplementary Consultation, p. 4.

⁸⁴ Business Council of Australia submission to the Supplementary Consultation, pp. 5-6.

⁸⁵ ACCC submission to the Supplementary Consultation, p. 13.

⁸⁶ Law Council of Australia submission to the Supplementary Consultation, p. 14.

⁸⁷ Centre for Artificial Intelligence and Digital Ethics submission to the Supplementary Consultation, p. 7.

Dark patterns

The Supplementary Consultation sought feedback on dark patterns, including if the proposed general prohibition would meaningfully address the various types of dark patterns and their use across different sectors, applications and channels.

Many stakeholders were supportive of the proposed general prohibition's capacity to address dark patterns. The ACCC considered that a general prohibition should capture dark pattern conduct that falls outside the existing ACL protections,⁸⁸ while ASIC considered that a broad prohibition is likely to be responsive to future needs and exploitative digital choice architecture.⁸⁹ Consumer advocacy groups and academics also expressed support, some with suggestions around changes to coverage and definitions. For example, Consumer Advocates jointly advocated for bans to cover certain data extractive and subscription-related dark patterns,⁹⁰ while some academics considered that the use of false hierarchies, 'confirmshaming', and pre-selections should be included on any grey list.⁹¹ Specific patterns of concern would be considered in developing any grey list.

The Internet Association of Australia argued that specific prohibitions or an industry code applying to digital platforms could be introduced to address the use of dark patterns, whilst the Australian Retailers Association suggested they could be addressed through a specific amendment.⁹² The Federal Chamber of Automotive Industries argued that a general UTP prohibition would introduce additional regulatory requirements that may result in increased compliance costs.⁹³

Other mostly industry-based stakeholders were unsupportive or expressed caution on reform targeting dark patterns. Their concerns and feedback largely centred on 3 issues.

- Stakeholders, including the Law Council, argued that the existing ACL protections, particularly against misleading or deceptive conduct, are sufficient to address problematic dark patterns.⁹⁴
- Secondly, there is a view that new interventions may result in overreach into established or normalised marketing and notification practices. The ACCI, the Retail Drinks Association and the Tech Council of Australia submitted that certain behaviours that may be labelled as dark patterns may instead be of benefit to consumers.⁹⁵ This includes interface design choices that represent helpful behavioural cues, or marketing practices not unlike those deployed in physical stores and contexts.⁹⁶ Digital Industry Group Inc (DIGI) submitted that new prohibitions would have a potential to disadvantage e-commerce over analogue retail.⁹⁷
- Finally, caution was expressed on the potential for regulations to duplicate or be out of step with the requirements of the Privacy Act and oversight of the Office of the Australian Information Commissioner (OAIC). As many dark patterns can involve the collection and handling of personal information, stakeholders including DIGI and the Insurance Council of Australia expressed that these are and should remain the domain of the privacy regulatory framework.⁹⁸

⁸⁸ ACCC submission to the Supplementary Consultation, p. 13.

⁸⁹ ASIC submission to the Supplementary Consultation, p. 9.

⁹⁰ Joint Consumer Advocates submission to the Supplementary Consultation, p. 18.

⁹¹ Centre for Artificial Intelligence and Digital Ethics submission to the Supplementary Consultation, p. 7.

⁹² Internet Association of Australia submission to the Supplementary Consultation, p. 3; Australian Retailers Association submission to the Supplementary Consultation, p. 8.

⁹³ Federal Chamber of Automotive Industries submission to the Supplementary Consultation, p. 4.

⁹⁴ Law Council of Australia submission to the Supplementary Consultation, p. 7.

⁹⁵ The ACCI submission to the Supplementary Consultation, p. 3; Retail Drinks Australia submission to the Supplementary Consultation, p. 2.

⁹⁶ The Tech Council submission to the Supplementary Consultation, pp. 6-7.

⁹⁷ DIGI submission to the Supplementary Consultation, p. 5.

⁹⁸ DIGI submission to the Supplementary Consultation, pp. 9-10; Insurance Council of Australia submission to the Supplementary Consultation, p. 7.

Treasury notes that matters relating to the handling and collection of personal information remain the remit of the Privacy Act and OAIC.

Policy proposal

The policy proposal is reform to the ACL to introduce a general, principles-based prohibition on UTPs. While the exact wording and elements of the prohibition will be finalised during the legislative drafting process, it is proposed that the prohibition target business conduct that:

- **Is unreasonable**
This requirement sets an appropriate threshold to capture a range of UTPs which cause consumer harm, ensuring the prohibition is targeted at sufficiently serious conduct without capturing fair business conduct (such as legitimate marketing and advertising practices). What is unreasonable would depend on the relevant circumstances, including the nature of the product or service and industry. The alternative of introducing a 'legitimate business interest' element would not be appropriate, with stakeholder feedback demonstrating that such a test could allow certain harmful practices to continue if they have been proven necessary for the particular business model in question.
- **Distorts or manipulates consumer decision-making or behaviour (or is likely to)**
There was stakeholder support for a general prohibition to target conduct that distorts, as it covers the range of unfair practices canvassed in the Supplementary Consultation and aligns with the wording of the EU Unfair Commercial Practices Directive (the EU Directive).⁹⁹ Targeting conduct that manipulates ensures that the scope of the prohibition includes practices that lead consumers into decisions they would not otherwise make, and is anticipated to also address dark patterns that have the greatest capacity for causing consumer harm. When drafting any legislation, further consideration would be given to whether the general prohibition should include reference to both the 'decision-making' and 'behaviour' of a consumer. For example, referencing 'economic behaviour' only would mirror the language of the EU Directive.
- **Causes detriment (or is likely to)**
The Supplementary Consultation proposed the prohibition incorporate a requirement that the conduct cause material harm to the consumer. Acknowledging stakeholder concerns that material harm creates a high statutory threshold and may fail to address UTPs which cause cumulative harm (both in terms of multiple or repeated impacts on a particular individual and in terms of aggregate impacts across many consumers or cohorts), it is proposed that only detriment, rather than 'material detriment', must be established to satisfy the test. The 'unreasonable' requirement, together with the requirement for detriment, will ensure that the prohibition only captures significant or serious conduct. There is also benefit in aligning the prohibition more closely with the EU Directive and the unfair contract terms provision in the ACL, as existing jurisprudence can provide guidance and more certainty for businesses and regulators. It is proposed that the general prohibition target non-financial detriment as well as financial detriment to consumers. This reflects that consumers may experience harms outside of economic detriment from UTPs.
- **Impacts 'a consumer'**
The inclusion of 'a consumer' limits the application of the prohibition to conduct that impacts consumers and not businesses or other entities.

⁹⁹ European Union, [Unfair Commercial Practices Directive](#), European Union, 2022, accessed 9 July 2025.

The proposed general prohibition is principles-based and intended to capture a range of conduct. During the legislative drafting process, options will be explored to ensure it appropriately captures specific conduct of concern and that businesses and consumers can understand its effect. This could be through the ‘grey list’, which may be included in the legislation itself, the Explanatory Statement or regulatory guidance as examples of conduct that will breach the general prohibition. In addition to the examples of specific conduct listed in the Supplementary Consultation, consideration will also be given to whether post-sale conduct of concern (such as inhibiting access to, or enjoyment of, a good or service already purchased) or other practices should be included.

Policy considerations from consultation and analysis

The feedback provided through consultation was important in assessing and refining the policy proposal. As discussed above, some stakeholders suggested intervention should be restricted to target dark patterns only, or highlighted the efficacy of existing ACL protections against misleading or deceptive conduct, and the potential for regulatory scope overreach. In respect of dynamic pricing, some stakeholders queried the extent to which dynamic pricing is being used in Australia, or might be used in the future, and whether the ACL would already sufficiently address this conduct.

While a specific dark patterns prohibition may seem like a more focused regulatory option, the use of dark patterns is not limited to any single industry and any proposals directed towards them would still need to apply broadly across the economy. The volume, variety and evolving forms of dark patterns also make categorising and classifying conduct challenging. More targeted intervention which only seeks to address these practices in specific contexts risks being overtaken as the modalities¹⁰⁰ – the different ways or methods through which users interact with systems and devices – and interface types between businesses and consumers evolve. For example, consultation revealed concerns about the increasing prospect of internet-connected devices which can initiate purchases through voice interactions. With this in mind, the proposal targets the underlying conduct of manipulation or distortion of consumers underpinning especially harmful patterns, regardless of medium or modality.

Some stakeholders observed that existing general prohibitions in the ACL, for example against misleading or deceptive conduct, already offer strong protections against misconduct and have been the basis for enforcement action against businesses including digital platforms.¹⁰¹ However as outlined in the Problem section above, there remains some unfair business practices that go beyond the scope of current ACL protections, which are the focus of this proposal. Where business conduct falls into these gaps or grey areas in the ACL, regulators are limited in their ability to take enforcement action.

Consistent with the broader policy intent of the ACL, this proposal is not intended to stifle or impede businesses from engaging in legitimate marketing activities. The proposed general prohibition against UTPs seeks to capture conduct that unreasonably manipulates or distorts consumer decision-making or behaviour. This is intended to draw a distinction from responsible marketing behaviour and conduct, which may influence consumer behaviour without going so far as to unreasonably manipulate or distort. The ACL already contains a number of provisions which protects consumers against certain types of potentially invasive marketing practices. For example, the prohibitions relating to unsolicited consumer agreements¹⁰² (such as door to door sales) and undue harassment or

¹⁰⁰ Other example modalities for interaction can include touch (as with smartphone or tablet touchscreens), visual (what is visible on a screen, such as buttons and icons), gestural (interaction with physical gestures as is common in virtual reality and motion sensing devices) or tactile (feedback that can be felt like phone vibrations or haptic feedback from a controller).

¹⁰¹ See examples: ACCC [\\$20m penalty for Meta companies for conduct liable to mislead consumers about their use of data](#) [media release], ACCC, 26 July 2023, accessed 9 July 2025; ACCC, [Google LLC to pay \\$60 million for misleading representations](#) [media release], ACCC, 12 August 2022, accessed 9 July 2025.

¹⁰² Section 69 of the ACL.

coercion.¹⁰³ This proposal would similarly seek to address manipulative behaviours identified in this paper.

Potential Benefits

The benefits of this proposal are primarily tied to enduring and enhanced consumer protection against UTPs that are not already prohibited under the ACL. The normative and behavioural benefits include sending a strong signal to businesses to encourage competition and marketing through consumer-centric and consumer-friendly practices in the Australian market. Identified benefits are outlined below.

Cost savings and enhanced consumer protections

Reduced risk and incidence of consumers making unwanted purchases, purchases that are not in their interests, or spending more than they otherwise would have because of manipulative or distortive business practices.

Enhanced consumer choice and autonomy

A general prohibition will target manipulative and distortive business practices that can impact a consumer's ability to make informed decisions about which products and services best suit their needs, enhancing consumer choice and autonomy.

Enhanced and enduring consumer protection against a wider range of current and emerging harmful business conduct

A principles-based general prohibition will enable the law to have sufficient flexibility to combat both current and emerging UTPs. Business practices and the products and services available to consumers are constantly evolving in response to new technology, global commerce and changes in consumer behaviour. A general prohibition is the most effective way to future proof UTP protections and to regulate business behaviour across circumstances and sectors.

Higher demand for higher quality products and services

A general prohibition will help establish a normative standard of conduct that requires businesses to compete more on merit and the quality of their products and services, rather than their ability to manipulate consumers. This will drive economic efficiencies and innovation.

Improved trust in the market

Trust and confidence underpin effective, well-functioning markets. Consumers who perceive markets as unfair or populated by businesses engaging in tactics which attempt to distort their purchasing decisions may be discouraged from transacting. A general prohibition which targets distortive and manipulative business practices could give increased confidence to consumers to engage in markets, promoting greater overall demand.

Ensuring regulatory consistency

Introducing a general prohibition will reduce the likelihood that states or territories introduce new, but potentially inconsistent, state-based legislation targeted at unfair practices that fall into gaps in the ACL. For example, the ACCC has observed an increase in state-based legislation and regulations aimed at requiring upfront disclosure of pricing and terms and conditions in various sectors, and noted that this would likely be unnecessary if there was a prohibition on UTPs.¹⁰⁴

¹⁰³ Section 50 of the ACL.

¹⁰⁴ ACCC submission to the Productivity Commission Inquiry into Australia's productivity performance (April 2022), p. 9.

A general prohibition is the best way to ensure a nationally consistent approach to regulating UTPs. This will also reduce regulatory burden for businesses by avoiding inconsistency or overlap in laws at both the federal and state levels.

Regulation impact summary

This proposal is not expected to result in any costs to consumers or to community groups. The affected stakeholders are consumer-facing businesses that will need to update their practices in order to comply with the new regulations.

Implementation costs to businesses

Legal and compliance costs

Businesses will need to invest time and resources to understand the new prohibition. Some businesses may incur costs for legal advice to interpret the legislation and understand the impacts for their operations. The potential need for legal advice arises from the uncertainty of how a new general prohibition will operate, particularly before there has been an opportunity for judicial consideration, and the increased compliance risk to businesses as a result. Regulators will undertake outreach to inform businesses of the changes to the law and provide guidance materials. This may, in some cases, reduce potential compliance costs by making it easier for businesses to understand and comply with their obligations.

Staff training

Businesses may as part of their regular induction and training revise how they educate their staff on the operation of the new prohibition and any new obligations. Training programs will be particularly relevant for employees in sales, marketing and customer service.

Reviewing and modifying business practices

Businesses may need to audit their existing practices (such as digital interfaces, marketing strategies and customer engagement) to ensure compliance with the new prohibition. This could necessitate some businesses to make changes or updates to their operational processes or to implement oversight systems.

IT costs and system enhancement

Depending on the nature of their business, businesses may need to update their websites and apps to ensure compliance with the new prohibition.

E-commerce and shopping cart platforms

Many businesses use third-party tools and platforms to design and manage their online presence. E-commerce platforms, shopping cart software, and user experience (UX)/user interface (UI) design software all provide services that facilitate businesses to run their sites, including how they market and present goods and services, account options and settings, and payment handling. Interface design resources, design app stores and plug-ins enable businesses to deliver targeted marketing, promote upselling and cross-selling, implement countdown timers and other functions directly into their consumer-facing interfaces.

Because of their prominent role hosting, encouraging and fulfilling commercial transactions, e-commerce platforms through their usual business may need to review their internal service and marketing offerings.

Ongoing costs to businesses

Following a transitional period, compliance is not anticipated to impose material ongoing costs. Business operators would be alive to this behavioural standard in the same way they routinely uphold ACL requirements not to engage in misleading, deceptive or unconscionable conduct. However, beyond any formal compliance transitional periods, it may take some time for judicial precedents to be established.

Compliance and legal costs are also likely to reduce once the law is more established and has been interpreted by the courts, providing businesses with greater certainty on the law’s scope and operation (noting however that the speed at which this will occur is uncertain).

While not a regulatory cost, the changes may result in a redistribution of customers between businesses, as businesses that currently employ manipulative practices are forced to compete on their merits (for example on the basis of quality and price of products).

Costs to government

Regulators will initially incur costs associated with developing and issuing guidance materials, and working with businesses to understand their compliance obligations. Regulators will also incur costs in seeking compliance with, and pursuing enforcement of, the new prohibition in their business-as-usual work.

Option 3: regulation impact summary

Costs

No costs are forecast for consumers (the primary beneficiaries of this proposal) or for community organisations under this proposal.

Treasury estimates an annual regulatory burden of \$93.82 million in change in costs to businesses over 10 years. Further information is at Appendix B, which outlines the costs affected businesses are likely to incur to understand and familiarise themselves with the reforms, and the costs some businesses are likely to incur to adjust their business practices to comply with the reforms and/or seek legal advice.

Table 1: Regulation Burden Estimate Option 3

Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	\$ 93.82	\$ -	\$ -	\$ 93.82

Benefits

A general prohibition is likely to enhance competition, consumer protection and consumer choice which will result in cost savings for consumers. These benefits have not been quantified as there is no reliable data available on the benefits accruing to consumers from comparable economy wide and principles based general prohibitions (such as misleading or deceptive/unconscionable conduct prohibitions in the ACL or comparable provisions in other jurisdictions).¹⁰⁵ However, in order for this

¹⁰⁵ In 2024, the European Commission conducted a fitness check of EU consumer law on digital fairness, which focused on 3 key directives: the Unfair Commercial Practices Directive (which contains a general prohibition of unfair commercial

consumer benefit to exceed the costs to business, each consumer aged 16 and over in Australia¹⁰⁶ would only need to benefit \$42.52 (for example, in cost and time savings) over 10 years to outweigh the estimated costs of Option 3. Given the prevalence of manipulative and/or distortive conduct that will be prevented by the prohibition, it is expected that the benefit will exceed the costs, likely significantly.

practices), the Consumer Rights Directive and the Unfair Contract Terms Directive. The review estimated that the online practices these directives target cost EU consumers €7.9 billion each year, with the cost to businesses to comply with these laws not exceeding €737 million per year. However, the review did not quantify the benefits from the Unfair Commercial Practices Directive alone and only analyses the impact of online practices. European Commission, [Fitness Check of EU consumer law on digital fairness](#), European Commission, 2022, accessed 9 July 2025.

¹⁰⁶ This assessment assumes the entire Australian population (16 and over) will be impacted by the proposed general prohibition as it is an economy wide reform.

Option 4 – Introduce a combination of general and specific prohibitions on unfair trading practices

Option 4 combines the general prohibition outlined above for Option 3 with specific reform to the ACL targeted at particular unfair business conduct.

Policy context

While the ACL contains general principles-based provisions, such as the prohibition on misleading and deceptive conduct, which capture a wide possible range of conduct, it also has a number of provisions targeting specific conduct. For example, Part 3-1 of Chapter 3 of the ACL sets out specific protections against certain defined business practices, including offering gifts and prizes with no intention to supply them, or not supply them as offered; bait advertising and pyramid selling schemes. These provisions apply generally to all businesses.

As previously noted, the Supplementary Consultation sought feedback on specific problematic unfair trading practices which could be addressed by enacting specific prohibitions in (or reforming existing provisions of) the ACL. Following that consultation, consideration has been given to specific reforms to target unfair subscription practices and strengthen protections against drip pricing.

Subscriptions

Consultation Outcomes

The Supplementary Consultation consulted on 4 non-exclusive options to address unfair subscription practices:

- Option 1 – requiring businesses to disclose certain material information about a subscription contract prior to the consumer signing up for the subscription
- Option 2 – requiring businesses to notify customers at key points of the subscription process
- Option 3 – requiring businesses to seek express consent from consumers before the end of any free trial or promotional period to continue on to a full priced subscription
- Option 4 – removing barriers to cancelling a subscription.

There was general stakeholder support for reform to the ACL to specifically address unfair subscription practices. Many stakeholders were in favour of adopting a combination of the proposed options to address issues occurring at different stages of the subscription process.

Option 1 – pre-sale disclosure of material information

A number of stakeholders, including the ACCC, the Joint Consumer Advocates, DIGI and the Tech Council, were supportive of requiring businesses to disclose material information at the pre-sale stage. The BCA noted there have been many lengthy debates about the effectiveness of consumer disclosure requirements which have been subject to detailed design.¹⁰⁷

Stakeholders supported confining disclosure to essential facts about subscription, such as:

- The fact that the consumer is entering, or will enter after the end of a free trial/promotional period, a subscription contract

¹⁰⁷ Business Council of Australia submission to the Supplementary Consultation, p. 10.

- The price and term of the subscription
- The renewal period (including any cancellation notice requirements)
- Information on how to cancel the subscription.

The Tech Council did not support the inclusion of prescriptive lists of specific information that must be disclosed to consumers signing up to a subscription, submitting that this approach can lead to large blocks of text that are less likely to be read and understood by consumers. The Tech Council also considered a requirement for material information to be provided in a specific form would be difficult to implement across different platforms and services.¹⁰⁸

Stakeholders cautioned that greater disclosure of information alone will not reduce consumer harm and recommended this option be introduced alongside other options. The ACCC noted that disclosure of this information will be competing with other strategies used by businesses for customer attention at the pre-sale stage, and that further information has an immaterial impact when customers feel they have no choice but to purchase regardless.¹⁰⁹

Option 2 – notification requirement

The ACCC considered notification requirements would assist consumers to make informed decisions about cancelling or continuing a subscription but highlighted the need for it to be implemented in conjunction with other options because often customers are time poor and could miss a notification.¹¹⁰ Consumer Advocates jointly submitted the requirement would provide clear information about when a charge is coming, allowing people to consider costs and act.¹¹¹

Some stakeholders were concerned that multiple reminders and emails on a repetitive basis may be a nuisance to consumers and may give rise to notification information fatigue. Suppliers of subscriptions for physical goods submitted that notification requirements may be unnecessary in certain circumstances, such as where there is a delivery of physical goods on subscription which, in and of itself, serves as a reminder to the customer.

A couple of stakeholders who supported Option 2 suggested the types of information that should be required to be provided in the notification, such as the minimum subscription renewal term, the minimum total cost for renewing the subscription and information about how to cancel a subscription.

Option 3 – opt-in requirement

The ACCC considered that an active opt-in requirement would ensure that consumers have genuine choice as to whether they wish to enter into a paid subscription after a free trial or introductory offer.¹¹² Consumer Advocates jointly submitted Option 3 would address the specific harmful practice of free trials that result in surprise charges.¹¹³

A number of industry stakeholders argued against progressing Option 3, with many raising concerns about the likely regulatory impact for businesses of complying with an opt-in requirement. ACCI considered requiring the customer to re-sign for the product at the end of the trial period is an unnecessary administrative burden on both the business and customer.¹¹⁴ The Tech Council submitted

¹⁰⁸ Tech Council of Australia submission to the Supplementary Consultation, pp. 7-8.

¹⁰⁹ ACCC submission to the Supplementary Consultation, p. 17.

¹¹⁰ ACCC submission to the Supplementary Consultation, p. 17.

¹¹¹ Joint Consumer Advocates submission to the Supplementary Consultation, p. 25.

¹¹² ACCC submission to the Supplementary Consultation, p. 17.

¹¹³ Joint Consumer Advocates submission to the Supplementary Consultation, p. 25.

¹¹⁴ ACCI submission to the Supplementary Consultation, p. 4.

an opt in requirement may encourage abuse of trial periods, with businesses potentially responding by limiting free trials.¹¹⁵

Option 4 - remove barriers to cancelling subscriptions

Option 4 received the most support from a broad range of stakeholders, including the ACCC, consumer advocates and some industry stakeholders. There was clear support for requiring businesses to provide customers with an easy to find, clear and accessible cancellation process and for requiring businesses to make the process for terminating a subscription as straightforward and easy as the process for subscribing.

Of the options provided, the Competition & Consumer Committee of the Law Council considered Option 4 to be the most likely to achieve stronger consumer-focused outcomes, ensure clarity of operation of the new provision, and minimise implementation costs to businesses.¹¹⁶ The Business Council for Sustainable Development Australia considered that this approach addresses unfair practices that trap consumers in unwanted services, promotes transparency, and enhances trust in the marketplace.¹¹⁷

Scope of proposed reforms

Some stakeholders expressed concerns about the potential for a broad definition of ‘subscription products and services’ to capture unintended products and services, such as retail leases/rental agreements.

Certain industry stakeholders advocated for businesses already covered by relevant sector specific regulation, such as the telecommunications sector, to be exempted from scope of any subscription reforms, citing concerns about the potential for overlap or conflict with existing industry consumer protections.¹¹⁸ Other stakeholders, including the TIO and National Legal Aid, supported any subscription reforms applying economy wide, arguing it is important that there are consistent consumer protections across all industries.¹¹⁹ The ACCC considered exemptions for certain sectors would risk creating gaps in the law and would likely create confusion for consumers and small business about the protections they have with any specific subscription.¹²⁰

There was also stakeholder support for the reforms to apply to subscription contracts where the customer is a small business, with stakeholders noting small businesses often experience the same issues as individual consumers with respect to subscriptions.

International subscription reform

Other international jurisdictions have pursued specific regulation to address unfair subscription practices. The UK’s *Digital Markets, Competition and Consumers Act 2024* places obligations on businesses to provide clear pre-contractual information to consumers before entering subscription contracts; send reminder notices at key points throughout their contract and provide consumers with easy exit options and access to cooling-off periods. The government consulted on its implementation in February 2025, but the provisions relating to the subscription regime are not yet in force.

In October 2024, the U.S Federal Trade Commission (FTC) adopted a final ‘click-to-cancel’ rule requiring businesses to make cancelling a subscription as easy as signing up. The FTC rule also required

¹¹⁵ Tech Council of Australia submission to the Supplementary Consultation, p. 7.

¹¹⁶ Law Council of Australia submission to the Supplementary Consultation, p. 23.

¹¹⁷ Business Council for Sustainable Development Australia submission to the Supplementary Consultation, p. 34.

¹¹⁸ Communications Alliance submission to the Supplementary Consultation, p. 3.

¹¹⁹ Telecommunications Industry Ombudsman submission to the Supplementary Consultation, p. 6; National Legal Aid submission to the Supplementary Consultation, p. 6.

¹²⁰ ACCC submission to the Supplementary Consultation, pp. 17-18.

businesses to provide important information about the terms of their subscription and obtain consumers' express informed consent before charging them. Businesses had until 14 July 2025 to comply with the rule's requirements, however prior to that date the rule was vacated by a federal appeals court on procedural grounds.¹²¹ Many US states have their own automatic renewal laws.

Germany's *Fair Consumer Contracts Act 2022* mandates that businesses enable consumers to terminate their subscription within '2 clicks'.

Subscription policy proposal

The subscription policy proposal is specific reform to the ACL to introduce positive obligations on businesses to address the detriment caused by unfair subscription practices. It is proposed this reform adopt a combination of subscription Options 1, 2 and 4 set out above, with the approach and formulation of each option to be finalised in the legislative drafting process. This approach broadly aligns with the approaches taken to subscription reform in the United Kingdom and the United States. Both jurisdictions developed their reforms in response to stakeholder feedback and industry research.

This proposal would require businesses to disclose material information clearly and prominently prior to the customer signing up for a subscription contract (Option 1). Material information will include pricing information, the renewal period (including any cancellation notice requirements) and details on how to cancel. This approach will ensure consumers are provided with the material information needed to make informed decisions about a subscription and are aware that they are signing up for an ongoing subscription contract before they enter into one.

This proposal also would require businesses to notify customers (Option 2):

- Before the end of a long-term contract if the contract will automatically renew unless cancelled and before the end of a free trial or promotional period if the consumer will become subject to an ongoing subscription unless cancelled.
- The notification will remind consumers that they are in a subscription contract, alert them that they are about to become liable for a payment and provide a cancellation mechanism. Businesses will be required to provide these notifications a reasonable period ahead of each renewal/end of a trial/promotional period, to ensure consumers are given adequate time to complete a cancellation before they are charged.
- For rolling monthly contracts, every 6 months. To address stakeholders concerns regarding notifications becoming a nuisance to the consumer or resulting in notification fatigue, it is not proposed that businesses be required to notify consumers ahead of every payment (i.e. each month). Instead, the proposal requires notifications at the frequency outlined above which ensures consumers are receiving useful information about their subscription, without being bombarded or overwhelmed by notifications.

This proposal does not include an opt-in requirement (Option 3). While an active opt-in requirement could reduce instances of consumers being rolled on to an ongoing subscription at the end of a free trial without their awareness, consultation feedback was this option could result in a high regulatory burden on businesses, and could consequently lead to businesses deciding to stop offering free trials. The subscription policy proposal, specifically the requirement for notifications before the end of a free trial or promotional period, will sufficiently address consumer detriment arising from unwanted

¹²¹ The United States Court of Appeals for the Eighth Circuit vacated the Rule on procedural grounds. United States Court of Appeals for the Eighth Circuit, No. 24-3469, *Custom Communications, Inc. et al. v. Federal Trade Commission*, July 8, 2025.

subscriptions rolling over to an ongoing subscription after a free trial, without the need for a specific opt-in requirement.

This proposal will also require businesses to ensure (Option 4):

- there is a straightforward method by which a consumer can exit their subscription contract
- that customers must not have to take steps that are not reasonably necessary to exit their contract
- that consumers who enter their subscription contracts online are able to exit online.

A principles-based approach to subscription Option 4, which aligns with key elements of the UK's approach to addressing subscription traps, is the best mechanism to address the range of issues faced by consumers cancelling subscriptions. What are 'reasonably necessary' steps will depend on the nature of the subscription product/service and the relevant industry. This approach seeks to address concerns raised during consultation about inadvertent cancellation resulting in consumer detriment (for example, being cut off from important services or lapses in policy coverage). It is expected that certain sectors will still require multi step cancellation processes and/or the provision of particular information to sufficiently protect the interests of their customers and for this reason, a 'one click' cancellation approach is not proposed.

Scope

This proposal is intended to apply economy-wide, to subscription contracts. While the precise definition of a 'subscription contract' will be determined during the legislative drafting process, they generally involve the offer of products and services on an ongoing basis, and contain provisions enabling the business to continue to charge for the products and services unless the consumer takes affirmative action to cancel.

Some specific subscription contracts will be excluded, with any sector specific exclusions to be determined during the legislative drafting process. Examples of subscriptions that are intended to be in scope are subscriptions for physical products such as magazines or food, digital streaming services, gym memberships, digital content, telecommunications products and services and software-as-service products.

However, while it is preferable for the proposed subscription reform to apply broadly in order to provide consumers with consistent consumer protections across all sectors and industries, there is potential for a broad application to capture unintended products and services. The policy intent is that certain subscription contracts that would otherwise be within scope of the proposed reforms will be excluded either because:

- there are existing regulations that apply to these contracts which provide appropriate consumer protection and the application of additional ACL protections would interfere with that appropriate protection, or
- the nature of the subscription products/services is such that the reform requirements would not be appropriate. For example, because a product or service is an essential service or because the product or service is charged exclusively on a usage basis.

Based on the above criteria, it is proposed that the following subscription contracts be excluded from scope:

- A contract for the supply of regulated utilities (electricity, gas, water)
- A residential or commercial lease agreement
- A contract for hire purchases or payments in instalments

- A contract for the supply of prescription healthcare products, and
- A contract for the supply of childcare or school education.

Further consideration will be given at the drafting stage to the application of the subscription proposal to recurring payments made to charities and not for profit organisations. However, the policy intent is that recurring donations not provided in exchange for a product or service will not be in scope.

The subscription policy proposal applies to standard form subscription contracts entered into by small businesses, as well as consumers. The most effective mechanism for extending protections to small businesses will be determined during the legislative drafting process.

Potential Benefits

Reduced costs of unwanted subscriptions

This proposal is likely to reduce costs for consumers associated with unwanted subscriptions, by making it easier for them to cancel subscriptions they no longer want or use. Notifications which alert consumers to the end of a free trial or promotional period can also reduce instances of consumers being auto renewed or rolled over on to an ongoing full price contract without their knowledge.

Time burden for consumers

Consumers can spend significant time and effort navigating overly complex and complicated cancellation processes and dealing with customer service hurdles – for example, where a business requires a customer to cancel in person, even though the customer signed up for the subscription online. This proposal can save consumers time and money by requiring businesses to simplify their cancellation processes and ensuring that consumers who enter their subscription contracts online are able to exit online.

More informed consumer decision-making

By requiring businesses to disclose material information in a clear and prominent manner, businesses will be clear about their obligations not to have essential information about a subscription contract buried in long and complex terms and conditions. This can increase the engagement of consumers with key information about their subscription, which can reduce the likelihood of consumers signing up for an unwanted subscription or not comprehending the full implications of entering a subscription contract.

Increased switching and competition

Barriers for a customer to cancel a subscription contract may prevent or inhibit customers from switching from one provider to another. This may weaken incentives for businesses to innovate and competitively price, and make it more difficult for new entrants to win market share. This proposal will prevent businesses from imposing unreasonable barriers which trap consumers into subscription contracts, making it easier for them to switch providers and promoting greater competition. As a result, businesses which compete on quality, pricing and customer service will be more rewarded than those relying on difficult and confusing cancellation processes to retain customers.

Improved consumer confidence in the subscription market

Consumers may be deterred from entering into subscription contracts because of the perceived risks of being locked into an unwanted subscription. This proposal will empower consumers with key information about their subscriptions and enhance the ability of consumers to manage their subscriptions, which may encourage greater participation in the subscription market.

Potential Costs

Subscriptions

Fixed implementation costs

Understanding and implementing new requirements: Businesses will need to invest time and resources to understand and comply with the new regulatory requirements. Some businesses are likely to incur costs for legal advice to interpret legislation and understand the implications for their operations. Businesses may also need to conduct staff training programs to ensure compliance with the new regulatory requirements, for example to ensure new subscription products and services are launched with compliant disclosures.

IT costs and system enhancements: Implementing automated notification systems to alert consumers before renewals or trial expirations may require investment in software or third-party services. Websites and apps will need to be updated to include the information mandated by this proposal at the point of sale. Websites and apps will also need to be updated to incorporate simplified cancellation procedures.

Updating internal guidance and protocols: Businesses will likely incur costs associated with making changes to subscription terms and conditions, and internal guidance and documentation, for example where customer service protocols need to be revised to comply with easier cancellation requirements.

Potential reduction in revenue for some businesses

Easier cancellation processes may result in higher customer churn rates which could lead to a reduction in revenue for some businesses. The notification requirement could also result in fewer conversions of consumers from free trials to ongoing subscriptions, or more cancellations ahead of subscription renewal. However, firms that offer superior products or services may benefit from higher revenue if it is easier for customers to switch to their products or services.

Ongoing costs

Businesses may incur ongoing costs to maintain systems required to comply with the subscription proposal, however the size of these costs is unknown and is likely dependent on each individual business's internal processes.

Regulation impact summary (subscription proposal)

Costs

Treasury estimates that businesses offering subscription contracts will collectively incur implementation costs of \$19.57 million annually, over 10 years.

Ongoing compliance costs have not been estimated because the size of these costs are likely small in comparison to the initial costs.¹²²

Some businesses may also experience a reduction in revenue as a result of higher customer churn rates. The effect of this reduction has not been estimated. However, consumers are likely to spend much of these savings on other products and services, reducing this as a cost to businesses overall.

¹²² The UK Impact Assessment cited a report that found that on-going costs were meaningful only in relation to sending reminders to consumers about their subscriptions, and only for firms that used postal mail delivery and not electronically delivered reminders. The number of businesses that offer subscription services and exclusively communicate with their customers via postal delivery in Australia is unknown, however Treasury estimates it would be very small: DBT (UK), [Impact Assessment for the Digital Markets, Competition and Consumers Act: Subscription traps: annex 2 impact assessment](#), UK Government, 2023, p. 30.

Subscription management tools offered by e-commerce platforms or payment processors may also lower the regulatory burden for small and medium sized businesses. These tools can reduce costs for businesses by streamlining and automating aspects of the customer experience for subscription products and services, such as account cancellation and customer communication (see Appendix B for further explanation).

Benefits

The estimated annual consumer detriment from spending on unwanted subscriptions by consumers aged 16 and above is \$971 million.¹²³ It is estimated that the average Australian over the age of 16 has 2.9 subscriptions (excl telecommunications) and 5% of these are unwanted, with the average monthly cost of a subscription estimated at \$25.29 per month. See Appendix B for further detail.

It is expected that consumers will reduce their spending on unwanted subscription contracts as a result of the subscription proposal, but it has not been quantified just how many of these unwanted subscriptions will be reduced as a result. However, to outweigh the estimated regulatory cost of \$19.57 million annually over 10 years, the consumer spending on unwanted subscriptions by subscription holders¹²⁴ would need to decrease by 2.02%,¹²⁵ which is a likely outcome of these reforms.

Reducing barriers to cancelling subscription contracts and providing consumers with greater information to manage subscriptions could enhance competition and result in more informed consumer decision making. These effects have not been estimated.

Small businesses often pay for subscription services and products to streamline operations, for example accounting software or design programs. However, although the proposal also benefits small businesses that use subscription products and services, the benefit to small businesses from the proposal has not been quantified due to a lack of data on business subscription use. Accordingly, the assessment underestimates the total spending on unwanted subscriptions in Australia and the total potential benefit of subscription reform proposal reforms.

Drip Pricing

Consultation Outcomes

Overall, there was support among government, consumer and legal stakeholders for amending the ACL to further strengthen existing protections against drip pricing. Of the reform options available, strongest support was shown for requiring businesses to disclose prominently and upfront any mandatory 'per transaction' fees to be applied during a purchasing process. The ACCC, the Joint Consumer Advocates, Music Australia, National Legal Aid and the Australian Live Music Business Council (ALMBC) all supported this option.

However, some industry stakeholders including ACCI, BCA, DIGI and Live Performance Australia opposed reform on the basis that the existing provisions in the ACL which protect against drip pricing, misleading or deceptive conduct and false or misleading representations, are sufficient to protect consumers. These stakeholders also considered that there is no evidence of harm to warrant reform.

¹²³ It is assumed that Australians under the age of 16 are less likely to directly hold subscription contracts.

¹²⁴ There is no data available on specific cohorts that are more likely to hold unwanted subscriptions. Accordingly, it is assumed that the entire Australian population (16 and over) are subscription holders (with an average of 2.9 subscriptions per person, 5 per cent of which are unwanted, see Appendix B).

¹²⁵ Reduction in spending on unwanted subscriptions equals (estimated annual costs) divided by (estimated annual consumer detriment).

Proposal

The drip pricing policy proposal is a specific reform to the ACL to require businesses to disclose prominently and upfront any mandatory ‘per transaction’ fees to be applied during a purchasing process. ‘Per transaction’ fees are those which are quantified and applied on a per transaction rather than a ‘per item’ basis – for example, mandatory handling fees that are applied per transaction regardless of the number of items that are purchased by the consumer.

The policy proposal would require businesses to:

- Disclose that per transaction fees will be charged, and the amount to be charged
- Make this disclosure upfront – as early as possible in the purchasing process when the business is first able to quantify the transaction fee
- Make this disclosure prominently – for example, not in fine print and not obscuring this information by requiring consumers to visit another webpage or pop-up etc.

It is intended that the above policy proposal would not impact the existing obligation under the ACL for businesses to not represent part of the price for goods or services without also disclosing the minimum quantifiable price (also known as the ‘single price’) at least as prominently.¹²⁶ The exact formulation and approach of this reform will be finalised in the legislative drafting process.

Potential Benefits

More informed consumer decision-making

Disclosing ‘per transaction’ fees early in the purchasing process will enable consumers to make more informed purchasing decisions. They will be more aware of the total price that they will ultimately pay to purchase a good or service at an earlier stage in the purchasing process when they may feel more able to ‘quit’ that transaction if they object to the total price that will be charged. Increased access to pricing information is also likely to result in consumers more easily shopping around and comparing prices among businesses for a better deal, which can save them money.

Consistency with existing provisions in the ACL regulating drip pricing

There are several provisions of the ACL that regulate drip pricing (see Appendix A for more detail). The policy intent behind these provisions, which protect consumers from paying more than they initially intended or expected to in a transaction, applies equally to ‘per transaction’ fees for which there is currently no express requirement to be disclosed upfront despite representing an important part of the total price to be paid by the consumer.

Ensuring businesses compete fairly

Currently there is inconsistency in how and when businesses choose to disclose mandatory per transaction fees during a purchasing process. While some businesses may highlight this information upfront to bring the fees to the full attention of the consumer, other businesses may delay advising consumers of these fees until much later in the transaction. This gives businesses who are less upfront with information a competitive advantage over businesses that provide the full pricing information upfront, as consumers may be inclined to choose the business with the seemingly lower price point when in reality that business’s final price inclusive of transaction fees may end up being higher.

¹²⁶ Section 48(1) of the ACL.

Potential Costs

Implementation costs

There are likely to be financial and non-financial costs (such as a time and resource impost) for businesses in understanding and ensuring their compliance with new regulatory requirements. These costs may include, for example, fees for legal advice on the application of the new requirement and IT costs to implement that advice.

IT-related costs may include the cost of making system changes to display transaction fees upfront and prominently for goods and services online, with potential complexity for businesses with multiple goods or services that attract different transaction fees. However, these costs may be reduced where businesses use third-party e-commerce platforms that provide tools for amending these settings with relative ease. E-commerce platforms will also likely update marketplace hosting policies and their own service offerings to be compliant.

Regulation impact summary (drip pricing)

Costs

Treasury estimates that affected businesses will collectively incur implementation costs of \$9.82 million annually, over a 10 year period (as outlined in Appendix B).

Benefits

The benefits of this proposal have not been quantified due to a lack of Australian specific data on how much extra time and money consumers spend on transactions as a result of drip pricing practices.

Overseas jurisdictions have quantified the consumer detriment and benefits of drip pricing reforms. For example, the UK Department of Business and Trade conducted a study on the prevalence of drip pricing, which estimated that UK consumers spend an additional £595 million (\$1.24 billion AUD) due to dripped fees.¹²⁷ The FTC also conducted a benefits analysis that estimated that U.S. consumers would save between \$26.3 million and \$350.6 million USD (between \$40.41 and \$538.66 million AUD) annually from time savings as a result of drip pricing reforms being implemented with respect to the live ticketing industry.¹²⁸

The U.K. and U.S. benefit assessments are not applicable to the Australian context, however, as both jurisdictions have fewer existing legislative protections in place against drip pricing practices compared to those that exist under the ACL. To rely on overseas data or methodology would therefore risk overstating the benefits of the reform proposal.

For the consumer benefit to exceed the estimated cost to businesses, it is estimated that each Australian consumer of the age of 16 and over¹²⁹ would need to save \$4.45 over a 10-year period, which is a likely outcome of these reforms.¹³⁰

¹²⁷ Alma Economics, *Estimating the prevalence and impact of online drip pricing*, p. 9.

¹²⁸ Fair Trade Commission (United States) (FTC US), [The Trade Regulation Rule on Unfair or Deceptive Fees](#), US FTC, 2025, p. 2141.

¹²⁹ This estimate assumes that Australians under the age of 16 are less likely to directly be making purchasing decisions.

¹³⁰ In the absence of data on which specific cohorts of consumers would be impacted by the proposed drip pricing reforms, this assessment assumes the entire Australian population (16 and over) will be impacted. However, this is likely an overestimation, given the conduct is only occurring in particular sectors.

Other specific conduct

The Supplementary Consultation sought stakeholder feedback on whether specific prohibitions were needed to address other potential examples of unfair trading: dynamic pricing, online account requirements and barriers to accessing customer support. While these practices are still of concern, existing ACL protections, the protective umbrella of the general prohibition, and other Government reform processes mean specific reform to the ACL is not required at this stage.

Dynamic Pricing

The Supplementary Consultation consulted on the need for reform to address ‘dynamic pricing’ where the business increases the price of a good or service during the purchasing process in response to factors such as demand. Feedback was sought on whether the existing protections in the ACL were sufficient to address the conduct, and whether the use of dynamic pricing should be specifically prohibited under the ACL.

The Australian Live Music Business Council (ALMBC), the Joint Consumer Advocates and Music Australia supported specific reform to prohibit dynamic pricing.¹³¹ Consumer Advocates jointly noted that clearly banning the practice of adjusting prices after a consumer has commenced the purchasing process will send a clear signal that new technology needs to be applied fairly in Australian markets.¹³² The ALMBC and CPRC also considered the need for increased disclosure requirements around the use of dynamic pricing, either as an addition or alternative to a specific prohibition against the practice.¹³³

However, consultation feedback indicated that most stakeholders, including the ACCC, ACCL, the Competition & Consumer Committee of the Law Council and Live Performance Australia did not support specific reform to address dynamic pricing practices. These stakeholders generally considered that specific reform is not needed as there is no evidence in Australia of dynamic pricing as defined in this paper, and if this conduct were to occur in Australia, the existing provisions of the ACL could be relied upon in bringing enforcement action. For example, the prohibitions against misleading or deceptive conduct, and false or misleading representations as to price.

Accordingly, given stakeholder feedback that dynamic pricing, where businesses increase the price of a good and service during the purchasing process, is likely already prohibited by the ACL, specific reform is not proposed.

Online account requirement

The Supplementary Consultation sought feedback on whether specific reform is needed to address potential harm arising from businesses requiring consumers to create an online account in order to make a purchase. Concerns were raised about consumers being required to disclose more personal information than is reasonably necessary in order to make a purchase, and the risk of this information being inappropriately managed or used. There was some support for requiring businesses to provide a guest checkout option to address this issue. Consumer Advocates considered such a requirement would help address the ‘data grab’ dark pattern, where consumers are asked for more information about themselves than what was needed to access a product or service.¹³⁴ The ALMBC asserted there

¹³¹ The Australian Live Music Business Council submission to the Supplementary Consultation, p. 4; Joint Consumer Advocates submission to the Supplementary Consultation, p. 27; Music Australia submission to the Supplementary Consultation, pp. 1-2.

¹³² Joint Consumer Advocates submission to the Supplementary Consultation, p. 27.

¹³³ The Australian Live Music Business Council submission to the Supplementary Consultation, pp. 3-4; Consumer Policy Research Centre submission to the Supplementary Consultation, p. 27.

¹³⁴ Joint Consumer Advocates submission to the Supplementary Consultation, p. 28.

should always be a guest check out option, noting that businesses that have contact details of customers can then directly market to them.¹³⁵

Stakeholders, including the BCA and the Competition & Consumer Committee of the Law Council, considered however that as these concerns relate to the collection and use of personal information, they are primarily privacy related issues and therefore best addressed by the proposed Privacy Act reforms (specifically the requirement for the collection, use and disclosure of personal information to be 'fair and reasonable' in the circumstances).¹³⁶

Further, some stakeholders argued that there are often legitimate reasons why businesses would require a consumer to create an account (even for a one-off purchase)¹³⁷ and cautioned that prohibiting mandatory account creation could have unintended consequences. Submissions emphasised that most businesses that can offer a guest checkout option, already do so.

Issues related to the collection and use of personal information as well as unsolicited marketing communications are regulated by frameworks outside of the ACL (specifically the Privacy Act and the Spam Act¹³⁸). Accordingly, specific reform to the ACL to prevent businesses from requiring consumers to create an online account to make a purchase or requiring businesses to offer a guest checkout option is not proposed.

Barriers to accessing customer support

Many examples of harms suffered by consumers as a result of barriers to accessing customer support raised in consultation were in relation to online sales and to subscription services. Submissions noted consumers can experience difficulties cancelling a subscription because they have been unable to contact a business. There was some stakeholder support for a specific legislative requirement on businesses to provide a direct contact point for customer service (such as an email or phone number). A number of stakeholders, while supportive of access to customer support, advocated against a specific law which mandates a particular level or method of customer support, arguing that what is 'adequate' customer service will differ depending on the scale and type of the relevant business, and the nature of the goods or services being sold.¹³⁹ Certain stakeholders noted that requiring businesses to provide in person support or call centre options would increase the cost of doing business, with small businesses being disproportionately impacted.¹⁴⁰

The ACCC and CPRC considered a general prohibition, and an item on the grey list which covers post sale conduct, would be an appropriate means to address consumer harm arising from businesses failing to provide adequate access to customer support.¹⁴¹ During the legislative drafting process, consideration will be given to addressing unfair post-sale conduct through the general prohibition.

¹³⁵ ALMBC submission to the Supplementary Consultation, p. 4.

¹³⁶ BCA submission to the Supplementary Consultation, p. 12; Law Council of Australia submission to the Supplementary Consultation, p. 30.

¹³⁷ Live Performance Australia submission to the Supplementary Consultation, p. 6. Live Performance Australia submitted that some of its members noted the difficulties in dealing with credit card fraud and ticket scalping when customers have completed their ticket purchase a guest.

¹³⁸ The *Spam Act 2003* (Cth) prohibits the sending of commercial electronic messages (including marketing emails and text messages) without the consent of the receiver.

¹³⁹ ACCI submission to the Supplementary Consultation, p. 5; DIGI submission to the Supplementary Consultation, p. 15; BCA submission to the Supplementary Consultation, p. 15.

¹⁴⁰ ACCI submission to the Supplementary Consultation, p. 5.

¹⁴¹ ACCC submission to the Supplementary Consultation, p. 23; Joint Consumer Advocates submission to the Supplementary Consultation pp. 29-30.

Option 4: Regulation impact summary

Costs

Table 2 outlines the estimated regulatory costs expected to be imposed by Option 4 (the combined general prohibition, subscriptions and drip pricing proposals) on business, community organisations and individuals. Treasury estimates that business will incur \$123.20 million in annual regulatory costs, over 10 years. Individuals and community organisations are not expected to incur any regulatory costs. As outlined in the subscription section, recurring donations made to charities and not-for-profit organisations not provided in exchange for a product or service are not intended to be in scope of the subscription reforms.

More detail is available at Appendix B.

Table 2: Regulation Burden Estimate Option 4

Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Option 3 – General Prohibition	\$ 93.82	\$ -	\$ -	\$ 93.82
Subscriptions proposal	\$ 19.57	\$ -	\$ -	\$ 19.57
Drip pricing proposal	\$ 9.82	\$ -	\$ -	\$ 9.82
Total, by sector	\$ 123.20	\$ -	\$ -	\$ 123.20

Benefits

The combined benefits of Option 4 have not been quantified. Additional cost-benefits analysis of each proposal is discussed in Appendix B.

Recommended Policy Option

Option 1 – Maintain the status quo (not recommended)

As outlined in the ‘problem’ section, the consultation process has identified that the existing provisions of the ACL are not effective in protecting consumers against a number of harms including manipulative conduct, dark patterns in online transactions, unfair subscription practices, and some drip pricing practices. The harm experienced by consumers as a result is multi-faceted, impacting consumer finances, time and wellbeing.

Digital trends including dark patterns have been shown to undermine consumer autonomy by encouraging consumers to make decisions that they would not normally make, often through an appeal to certain psychological or behavioural biases.¹⁴²

Unfair subscription practices identified in consultation include businesses not providing customers with material information they need to make informed decisions about a subscription, or making it difficult for customers to cancel their subscription. These practices distort consumer choices and result in consumers paying for some subscriptions they do not want or no longer use.

Consultation shows that pricing related practices including drip pricing impair the consumer’s ability to make informed purchasing decisions by obscuring the true price of a product, which often prevents or impedes a consumer from comparing prices among businesses and finding a better deal.

Option 1 is not recommended as consumers would continue to bear the financial and non-financial costs of these UTPs, with regulators limited in their ability to respond to practices which result in consumer harm.

Option 3 – Introduce a general prohibition only on unfair trading practices (not recommended)

Introducing a general prohibition on UTPs would address a range of gaps in the current ACL protections. As a broad and flexible principles-based intervention, it is expected to stay robust and adapt as new practices emerge.

The general prohibition would be effective in addressing and preventing consumer harm arising from UTPs not currently (or not adequately) covered by the ACL, such as some dark patterns in online transactions. As discussed in the Problem section, the increasing complexity of online transactions has meant that consumers can experience a range of harms from the manipulation of decision making, including from subtle forms of manipulation which, particularly when combined, can lead to consumers making purchases they do not want or that cost more than they intended to pay. The prohibition would provide effective protection to consumers from harm arising from these more subtle forms of conduct that are not prohibited under, or adequately addressed by, existing ACL provisions such as misleading and deceptive conduct.

The principles-based nature of the prohibition is intended to ensure that it will be responsive to evolving commercial practices and fast-paced digitalisation. A grey list (a non-exhaustive and illustrative list of examples of conduct) would provide clarity and guidance to businesses and consumers about certain types of conduct which may be considered, depending on the circumstances, as meeting the criteria of the UTP general prohibition.

¹⁴² OECD, ‘Dark commercial patterns’, p. 28.

The prohibition would be located in the ACL, ensuring a baseline standard of behaviour towards consumers that applies across all sectors.¹⁴³ This has advantages as it enables consumers to be familiar with their rights, while also protecting consumers from unfair conduct relating to new products and services.

Costs identified with this option are concentrated in the initial stages of familiarisation and process adjustments to meet the new behavioural standard. Treasury estimates this to equate to \$93.82 million per year for affected businesses over 10 years, that is expected to be outweighed by the benefits of raised business standards, improved market conduct and reduction of consumer harm. These benefits have not been quantified. However, for the consumer benefit to exceed the costs to businesses, each consumer aged 16 and above in Australia would only need to benefit \$42.52 (for example, in cost and time savings) over 10 years. This proposal also assures better regulatory consistency across state and federal jurisdictions for addressing a range of emergent conduct.

This option achieves the aims for government action of a response that addresses consumer harm from unfair distortive or manipulative business conduct across the economy, however is not the recommended policy option of this impact analysis.

Option 4 – Introduce a combination of general and specific prohibitions on unfair trading practices (recommended)

Option 4, a combination of general and specific prohibitions to address UTPs, is the recommended policy option. It has been assessed as the most effective option to reduce instances of consumer harm experienced as a result of UTPs, without disproportionate associated costs. In addition to decreasing instances of consumer harm and exploitation, implementation of Option 4 is expected to result in growth in consumer confidence, due to increased protections from manipulative and distortive practices when consumers engage with, and purchase products and services from, businesses. It is also expected to redirect some consumer demand to businesses that compete on the quality and price of their goods and services they supply, rather than those that use tactics that unreasonably manipulate or distort consumer decision-making.

The benefit of Option 4 is that it combines the flexible, principles-based general prohibition proposed in Option 3 with specific reform to the ACL so that it can address a range of gaps in the ACL, including newer emerging practices, as well as targeting unfair subscription practices and strengthening protections against drip pricing.

Unfair subscription practices and drip pricing can effectively be addressed by specific prohibitions because they can be clearly identified and targeted. Specific reform to the ACL provides consumers and small businesses with protection while precedent and guidance on the general prohibition develops.

The benefits of introducing targeted positive obligations on businesses to address unfair subscription practices include reduced costs and time spent for consumers associated with unwanted subscriptions, increased consumer confidence in subscription models and reduced barriers to switching. As noted above, the targeted approach also ensures that certain sectors are able to be excluded from the scope of its application. Treasury estimates that businesses offering subscription contracts will collectively incur costs of \$19.57 million annually, over 10 years. The estimated annual consumer detriment from spending on unwanted subscriptions by consumers aged 16 and above is \$971 million. To outweigh the cost to businesses, the consumer spending on unwanted subscriptions by subscription holders would need to decrease by 2.02%, which is a likely outcome of these reforms.

¹⁴³ The Government will consider what changes, if any, are required to financial services regulated by the ASIC Act to ensure appropriate alignment across the ACL and financial services laws once options to amend the ACL have been agreed.

In relation to drip pricing, the proposed reform will benefit consumers by enabling them to more easily compare the total price they would pay to obtain goods and services to make more informed purchasing decisions. This is likely to result in a time and cost saving for consumers, as well as providing benefits for businesses by ensuring they are on a level playing field in how they present pricing information. Treasury estimates that businesses affected by the drip pricing proposal will collectively incur implementation costs of \$9.82 million annually, over a 10-year period. The benefits of this proposal have not been quantified. However, for the consumer benefit to exceed the estimated cost to businesses, it is estimated that each Australian consumer aged 16 and above would need to save \$4.45 over a 10-year period, which is a likely outcome of this reform.

Overall, costs identified with Option 4 are concentrated in the initial stages of familiarisation and process adjustments. Treasury estimates this to equate to \$123.20 million in annual regulatory costs, over 10 years, that is expected to be outweighed by the benefits.

As with Option 3, this option achieves the aim for government action of a response that addresses consumer harm from unfair distortive or manipulative business conduct across the economy, with the additional benefits of targeted responses for unfair subscription and drip pricing practices.

Implementation of option 4

Implementation of this proposal would require legislative amendments to the ACL. Legislation amending the ACL needs to be passed by the Australian parliament and there may also be a need for subordinate legislative instruments made under the ACL. Under the IGA,¹⁴⁴ following consultation with the states and territories on a proposal, the Commonwealth Minister must call a vote of states and territories on the proposal and secure the agreement of at least four other jurisdictions (including three states) before introducing legislation.

If there is an affirmative vote, the Commonwealth Government will develop legislation (and subordinate legislative instruments, if required) in consultation with stakeholders, including states and territories. In drafting legislation, consideration will be given to the interactions with existing regulatory frameworks, as well as other legislative reforms (including those proposed for the Privacy Act). The precise timing for the introduction of any legislation into the Australian parliament is determined by government, subject to legislative priorities. States and territories apply the ACL in their jurisdictions through application legislation.

ACL regulators (the ACCC and state and territory consumer protection agencies) would enforce the new protections, as they do with other existing ACL protections. The ACCC takes action in respect of systemic conduct in trade and commerce at a national level, and state and territory consumer protection agencies focus on conduct engaged in by businesses that operate within their own state or territory. ACL regulators will continue to co-ordinate their activity in enforcing ACL protections, overseeing compliance and supporting the operational objectives of the IGA. These objectives include: to prevent practices that are unfair, to provide accessible and timely redress where consumer detriment has occurred, and to promote proportionate, risk-based enforcement.

Consistent with the IGA, ACL regulators develop and publish common national guidance for businesses and consumers on the application, enforcement and administration of the provisions of the ACL. It is expected that ACL regulators would issue guidance on the implementation of new legal requirements and work with businesses and consumer groups to make them aware of the changes, including through enhancing education and awareness raising activities. In the short term, this is likely to lead to an increase in unfair trading related complaints and queries to regulators. However, as the operation

¹⁴⁴ Council of Australian Governments, [Intergovernmental Agreement for the Australian Consumer Law](#), 2019, accessed 14 July 2025.

of the law becomes clearer and businesses better understand how to comply, the increased demand on ACL regulators in implementing the new requirements is expected to level off. Transitional arrangements will be put in place to give businesses time to amend their business practices, and regulators time to develop further guidance and conduct education and awareness raising activities. It is also expected that industry associations and business organisations, and organisations like the Australian Small Business and Family Enterprise Ombudsman (ABSFE0), would also play a role in distributing resources and guidance.

The multi-regulator model of enforcement and compliance under the IGA ensures that information related to educating consumers, monitoring and compliance, enforcement and other administrative functions can be shared. This cooperative approach to communication will enable the different regulators to bring forward any concerns regarding the implementation of the proposal and levels of compliance through existing inter-agency and national committees which coordinate consumer law initiatives across jurisdictions.¹⁴⁵ In addition, there are other avenues for states or territories to raise any issues, such as bringing forward a valid proposal for reform to the ACL under the IGA. The existence of these networks will help to ensure any implementation issues can be identified and that the proposed provisions are, and remain, fit-for-purpose.

Enforcement tools and penalties

Consultation outcomes

The ACCC considered ACL regulators should be empowered to employ the full range of their existing enforcement powers and compliance actions to address contraventions of the proposed general unfair trading prohibition. These include court action, infringement notices, court enforceable undertakings, administrative resolutions, guidance and education, cautions to businesses to change their conduct and public warnings or other public statements.¹⁴⁶ Most stakeholders were supportive of civil penalties applying to a breach of a general prohibition, and there was also stakeholder support for maximum penalties for breaches to align with the current pecuniary penalty regime for existing key general protections under the ACL. The ACCC argued penalties must be set at a level that is sufficient to act as a genuine deterrent for noncompliance.¹⁴⁷

The BCA submitted any proposal to implement the maximum penalties available under the ACL would be concerning given the inevitable uncertainty associated with the proposed prohibitions.¹⁴⁸ ACCI opposed the application of penalties in line with the current maximum penalties for existing key ACL provisions, arguing penalties this large would be excessive and grossly disproportionate to the action of the business and detriment to the consumer.¹⁴⁹

However, the ACCC noted that the maximum penalty amount does not automatically apply for any particular contravention, with the courts being well-practiced at determining the appropriate penalty amount in any given case, up to the per contravention maximum set in the ACL.¹⁵⁰

Stakeholders generally supported a transition period if penalties were to apply, with 2 years generally considered to be appropriate. National Legal Aid supported a similar transition period to that which

¹⁴⁵ Such as the Consumer Ministers Network, the Consumer Senior Officials' Network and the Consumer Policy Officials Network.

¹⁴⁶ ACCC submission to the Supplementary Consultation, p. 14.

¹⁴⁷ ACCC submission to the Supplementary Consultation, p. 14.

¹⁴⁸ BCA submission to the Supplementary Consultation, p. 6.

¹⁴⁹ ACCI submission to the Supplementary Consultation, p. 3.

¹⁵⁰ ACCC submission to the Supplementary Consultation, p. 14.

occurred for the unfair contract terms regime which gave the ACCC the opportunity to work with businesses to improve their practices.¹⁵¹

Policy proposal

It is intended that the full range of remedies, including civil penalties, will be available for breaches of the general prohibition and any specific prohibitions, and that a transition/compliance period will occur before penalties apply. This approach ensures businesses have time to comply with the new law, while ensuring the prohibition will have a true deterrent effect. This also provides regulators with the opportunity to produce guidance material to support businesses in transitioning their practices.

¹⁵¹ National Legal Aid submission to the Supplementary Consultation, p. 5.

Evaluation

The objectives of the proposal include to:

- Reduce consumer harm from distortive and manipulative business conduct
- Reduce the risk of consumers being signed up to unwanted subscriptions, and the amount consumers spend on unwanted subscriptions
- Improve pricing transparency around transaction fees, so consumers can make informed purchasing decisions and price comparisons.

Evaluation of the general and specific unfair trading reforms would be measured through the consideration and analysis of:

- Quantitative and qualitative data relating to UTP complaints and contacts received by ACL regulators. This data will be used to assess whether the reforms have had a positive effect on consumer and business outcomes through key metrics such as:
 - volume and nature of UTP related complaints and queries
 - the levels of awareness and knowledge of the consumer rights and business obligations under the UTP framework
 - ability to take enforcement and compliance action in response to UTP conduct
- Results from any relevant consumer survey, such as the Australian Consumer Survey last commissioned on behalf of Consumer Ministers in 2023. Sample evaluation questions are outlined in the table below.
- Court actions taken by ACL regulators, to see how the UTP reforms are being interpreted and applied by the courts
- Feedback from industry to Treasury on the impact of the reforms and compliance costs incurred by businesses
- Research and results of surveys conducted by consumer advocacy groups¹⁵²
- Ongoing liaison with various stakeholders, including industry, government and consumer advocates, to evaluate the effectiveness of the reforms and their impact on consumers and markets more broadly.

The Government should consider undertaking an implementation review to evaluate the outcomes of the implemented reform proposal. Any review should occur at least 3 to 5 years after implementation to allow time for judicial consideration of the new law, to properly observe how the revised settings are functioning. Treasury would be best placed to undertake such a review, in consultation with ACL regulators. States and Territories have their own operational and monitoring processes which would complement the Commonwealth's evaluation activities. The Consumer Ministers Network also offers an additional forum to coordinate evaluation.

Metrics for evaluating success include:

- Reduction in the amount of consumers being signed up for unwanted subscriptions and the amount consumers spend on unwanted subscriptions
- Reduction in reported consumer harm from distortive and manipulative business conduct

¹⁵² A recent example of this type of research is the CPRC's, [Let me out - Subscription trap practices in Australia](#), 2024.

- Increased reported consumer confidence in subscription and online purchasing
- Estimated level of business compliance with the reform proposal
- Level of direct and indirect costs to business associated with implementation of the reform proposal, and
- Stakeholder perceptions on the effectiveness of the reforms.

Objectives of the proposal	Sample evaluation questions
Reduce consumer harm from distortive and manipulative business conduct	<ul style="list-style-type: none"> • Has there been a reduction in consumers reporting harm caused by distortive and manipulative business conduct since the general prohibition came into force? • Are consumers experiencing harm from distortive or manipulative practices which are not adequately addressed by the general prohibition or other provisions of the ACL? • Are businesses complying with the general prohibition? Have businesses had to adjust their practices to comply with the reforms, and what costs have they incurred? • Has there been any market or technological developments that are likely to challenge the effectiveness of the general prohibition in the future?
Reduce the risk of consumers being signed up to unwanted subscriptions, and the amount consumers spend on unwanted subscriptions	<ul style="list-style-type: none"> • How many subscriptions do consumers hold? How many are unwanted? How much do consumers spend on subscriptions per month? • Do consumers hold fewer unwanted subscriptions than they held prior to the subscription reforms coming into force? • Are consumers encountering difficulties cancelling a subscription? Are consumers signing up for products and services without realising they are subscriptions? • Are businesses complying with the subscription reforms? What costs have businesses incurred to comply with the subscription reforms? • Are consumers experiencing harm from unfair subscription practices which are not sufficiently addressed by the subscription reforms or other provisions of the ACL?
Improve pricing transparency around transaction fees, so consumers can make informed purchasing decisions and price comparisons	<ul style="list-style-type: none"> • Have consumers experienced improved transparency around transaction fees for online purchases since the drip pricing reforms came into force? • Are businesses complying with the drip pricing reforms? What costs have businesses incurred to comply with the pricing reforms? • Do consumers feel more confident and informed about transaction fees when engaging in online transactions? • Are consumers experiencing harm from unfair drip pricing practices which are not sufficiently addressed by the drip pricing reforms or other provisions of the ACL?

Appendix A – existing relevant ACL protections

Misleading or deceptive conduct

Section 18 of the ACL prohibits businesses from engaging in conduct which is misleading or deceptive or is likely to mislead or deceive. The prohibition in its current form was first introduced in 1974 in the *Trade Practices Act 1974* (Cth). It applies even if the intention was not to mislead or deceive.

Misleading or deceptive conduct is assessed against whether an ‘ordinary’ or ‘reasonable’ member of the relevant class of people to whom the conduct was directed is likely to be misled. A substantial body of case law has developed since the introduction of the prohibition, and it is now generally well understood by both consumers and business, and a well-accepted tenet of consumer laws in Australia. Misleading omissions are not expressly covered by this provision although silence may be considered misleading when there is a reasonable expectation that a fact, if it exists, will be disclosed.

Unconscionable Conduct

The ACL contains 2 protections against unconscionable conduct:

- Equitable unconscionable conduct, a concept from the courts of equity which prohibits conduct that is unconscionable ‘within the meaning of the unwritten law’ (section 20). This applies where one party takes unconscientious advantage of a special disadvantage of another.¹⁵³
- A prohibition on unconscionable conduct in connection with goods or services (section 21), referred to above as statutory unconscionable conduct. This is designed to address a broader range of conduct than equitable unconscionable conduct.¹⁵⁴

Unconscionable conduct under section 21 of the ACL prohibits conduct which is particularly harsh or oppressive. To be considered unconscionable, the conduct must be against good conscience as judged against the norms of society. There are several matters the court may consider in determining whether conduct, or a system of conduct or pattern of behaviour, is unconscionable, including:

- the use of undue influence, pressure or unfair tactics by the stronger party
- the price or other terms on which the weaker party could have got the same or similar products or services from another business
- whether the stronger party acted unreasonably in not informing the weaker party about key risks that the stronger party should have known the weaker party was not aware of
- whether the parties acted in good faith.¹⁵⁵

Section 22 of the ACL contains a list of matters or factors that a court may have regard to when determining whether conduct was unconscionable.¹⁵⁶ Generally, one factor is not itself sufficient to meet the threshold.

¹⁵³ See *Commercial Bank of Australia Ltd v Amadio*, 151 CLR 447, 1983.

¹⁵⁴ Section 21(4)(a) of the ACL.

¹⁵⁵ ACCC, [Unfair business practices](#), ACCC, n.d., accessed 9 July 2025.

¹⁵⁶ Section 22 of the ACL.

Unfair contract terms

This protection provides courts with the ability to declare contract terms in standard form consumer and small business contracts unfair and impose significant penalties. Under Part 2-3 of the ACL, a term of a contract is unfair if it:

- causes a significant imbalance in the parties' rights and obligations
- is not reasonably necessary to protect the legitimate interests of the party who would be advantaged by the term
- would cause significant financial or non-financial detriment to a party.

Specific Prohibited Practices

Some specific trading practices are unlawful under Part 3-1 of the ACL. Examples of existing ACL specific protections include false or misleading representations about, for example, the price of goods, availability of repair facilities, or the existence of warranties. They also include protections against bait advertising (discussed further below), accepting payment without intending to supply goods or services, certain practices in the unsolicited supply of goods or services, participating in or persuading someone to participate in a pyramid scheme, coercion, undue harassment or physical force in connection with the supply or possible supply of goods or services, or the payment for them.

Bait advertising

Section 35 of the ACL prohibits businesses from engaging in bait advertising. Bait advertising is when a business advertises goods or services at a specified price, and there are reasonable grounds for believing that the business will not be able to supply the advertised goods or services at the advertised price for a reasonable period or in reasonable quantities, having regard to the nature of the market and the advertisement.

Provisions relevant to drip pricing

Section 48 of the ACL prohibits businesses from disclosing part of the price for a good or service without also disclosing the minimum quantifiable price (as a single figure), at least as prominently as the part price. The single price must include any tax, duty, fee, levy or other additional charges (such as GST or airport tax). It should also include any optional fees or charges pre-selected for the consumer during the purchasing process unless and until they are de-selected by the consumer. The requirement under section 48 has some exceptions, including:

- optional charges or extras that cannot be quantified at the time of making the representation
- price representations made by a business exclusively to a body corporate (i.e. another business).

Appendix B – regulatory burden estimate

Option 3 - General Prohibition

No costs are forecast for consumers (the primary beneficiaries of this proposal) or for community organisations under this proposal.

Table 3: General Prohibition - Estimated Costs to Businesses

	Small businesses (0-19 employees)	Medium-sized businesses (20-199 employees)	Large businesses (200+ employees)	Total
Number of affected businesses	1,510,937	40,239	2,742	1,553,917
Labour costs (\$)				531,002,000
Familiarisation costs	386,059,000	27,417,000	5,604,000	
Adjustment costs	102,949,000	8,225,000	747,000	
Purchase costs (\$)				407,175,000
Obtain external legal advice	362,625,000	38,629,000	5,922,000	
Total cost (labour + purchase) (\$)	851,633,000	74,271,000	12,273,000	938,177,000
Annual total cost (over 10 years) (\$)				93,818,000

Note: sums may not add to totals due to rounding adjustments.

Methodology and assumptions

Affected businesses

In terms of impacted cohort, Treasury has taken a high-level estimate, favouring a higher assumption of the number of affected consumer-facing businesses; approximately 61.4 per cent of businesses based on industrial sector classification from the ABS Counts of Australian Businesses, including Entries and Exits dataset (data as at June 2024).¹⁵⁷

Cost estimates

Labour costs: Affected businesses are anticipated to have an initial cost incurred to familiarise with the new requirements, and potentially seeking advice and internal auditing by those businesses offering

¹⁵⁷ Primarily business-to-business sectors including mining and wholesale trade have not been counted, while primarily business-to-consumer sectors including retail trade and accommodation and food services businesses are fully counted as amongst the impacted cohort. Financial and insurance services businesses are not included. Sectors with a mix of customer types including construction and transport, postal and warehousing are partly counted with a general assumption of half being consumer-facing.

more complex service offerings or with more elaborate organisational considerations. Treasury estimates this familiarisation exercise would take:

- Small businesses: 3 hours of work for 1 person
- Medium businesses: 4 hours of work each for 2 people
- Large businesses: 6 hours of work each for 4 people

Treasury estimates that 10 percent of businesses¹⁵⁸ will also incur adjustment costs from having to redesign processes or websites to ensure compliance. Adjustment costs are based on businesses spending the following hours on adjustment practices:

- Small businesses: 8 hours of work for 1 person
- Medium businesses: 8 hours of work each for 3 people
- Large businesses: 8 hours of work each for 4 people

Treasury has used a \$85.17 hourly rate, the default labour cost provided by the Office of Impact Analysis, for all labour costs in Annexure B.¹⁵⁹

Purchase costs: Treasury assumes that 24 per cent of businesses will also seek external legal advice in relation to the operation of the general prohibition.¹⁶⁰ Treasury estimates the hours of advice required will vary according to business size:

- Small businesses: 2 hours of work for 1 person
- Medium businesses: 4 hours of work each for 2 people
- Large businesses: 6 hours of work each for 3 people

Treasury estimates a \$500 hourly rate for legal costs to calculate all purchase costs in Appendix B.

Option 4 – Combined Specific and General Prohibition

The total Regulatory Burden Estimate comprises the costs noted for Option 3, with the addition of costs of the subscription and drip pricing proposals.

Subscription Proposal

Annual spend by consumers on unwanted subscriptions

This assessment adopts the same approach and formula used to calculate annual spending on unwanted subscriptions in the regulation impact assessment conducted by the Department of Business and Trade (UK) in 2023 on the Digital Markets Competition and Consumers Bill: Subscriptions

¹⁵⁸ The percentage of businesses that will incur adjustment costs is unknown. This figure is based on the European Commission's *Fitness Check of EU Consumer Law on Digital Fairness*, which covered 3 directives, including the Unfair Commercial Practices Directive. The review found that 10% of businesses reported incurring high costs relating to adjustment and implementing legal requirements arising from the 3 relevant directives into business procedures.

¹⁵⁹ Office of Impact Analysis, *Regulatory Burden Measurement Framework*, Department of Prime Minister and Cabinet, 2024, p. 12. As per the framework guidance, the \$85.17 per hour default has been used as the general, subscription and drip pricing policy proposals each cut across a number of sectors.

¹⁶⁰ Kantar Public, *Australian Consumer Survey 2023 - Final Report*, p. 100. The report stated that 24% of businesses surveyed reported that a solicitor or lawyer would be the main channel they would use to seek advice on the Australian Consumer Law. The survey results showed this rate did not significantly vary by business size.

Measures (the UK IA).¹⁶¹ The subscription reform proposal broadly aligns with the proposed subscription reforms assessed in the UK IA, as both proposals include information disclosure, notification and easy cancellation requirements.

The FTC's 2024 Final Rule Concerning Subscriptions and Other Negative Option Plans¹⁶² which sought to impose disclosure requirements and a click-to cancel requirement for negative option marketing,¹⁶³ also contained regulatory impact analysis.¹⁶⁴ Treasury sought quantitative information on the likely costs and benefits associated with the subscription reform proposal through consultation, but respondents did not provide many estimates or evidence. Where Treasury did not have access to Australian data, Treasury applied some of the findings of these regulatory impact assessments to Australian data on businesses and consumers to calculate estimated costs and benefits.

Table 4: Estimated annual spend by Australian consumers on unwanted subscriptions

	Lower bound ¹⁶⁵	Central estimate	Upper bound
Population (16 and over) ¹⁶⁶	-	22,066,664	-
Average number of subscriptions per adult, excl. telecommunications	2.18	2.9	3.63
Number of non-telecommunications subscriptions	47,995,000	63,993,000	79,992,000
Share of unwanted subscriptions	2%	5%	10%
Number of unwanted subscriptions ¹⁶⁷	956,000	3,200,000	7,999,000
Mean monthly cost of a single subscription	\$18.97	\$25.29	\$31.61
Annual spending on unwanted subscriptions	\$218,483,000	\$971,035,000	\$3,034,484,000
Annual spending on unwanted subscriptions, per consumer ¹⁶⁸	\$9.90	\$44.0	\$137.51

¹⁶¹ DBT (UK), [Impact Assessment for the Digital Markets, Competition and Consumers Act: Subscription traps: annex 2 impact assessment](#), UK Government, 2023.

¹⁶² US FTC, [Final Rule Concerning Recurring Subscriptions and Other Negative Option Programs](#), FTC, 2024.

¹⁶³ A negative option rule, in the context of consumer protection, refers to a business practice where a seller assumes a customer's consent to a transaction or ongoing service based on the customer's inaction or failure to specifically decline an offer.

¹⁶⁴ As outlined in the Subscription policy proposal section, the Rule was vacated by a US appeals court on 8 July 2025 on procedural grounds.

¹⁶⁵ Unless otherwise stated, lower and upper bound figures are 25% either side of the central estimate.

¹⁶⁶ Australian population 16 and above as of September 2024: Australian Bureau of Statistics, [National, state and territory population](#), ABS, 2024, accessed 11 July 2025.

¹⁶⁷ (Adult population) multiplied by (average number of subscriptions) multiplied by (share of unwanted subscriptions).

¹⁶⁸ (Annual spending on unwanted subscriptions) divided by (population of 16 and over).

Formula:¹⁶⁹

No. of subscriptions X % of subscriptions that are unwanted X Monthly cost of subscriptions X 12

No. of unwanted subscriptions $t = n \times s \times u$

Where:

Total Annual Consumer Detriment:

$$\bullet \frac{t \times u \times l \times c}{p} = \frac{t \times u \times l \times c}{\frac{1}{12}} = (t \times c \times u) \times 12$$

• Where:

- t = number of subscriptions
- u = share of unwanted subscriptions
- l = average length of time consumers pay for an unwanted subscription
- c = the mean monthly cost of a subscription
- p = the share of annual unwanted subscriptions (note as above, we use $p = l/12$. Which is $2.4/12 = 20\%$)

Methodology and assumptions

The exact subscription contracts in scope will be determined during the legislative drafting process, however it is intended to apply broadly, with limited exceptions. The estimated annual spending on subscription contracts will change depending on the exact scope. As outlined above, it is expected that the scope of the subscription reform proposal will broadly align with the scope of the UK's subscription reforms as outlined in the UK IA.¹⁷⁰ Importantly, UK's IA excludes regulated telecommunications products and services from scope, while these products and services are proposed to be within scope of the subscription proposal. Treasury has also excluded telecommunications products and services from this assessment to ensure consistency. Accordingly, the estimated size of spending on subscription contracts is likely underestimated, as it is estimated that the average Australian adult has at least one telecommunication contract.¹⁷¹

There is a lack of reliable Australian data on:

- The average number of subscriptions per adult. Input used in this assessment has been drawn from the UK IA,¹⁷² which was estimated using the combined output of multiple UK consumer surveys. The FTC estimated the total number of subscriptions (including telecommunications)

¹⁶⁹ This formula was based upon the 2021 UK Impact Assessment: UK Department for Business, Energy and Industrial Strategy, [Consumer and competition reform: Subscription regulations](#), UK Government, 2021, p. 39. The 2023 UK Impact Assessment used a simplified formula: DBT (UK), [Impact Assessment for the Digital Markets, Competition and Consumers Act: Subscription traps: annex 2 impact assessment](#), UK Government, 2023, p. 17.

¹⁷⁰ Regulated sectors with equivalent or higher rules in relation to subscription contracts (or where there is a compelling public policy reason) are exempt or largely exempt from scope as per the UK's IA. This includes telecommunications, financial services and insurance, the regulated supply of gas, electricity, water and the supply of medicine and certain medical products/devices supplied by a healthcare professional including a prescriber: DBT (UK), [Impact Assessment for the Digital Markets, Competition and Consumers Act: Subscription traps: annex 2 impact assessment](#), p. 24.

¹⁷¹ In 2023, the number of mobile cellular subscriptions per 100 inhabitants in Australia was 110 (1.1 per person): Statista, [Mobile subscription penetration Australia 2023 | Statista](#), Statista, 2024, accessed 9 July 2025.

¹⁷² Share of subscriptions that are unwanted: DBT (UK), [Impact Assessment for the Digital Markets, Competition and Consumers Act: Subscription traps: annex 2 impact assessment](#), p. 20.

held by US consumers at 4.5.¹⁷³ Both the UK's IA and the FTC's Final Rule acknowledge there is uncertainty in these estimates since subscriptions may be held by households of multiple individuals.

- The average cost of a monthly subscription in Australia. Treasury undertook desktop research across several popular types of subscriptions to estimate this figure.
- The share of unwanted subscriptions that Australians hold. The input used in this assessment has been drawn from the UK IA.¹⁷⁴

This approach makes no accounting for growth or decline in the subscription market. There is evidence to suggest that consumer spending by Australians on subscriptions has grown in recent years and will continue to grow.¹⁷⁵

Regulatory burden estimate

No costs are forecast for consumers or for community organisations under this proposal.

¹⁷³ US FTC, *Final Rule Concerning Recurring Subscriptions and Other Negative Option Programs*, p. 90523.

¹⁷⁴ Share of subscriptions that are unwanted: DBT (UK), [Impact Assessment for the Digital Markets, Competition and Consumers Act: Subscription traps: annex 2 impact assessment](#), p. 20.

¹⁷⁵ ING research found 56 per cent of respondents with outgoing payments continue to sign up to new subscriptions, spending an additional \$48 per month on average in 2022: ING Bank, [Unused subscriptions and forgotten outgoings could cost each Aussie up to \\$1,261 a year – ING Newsroom](#), ING Bank, 2023, accessed 9 July; Telsyte reported the Australian entertainment subscription market, which includes video, music and game services, grew by 5 per cent in the 12 months to June 2024: Telsyte, [Ad-Supported streaming surges as Australians seek budget-friendly entertainment](#), Telsyte, 2024, accessed 9 July; Precedence Research reported the global subscription e-commerce market size accounted for USD 18.82 billion in 2024 and is predicted to increase from USD 20.58 billion in 2025 to approximately USD 46.05 billion by 2034: Precedence Research, [Subscription E-Commerce Market Size, Share and Trends 2025 to 2034](#), Precedence Research, 2025, accessed 9 July.

Table 5: Subscription Proposal - Estimated costs to businesses

	Non-Employing	Small Businesses (1-19 employees)	Medium-sized businesses (20-199 employees)	Large businesses (200+ employees)	Total
Number of businesses in Australia offering subscriptions	5,500	18,406	6,244	449	30,600
Labour cost (\$) ¹⁷⁶					177,337,000
Disclosure requirement	4,872,000	22,574,000	28,932,000	3,916,000	
Notification requirements	4,872,000	22,574,000	28,932,000	3,916,000	
Easy cancellation requirement	4,235,000	20,442,000	28,209,000	3,864,000	
Purchase costs (\$)					18,360,000
Obtain external legal advice	3,300,000	11,044,000	3,747,000	269,000	
Total cost (labour + purchase) (\$)	17,278,000	76,635,000	89,819,000	11,964,000	195,697,000
Annual total cost (over 10 years) (\$)					19,570,000

Note: sums may not add to totals due to rounding adjustments.

Methodology and assumptions

Businesses offering subscription products and services to consumers in Australia

The share of businesses in Australia that offer subscription contracts is unknown. Based on industrial sector classification from the ABS Counts of Australian Businesses, including Entries and Exits dataset (data as at June 2024), Treasury identified 8 sectors in which businesses are likely to offer consumer or small business facing subscriptions.¹⁷⁷ Given the broad nature of these sectors, it is assumed that only a fraction of the total businesses in these sectors offer subscription contracts. To estimate this number, Treasury employed data estimated by the UK IA regarding the proportion of businesses that offer subscriptions at each level of business size.¹⁷⁸

¹⁷⁶ Labour Costs = Familiarisation Costs + Adjustment Costs, where: Familiarisation Costs = (\$85.17) x (hours required) x (number of affected businesses) and Adjustment Costs = (\$85.17) x (hours required) x (number of non-compliant businesses).

¹⁷⁷ Included sectors: Retail Trade, Accommodation and Food Services, Information Media and Telecommunications, Professional, Scientific and Technical Services, Education and Training, Health Care and Social Assistance, Arts and Recreation Services and Other Services. Excluded sectors: Supply of Electricity, Water, Gas and Sewerage, Finance Services and Insurance.

¹⁷⁸ The estimate of the proportion of businesses that offer subscriptions was reduced for non-employing and small businesses as we assume a smaller percentage of businesses of these sizes are offering subscription products and services in Australia.

Cost estimation

Labour costs: It is expected that all businesses offering subscriptions will incur familiarisation costs (cost associated with understanding the new regulatory requirements and how these will apply to their businesses) and some will also incur adjustment costs (including IT costs to make changes to websites and customer communications). In the absence of relevant Australian data, the number of hours required to perform these tasks has been drawn from the UK IA, on the assumption that UK and Australian firms will require the same timeframes to gain familiarity with the subscription reforms and to perform adjustment tasks.

Treasury assumes that the number of staff that will have to familiarise themselves with the regulatory requirements will vary according to business size.¹⁷⁹ The estimated time businesses will devote to familiarisation tasks for each business size is as follows:

- Non-employing: 4 hours of 1 person's time
- Small businesses: 4 hours of 2 people's time
- Medium businesses: 8 hours of 6 people's time
- Large businesses: 8 hours of 12 people's time

It is assumed that a number of Australian businesses offering subscription contracts already comply with the proposal's requirements, and as a result, these businesses will not incur adjustment fees.¹⁸⁰ This assessment uses the UK's and FTC's regulatory impact assessment estimations as the basis for our assumptions about the number of Australian businesses already complying with each of the 3 proposed requirements which make up the subscription proposal, on the assumption that similarities between UK, US and Australian firms are such that levels of existing compliance are likely to be similar. The estimates we have used for existing compliance rates are therefore 20% for disclosure and notification requirements, and 37% for easy cancellation.

It is assumed non-compliant businesses will spend 8 hours on adjustment tasks.¹⁸¹ For online businesses that use subscription management and tools offered by hosting platforms or payment processors, these adjustment figures are likely to be an overestimation. This is because these platforms typically allow businesses to integrate easy cancellation processes into their websites and to send notifications to consumers at little to no additional cost.¹⁸²

Purchase costs: Treasury estimates that 24 per cent of businesses offering subscriptions will also seek external legal advice to comply with the regulatory requirements (including seeking advice to verify internal processes to make changes to subscription terms and conditions). This is based on a survey of how businesses get advice in response to changes in the Australian Consumer Law.¹⁸³ Treasury estimates an average of 5 hours of time per business will be required.

¹⁷⁹ UK DBT, *Digital Markets, Competition and Consumers Bill impact assessment annex 2: subscription traps*, p. 26.

¹⁸⁰ The UK's IA estimated that many businesses already complied with some of the subscription reforms and therefore would not incur additional costs: DBT (UK), [Impact Assessment for the Digital Markets, Competition and Consumers Act: Subscription traps: annex 2 impact assessment](#), p. 48.

¹⁸¹ UK IA assumed eight hours of work from an IT professional is required and that these costs were uncorrelated with the size of the business: DBT (UK), [Impact Assessment for the Digital Markets, Competition and Consumers Act: Subscription traps: annex 2 impact assessment](#), p. 26.

¹⁸² The FTC in its Final Rule found that "many payment processors and website hosting platforms used by many businesses, particularly small and medium sized businesses, provide marketers with consumer subscription account management tools that provide consumers with "click-to-cancel" functionality at no direct incremental cost to marketers." US FTC, *Final Rule Concerning Recurring Subscriptions and Other Negative Option Programs*, p. 90529.

¹⁸³ 24% of businesses surveyed reported that a solicitor or lawyer would be the main channel they would use to seek advice on the Australian Consumer Law: Kantar Public, *Australian Consumer Survey 2023 - Final Report*, p. 100.

Drip Pricing Proposal

Regulatory burden estimate

No costs are forecast for consumers or for community organisations under this proposal.

Table 6: Drip Pricing Proposal – Estimated cost to businesses

	0-4 Employees	5-19 Employees	20-199 Employees	200+ Employees	Total
Number of affected businesses	272,113	39,187	14,366	1,071	326,737
Labour cost¹⁸⁴ (\$)					65,490,000
Total familiarisation costs	46,352,000	6,675,000	4,894,000	547,000	
Total adjustment costs	4,635,000	1,335,000	979,000	73,000	
Purchase cost (\$)					32,674,000
Obtain external legal advice	27,211,000	3,919,000	1,437,000	107,000	
Total cost (labour + purchase) (\$)	78,198,000	11,929,000	7,309,000	728,000	98,164,000
Annual total cost (over 10 years) (\$)					9,816,000

Note: sums may not add to totals due to rounding adjustments.

Methodology and assumptions

Treasury sought quantitative information on the likely costs and benefits associated with drip pricing reform through consultation, but respondents did not provide many estimates or evidence.

Accordingly, our analysis relies on publicly available data from the ABS, the US FTC¹⁸⁵ and UK Department for Business and Trade,¹⁸⁶ supported by Treasury estimates and assumptions.

Affected businesses

In determining the number of businesses that are likely to be affected by the proposal, Treasury has taken a high-level estimate by only including those industry sectors that are consumer facing.¹⁸⁷ Of these sectors, only those businesses that receive orders online were counted as likely to be affected. This filter is applied based on Treasury's assumption that drip pricing practices are primarily used in

¹⁸⁴ Labour Costs = Familiarisation Costs + Adjustment Costs, where: Familiarisation Costs = (\$85.17) x (hours required) x (number of affected businesses) and Adjustment Costs = (\$85.17) x (hours required) x (number of non-compliant businesses).

¹⁸⁵ FTC (US), *The Trade Regulation Rule on Unfair or Deceptive Fees*.

¹⁸⁶ Alma Economics, *Estimating the prevalence and impact of online drip pricing*.

¹⁸⁷ Business-to-business sectors such as mining and wholesale trade have not been counted, while primarily sectors including retail trade and accommodation and food services businesses are counted amongst the impacted cohort. Financial and insurance services businesses are not counted.

online, rather than instore retail transactions. The ABS has publicly available data on the proportion of Australian businesses that receive orders via the internet categorised by employment size.¹⁸⁸ In applying these datasets, Treasury estimates that the total number of affected businesses is 326,737.

Table 7: Proportion of businesses that receive online orders

Business Size	Proportion of businesses that receive orders online
0-4 Employees	26.6%
5-19 Employees	36.20%
20-199 Employees	45.30%
200+ Employees	42.90%

Cost estimation

Labour Costs

It is assumed that all affected businesses will incur initial costs to familiarise themselves with the new regulatory requirements, seek advice and/or handle more elaborate organisational considerations. Treasury estimates the number of hours businesses will devote to these familiarisation tasks is as follows:

- For businesses with 0-4 employees: 2 hours of work total
- For businesses with 5-19 employees: 2 hours of work total
- For businesses with 20-199 employees: 4 hours of work total
- For businesses with 200+ employees: 6 hours of work total

In calculating the above estimate, Treasury has assumed that familiarisation with the drip pricing proposal will require less labour than for the general prohibition proposal and subscription proposal. This assumption is based on the understanding that there are already several provisions in the ACL that regulate drip pricing, and the proposed reform will therefore only represent a relatively minor addition to a business's current obligations in respect of drip pricing.

Treasury estimates that approximately 10 per cent of businesses will incur adjustment costs from having to change their online pricing displays to comply with the reform. These adjustment costs will primarily include IT costs incurred by businesses to redesign processes or websites to ensure compliance. The estimated proportion of businesses that are likely to incur adjustment costs has been drawn from methodology used by the US FTC in its Trade Regulation Rule on Unfair or Deceptive Fees.¹⁸⁹ Adjustment costs are based on businesses spending the following hours on adjustment practices:

- For businesses with 0-4 employees: 2 hours of work
- For businesses with 5-19 employees: 4 hours of work
- For businesses with 20-199 employees: 8 hours of work
- For businesses with 200+ employees: 8 hours of work

¹⁸⁸ Stat Data Explorer (BETA), [Internet connectivity, Online presence and E-commerce](#), Australian Bureau of Statistics, 2022, accessed 11 July 2025.

¹⁸⁹ The US FTC estimated that there is 10% non-compliance with drip pricing within the whole economy excluding live event ticketing, restaurants and the short-term lodging industries: FTC (US), [Trade Regulation Rule on Unfair or Deceptive Fees: notice of proposed rulemaking](#), FTC, 2023, p.77448.

Treasury has taken a high-level estimate in calculating adjustment costs, and notes that its methodology may overestimate costs for adjustment practices. For example, there are some businesses that do not charge 'per transaction' fees to consumers and are therefore outside the scope of the reform. There are also some businesses that charge 'per transaction' fees but would already be compliant with the reform and would not need to adjust their practices.

Further, there are many online retailers that use e-commerce platforms to design and maintain their websites. Where this occurs, businesses can often change pricing displays on their website with relative ease. This may reduce adjustment costs for businesses using these platforms.

Purchase costs

Treasury assumes that approximately 10 per cent of businesses will also seek external legal advice in relation to compliance with the drip pricing proposal. This aligns with the above 10 per cent assumption used in relation to adjustment costs drawn from the US FTC assessment. Treasury estimates an average of 2 hours of time will be required.