Australian Telecommunications Alliance

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AUSTRALIAN TELECOMMUNICATIONS ALLIANCE SUBMISSION

To: The Treasury

Re: Unfair trading practices protections for small business

10 July 2026

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1. AUSTRALIAN TELECOMMUNICATIONS ALLIANCE

The Australian Telecommunications Alliance (ATA) is the peak body of the Australian telecommunications industry. We are the trusted voice at the intersection of industry, government, regulators, and consumers. Through collaboration and leadership, we shape initiatives that grow the Australian telecommunications industry, enhance connectivity for all Australians, and foster the highest standards of business behaviour. For more details, visit www.austelco.org.au.

For questions on this submission, please contact Peppi Wilson, p.wilson@austelco.org.au.

2. INTRODUCTION AND SUMMARY

2.1 The ATA appreciates the opportunity to make a submission in response to the Treasury's consultation on extending unfair trading practice (UTP) protections to small businesses and franchisees. This submission should be considered in conjunction with comments provided in the round table held by Treasury in late June, as well as comments made in earlier submissions on the UTP Bill.

2.2 We fully support the intent of extending the UTP Bill to apply to small business when they acquire telecommunications services in a way that is similar to consumers; all customers should be treated fairly, and we recognise that regulation has a role to play in addressing the potential power imbalance between providers of services and their small business customers.

2.3 The ATA has concerns, however, that the proposed extension is overbroad in its scope and application to the telecommunications industry and fails to reflect the experience of regulation specific to our sector. The proposed definition of small business would capture almost all businesses in Australia, both large and small, when purchasing telecommunications goods and services. This is a reflection both of the small business sector and typical spend on telecommunications goods and services (even that of large enterprises).

2.4 The ATA proposes that that any extension of the UTP Practices Bill recognises that the definition of consumer in section 3 of the ACL may inadvertently capture larger business consumers, in the context of the telecommunications sector, and that any extension instead adopts the definition of small business used by either the Australian Small Business and Family Enterprise Ombudsman (ASBFEO), or the definition used Telecommunications Industry Ombudsman (TIO). Alternatively, the ATA suggests that that any extension permits that certain exceptions or exclusions apply for the telecommunication sector, to ensure that the provisions provide the desired protections for small businesses, without imposing undue compliance costs on industry to protect large and very large businesses that would be captured by the proposed scope of the legislation.

2.5 The ATA would welcome the opportunity to work with Treasury, and with the Australian Communications and Media Authority (ACMA), to explore these issues further, as required.

3. DEFINITIONS AND SCOPE

3.1 The discussion paper states that the intent of extending the prohibition would be to provide a consumer that is carrying on a small business with the same protections as individual consumers, *where their transactions resemble those of individual consumers* (emphasis added).

3.2 While we agree with this intention, the challenge for the telecommunications sector is that the proposed legislation does not adequately serve to limit the stated scope of the UTP to small business customers whose transactions *resemble those of individual consumers* when it comes to the purchase of telecommunications goods or services:

- $100,000 is a considerable spend in the telecommunications industry and many large – and even very large - business customers spend under this threshold on telecommunications services.
- Many large – and even very large - business customers purchase the same kind of goods or services as residential or genuinely small businesses customers. For example, they may purchase a basic service from telecommunications company B as a backup service to the enterprise-grade services acquired through telecommunications company A. Or they may add a commercially-available telecommunications service to a suite of enterprise products already purchased.

3.3 The ATA notes that when the ACL spend threshold was increased in 2021 from $40,000 to $100,000, the stated intention was to update it in line with inflation, as the original $40,000 limit had been set back in 1986. The ACL Review Report made it clear that the intent was to ensure that protections that had been covered under the ACL but had become out-of-scope because of inflation, were once again covered. Examples cited in the report were large value business purchases acquired occasionally by otherwise small businesses – e.g. air conditioning units for industrial buildings, water tanks, client record systems.

3.4 Notably, telecommunications equipment and services had not become out-of-scope due to inflation; between 1986 and the time of the ACL review in 2021, the price of telecommunications goods and services had only increased marginally in nominal terms, and had actually decreased in real terms[1].

3.5 Accordingly, telecommunications-specific consumer protection regulations (which cover both residential and small business consumers) have continued to use a $40,000 annual spend threshold definition for small business[2], rather than aligning with the ACL threshold. This recognises that the protections they provide, and the requirements they impose, are not required, appropriate, *or in many cases, able to be operationalised*, for larger businesses.

3.6 Arguably, the second part of the definition (the characterisation of a small business as a business with fewer than 100 employees, or with less than $10 million in annual turnover) should assist to restrict the UTP's scope to small business, as intended, even when read in isolation.

[1] Trends as documented across ABS general consumer price monitoring (ABS, 2021), legacy market reviews (ACCC, 2000) and contemporary sector monitoring (ACCC, 2021)

[2] Including in the Telecommunications (Financial Hardship) Industry Standard 2024. It is anticipated that this will also be included in the upcoming TCP Standard.

3.7 However, this definition also does not align with definitions in telecommunications-specific regulations, which tend to also include the concept of 'genuine and reasonable opportunity to negotiate the terms of the consumer contract'. It also does not align with either the Australian Small Business and Family Enterprise Ombudsman (ASBFEO), or the Telecommunications Industry Ombudsman (TIO) definition of small business:

(a) The ASBFEO, which is tasked to assist small businesses in dispute with other businesses, defines a small business as one with 0-19 employees (with a medium business defined as one with 20-199 employees and a large business as one with 200+ employees). The ASBFEO's data reveals that businesses with 0-19 employees make up 97.3 percent of Australian businesses, and the average turnover of a small business in Australia is around $740,000.

(b) The TIO, which provides independent advice and arbitration for telecommunications consumers, defines consumers as individuals and small business customers, with the latter characterised as businesses with a turnover of under $3,000,000, or fewer than 20 employees.

3.8 We contend, therefore, that, rather than using the very broad ACL definition, it is more appropriate to align the UTP definition with that used by either the ASBFEO, or by the TIO.

3.9 The potential practical and cost implications of definitional misalignment are described in the next section.

4. INTERPRETATION AND COSTS

4.1 Telecommunication companies frequently have a different sales channel for residential and small business customers than for large or enterprise customers, with the systems, processes, information provision and staff training in each designed to reflect the different customer requirements, expectations, and regulatory requirements applicable to each.

4.2 Notably, sales channels designed for residential consumers and small businesses – as defined in sector-specific regulation – are designed to comply with comprehensive and often very prescriptive sector-specific consumer protection regulations tailored to the sector and the regulation's specific purpose.

4.3 The ATA understands that the UTP Bill 2026 (as drafted) will look to delegated (sector-specific) regulation when interpreting its provisions for (residential) consumers. For the telecommunications sector, this will sensibly include, for example, looking to the upcoming TCP Standard's detailed requirements on sales, advertising, communication pre- and post-sale, terms and conditions, etc., when considering the general prohibition's grey list requirements around information provision and presentation.

4.4 The ATA considers that looking to telco-specific regulation when interpretating provisions for residential consumers is appropriate, for the reasons outlined in our previous submissions.

4.5 However, unless definitions of small business align and the extension of the UTP provisions is to genuinely small business that make purchases in a way that resembles consumers, we do not consider that it is appropriate to look to the same regulation when considering the UTP provisions for small business. The mismatch arises particularly when attempting to determine the 'Goldilocks standard' of information provision – not too much information to overwhelm, but not too little as to distort. As described, telecommunications sector regulation contains obligations to provide consumers with certain information, deemed to be appropriate for residential consumers and genuinely small business. The same information is generally not appropriate for larger business that will be covered by the proposed scope of an extended UTP if the ACL section 3 definition of acquiring services "as a consumer" is adopted.

4.6 Further, the discussion paper suggests that having the same test apply for unfair trading practices in connection with (residential) consumer purchases and small business purchases will likely limit additional compliance costs.

4.7 Where both types of consumer are managed through the same channels, this may be true. However, the definitional misalignment means that a telecommunication company's larger business and enterprise channels may be managing 'small business' customers captured under an extended UTP, but not telecommunications-specific regulation. This presents a significant regulatory and compliance risk for the telecommunications company that is not commensurate or proportionate with the risk of consumer harm.

4.8 To ensure compliance with the UTP, it is likely that telecommunications companies would need to treat all customers in their business and enterprise channels as if they were a small business ('just in case'). This would mean providing these customers with the detailed information designed for a different market segment; information that would not be relevant, required or wanted for the customers managed through this channel.

4.9 This will require expensive changes to systems, processes and training in enterprise channels for no benefit to genuinely small businesses whose dealings with telecommunications suppliers resemble that of consumers and generally occur via consumer channels.

5. CONCLUSION

5.1 To address these concerns, the ATA suggests that any extension of the UTP Practices Bill recognises that the definition of consumer in section 3 of the ACL may inadvertently capture larger business consumers and that any extension instead uses the definition of small business used by the ASBFEO.

5.2 Should Treasury not be willing to adopt this definition, we suggest that any extension permits that certain exceptions or exclusions apply for these sectors, to ensure that the provisions provide the desired protections, without imposing undue costs. We note that the UTP Bill already introduces a further definition of 'consumer' into the ACL by excluding bodies corporate.

5.3 For the avoidance of doubt, it would also be reasonable for the Bill to explicitly provide a safe harbour for conduct which is compliant with relevant sector-specific regulations.

5.4 For the telecommunications sector, this might mean, for example, that that business customers engaging with telecommunication suppliers through channels clearly designed for larger businesses are excluded from the UTP requirements, provided certain conditions are met. These conditions would ensure that suppliers use the exclusions in the manner intended and do not push genuinely small business to give up protections by opting to engage through these channels.

5.5 We suggest that these exceptions would be managed through sector-specific guidance or delegated regulation, developed by the relevant sector regulator in consultation with Treasury. The ATA would be pleased to assist and engage as appropriate for the telecommunications sector.

Ends

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