79 Constitution Avenue
Campbell ACT 2612
02 6245 1300

10 July 2026

The Treasury
Langton Crescent
PARKES ACT 2600

By email: consumerlaw@treasury.gov.au

Response to Unfair Trading Practices protections for small businesses Consultation Paper

The Housing Industry Association (HIA) takes this opportunity to respond to the Treasury on the Consultation Paper on Unfair Trading Practices protections for small businesses, which includes proposals to extend protections to 'small businesses' as consumers, business-to-business dealings and franchisees not already captured by the small business definition.

This response supplements positions included in our recent submission on the Review of the Amended Unfair Contract Terms Protections on 17 March 2026, and we refer to and reiterate those positions with respect to the Consultation Paper. Additionally, HIA has met with Treasury on two occasions to explain our concerns with the proposals.

Small businesses require support that is right-sized, industry-specific, and focused on reducing uncertainty and administrative burden. Unfortunately, the proposals canvassed in the Consultation Paper are not responsive to existing settings, business size or industry, and are likely to add further cost and complexity to an already complicated and burdensome regulatory environment.

Proper data and analysis is required

There is no evidence provided in the Consultation Paper that a specific problem exists with respect to businesses as consumers, or business to business transactions. Nor is there any interrogation of options to address suggested issues aside from legislative amendment. Rather than data, the reform agenda appears to be driven by an ideological view that businesses would benefit from the same protections as consumers.

While the Consultation Paper acknowledges that there are already a range of existing and overlapping protections for businesses across a variety of legislative and subordinate instruments, despite requests by HIA and other employer organisations, there has been no further work carried out to identify gaps and shortcomings in these frameworks. A rigorous, holistic analysis is critical, but instead, government seems set on a progressing a broad and pre-determined, one-size-fits-all approach, absent the necessary supporting analysis.

One example of existing protections for business is the Security of Payment (SOP) regime, which was intended to assist construction industry contractors of any size to get paid quickly and at minimal cost, and includes unfair and prohibited contract terms. What is now in place is a system so complex and onerous that it may make better financial and commercial sense for a business to absorb the cost of late or non-payment rather than attempting adjudication.

This is not a gap that requires filling with another layer of legislative caulk, but an opportunity to make genuine improvements to an existing framework to ensure it is properly aligned with its purpose.

We remind government that there is a necessary process to progressing effective reforms, which begins with the identification of a specific problem utilising data. Secondly, the existing framework must be reviewed to determine whether the systems in place are adequate and are not being properly applied, or inadequate and in need of review, and whether there are any other barriers that exist and/or if there is an actual gap to be addressed. Finally genuine consultation with stakeholders is imperative, while a regulatory impact analysis is necessary to test the various statutory and non-statutory options available, explore any adverse impacts and demonstrate that a net benefit would be achieved.

The definition of 'small business' remains inappropriate

Small businesses are not consumers. Nor are they medium-to-large businesses.

It is a peculiar proposition that businesses of up to 99 employees would benefit from or require the same protections as consumers. Suggesting that small businesses, or medium-large businesses by virtue of the current definition, are by any measure similar to a consumer reflects a gross misunderstanding and underestimation of the commercial pressures of business. It is a disservice to businesses of any size to overlook their unique circumstances and assume that they can be placated with a 'lick-and-stick' approach to regulation-making.

Similarly, the approach to combining small businesses by definition under any other framework, with medium-to-large businesses under the ACL, is flawed. The Consultation Paper on page 7 lists a number of examples of UTPs potentially faced by small businesses including dark patterns, disclosure issues, manipulation via choice architecture and practices that dissuade businesses from exercising their legal rights, which it is suggested would be covered by the expanded general prohibition.

However, it is difficult to conceive of an instance where a business sophisticated enough to have up to 99 employees would require protection against practices such as the use of dark patterns. In fact, where a generalised protection is extended to such a broad spectrum of businesses without due cause or limitation, it may ultimately lead to misuse or abuse to the detriment of actual small businesses.

Normal commercial conduct must not be compromised

Government intervention in commercial contracting arrangements undermines the principle that businesses should be free to contract with whom they choose and be bound by the terms they agree to. We recognise that business dealings are influenced by a range of factors and that business relationships can be challenging, however, the inherent nature of doing business does not necessarily warrant a general prohibition on unfairness.

Introducing laws that protect one business at the expense of another is at odds with a competitive market, is counterproductive and could aggravate the difficulties faced by business. To ensure legitimate commercial conduct is not inadvertently captured, any future proposals should be focused on situations where there is a significant imbalance of power and a real risk of detriment to a business.

Legal ambiguity

HIA understands ACCI has raised serious concerns regarding legal ambiguity arising from the proposed general prohibition and we echo their position. The introduction of further uncertainty in trading conditions for small businesses, who are already struggling to keep up with the volume and pace of regulatory change, would only have harmful impacts on these businesses.

It must not be overlooked that regulatory fatigue and uncertainty for small businesses ultimately manifests in adverse outcomes for consumers and an erosion of consumer protection, highlighting the importance of a balanced approach to regulation.

Non-statutory measures should precede reform

Small businesses require easily accessible and cost-effective support, such as educational resources and information, advice, training, advocacy and representation. Unless there is an overwhelming case for regulation, our preference is for non-statutory measures to be implemented and tested first. However, these measures are equally important ahead of commencement and in an ongoing manner as continuous support for compliance.

Industry organisations such as HIA are a powerful partner in facilitating these measures and we would be pleased to support government in this endeavour if funding were to be made available.

If reform can be justified, it must be right-sized

Where it is demonstrated regulation is required, the laws should be focused on improving productivity, increasing market efficiency and delivering better prices for consumers. To this end, any changes to existing settings must take into account and minimise the adverse impacts on small businesses and ensure they can practically comply.

Where gaps are identified that cannot be addressed under existing frameworks, and it has been demonstrated these gaps have resulted in serious harm to businesses, it is likely the appropriate approach is to implement industry-specific amendments that address discrete issues and are limited in their application by objective qualifications.

Industry-specific communications, guidance and education should run concurrently with staged commencement and transitional arrangements to support adoption. Although we would oppose penalties against small businesses of a quantum that would undermine business viability, we would support an educative approach to enforcement, particularly during the initial phase of implementation. Government must also commit to a period of monitoring, assessment and review to test the impact of any amendments.

Next steps

In the event these proposals are progressed irrespective of the issues raised by industry representatives, HIA would welcome the opportunity to be involved in further consultation with the view to achieving a suitable, practical outcome for small businesses, including implementation support and education.

Yours sincerely

HOUSING INDUSTRY ASSOCIATION LIMITED

Stuart Collins

Stuart Collins
Senior Executive Director Compliance and Workplace Relations