


THE ROLE OF FAIRNESS IN COMPETITION AND CONSUMER LAW: ALL SIDES OF THE STORY

DATE

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PRESENTERS

ELIZABETH AVERY, Partner, Gilbert + Tobin

GINA CASS-GOTTLIEB, Chair, Australian Competition and
Consumer Commission

GERARD BRODY, Chair, Consumers' Federation of Australia

PRESENTERS



ELIZABETH AVERY
PARTNER
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As Head of the G+T C&R Group, and with significant experience in the United States, Elizabeth regularly advises key domestic and multi-national clients on a broad range of competition and consumer matters. She is recognised as a leading competition lawyer in Australia across all major legal directories.



GINA CASS-GOTTLIEB
CHAIR
AUSTRALIAN COMPETITION
AND CONSUMER COMMISSION

Gina Cass-Gottlieb started her appointment as Chair of the ACCC in March 2022. Gina has over 25 years' experience advising on a large number of merger, competition and regulatory matters in Australia and New Zealand. She is widely recognised as one of Australia's leading competition and regulatory experts.



GERARD BRODY
CHAIR
CONSUMERS' FEDERATION
OF AUSTRALIA

Gerard Brody is a leading consumer rights advocate and lawyer. He is Chair of the Consumers' Federation of Australia, the peak body for consumer organisations in Australia, representing a diverse range of consumer groups, and held the title of CEO at the Consumer Action Law Centre for almost 10 years.

THE ROLE OF FAIRNESS IN COMPETITION AND CONSUMER LAW: ALL SIDES OF THE STORY

Elizabeth Avery, Matt Rubinstein, Anna Belgiorno-Nettis, Angus Lane and Jasleen Kaur

The 1997 Report chapter that first recommended an Australian unfair conduct prohibition began with a quote from William Shakespeare:

“The law hath not been dead, though it hath slept.”¹

The Reid Committee that authored that Report may be disappointed at how sleepy the legislative process on unfair conduct has been. Over 25 years on from its recommendation, there is still no legislative proposal, let alone actual instrument, prohibiting unfair conduct.

In 2017, the Reid Committee’s recommendation for an unfair trading practices prohibition resurfaced. The Consumer Affairs Australia and New Zealand (CAANZ) suggested exploring whether the Australian Consumer Law (ACL) adequately captured the unfair conduct that was raised by submissions to the CAANZ’s ACL review.²

The Australian Competition and Consumer Commission (ACCC) responded in 2019 in the Digital Platforms Inquiry Final Report (DPI Report)³, and for the first time formally recommended an unfair trading practices prohibition.

The ACCC has most recently reaffirmed its support for an unfair trading practices prohibition in its 2022 Digital Platform Services Inquiry interim report into regulatory reform (DPSI Report).⁴ Treasury has already responded to this recommendation saying that Federal and State consumer Ministers are to undertake further consultation on the prohibition.⁵

A review of the history of recommendations for an unfair trading prohibition in Australia highlights both common threads and new focuses (see Table 1). Inadequate disclosure of important information, an inability to exercise meaningful choice due to complex, all-or-nothing contracts or insufficient review time, and dissuading consumers from exercising their contractual rights, have been consistently raised by reviews from 1997 to now.

In other ways, the deliberation has pivoted. The Reid Committee’s small businesses vs. powerful firms dichotomy has evolved with the ACCC’s focus on consumers into an economy-wide recommendation. Data-related practices have also come to the fore, in the ACCC highlighting dark patterns and harmful data tracking, collection and use.



1 Standing Committee on Industry, Science and Resources, *Finding a Balance: Towards Fair Trading in Australia*, Chapter 6: https://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=isr/fairtrad/report/contents.htm, citing William Shakespeare, *Measure for Measure*, Act II Scene ii

2 CAANZ, *Australian Consumer Law Review – Final Report*: https://consumer.gov.au/sites/consumer/files/2017/04/ACL_Review_Final_Report.pdf

3 DPI Report: <https://www.accc.gov.au/publications/digital-platforms-inquiry-final-report>

4 DPSI Report: <https://www.accc.gov.au/system/files/Digital%20platform%20services%20inquiry%20-%20September%202022%20interim%20report.pdf>

5 *Treasury, Digital Platforms – Consultation on Regulatory Reform*: <https://treasury.gov.au/consultation/c2022-341745>



TABLE 1: TARGETED CONDUCT BY PAST AUSTRALIAN RECOMMENDATIONS FOR AN UNFAIR TRADING PRACTICES PROHIBITION



Reid Committee, 1997: A small business focus

Small businesses v. powerful firms:

- + inability to negotiate pro-forma contract terms
- + inadequate disclosure of pertinent commercial information before entering transaction
- + inadequate disclosure of important contract terms (through technical wording, negotiations, unfavourable terms not highlighted)
- + varying relationship in long-term contracts to favour more powerful party



CAANZ, 2017: A refocus on exploring

Business models that:

- + take advantage of consumers not appreciating a contract's unexpected consequences
- + exploit vulnerable consumers by overcharging
- + take advantage of vulnerable consumers who cannot access or are unaware of alternatives



ACCC DPI Report, 2019

Business conduct significantly detrimental to consumers:

- + Collecting / disclosing consumer data without express informed consent
- + Failing to comply with reasonable data security standards
- + Unilaterally changing terms for product provision without reasonable notice / ability for consumer to consider new terms
- + Inducing consumer consent to data collection through long, complex, 'all or nothing' contracts and providing insufficient time / information to properly consider the terms
- + Dissuading consumers from exercising legal rights, including requiring unnecessary information to access benefits



ACCC DPSI Report, 2022

Problematic conduct that is unlikely to breach the ACL:

- + Adopting business practices to dissuade consumers from exercising their legal rights
- + Inducing consent or agreement by very long contracts, providing insufficient time to consider contracts or all-or-nothing 'clickwrap' consents
- + Engaging in harmful and excessive tracking, collection and use of data
- + Using dark patterns and other interface design strategies (eg. prominence, framing) which impede choice and harm consumers

WHAT DO OTHER JURISDICTIONS' PROHIBITIONS SUGGEST FOR AUSTRALIA'S?

Given Australia does not yet have a concrete proposal for an unfair trading practices prohibition, international jurisdictions can provide insight into the form that our prohibition, if proposed, may or should take – both in its scope and its enforcement.

Protections in other jurisdictions may capture some conduct that is not captured by Australia's combination of general and specific protections, including the prohibitions on unconscionable conduct, misleading or deceptive conduct, and misleading or false representations. On the other hand, some of Australia's protections are likely broader than those in other jurisdictions.

Overall, it may be that these jurisdictions are more similar than they are different. For example:

- + Conduct that is likely to “materially distort the economic behaviour of consumers” under the European Union test may often amount to misleading and deceptive or unconscionable conduct in Australia. Many “aggressive commercial practices” under European law would also be likely to breach the specific Australian prohibitions against harassment or coercion.
- + Singapore's prohibition against unfair practices is unlikely to go any further than Australia's prohibitions against misleading or deceptive conduct, false representations and unconscionable conduct. If it does, the remedies are focused on restitution and compliance, rather than deterrence through substantial penalties.
- + Many of the prohibitions in Canada refer directly to unconscionable conduct or employ similar concepts of taking advantage of a consumer's inability to protect themselves, or are based on misleading or deceptive conduct. Where Canada's general prohibitions of unfair conduct may be broader than the Australian prohibitions, breaches are not subject to penalties of the magnitude contemplated by the ACL, and enforcement is focused on restitution.

It remains open to debate whether any differences need to be addressed, and if so, are best addressed through a new general prohibition or through more targeted provisions.

Finally, any definition of unfair conduct must be considered in the context of the administrative or enforcement framework that is to apply, particularly where protections are general rather than specific. From this perspective, Australia's general enforcement approach, focused on substantial penalties and ex-post legal action, may be out of step for an unfair trading practices prohibition.

Other jurisdictions, such as the United States, rely more on processes that identify concerning practices, and proactive measures that will mitigate or compensate for any harm, particularly in the first instance. It is typically only where the boundaries of unfair conduct and behavioural requirements have been defined – usually following negotiation or at least consultation with the offending party – that substantial penalties are imposed for subsequent contraventions.

The US Federal Trade Commission's (**FTC**) process does not directly result in penalties. Instead, the FTC first issues or threatens a complaint against a company, allowing it to work with the allegedly offending party, to identify and define what is unfair in the circumstances and address any departure from that definition. A subsequent settlement often involves a new consent order with further obligations, including undertakings, and definitions of the range of acceptable conduct. These settlements and undertakings then have legal force, and breaching them can potentially lead to even higher penalties. Although this framework may have emerged historically rather than by design, it has the effect of identifying the problematic conduct and giving the business a chance to fix it, before imposing penalties. Such an approach may be worth considering in Australia along with other alternatives or complements to ex post enforcement.

WHAT ABOUT UNFAIRNESS IN AUSTRALIAN COMPETITION LAW?

How would prohibiting unfair conduct impact Australia's competition law, as opposed to consumer law? Positively, in the ACCC's opinion. As the ACCC wrote in its 2019 DPI Report, referring to Edelman J's comment in *Australian Securities and Investments Commission v Kobelt* [2019] HCA 18 (*ASIC v Kobelt*):

“Promoting competition relies on consumers being able to make free and informed choices regarding products and services that best meet their interests. As such, it is critical that the ACL is able to protect consumers from any conduct that deprives them of a real and meaningful choice, such as a monopolist's conduct in imposing extortionate take-it-or-leave-it terms to consumers who are in need of a service.”⁶

There are complementary observations in the 2022 DPSI Report. That Report suggested that its competition recommendations should include high-level principles around fair trading and transparency for users.⁷ The ACCC also recently made similar comments in the context of greenwashing, observing that businesses making false or misleading claims creates an unfair advantage for those businesses “doing the wrong thing”.⁸

However, the debate around the need to go further than our existing laws in relation to prohibiting unfairness remains open. After all, the quotation above cited a dissenting judgment. The unconscionable conduct case of *ASIC v Kobelt* divided the High Court 4-3, with five compellingly argued judgments on whether Mr Kobelt's “book-up” credit system in Aboriginal communities was unconscionable or not.⁹

The Reid Committee would likely seek comfort in how lively the deliberation on its recommendation has become in recent years. Perhaps Shakespeare would also approve of the current state of affairs, given the subjectivity of the topic.

“Fair is foul and foul is fair.”¹⁰

6 DPSI Report, p499.

7 DPSI Report, p112-113.

8 ACCC, ACCC Product Safety Priorities announced at National Consumer Congress speech: <https://www.accc.gov.au/speech/accc-product-safety-priorities-announced-at-national-consumer-congress-speech>

9 For more, see Gilbert + Tobin, Nod and a Wink, Unconscionable and Unfair conduct after Kobelt: <https://www.gtlaw.com.au/knowledge/nod-and-a-wink>

10 William Shakespeare, Macbeth, Act I, Scene i.

TABLE 2: UNFAIR TRADING PROHIBITIONS ACROSS INTERNATIONAL JURISDICTIONS

	PROHIBITION SUMMARY	ENFORCEMENT FRAMEWORKS (PENALTIES)
UK	<p>The <i>Consumer Protection from Unfair Trading Regulations (2008)</i> imposes a general prohibition on all traders from engaging in unfair commercial practices with consumers. A commercial practice is unfair if it:</p> <ul style="list-style-type: none"> (a) contravenes the requirements of professional diligence; and (b) materially distorts or is likely to materially distort the economic behaviour of the economic consumer with regard to the product. <p>A commercial practice is also unfair if it is a misleading action, a misleading omission, or aggressive.</p> <p>The Regulations' Schedule 1 also lists commercial practices which, because of their inherently unfair nature, are "blacklisted unfair practices" that are prohibited <i>per se</i>, eg: false free offers; bait advertising; falsely stated limited offers; and fake credentials.</p> <p>In April 2022, the UK government announced its intention to strengthen consumer protection and enforcement. A draft bill is expected to be published in February 2023 considering issues of fake reviews, subscriptions and package travel rules.</p>	<p>A wide range of sanctions are available for breach of the prohibitions including:</p> <ul style="list-style-type: none"> + Civil right of redress: A consumer has a right to undo a contract, a right to a discount on the price paid, or an entitlement to seek damages if they have incurred a financial loss due to the trader's conduct. + Civil penalties: In April 2022, the UK government announced plans to introduce turnover based or fixed monetary fines for infringing consumer law. The CMA will be given the power to levy civil fines of up to 10% of global annual turnover. + Criminal sanctions: a breach of the unfair trading prohibitions may incur criminal prosecution if it can be proven the trader knowingly and recklessly breached the requirements of professional diligence and the conduct materially distorts, or is likely to distort the average consumer's economic behaviour. Corporate bodies or company officers may be subject to penalties which include a summary conviction or up to two years imprisonment. + Court enforcement orders.
US	<p>Section 5 of the <i>Federal Trade Commission Act</i>, imposes a broad and general prohibition against 'unfair methods of competition' and 'unfair or deceptive acts or practices'.</p> <p>Conduct must satisfy three tests to be unfair. It must be substantial; it must not be outweighed by any countervailing benefits to consumers or competition that the conduct produces; and it must result in injury that consumers themselves could not reasonably have avoided.</p>	<p>The FTC can obtain equitable remedies using:</p> <ul style="list-style-type: none"> + Cease-and-desist orders after an administrative hearing; + Consent orders binding the parties to various positive or negative obligations in settlement of an administrative complaint. <p>To obtain monetary remedies, the FTC must first go through Section 5's administrative process, including issuing a cease-and-desist or consent order. It may then be able to obtain civil fines of up to \$50,120 for each violation of the issued order.</p>

	PROHIBITION SUMMARY	ENFORCEMENT FRAMEWORKS (PENALTIES)
EU	<p>Article 5 of the European Union’s 2005 <i>Unfair Commercial Practices Directive</i> (UCPD) includes a general prohibition of unfair commercial practices, to capture conduct that does not fall within the specific per se prohibitions on certain aggressive or misleading commercial practices. A commercial practice is unfair if it:</p> <ul style="list-style-type: none"> + is contrary to the requirements of professional diligence; and + materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers <p>The UCPD defines the following terms:</p> <ul style="list-style-type: none"> + “Professional diligence” is the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practice / the general good faith principle in the trader’s field.” + “To materially distort the economic behaviour of consumers” is using a commercial practice to appreciably impair the consumer’s ability to make an informed decision, causing the consumer to take a transactional decision they would not have taken otherwise. <p>The UCPD also:</p> <ul style="list-style-type: none"> + prohibits “<i>aggressive commercial practices</i>” which, by harassment, coercion or undue influence, significantly impair consumers’ freedom of choice or conduct and cause them to take a transactional decision they would not have taken otherwise. + contains a list of 35 commercial practices that are per se prohibited. <p>The European Commission is currently undergoing a public consultation and review to ensure that its legislative instruments, including the UCPD, ensure a high level of consumer protection in the digital environment. This review complements new legislation such as the <i>Digital Services Act</i>, which will prohibit dark patterns on online platforms.</p>	<p>Implementation and enforcement of the UCPD is left to European Union member states, provided that enforcement is “adequate and effective” and penalties are “effective, proportionate and dissuasive.”</p> <p>For example, under the French Consumer Code implementing the UCPD, a wide range of sanctions are available, including:</p> <ul style="list-style-type: none"> + Court enforcement orders, which may include cease-and desist orders, damages and rescission of contracts; and + Criminal and civil penalties, including a two-year prison sentence or monetary fines of EUR 300,000 for individuals. In addition, legal entities may be fined EUR1.5 million or up to 10% of a company’s annual turnover.

PROHIBITION SUMMARY

ENFORCEMENT FRAMEWORKS (PENALTIES)

CANADA

Parts 7 and 8 of the *Competition Act* of Canada prohibit deceptive marketing practices, including false and misleading representations, drip pricing, and refusals to deal. Consumer protection legislation at the province level further regulates unconscionable and unfair forms of conduct:

- + in **Alberta**, it is an *unfair practice* to exert undue pressure or influence on a consumer; take advantage of a consumer's inability to understand any aspect of a transaction; enter into a transaction that the consumer will not benefit from or cannot pay for; charge grossly above market price; include terms or conditions that are harsh, oppressive or excessively one-sided; or make any of a number of general or specific false or misleading representations;
- + in **British Columbia**, a supplier must not engage in an *unconscionable act or practice*, considering all the circumstances, including any undue pressure; any taking advantage of the consumer's inability to protect their own interests; whether the price grossly exceeded market price; whether there was no probability that the consumer would be able to pay for the transaction; and whether terms or conditions were so harsh or adverse to the consumer as to be inequitable;
- + in **Quebec**, a consumer transaction may be voided where the disproportion between the respective obligations of the parties is so great as to amount to consumer exploitation or where the obligation of the consumer is excessive, harsh or unconscionable;
- + in **Saskatchewan**, it is an *unfair practice* to engage in misleading or deceptive conduct; make a false claim; take advantage of a consumer's inability to protect their own interests or understand a transaction; include terms or conditions that are harsh, oppressive or excessively one-sided; charge grossly above market prices; or take advantage of a consumer by exerting undue pressure or undue influence; and
- + in **Manitoba, New Brunswick, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island** and **Yukon**, there is no general prohibition against unfair or unconscionable practices.

Enforcement options vary:

- + A **breach of the national *Competition Act*** may result in injunctions preventing the conduct, or administrative penalties the greater of \$10,000,000 for a first offence, \$15,000,000 for subsequent offences or three times the benefit from the breach.
- + In **Alberta**, a relevant breach is a criminal offence subject to penalties up to the greater of \$300,000 for a first offence or three times the benefit from the breach, or up to 2 years' imprisonment for an individual.
- + In **British Columbia** a relevant breach is a criminal offence subject to three times the benefit obtained from the breach.
- + In **Quebec**, certain contracts can be voided with appropriate restitution.
- + In **Saskatchewan**, a relevant breach is a criminal offence subject to penalties of up to \$500,000 for a repeat offence.

	PROHIBITION SUMMARY	ENFORCEMENT FRAMEWORKS (PENALTIES)
<p>JAPAN</p>	<p>‘Abuse of superior bargaining position’ (ASBP) is a type of unfair trade practice regulated under Article 19 of the <i>Act on the Prohibition of Private Monopolization and Maintenance of Fair Trade</i>.</p> <p>ASBP does not require a finding of market power. Rather, ASBP exists when a party in a relative superior bargaining position engages in abuse conduct that runs the risk of being an ‘impediment to competition’. The JFTC cumulatively considers a number of factors, including (i) whether the company at issue has a superior bargaining position; (ii) whether there was an “abuse” (i.e. a disadvantageous conduct); and (iii) whether the abusive behaviour can be justified in light of normal business practice.</p> <p>The JFTC’s Guidelines on ASBP include a non-exhaustive list of conduct that would support a finding of ASBP, including:</p> <ul style="list-style-type: none"> + Vendors being forced to purchase/use the retailer’s goods or services; + Unjust price reduction imposed by the retailer; and + Unjust return of goods by the retailer. 	<p>Where there is an infringement of Article 19, the JFTC can:</p> <ul style="list-style-type: none"> + Impose a non-discretionary administrative fine (1% of all relevant sales from when the infringing party engaged in the conduct to when it ended, for a maximum of 10 years); or + Issue a cease-and-desist order. <p>Or, in the alternative:</p> <ul style="list-style-type: none"> + Accept formal commitments from the infringing party; or + Accept informal rectification of the relevant conduct.
<p>SINGAPORE</p>	<p>Singapore’s <i>Consumer Protection (Fair Trading) Act 2013</i> section 4 provides it is an “unfair practice” for a supplier in a consumer transaction to:</p> <ul style="list-style-type: none"> + do or say (or omit to do or say) anything if as a result a consumer might reasonably be deceived or misled; + make a false claim; + take advantage of a consumer if the supplier knows or ought reasonably to know the consumer is not: <ul style="list-style-type: none"> – in a position to protect their own interests; or – reasonably able to understand the transaction or any related matter; + engage in certain specific practices, including taking advantage of a consumer by: <ul style="list-style-type: none"> – including harsh, oppressive or excessively one-sided conditions so as to be unconscionable; or – exerting undue pressure/influence to enter the transaction. 	<p>In relation to unfair practices, the Act allows:</p> <ul style="list-style-type: none"> + A consumer who has entered the relevant consumer transaction to take legal action against the supplier for restitution, damages, specific performance or a variation of the contract. + a regulator to invite a supplier who may have engaged in an unfair practice to enter into a voluntary compliance agreement undertaking not to engage in that practice as well as compensation, costs and publicity obligations. + the Commission to take court action for declarations, injunctions and notification orders.

PROHIBITION SUMMARY

SOUTH KOREA

The *Monopoly Regulation and Fair Trade Act* regulates unfair or unjust conduct that may limit free competition. The 9 categories of unfair trade practices include:

refusal to deal; discriminatory treatment; exclusion of a competitor; unfair solicitation of customers; coercion of transaction; abuse of superior bargaining position (where a party in a transaction takes unfair advantage of its bargaining position); imposing binding conditional trade; obstruction of business activities; and unfair support.

The KFTC Guidelines on Unfair Trade Practices note that although an abuse of superior bargaining position does not require a finding of market power or dominance, there must be an ongoing relationship between the parties, significant reliance of one party on the other, and the KFTC will consider various factors including the conduct's purpose, industry practices, and relevant laws.

ENFORCEMENT FRAMEWORKS (PENALTIES)

For a finding of unfair trade practices, the KFTC may:

- + impose an **administrative fine** of up to 4% of relevant sales; or
- + refer the case for **criminal prosecution** with a maximum penalty of KRW 150 million or imprisonment of up to 2 years.

Individuals can also seek **private damages**, or an **injunction** against a company that commits or is likely to commit the violation.



UNFAIRNESS IN AUSTRALIA'S COMPETITION AND CONSUMER LAWS

MAY 1997

Report of the House of Representatives Committee on Industry, Science and Technology: *Finding a Balance Towards Unfair Trading in Australia*

Commissioned on the back of “grave” concerns regarding unfair conduct by big business, Report recommends the introduction of a prohibition against unfair conduct

1998-2008

Only 2 successful ACCC-initiated prosecutions for unconscionable conduct under the TPA

- + *ACCC v Simply No-Knead (Franchising) Pty Ltd* (unconscionable conduct against franchisees)
- + *ACCC v Dataline.Net.Au Pty Ltd* (unconscionable conduct for misusing superior bargaining position)

3 DECEMBER 2008

Commonwealth Government releases its report, *The need, scope and content of a definition of unconscionable conduct for the purposes of Part IVA of the Trade Practices Act 1974.*

Whilst the unconscionable conduct provisions had been interpreted narrowly by the courts, the Report does not recommend a general prohibition on unfair conduct, instead suggesting other legislative amendments

20 DECEMBER 2018

ACCC v Medibank Private Ltd

ACCC loses a claim against Medibank for unconscionable conduct even though Medibank had acted “harshly and unfairly”

JUNE 2019

ACCC Digital Platforms Enquiry Final Report

ACCC recommends amending the Australian Consumer Law “to include a prohibition on certain unfair trading practices”

MARCH 2017

Australian Consumer Law Review

Review suggests exploring “how an unfair trading prohibition could be adopted within the Australian context”

2010

Unfair Contract Term laws introduced into the Australian Consumer Law

6 NOVEMBER 2020

Commonwealth Government agrees to develop a regulatory impact statement for an unfair trading practices prohibition

12 JUNE 2019

ASIC v Kobelt

High Court (by 4:3 majority) dismisses a claim for unconscionable conduct arising out of a predatory 'book-up' credit system supplied to vulnerable users. Judges were split on their reasoning

30 NOVEMBER 2021

ACCC v Mazda Australia Pty Ltd

Federal Court dismisses claims that Mazda acted unconscionably despite "appalling customer service", the ACCC has appealed this to the High Court

9 NOVEMBER 2022

Civil penalties for anticompetitive conduct increased, unfair contract terms made illegal

Law introduced as part of an initiative to "deter unfair activity" by businesses

MAY 2022

Election of new Government

Government pledges to implement a competition policy that has a stronger focus on consumer and small businesses

SO WHERE ARE WE AT?



The Government has indicated that it will develop a regulatory impact statement for the introduction of an unfair trading practices prohibition



The Government has also indicated a policy shift towards the protection of consumers and small businesses, evidenced in the amendments made to civil penalties / unfair contract terms under the CCA



The ACCC continues a broad campaign advocating for the introduction of an unfair trading practices prohibition, through projects such as the DPSI



How such a prohibition would be formulated remains uncertain

