

Director  
Consumer Policy and Product Safety Unit  
Market Conduct and Digital Division  
Treasury  
Langton Cres  
Parkes ACT 2600

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### **WAFarmers Submission - Unfair Trading Practices**

WAFarmers represents the broadacre farming industry of grains and livestock in Western Australia.

From our members perspective the expansion of the digital economy and the increasing reliance on it by farmers operating in remote locations heightens the risk of businesses being captured in unfair trading contracts.

For example, farmers are generating large amounts of data which if aggregated is value to service and product providers.

Bargaining power imbalances in supply chain arrangements, including by unilaterally varying supply terms is a growing issue particularly for those farmers who access finance credit arrangements offered by fertiliser and chemical companies. Some farmers have been pressured to pre commit to next seasons orders, with the supplier retaining small print powers to change the timing, volume, price or spec of the order.

WAFarmers supports a combination of general and specific prohibitions similar to the approach taken by the UK, EU and Singapore complementing existing prohibitions under the ACL.

Our position is for a new general provision prohibiting unfair trading practices such a reform would bring Australia in line with other jurisdictions, such as the EU and the US.

The main reasons for this are:

- a perceived gap in the law and cases in which the regulator failed to convince the courts that a particular business has acted unconscionably towards consumers, although its conduct was considered unfair;
- drawing on the existing requirements in financial services and credit licensing that licensees must act "honestly efficiently and fairly";
- to align Australia to other jurisdictions, which have laws prohibiting unfair trading practices;
- concerns that various codes of conduct, designed to protect small business suppliers in dealings with the major grocery chains, continue to fail to address conduct of concern; and
- to give regulators more tools to address the practices of major digital platforms in their use of consumers data.

The ACL should be amended to expand the scope of the laws about unfair contract terms and introduce penalties. These penalties need to be consistent with its public views that consumer laws are ineffective without substantial penalties.

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