

13 December 2024

Director
Consumer Policy Unit
Market Conduct Division
Treasury
Langton Cres
Parkes ACT 2600

By email: consumerlaw@treasury.gov.au

Dear Director,

UNFAIR TRADING PRACTICES – SUPPLEMENTARY CONSULTATION PAPER

On behalf of Retail Drinks Australia (**Retail Drinks**), we appreciate the opportunity to provide feedback on Unfair Trading Practices Supplementary Consultation Paper.

By way of background, [Retail Drinks](https://www.retaildrinks.org.au) is the national industry body representing the needs and interests of Australia's \$18 billion packaged (retail) liquor sector, with a vision to enhance the freedom to retail responsibly. Our membership represents the majority of all packaged (retail) liquor licences in Australia, and members comprise some of the most recognised and trusted companies and brands in the industry, including:

- Independently owned and operated *Liquor Stores*, whether operating under a known retail banner/brand, or their own;
- *Chain Stores*, including Coles Liquor (First Choice, Liquorland and Vintage Cellars) and Endeavour Group (BWS, Dan Murphy's, etc);
- *Digital & Online* liquor retailers, marketplaces and delivery partners including Vinomofo, Laithwaites, Qantas Wines, Australia Post, Uber Eats, MILKRUN, Amazon, DoorDash and Menulog;
- *Retail Banner Groups*, including Independent Brands Australia (Cellarbrations, The Bottle-O, IGA Liquor, Porter's Liquor, and Thirsty Camel), Independent Liquor Retailers (Local Liquor, Countrywide Liquor, Liquor & Co), Liquor Legends (Liquor Legends and Urban Cellars), Liquor Marketing Group (Bottlemart, Sip n Save, and Harry Brown), and Liquor Stax; and
- Small and large beverage producers, suppliers and service providers to the retail liquor industry.

Retail Drinks has a demonstrated commitment to the responsible promotion, sale and supply of alcohol beverage products. To ensure the reputation of our sector, we promote standards of operation for our members beyond the required standards of legal compliance and have promoted and implemented a range of voluntary promotion, product, sales and service control initiatives adopted by members and the broader industry. This includes the Retail Drinks [Online Alcohol Sale & Delivery Code of Conduct](#) (**Online Code**) and the Alcohol Beverages Advertising Code Scheme (**ABAC**) [Best Practice for Responsible Digital Marketing](#).

Based on our extensive interactions with Retail Drinks members, many of whom are Signatories to both the Retail Drinks Code and ABAC, we do not believe that many of the marketing practices as targeted by the Commonwealth Government through this process are particularly prevalent in the online liquor retailing industry. Nevertheless, we

are committed to ensuring that robust standards of practice continue to be at the forefront of the online liquor retailing industry.

In responding to the Consultation Paper, we wish to highlight several concerns and suggestions to ensure that any forthcoming amendments to Australian Consumer Law (**ACL**) are clear, practical, and do not impose unnecessary burdens on business.

General Prohibition:

Retail Drinks members generally agree with the principles outlined in the general prohibition. As previously noted, we do not believe that the unfair trading practices as outlined are particularly prevalent in the online liquor retailing industry. Retail Drinks promotes high standards of practice amongst its members which go further than both ACL and relevant state and territory government legislative and regulatory frameworks.

In our view, it is important to ensure that any proposed amendments to ACL do not perversely impact these existing industry responsibility Codes or other state and territory regulations. For example, the Retail Drinks Online Code includes a specific principle regarding data monitoring requiring that Signatories have in place systems to flag potentially high-risk transactions or ordering patterns amongst their customers.

The Online Code, however, also ensures that only the minimum data required for identification and age verification is collected and that customers have consented to the collection of their personal data.

Additionally, general prohibition must stay relevant with emerging technologies, such as AI generative chat bots, which are increasingly used in customer interactions. While the requirement for material detriment is appropriate, it should be clearly defined to prevent overreach. The proposed grey list of examples is helpful but should include more specific scenarios relevant to current and future digital practices. This will provide better guidance for businesses and regulators.

Dark Patterns:

Retail Drinks is concerned there may be ambiguity in distinguishing between dark patterns and legitimate customer guidance. For instance, we highlight the example of online liquor retailers where customers voluntarily enter information regarding their taste and preferences in wine and subsequently referred products which align with these specific tastes. We do not believe that practices such as these should be conflated with manipulative dark patterns. Clear definitions and examples are essential to avoid confusion and ensure that businesses can comply without stifling legitimate marketing practices.

Application to Business-to-Business Dealings:

A staged approach for the introduction of a general prohibition on unfair trading practices, initially applying to business-to-consumer dealings, is sensible. Business-to-business applications should be considered once the impact on consumer dealings is clear.

In conclusion, while the proposed amendments to the ACL aim to enhance consumer protection, it is essential to ensure that the regulations are clear, practical, and do not impose unnecessary burdens on businesses. By addressing the ambiguities and providing detailed guidance, the ACL can effectively protect consumers without stifling business innovation and competitiveness.

We appreciate the opportunity to provide a submission to the Supplementary Consultation Paper on behalf of our members and the broader retail liquor industry. Should there be any matters raised in this submission which you wish to discuss in more detail, please contact us via (P) or (E)

Sincerely,

Michael Waters
Chief Executive Officer