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Australian Research Centre for  
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RE: *Protecting consumers from unfair trading practices* Consultation Regulation Impact Statement

To whom it may concern,

In response to the Consultation Regulation Impact Statement *Protecting consumers from unfair trading practices*, we seek to provide comment on Treasury's statement, specifically Focus Questions 3, 5, and 9. Whilst we applaud Treasury's identification of this important area, we would strongly encourage Treasury to engage in deeper research into the development of alternatives rather than focusing on the proscription of 'unfair' trading practices.

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We believe considerations around any policy and in turn best practices need to support the rapid evolution of this space. Without the provision of a meaningful alternative model or set of models, we believe that a singular focus on increasing profit leads to a race-to-the-bottom for user experience across many current digital systems, and is likely to persist despite the proposed legislative frameworks. Recurrent and frequent notifications (either on their phone, via SMS, or email), up-selling strategies, and other manipulative strategies or dark patterns detailed in the consultation document precondition consumers to see such behaviours as normal. The current ubiquity of these dark patterns means that for an organization developing a financial application, or set of guidelines, they must assume users will already be preconditioned by other applications to not pay attention. For example, where an application may need to provide consent notifications to a user on some regular basis, the fact that the user has been preconditioned to accept pop-ups without consideration so any consent achieved in the same manner may not truly reflect the user's intention. This presents a significant challenge in that consumers are likely to experience what could reasonably be called unfair trading practices regardless of a business or organisation's best attempts to protect their customers. We believe the presented policy options do not address the wider systemic issues that have been caused by the near-universal application of dark patterns across digital services. Further, we believe a larger project to investigate consumer experiences of dark patterns and potential strategies for operating outside of these patterns is necessary to provide a way forward that has a meaningful impact on the protection of Australian consumers.

We believe the current pace of the development and deployment of AI systems with the purpose of increasing profit by manipulating consumer behaviour presents a profound challenge where for the first time in history, dark patterns can be targeted at individuals with extremely high levels of specificity. This is of particular concern for vulnerable Australians as it is not clear where the 'reasonableness' of such conduct would be defined. To offer users a "fair go" when interacting with a service, their data, and the data of their fellow citizens, shouldn't be used to manipulate them, yet as we have seen through the rise of social media, this is a constant day-to-day experience for almost all Australians. The observations of Rod Sims (page 25 of the consultation document) point to this emergent area and frame a need for an urgent investigation into what an alternative system or set of digital practices may look like. Without such a vision, we do not see a way forward that could meaningfully protect Australian consumers from manipulation and exploitation.

The development of guidelines and policy to ensure a fair, safe, and productive digital environment for all Australians is crucial and non-trivial. As we have seen in the technology space for decades, industry will adapt to whatever policies are put in place, and like water, find a way through. The significant damage that has been caused by social media should be seen as a sentinel for the potential damage that could occur here. With the rapid development of AI, mass data aggregation, and increasing associated vulnerability around cyber security, the challenges ahead are significant, and attempts to influence such changes must be grounded in the evidence and supported by the latest developments in human-systems research from computer science, psychology, neuroscience, and design. We would encourage you to engage with academic researchers in this domain to develop robust and evidence-based alternatives to the current trajectory of this space.

We would welcome any opportunity to engage further with Treasury around this topic, and to contribute our expertise to such an important issue.

Kind regards,

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**Dr. Andrew Cunningham**  
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## About the Australian Research Centre for Interactive and Virtual Environments

The University of South Australia's Australian Research Centre for Interactive and Virtual Environments (IVE) is a unique alignment of computer science, engineering, neuroscience, art, architecture, and design. Founded in 2019 as a unification of a number of individual areas of expertise, the centre explores multidisciplinary problems, where the human is at the centre of the solution. We are inspired by the challenges of industry and society to achieve impactful outcomes through delivering world-leading research, developing global research talent, and top-performing PhDs. In collaboration with our industry partners, we investigate and combine world expertise in digital and virtual environments, with computer science, engineering, neuroscience, art, architecture, and design to solve real-world problems.

Increasingly the problems being encountered in our digital lives are no longer just technical problems, but problems that touch at the heart of human cognition, emotion, and basic human responses to stimuli. Good digital systems are no longer just created by software developers, rather holistic teams of software developers paired with designers, psychologists, and neuroscientists. Modern applications and web pages are now designed to leverage the user's biological response to stimulus, feeding people's need to infinitely scroll or engage.

IVE's expertise and contribution lies not just in researching and developing solutions for academic problems and industry, but also providing consultation and advice, offering the capability to generate grounded, evidence-based reports and whitepapers, as well as performing grounded, multi-disciplinary objective research focused on the fundamentals of human factors, and how that impacts our relationship with technology.

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