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To the Treasury
By submission: Treasury Consultation Hub

RE: Unfair Trading Practices – Exposure Draft

The Internet Association of Australia Ltd (**IAA**) thanks the Treasury for the opportunity to respond to the consultation on the Exposure Draft of the proposed *Competition and Consumer Amendment (Unfair Trading Practices) Bill 2026*, and accompanying Explanatory Memorandum.

IAA is a member-based association representing Australia's Internet community. Our membership is largely comprised of small to medium sized Internet service providers (**ISPs**) in the telecommunications industry that would be captured by the changes proposed under the Exposure Draft. We submit our response in representation of these members, as well as for the greater public good of the Internet industry which underpins much of today's digital economy. We have also been actively involved in the development of these unfair trading practices (**UPT**) laws, responding to the Treasury's consultation on the supplementary consultation paper on UPT in 2024 (**2024 Consultation**).

As expressed in our response to the 2024 Consultation, IAA and our members emphasise our commitment to addressing gaps in consumer protection across the Australian economy. We support the work of the Treasury and the Australian Government in introducing laws that will better protect consumers from UPT. However, we also reiterate our concerns regarding the undue costs of duplicative regulation, particularly for the smaller telecommunications providers whom we represent.

This is particularly the case of the proposed subscription contract laws which we believe to unnecessarily duplicate long-standing consumer protections regulation in the telecommunications sector. We also consider there may be some technical impracticalities in the application of the subscription contract laws. As such, and as will be further discussed in the response, we strongly recommend exempting the telecommunications industry from the subscription contract laws. We also urge the Treasury to narrow the small business definition to better reflect business relationships, and make recommendations in relation to the compliance timeline and approach.

CONSULTATION TIMEFRAME

We take this opportunity to first raise concerns about the short timeframe for consultation. We note that the consultation on the Exposure Draft opened 9 February 2026, and is set to close 23 February, allowing the public with only two weeks to review, consider and respond to what is a significant piece of law reform. We are further unaware of whether a public town hall, or sector specific meetings were held to explain the proposed changes to sufficiently inform industry and other stakeholders.

We appreciate that this is not the first round of consultations on the matter, and UPT has been consulted on previously. However, we consider this timeframe inadequate given the exposure draft goes into further detail of the operation of the UPT regime than was apparent in the previous consultations. For example, the application of the subscription contract laws on the telecommunications sector was unclear.

As a wide-reaching regime, we recommend the Treasury to hold another round of consultation, with explicit summaries of the feedback received, and if and/or how feedback has been considered by Treasury prior to the tabling of the Bill in Parliament.

We also note that due to the compressed timeframe, this response is limited in its scope and depth of analysis of the impact of the proposed laws.

EXEMPTION OF TELECOMMUNICATIONS

Duplication with Telecommunications Regulation

We understand that the Exposure Draft proposes to capture telecommunications contracts as part of 'subscription contracts' that would be regulated under the proposed laws. We strongly oppose this and consider that telecommunications contracts should be an 'excluded subscription contract', either as 'a contract for supply of a public utility' (and therefore requiring amendment to the definition of public utility to remove the exclusion of telecommunication services from a public utility service) or as otherwise prescribed.

We note the telecommunications sector is already heavily regulated, including in relation to various consumer safeguard concerns. Most notably, we consider that the *C628: Telecommunications Consumer Protections Code* (**Code**) already addresses the gaps the Government intends to address economy-wide via the proposed laws.

As was detailed by the Australian Telecommunications Alliance (then, Communications Alliance) in its submission to the 2024 Consultation, the Code already sets out extensive obligations on a provider in relation to providing information to consumers via the Code, including but not limited to billing, information about standard form of agreement (which includes information on how to request cancellation or disconnection), as well a critical information summary (**CIS**) that includes information about a telecommunications service such as monthly charges, early termination fees. Importantly, the Code is also currently under review, and there have been significant uplifts in the proposed updated version of the Code which is currently under consideration by the ACMA for registration. The revised Code placed concerted focus on improving transparency and responsible selling practices, addressing the concerns of the Government in proposing these new laws.

The existing and proposed extensive rules under the Code are similarly intended to ensure transparency so that consumers are well-informed, and are not misled regarding the terms of their service. However, the Code has the benefit of being specific to the telecommunications sector, and its billing and contractual practices. As will be further detailed below, the drafting of the proposed subscription contract laws will make some of the obligations impracticable for telecommunications entities.

Furthermore, we understand that a key focus of the proposed subscription laws is to make it easier for consumers to cancel their subscription contracts. To that end, we note the high level of 'churn' in the telecommunications sector, whereby consumers cancel their service(s) and/or switch to a

competitor provider. We further note that the telecommunications industry makes it extremely easy for customers to switch providers, whereby consumers don't even have to contact their then-current provider to advise or request cancellation prior to switching providers. Consumers are able to contact their new provider, request porting of existing services (where relevant), and the transfer is handled by the new provider.

One specific example of where confusion between the application of regulation and legislation may be of serious detriment to consumers is in the application of the *Mobile Number Portability Code (C570:2024)*. This Code sets out stringent requirements before a mobile phone number can be moved to another provider and came about largely due to egregious cases of fraud committed upon consumers. Mobile phones and associated SMS and other services are increasingly used by banks, superannuation funds and other financial services providers as a key component in their security via two/multi-factor authentication systems used to guarantee the authenticity of a consumer's request to access funds. Should these systems be undermined, then there is little doubt that fraudsters and scammers will move rapidly to take advantage of any weaknesses in the system. This Code is but one of a set of obligations imposed on the sector to prevent fraud.

We are thus concerned that the introduction of additional subscription contract laws for the telecommunications industry that will only duplicate existing obligations, and make it confusing for providers having to refer to multiple pieces of regulation, and has the potential to raise serious security concerns. We especially note the disproportionate burdens placed on the smaller entities within the telecommunications industry whom we represent. Many of these smaller entities lack the resources to navigate complex regulatory frameworks, and the existence of multiple sources of regulation dealing with the same matter will cause great confusion.

We therefore recommend that telecommunications subscription contracts are exempted from the proposed laws.

Notwithstanding this position, we provide further recommendations as outlined in the remainder of this response to assist the Treasury in the event that the telecommunications sector is not exempted from the scope of the regime to ensure the subscription laws operate proportionately and in a manner that reflects the technical and commercial realities of the telecommunications sector.

Firstly, where there is any overlap and inconsistency between the proposed laws and existing telecommunications regulation, a clear safe harbour provision should apply. Again, due to the limited timeframe for consultation, we have been unable to complete an analysis of the extent of the overlap between industry codes and standards and the obligations under the proposed laws. However, we do note that other industry codes and standards do deal with similar matters of information to be provided, and disconnection or cancellation processes that specify timing, form and content that may differ from the proposed regime. Thus there is a risk that telecommunications providers may be exposed to dual and potentially inconsistent compliance obligations, increasing compliance complexity and uncertainty, which is disproportionately felt by smaller providers. It

As such, we recommend a clear safe harbour provision that ensures where a telecommunications provider has complied with applicable telecommunications regulation dealing with the same subject matter, compliance with the telecommunication regulation is taken to satisfy the obligation under the proposed subscription laws. At the least, compliance with the telecommunications

regulation should be taken into consideration as a mitigating factor when assessing a providers' non-compliance with the new subscription laws.

Technical Realities

Cancellation

We also raise the technical impracticalities with regard to the application of the proposed subscription laws on telecommunications services.

Importantly, the cancellation provision, while well-intended, does not consider the technical complexity of telecommunications services. This is particularly the case of telecommunications services provided in business-to-business contexts, which would still likely be captured under the breadth of the 'small business requirement', which we discuss further below. Telecommunications services is much broader than the standard landline, mobile, and internet services most commonly thought of, and rely on technical interdependencies and complex network engineering. As such, cancellation may not always be straightforward, nor will it be always possible to complete a cancellation process online. There may be legitimate reasons where a provider should be contacted during the cancellation process, such as to ensure correct porting, or where there are bundled or interdependent services requiring reconfiguration. As noted above, we reiterate the security concerns regarding service cancellations that not being thoroughly implemented to ensure correct porting in accordance with established industry regulations to protect consumers against fraud.

Thus, we consider subsection 48G(d) should be amended to clarify that a provider must provide a way for the subscriber to end the contract online, only to the extent it is practicable and safe to do so. The provision can further stipulate considerations that may make it impracticable to do so including technical constraints, dependencies with other services, any regulatory, security or identity verification requirements.

We also recommend that a new safe harbour provision is included to specify that a provider who has taken reasonable steps to enable online cancellation but cannot complete the cancellation process online due to limitations beyond the provider's reasonable control, and where the provider has provided alternative means to complete the cancellation in accordance with subsection 48G(c).

Similarly, what is considered 'straightforward' for the purposes of section 48G(b) should be clarified and the proposed laws should explicitly state that requiring subscribers to undertake technical steps to enable the cessation of a service or contact the provider to complete the cancellation process does not mean the cancellation process is in contravention of subsection 48G(b), so long as the steps were in accordance with subsection 48G(c).

Free Trial or Promotional Period

We also raise concerns about the drafting of section 48E. We understand the provision is directed at scenarios where a consumer receives goods or services at a reduced rate, or at no charge (together, **discounted rate**) for a defined period (**discount period**), and is subsequently transitioned to supply at a higher rate unless they take steps to cancel during the discount period. We further appreciate that this provision is to provide consumers with strong notice and exit rights.

However, we are concerned that the drafting goes beyond the legislative intent and captures contracts where a discounted rate may reflect non-standard billing structures or amortised contract value pricing. There are legitimate cases where a reduced rate may be offered, not as a genuine

promotion but rather to reflect proration, or a cost recovery mechanism for the total contract value. Telecommunications contracts often involve proration for the first month of billing, and also commonly involve staged or amortised recovery of the total contract value where capital costs are recovered over the term of the contract but not necessarily by an equal amount in each period.

We understand that the respective paragraph (c) under subsections 48E(2) and (3) is intended to act as a way to distinguish true discounts from other pricing constructs, on the basis that the subscriber has the right to end the contract before liability at the higher rate is incurred. However, in practice, the existence of a contractual right to cancel does not clearly differentiate promotional pricing from fixed-term telecommunications arrangements. In many telecommunications contracts, a subscriber may formally have the right to cancel at any time, but that right is subject to early termination charges or paying the balance of amortised costs.

Thus, we recommend amendment of section 48E to clearly specify the provision only applies to true discounts where a subscriber should be informed of their right to exit a contract during a discount period without consequence.

SMALL BUSINESS DEFINITION

As mentioned above, we consider the definition of 'small business' too broad, particularly in the telecommunications context. As an increasingly vital service to conduct business, telecommunications is supplied to almost all businesses across Australia, including to enterprise customers. Indeed, there are ISPs whose business model is solely to provide services to SMEs. However, ironically, the threshold set in the proposed 'small business requirement' to be a 'subscriber' would mean there are cases where the 'subscriber' business is actually larger in size and of greater revenue than many of the small to medium sized ISPs in the telecommunications sector. We are concerned this will cause a number of unintended consequences, including:

- further entrenching the dominant telecommunications providers in the market who are better equipped to absorb costs associated with the new laws;
- causing or entrenching power asymmetry between the smaller ISPs and enterprise customers;
- introducing new regulatory burdens for smaller ISPs having to segment their customers in order to comply with the new laws, and;
- thereby causing ISPs to change their contract models, such as withdrawing flexible contracts or creating new, bespoke contracts for certain customers which causes rising operational costs and complexity in their contract management.

Again, we note the limited resources of smaller ISPs who will struggle with the disproportionate impacts of regulatory compliance.

As it pertains to the telecommunications sector, we recommend that the small business requirement is harmonised with existing thresholds often used in telecommunications consumer safeguard regulation, provided below:[1]

[1] This definition is from the *Telecommunications (Financial Hardship) Industry Standard 2024*, but is similar to the threshold used in various other regulation, including the TCP Code and *Telecommunications (Domestic, Family and Sexual Violence Consumer Protections) Industry Standard 2025.*

a business which acquires or may acquire one or more telecommunications products which are not for resale and which, at the time it enters into the consumer contract:

(i) does not have a genuine and reasonable opportunity to negotiate the terms of the consumer contract; and

(ii) has or will have an annual spend with the provider which is or is estimated on reasonable grounds by the provider to be, no greater than $40,000.

COMPLIANCE TIMELINE AND APPROACH

We understand that the Government proposes for the new laws to commence on 1 July 2027. We do not consider this enough time, particularly for smaller telecommunications providers who, we reiterate, have limited resources. Compliance with the new laws will require systems redesign to ensure notification and cancellation workflows, and customer portals or websites are compliant. This will particularly cause issues for smaller ISPs who may use white-label billing platforms or customer relationship management systems that are not so easily modified to accommodate the changes in accordance with the proposed laws.

We recommend a tiered commencement timeline, whereby the proposed commencement date applies to the large companies who are not deemed small businesses first, with a subsequent commencement date for smaller businesses. We consider a reasonable commencement date for smaller businesses to be 1 March 2028. We also urge the Treasury and the ACCC, and sector-specific regulators, such as the ACMA in the telecommunications sector, to work proactively with the smaller businesses to assist with compliance.

Given this is a broad and wide reaching amendment, the compliance approach should moreover be educative and collaborative. Specifically, for the first 12 months from the respective commencement dates, ACCC should commit to taking enforcement action only in egregious cases where companies were non-compliant or negligent in their compliance.

Furthermore, the ACCC should work with the sectors to provide guidance material that is sector-specific, noting the above response of the incompatibility of some of the provisions to the telecommunications context. Specifically, the ACCC and/or ACMA should publish guidance material that compares the application of the subscription contract laws and the existing consumer safeguard regulations in the telecommunications sector, explicitly setting out differences in timing, content and form where the obligation relates to the same subject matter.

Once again, IAA appreciates the opportunity to contribute to the Exposure Draft of the *Competition and Consumer Amendment (Unfair Trading Practices) Bill 2026.* We reiterate our commitment to ensuring consumers are protected from unfair trading practices, and support the work of the Government in addressing gaps in the economy. However, we are equally interested in ensuring any new unfair trading practices laws are proportionate and fit-for-purpose. Importantly, providers should not be impeded in their efforts to provide a fairer, smoother consumer experience by complex regulatory frameworks. Moreover, these laws should not serve as a barrier to conducting business between enterprises where the risk of unfairness for 'consumers' is not apparent due to the nature of the commercial relationship. To that end, we look forward to continue working with

Treasury, regulators, industry and other stakeholders in the development of a fit-for-purpose unfair trading practices regime.

ABOUT THE INTERNET ASSOCIATION OF AUSTRALIA

The Internet Association of Australia Ltd (**IAA**) is a not-for-profit member-based association representing the Internet community. Founded in 1995, as the Western Australian Internet Association (**WAIA**), the Association changed its name in early 2016 to better reflect our national membership and growth.

Our members comprise industry professionals, corporations, and affiliate organisations. IAA provides a range of services and resources for members and supports the development of the Internet industry both within Australia and internationally. Providing technical services as well as social and professional development events, IAA aims to provide services and resources that our members need.

IAA regularly engages with government and regulatory bodies on policy matters affecting the Internet industry. In particular, our advocacy efforts represent the small to medium sized internet service providers in Australia who are often disproportionately disadvantaged by law reform affecting the telecommunications sector. Our public policy work is guided by the following principles:

We stand for an internet for the common good

We stand for an open internet platform

We stand for measured, effective and practical regulation

IAA is also a licenced telecommunications carrier and provides the IX-Australia service to Corporate and Affiliate members on a not-for-profit basis. It is the longest running carrier neutral Internet Exchange in Australia. Spanning seven states and territories, IAA operates over 30 points of presence and operates the New Zealand Internet Exchange on behalf of NZIX Inc in New Zealand.