

## Protecting consumers from unfair trading practices

### Submission in response to the Treasury Consultation Regulation Impact Statement

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#### Option 1 – Questions Option 1 – Status quo

##### **1.1 Do you agree with the impact analysis of this option? Are there other issues that should be taken into account when analysing the impact of this option?**

The status quo does not provide a way of responding to consumer harms arising from unfair business practices, especially the more subtle harms imposed via new digital technologies.<sup>1</sup> Industry Ombudsmen provide useful and important responses to unfair practices, particularly under their unfairness jurisdiction, but do not apply in general and online consumer markets.

##### **1.2 If a trading practice is found to have caused consumer harm, do you think that the courts are able to determine appropriate remedies in line with community expectations under the current legal framework? If not, why not?**

Many if not most consumer disputes do not go to court. Compliance with existing consumer protection law is primarily enforced through regulatory action. Regulators do not have sufficient powers to respond to unfair trading practices.

##### **1.3 Could a focus on stakeholder education help reduce the prevalence of unfair trading practices under existing consumer protections?**

Stakeholder education is important. However without a legislative imperative to avoid unfair conduct, business are unlikely to change otherwise profitable conduct.

#### Option 2 – Questions Option 2 – Amend statutory unconscionable conduct

##### **2.1 Do you agree with the impact analysis of this option? Are there other benefits or costs that should be taken into account when analysing the impact of this option?**

Statutory unconscionable conduct has been amended multiple times yet remains unresponsive to more subtle forms of unfair conduct outside the scope of the equitable doctrine or specific instances of bullying or fraudulent behaviours.<sup>2</sup>

##### **2.2 What would be the impact of pursuing this policy option for consumers and businesses?**

There risks being little impact from this option.

##### **2.3 Are there any consequences or risks that need to be considered when pursuing this policy option? Please provide details.**

See above.

##### **2.4 Would this policy option place any additional financial or administrative cost or burden on small businesses and/or consumers?**

See above.

##### **2.5 Do you consider amending 'unconscionable conduct' under the ACL would sufficiently deter businesses from engaging in unfair trading practices? Please provide reasons for your response.**

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<sup>1</sup> Jeannie Marie Paterson and Elise Bant 'Should Australia Adopt a Prohibition on Unfair Trading; Responding to Exploitative Business Systems in Person and Online' (2020) 44(1) Journal of Consumer Policy 1.

<sup>2</sup> See Jeannie Marie Paterson, Elise Bant, Nicholas Felstead, and Eugene Twomey, 'Beyond the unwritten law: The limits of statutory unconscionable conduct' (2023) 17 Journal of Equity 1.

NA

## **2.6 What forms of unfair trading conduct could be included as additional factors in section 22?**

Including additional factors is unlikely to change the approach of courts given the current approaches have failed to pay proper attention to these factors.<sup>3</sup>

## **2.7 Do you think that the prohibition should be made prospective, so it applies to conduct that is likely to be unconscionable? Why or why not?**

This change would be useful to allow courts to make a finding in the absence of showing actual demonstrated advantage taking. It will remain necessary to show conduct that is unconscionable which as discussed is arguably too high a bar to respond to the concerns of unfair conduct, particularly in digital markets.

## **2.8 Should the list of factors contained in section 22 be mandatory for courts to consider in determining whether conduct is unconscionable? In other words, should section 22 be amended so that the courts must have regard to the list of factors for the purposes of section 21?**

Requiring courts to have regard to the list of specified factors may extend the scope of the doctrine in case law. But the impact of conduct listed under the factors would remain to be assessed by the standard of what is unconscionable, and in this sense remain restricted in its ability to respond to unfair practices.

## **2.9 Are there any other principles that would be useful to consider in amending statutory unconscionable conduct? Please provide details.**

### **Option 3 – Questions Option 3 – Introduce a general prohibition on unfair trading practices 3.1 Do you agree with the impact analysis of this option? Are there other benefits or costs that should be taken into account when analysing the impact of this option?**

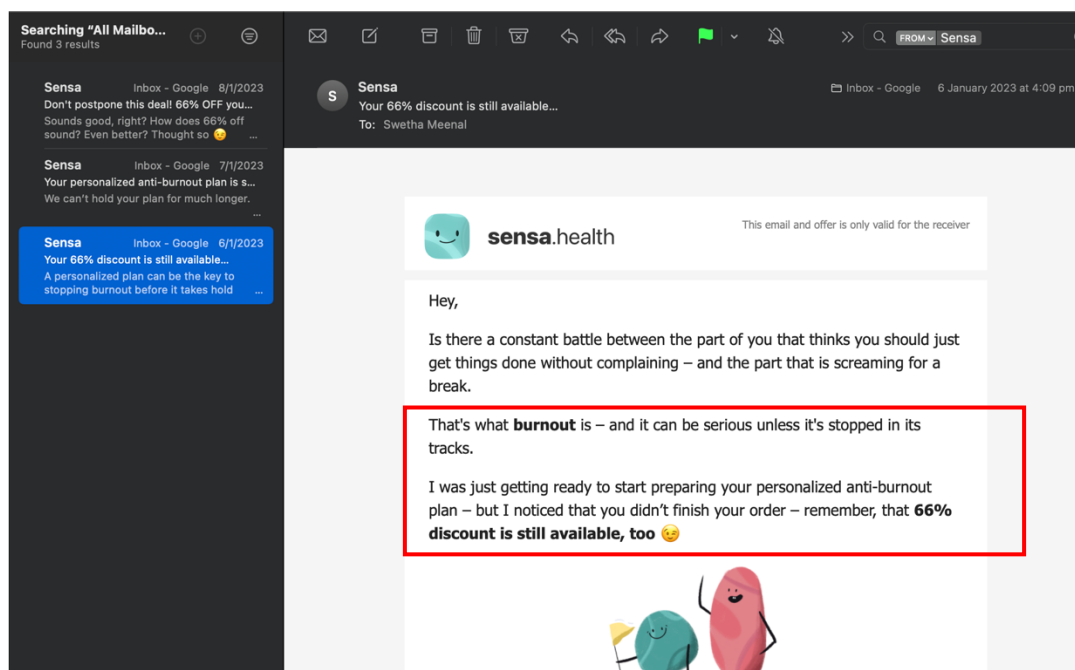
We support introducing a prohibition on unfair trading to address harms that arise in particular from online interactions. As a primary point of focus, this submission will highlight the use of manipulative designs and dark patterns by consumer-facing digital businesses that boost their ability to acquire and retain consumers and generate profits. These can range from subtle manipulation techniques that leverage the colour, sizing, and fonts of information presented to distort consumers' autonomy, to aggressive practices where consumers are made to pay for services not actively purchased by them. Importantly, certain decisions that may initially seem to only affect one's ability to make informed choices can, over time, lead to financial consequences. For instance, in a recent study conducted by the Centre for AI and Digital Ethics, it was uncovered that most mental-health businesses nag consumers with emotionally steering emails to persuade them to sign up for ongoing memberships.<sup>4</sup> The consent for these marketing messages are obtained passively or presumed by business at the time of sign-up. This flawed consent mechanism is relied on by businesses to justify the volume and the aggressiveness of these marketing communications. However, what begins as a seemingly harmless agreement to receive marketing emails can quickly escalate into consumers being pressured into purchasing services that may not truly benefit them.

For example, Sensa, a mental health application, passively acquires consent to marketing messages by preselecting a user's consent to direct-marketing communications. The app then emails consumers with discounts and offers to a premium subscription, highlighting how a user's mental health may worsen if they do not seek help immediately. These emails leverage all sensitive information that a user provides at the time of signing up, and urges consumers to take immediate action to improve their mental health (See image below).

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<sup>3</sup> Jeannie Marie Paterson, Elise Bant, Nicholas Felstead, and Eugene Twomey, 'Beyond the unwritten law: The limits of statutory unconscionable conduct' (2023) 17 Journal of Equity 1.

<sup>4</sup> Jeannie Paterson and Swetha Meenal Ananthapadmanaban, *Data Privacy And Consumer Protection Practices of Automated Mental Health, Wellbeing and Mindfulness Mental Health, Wellbeing and Mindfulness Apps Report* (June 2023) <[https://www.unimelb.edu.au/data/assets/pdf\\_file/0010/4663162/Mental-Health-Apps-Report-7-June.pdf](https://www.unimelb.edu.au/data/assets/pdf_file/0010/4663162/Mental-Health-Apps-Report-7-June.pdf)>.



In such cases, the harms caused by marketing messages extend beyond a temporary annoyance caused to consumers. It could persuade them into purchasing a subscription they might not use or a service that might not meet their needs. A passively obtained consent to send direct-marketing messages to a consumer does not justify the use of manipulative language to target a consumer based on their behavioural profile.<sup>5</sup> Hence, mandating that all forms of consumer consent be fairly obtained is paramount to ensuring a system of fair practices.

This submission will proceed to outline the list of specific instances that can result in consumer harm and small business harm and distort competition in the economy.

### 3.2 Are there any consequences or risks that need to be considered when pursuing this policy option? Please provide details.

The success of the prohibition depends on its drafting. We favour the US model over the EU model where the concept of the ordinary consumer has been problematic in reducing the scope of protection.

### 3.3 Would this policy option potentially create uncertainty for business or limit competition and innovation? Would it place any additional financial or administrative cost or burden on small businesses and/or consumers?

Unfairness is a more intuitive concept than unconscionability and we do not foresee unreasonable burdens arising from the introduction of this prohibition. Certainty will be supported by the inclusion of a black list of unfair practices, discussed below.

### 3.4 Do you consider a general prohibition on unfair trading practices would sufficiently deter businesses from engaging in conduct that is considered unfair, harmful or detrimental to consumers?

This would depend largely on enforcement but provides a basis for the ACCC to pursue rogue business engaging in unfair business practices.

### 3.5 Should a general prohibition on unfair trading practices define what is considered unfair? If so, what elements should be incorporated? Should a definition of unfair be similar to the recent unfair contract terms amendment under section 24 of the ACL?

We do not support a definition based on legitimate interests. We consider that the definition proposed in the consultation regulation impact statement accords importance to businesses' interests and sets higher thresholds

<sup>5</sup> Ibid

of consumer harm, both of which could undermine the operation of the unfair trading regime. The definition proposes that a practice could be considered unfair if,

- is not reasonably necessary to protect the legitimate interests of the party who would be advantaged by the conduct; and
- would cause detriment (whether financial or otherwise) to a party if it were to continue.

First, allowing the 'legitimate interests' of businesses to weigh into the determination of whether a practice is unfair could override the considerations of harm caused to consumers. For instance, the consideration of 'legitimate interest' in the unfair contract terms regime has allowed courts to justify unfair contract terms as reasonably necessary to protect the interests of the businesses.<sup>6</sup> Even where the terms have, in effect, allowed businesses to take significant advantage of the lack of parity between the contracting parties, courts have held them to be 'reasonably necessary' to protect the legitimate interests of the businesses.<sup>7</sup> It is submitted that the consideration of whether a practice is 'reasonably necessary to protect the legitimate interests' could have a similar chilling effect on the operation of the regime. For example, a 2022 report by the Consumer Policy Research Centre on Dark Patterns highlights how most businesses use pressure selling tactics (or 'scarcity cues') to set urgency to actions that may not be necessary to consumers. The report states that scarcity cues induce a 'fear of missing out' or 'FOMO' in consumers to persuade them to purchase the product before the discount expires or before the business runs out of stock.<sup>8</sup> According to the report, 1 in 3 Australians found the practice to be manipulative, and 1 in 4 Australians found the practice to be deceptive. Despite this effect on consumers, there might be a certain degree of merit in the argument that businesses – especially booking sites – have a legitimate interest in informing consumers when they are about to be sold out. It may be argued that this information might allow consumers to plan effectively. But this interest that a business holds in keeping its consumers informed cannot be the safety net that enables them to undermine the operation of prohibition on unfair trading practices. Dr. Harry Brignull, in his book, 'Deceptive Patterns: Exposing the tricks tech companies use to trick you', points out how Shopify apps like 'Hurrify' allow businesses to create fake countdown timers that can be automatically reset once the timer runs out.<sup>9</sup> The popularity of Hurrify and other countdown timers on the Shopify platform in itself is indicative of the fact that pressure-selling tactics work, whether or not they are genuine, and that businesses widely use them to boost sales (See image below). E-commerce platforms are rife with such fake countdown timers that mislead consumers into thinking that certain discounts or offers are time bound, when they could be available for longer.

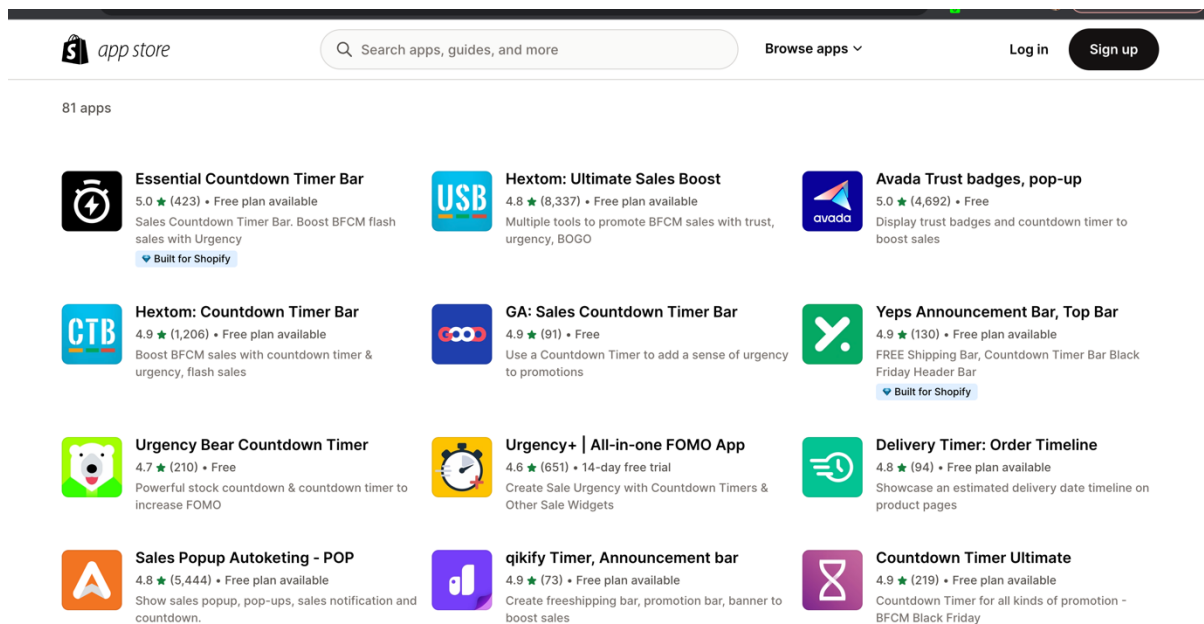
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<sup>6</sup> Jeannie Paterson and Hal Bolitho, 'Unfair Terms and Legitimate Business Interests in Standard Form Small Business Contracts' (2023) 30 *Competition and Consumer Law Journal* 19.

<sup>7</sup> *Paciocco v Australia and New Zealand Banking Group Ltd* [2016] HCA 28; *Dialogue Consulting Pty Ltd v Instagram Inc* [2020] FCA 1846 [322].

<sup>8</sup> Duped by Design Consumer Policy Research Centre, *Duped by Design* (2022) <<https://cprc.org.au/dupedbydesign/>>.

<sup>9</sup> Harry Brignull, *Deceptive Patterns* (Testimonium Limited, 2023).



*Shopify App Store features various countdown timer apps designed to easily incorporate urgency and other scarcity cues into e-commerce interfaces to drive sales. High user ratings displayed alongside these Apps imply their effectiveness and popularity among online businesses.*

Such practices that tend to boost sales by creating a false impression on the availability of goods or the availability of discounts without adequate information to allow consumers to make informed decisions must be held unfair. In the assessment of whether such practices are unfair and distort consumer decision making, significant importance must be accorded to the design of the practices and their potential impact on consumers. For instance, businesses that have low stock counts displayed on every other item of purchase must be found to be in breach of the prohibition on unfair trading practice. Businesses that are found to never update their stock, or businesses that are found to always position scarce stocks in the most prominent location on the screen, must be found to be in breach as well. However, displaying stock counts that are updated from time to time, or genuine timers that are only set around specific events such as 'Black Friday' sales (that expire as indicated, and do not extend and offer a further increase in discount) should be permitted. These must be actively monitored to ensure adequate transparency and fairness.

Second, the requirement of there being a detriment to the consumer might be harder to prove in some instances involving dark patterns, where the harms caused to consumers vary on a case-to-case basis. While it is not contested that the harm to consumer is a relevant factor, the focus of the unfair trading prohibition must remain on the unfairness inherent in the design of the business practice rather than a measurable impact on the consumer. It is suggested that modelling the definition based on the general safety net provision in ACL, which prohibits conduct that is "misleading or deceptive, or *likely* to mislead or deceive", could lower the threshold of harm required.<sup>10</sup> Looking at EU's Unfair Commercial Practices Directive or the US's FTC Act for the definition of 'unfair' could prove helpful as well. Article 5 of the Directive defines a practice as unfair if the conduct materially distorts or is *likely* to materially distort the economic behaviour of the average consumer. Similarly, the FTC Act defines a practice as unfair when it causes or is *likely* to cause substantial injury. This shifts the focus of the inquiry back to the design of the business practice and its *potential* effect on a consumer – as opposed to a tough query on whether a consumer's behaviour was in fact distorted on account of the business practice.

While looking at international statutes for might be a helpful practice in constructing a progressive definition of 'unfair', caution must be exercised to ensure that the protection is awarded to the entire spectrum of consumers, as opposed to an 'average' or a 'vulnerable' consumer. While the EU's statute is restricted in application to those practices that would materially distort the economic behaviour of the *average* consumer, the Australian Consumer

<sup>10</sup> JM Paterson and E Bant, 'Should Australia Introduce a Prohibition on Unfair Trading? Responding to Exploitative Business Systems in Person and Online' (2021) 44(1) *Journal of Consumer Policy* 1 <<https://link.springer.com/article/10.1007%2Fs10603-020-09467-9>>.

Law makes no such differentiation between consumers (save, the application of the doctrine of unconscionability). Hence borrowing from the EU's statutory provision might narrow down the definition of a 'consumer' as it exists in the Australian regime, and cause friction on application.<sup>11</sup>

Additionally, the operation of the doctrine of unconscionability in ACL offers valuable insights into the disadvantages of stratifying consumers, particularly if the intention is to create a fair and transparent digital commercial landscape. Although this is not a requirement of the action, courts have tended to focus on the need advantage-taking by a stronger party of a weaker party, over the course of a commercial dealing.<sup>12</sup> This leads to an emphasis on the experience of vulnerability of the weaker party. A focus on special disadvantage or vulnerability renders the doctrine ill-suited for application to digital economy – particularly in instances of subtle consumer manipulation – given that every consumer is subject to one form of manipulation or another in the digital economy.<sup>13</sup>

To overcome these limitations, a broader definition of unfair trading practices that entirely shifts the focus onto the design of the businesses must be adopted. The definition of 'unfair' must be broad enough to reflect the notion of unfairness that is "widely understood, being part of the every-day moral vocabulary of all Australians" (House of Representatives Standing Committee on Industry, Science and Technology (1997), Recommendation 6.1 [6.73]).<sup>14</sup> As discussed by the Full Federal Court in *Australian Securities and Investments Commission v Westpac Securities Administration Limited* (2019), a practice that will be regarded as fair must preclude "a degree of calculated sharpness" ([174]), conduct that is "sufficiently egregious" ([289]), "systemic sharp practice" ([290]), and behaviour that "undermine[s] informed decision-making" by consumers ([398]).<sup>15</sup>

To ensure a fair and transparent digital economy, a business practice must therefore be held unfair if it unreasonably distort or undermine consumer autonomy and the economic choices of consumers by doing any of the following:

- (i) omit, hide, or provide unclear, unintelligible, ambiguous, or untimely material information that interferes with a consumer's decision making;
- (ii) Using design elements and other non-contractual barriers that causes a consumer to undertake a transactional decision they would not have taken otherwise.

**3.6 Should civil penalties be attached to a general prohibition on unfair trading practices? Please provide reasons for your response.**

Yes – civil penalties mean contravening the law is not a mere cost of doing business.

**3.7 Are there any practices you think may be captured by a potential unfair trading prohibition, that you consider to be part of legitimate commercial behaviour and should be excluded from an unfair trading prohibition? Please provide examples.**

No

**Option 4 – Questions Option 4 – Introduce a general and specific prohibition on unfair trading practices**

**4.1 Do you agree with the impact analysis of this option? Are there other benefits or costs that should be taken into account when analysing the impact of this option?**

The impact analysis presented overestimates the costs that the businesses would go through on the road to compliance. While this may have been true for privacy regimes in the past, this does not necessarily translate to the unfair trading regime. Particularly, with respect to online consumer manipulation or dark patterns (as is the scope of this submission), businesses invest upwards of hundreds of thousand of dollars every year in 'A/B variant

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<sup>11</sup> Jeannie Marie Paterson and Gerard Brody, 'Safety Net Consumer Protection' (2015) 38 *Journal of Consumer Policy* 331.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid

<sup>15</sup> Ibid

testing'.<sup>16</sup> This is a process that allows businesses to test the appeal of various versions of their UI designs with the consumers before they decide on the one design that will boost customer engagement the most.<sup>17</sup> Email subject lines, use of colours on the action buttons on landing pages, positioning of advertising messages, and other design elements on the webpage are all tested amongst various groups of customers before companies decide upon a design. Once a design is confirmed, the process is repeated every few weeks depending on the size of the business and the consumer engagement. Businesses aggressively conduct A/B variant testing around important holidays to boost customer engagement and generate profits. According to a report by Digital Marketing Institute, medium to large sized businesses see as much as 300% increase in customer engagement through A/B variant testing.<sup>18</sup> In this process, large sized businesses with troves of data further leverage machine learning algorithms to optimise their UI to increase engagement. This helps them deliver personalised content and UI design to different customers based on their behavioural profiles,<sup>19</sup> to manipulate them into making choices that benefit businesses at the cost of their personal or financial welfare.

Businesses are not hesitant to invest in these tactics because it makes them financially better off. According to research by the Consumer Policy Research Centre, 83% of the surveyed Australian customers have lost money, control over their data, or were influenced into making choices that did not benefit them on account of dark patterns.<sup>20</sup> Another research published by ING Australia found that dark patterns and subscription traps cost an average Australian about \$1261 a year, amounting to a total displacement of about \$8 billion from customers to businesses – for services that customers hardly use.<sup>21</sup> The status-quo allows businesses to benefit, leaving customers worse-off. Hence, with the introduction of unfair trading prohibition, the costs of compliance and training that businesses will have to undergo has the potential to make Australian consumers better off by \$8 billion. This will empower consumers to make informed decisions with their finances.

#### **4.2 Are there any consequences or risks that need to be considered when pursuing this policy option? Please provide details.**

It might be worth considering potential countermeasures that businesses will employ to boost customer engagement if the law prohibits certain behaviour. Businesses are likely to aggressively leverage machine learning methods to optimise customer interaction, possibly moving away from conventional dark pattern tactics. This calls for regulatory bodies to adopt sophisticated technologies to proactively monitor the behaviour of digital businesses. Given the rapid adoption of AI and tech by the consumer businesses, regulatory bodies must consider adoption of enforcement technologies to be able to capture and address violations effectively and ensure a fair and transparent digital economy.

#### **4.3 Would this policy option place any additional financial or administrative cost or burden on small businesses and/or consumers?**

See above.

#### **4.4 Do you consider a specific prohibition on unfair trading practices in the form of a list or schedule of unfair conduct would be an adaptable policy option for technological change?**

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<sup>16</sup> Eva Ascarza, 'Research: When A/B Testing Doesn't Tell You the Whole Story', *Harvard Business Review* (23 June 2021) <<https://hbr.org/2021/06/research-when-a-b-testing-doesnt-tell-you-the-whole-story>>.

<sup>17</sup> Amy Gallo, 'A Refresher on A/B Testing', *Harvard Business Review* (28 June 2017) <<https://hbr.org/2017/06/a-refresher-on-ab-testing>>.

<sup>18</sup> Ron Kohavi, Diane Tang and Ya Xu, *Trustworthy Online Controlled Experiments: A Practical Guide to A/B Testing* (Cambridge University Press, 2020) 14, 14–17; '3 Reasons Your Landing Pages Suck & How to Fix Them', *Digital Marketing Institute* <<https://digitalmarketinginstitute.com/blog/3-reasons-landing-pages-suck-fix>>.

<sup>19</sup> UK Government, *Algorithms: How They Can Reduce Competition and Harm Consumers* (Department for Business, Energy and Industrial Strategy (2020) <<https://www.gov.uk/government/publications/algorithms-how-they-can-reduce-competition-and-harm-consumers>>.

<sup>20</sup> Duped by Design Consumer Policy Research Centre, *Duped by Design* (2022) <<https://cprc.org.au/dupedbydesign/>>.

<sup>21</sup> 'Unused Subscriptions and Forgotten Outgoings Could Cost Each Aussie up to \$1,261 a Year – ING Newsroom', *newsroom.ing.com.au* <<https://newsroom.ing.com.au/unused-subscriptions-and-forgotten-outgoings-could-cost-each-aussie-up-to-1261-a-year/>>.

Yes – the specific prohibitions will give guidance as to prohibited practice. The general prohibition will provide a safety net protection.

**4.5 Do you consider a specific prohibition on unfair trading practices would sufficiently deter businesses from engaging in conduct that is considered unfair, harmful or detrimental to consumers?**

Yes – but it should be accompanied by sufficient education and enforcement strategies.

**4.6 What types of unfair trading practices should be specifically prohibited? Should they be industry specific or economy-wide?**

The following are design techniques most employed by businesses to undermine consumer autonomy and cause a range of tangible and intangible harms to them over the course of a commercial transaction. They cause varying degrees of harm to a consumer as discussed below:

1. The following are commonly deployed by businesses to undermine consumer autonomy in the course of obtaining their consent to data-collection and marketing communication. As stated above, the consequences of such practices extend beyond an immediate privacy-based impact.

1.	False Hierarchy Forced Action	<p>This is a practice where the option that benefits a business is highlighted and presented in a different colour or a bigger font. This usually quickly manipulates consumers into choosing the highlighted option, even if it is not privacy-friendly or consumer-friendly.</p> <p>The presence of the alternate option is rarely noticed.</p>
2.	Trick Question	<p>These are pop-ups with confusing phrasing or no straightforward options. These contain no options to directly refuse, deny, or reject the request raised in the pop-up or the notice. This causes a consumer to choose an option that might not be in their best interest.</p>
3.	Data-Grab	<p>Having design features in the user interface that permit the collection of more data than is required or solicit data without the user's explicit consent.</p> <p>This could appear in the form of pre-ticked boxes, privacy collection notices that do not require a consumer to consent or require that a user signs in before they can shop from the website.</p>
4.	Nagging	<p>This is when customers are constantly interrupted from the activity they intend to complete, by the way of pop-ups that request their email-IDs to send discounts, coupons, or other marketing messages. These pop-ups typically lack an easily accessible or identifiable option to allow a user to close or minimise them to the bottom of the screen.</p>



		As users face continuous interruptions, they may eventually find it more convenient to comply with the provider's requests, even if it contradicts their own interests. This raises ethical concerns surrounding autonomy and the exploitation of users' cognitive resources. The only way to complete the activity the user intends to is by providing the information requested – before they can proceed to complete the intended activity on the screen.
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The California Privacy Act Regulations 2023, Colorado Privacy Act Rules 2023, and The Guidance to the Interpretation and Application Unfair Commercial Practices Directive (2021/C 526/01) already prohibit the usage of these dark patterns. These statutes mandate that businesses incorporate symmetry in colour, font size and options, in how various consent notices are presented to consumers.

- II. Design elements can also be leveraged to make consumers pay for services they do not consciously opt to buy or retain them in subscriptions they do not use. The following patterns cause tangible financial harms to consumers in all instances, and reveal the underlying intention of the businesses deploying these designs and tactics.

1.	Hidden Costs Preselection Sneaking Drip-pricing	<p>Some businesses deceive consumers into paying more for a product than what was initially displayed alongside a good or a service they were looking to purchase.</p> <p>This could occur where add-ons such as insurance, shipping costs, cleaning fee, or a premium subscription, is automatically added to a consumer's cart during or towards the end of their shopping. It is presented in a manner that makes it hard for the consumer to detect, or harder opt-out of, forcing the consumer to pay the additional charges to be able to make a purchase.</p> <p>Some businesses hide information regarding payment and cost of services – and make consumers believe that they are paying in AUD for their services. In addition to getting charged a higher price, consumers are also charged a transaction fee.</p> <p>This practice also inhibits consumers' ability to compare prices and make informed decisions. These design practices allow businesses charge more for a purchase through deception and subtle tricks, as opposed to being transparent and enabling informed consumer decision making, while distorting competition in the market. These must be considered unfair.</p>
2.	Obstruction Hotel California Hard to Cancel Roach Motel	These are all variations of design elements that are meant to prevent a consumer from terminating a subscription. In each of these patterns, the customer, trying to terminate a subscription, is made to go through several steps, rife with confusing design elements and a veiled placing of the option that would allow them to unsubscribe.

		<p>Some businesses also offer attractive discounts towards the end of the subscription-cancellation process. The discount would only operate for one part of the subscription cycle (typically, for a month or so) and would continue to keep the customer subscribed at the standard rate once the discount period end.</p> <p>At the conclusion of the subscription cancellation process, some businesses require customers to justify their decision. If a customer indicates that the cost is prohibitive by choosing 'too expensive' from a list of potential reasons, they are then presented with more affordable subscription alternatives along with prompts like 'consider these options' or 'did you know about these options that may save money?'. This introduces extra steps that the customer must go through before they can successfully cancel their subscription.</p> <p>Finally, towards the end of the process, some businesses confirm-shame the unsubscribing consumer as to the benefits lost upon unsubscription.</p> <p>Some businesses were observed to have no unsubscription mechanisms in place on their website at all. This forces consumers to call the service and wait online for hours before they could speak with a service assistant. The long waiting periods during business hours is not something most consumers can afford to do.</p> <p>By exploiting a time-poor customer by putting them through unnecessarily long termination process, these design flows or processes dissuade consumers from cancelling/terminating their subscriptions. The lack of symmetry in the subscription and unsubscription process-flows, along with the additional hurdles placed along the way, are all indicative of the systemic intent behind this design, making them unfair.</p>
3.	<p>Scarcity Cues</p> <p>Fake Scarcity</p> <p>Fake Urgency</p> <p>Activity - notifications</p>	<p>These patterns cause a fake sense of urgency by doing the following:</p> <ul style="list-style-type: none"> <li>• Implementing a countdown that restricts the time frame for availing discounts or finalising a purchase at a certain price (common on travel booking sites)</li> <li>• Persistently displaying what other customers are purchasing from the store as well – with no means to verify the information - to invoke curiosity.</li> <li>• Pressurising the customer to making a purchase by notifying them that the stocks are limited</li> </ul> <p>Since consumers have no means to verify these cues, they are bound to feel pressured to make a purchase immediately. The conclusion of this transaction entirely depends on undermining consumer autonomy, as opposed to generating a genuine interest from the consumer. Hence, this must be held an unfair practice.</p>
4.	Visual Interference	<p>Visual interference refers to the manipulation of design elements on a page to hide, obscure, or disguise important information, all of which can violate users'</p>

		<p>expectations of clear and predictable presentation. This deceptive practice can result in financial harm in contracts, where crucial terms that deviate from commercial norms are hidden, potentially infringing consumer rights.</p> <p>By intentionally misleading users, visual interference undermines transparency, fairness, and the principles of informed decision-making and must be considered an unfair commercial practice.</p>
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III. Some dark patterns leverage behavioural psychology to incentivise a series of micro spending – which, over a period of time, results in significant financial detriment to the consumers.

1.	Loot-boxes	<p>Some video games exploit users' desires and competitiveness to lure users into buy an in-app virtual item or a reward that can improve their rankings and their progress in the game. These in-game rewards can vary, and can include specialised weapons for characters, aesthetic enhancements like skins, or various randomised items that players do not already possess. Opting to purchase a randomised reward might not guarantee that the player receives the feature they require in order to advance in the game. This could be particularly concerning in children's games where the apps access payment information once installed.</p> <p>This must be considered unfair for the following reasons:</p> <p>The design of the game is intentionally created such that the players must purchase additional randomised features to advance through the game. The actual contents of these rewards are not clearly disclosed, leading to a damaging pattern of continuous spending as players repeatedly take a chance on these purchases in hopes of advancing to higher levels. Hence, these should be prohibited.</p>
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IV. Finally, communications sent to consumers – even upon their consent – or messages displayed to consumers on websites could aggressively steer them into making a purchase or retaining a purchase they otherwise might not want:

1.	Confirm Shaming Emotional Steering	<p>These are messages displayed to a customer to induce the feeling of guilt or emotional discomfort, which is leveraged to dissuade them from cancelling a service.</p> <p>This manipulative technique leverages negative emotions to influence customer behaviour and must be considered unfair as it prioritises emotional manipulation over genuine value and trust-building.</p>
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