



Submission to Treasury Consultation - Regulation Impact Statement on Protecting Consumers from Unfair Trading Practices

Direct Selling Australia is pleased to make this submission to Treasury in relation to the Regulation Impact Statement on Protecting Consumers from Unfair Trading Practices (**RIS**).

Direct Selling Australia represents 50 members who manufacture and supply products through a network of over 350,000 independent sales people (**ISP**), who are micro business owners. Most ISPs are women, who put occasional hours into their business, to develop supplementary income for their family. Proportionately, many are in rural communities.

Unfair Trading Prohibition

Direct Selling Australia notes that the RIS outlines unfair trading practices it asserts are not currently covered by existing consumer laws which might cause significant consumer and small business harm. The RIS presents four policy options, including maintaining the status quo, amending statutory unconscionable conduct, introducing a general prohibition on unfair trading practices, and a combination of general and specific prohibitions. The RIS acknowledges that 'unfairness' is a subjective concept and poses challenges in policy design and implementation.

Direct Selling Australia opposes any changes to the Australia Consumer Law (**ACL**) which will affect impose additional compliance burdens on businesses. Direct Selling Australia does not believe there is sufficient a gap in the law to justify or necessitate the introduction of an “unfair trading” prohibition. The existing provisions in the ACL provide significant legal consumer protection measures to address unfair trading practices. We acknowledge that other jurisdictions such as the EU have introduced an express “unfair trading” prohibition. However, we are not cognisant of whether other provisions exist in those jurisdictions relating to unconscionability, misleading and deceptive conduct and unfair contract terms as exist already in Australia. The European example provided in the RIS relates to a Directive which would have been implemented differently in each member state. It is difficult to comment on the effectiveness of these international models without further analysis of the broader legal environment in which they operate.

In our view the introduction of any general prohibition in Australia would result in duplication with prohibitions already included under current law and there is likely to be a substantial overlap between a general unfair trading prohibition, taken from an

international model, and current Australian law, needlessly complicating the Australian legal framework. The recent introduction of a significant penalty regime to the unfair contract terms provisions should, for example, be considered and the effect those changes may have on business behaviour prior to expanding and introducing new provisions into the ACL. An additional legislative protection in the ACL should only be introduced to the extent it addresses a very specific gap in protection afforded by the existing ACL rather than introducing a new broad brush provision.

Direct Selling Australia considers that the introduction of a general, economy wide “unfair trading” prohibition would impose unnecessary and burdensome regulatory compliance costs and uncertainty for business. We note that small business would also be required to comply with an unfair trading prohibition. Direct selling companies in particular, invest significant time and resources in educating the ISPs they partner with about changes to the law and how to comply with them. The introduction of a broad, economy wide unfair trading with a highly subjective dimension would require a great investment of time and training resources in order to train thousands of micro-businesses on the ramifications of such a broad provision. Regulation of this nature (and the consequential uncertainties) is likely to stifle investment and commercial innovation at a time when Australian businesses are already facing significantly increased and regulatory burdens in other areas such as industrial relations.

For the reasons set out above, Direct Selling Australia supports Option 1.

29 November 2023