

23 February 2026

By email: consumerlaw@treasury.gov.au

Dear Treasury,

Unfair Trading Practices – Exposure Draft and Explanatory Memorandum

Thank you for the opportunity to provide feedback on the Exposure Draft (**ED**) legislation and accompanying Explanatory Memorandum (**EM**) for the proposed prohibition on Unfair Trading Practices (**UTP**). We welcome the Government's commitment to protecting consumers from unfair, harmful business practices.

We refer to and support the consumer sector submission led by Consumer Policy Research Centre, to which Consumer Action is a signatory.

We are providing this supplementary submission to highlight the need to explicitly consider manipulative lead generation practices in the ED legislation and EM to ensure its status as an unfair trading practice is clear. To ensure the UTP prohibition functions as intended and genuinely protects consumers from unfair conduct, consideration should be given to reversing the onus of proof to place on businesses, the burden of proving a practice is fair.

Capturing unfair lead generation

Lead generation—the process of identifying people as sales targets and harvesting and using their contact details for sales pitches—has become a significant source of consumer harm in Australia.

Unlike traditional marketing, where the link between an advertisement and the business selling a product or service is clear, lead generation operates within a complex ecosystem of marketers, data brokers, platforms, and software providers, with potentially multiple intermediaries between the consumer whose data has been harvested and the end business seeking to sell to them. Lead generators may technically receive consumers' consent to future sales contact, but consumers are often manipulated into providing it, with marketing consent buried in terms and conditions and/or hidden behind unrelated online activities, such as competition entry or completion of an online comparison tool.

From what we see on our frontlines, lead generation is often involved in aggressive, high-pressure sales of unaffordable or poor-quality products and services. The process of gathering and on-selling leads also leaves people's personal data exposed to the risk of leaks and misuse. The potential for lead generation to cause harm has been made abundantly clear from the recent collapse of the First Guardian Master Fund and Shield Master Fund¹. However, we see this unfair and manipulative practice harming consumers across the economy and this harm was at the heart of our 2025 Designated Complaint to the ACCC². Lead generation presents particular risks

¹ [ASIC announces review into 'lead generators' pushing superannuation switching - ABC News](#)

² [Designated Complaint: Unsolicited Selling](#)

in new energy technology where unit prices are high and faulty products or installation presents significant physical risk (e.g. lithium-ion batteries).

Recommended change to UTP ED legislation and EM

We note that in the draft legislation the general prohibition is designed to capture conduct by business that seeks to manipulate consumers or distort the environment in which they make decisions. We consider that in many circumstances, harmful lead generation practices would be captured under this formulation of the general prohibition, given the manipulation and distortion of consumer choice involved. However, given the significant consumer harm linked to lead generation and subsequent high-pressure sales, we **recommend** that these practices be explicitly cited in the legislation and/or Paragraph 1.34 of the EM as examples of conduct that may contravene the general prohibition.

Examples of practices involved in manipulative lead generation that should be referenced include:

- Failing to clearly disclose the dominant purpose for collecting a consumer's personal information.
- Failing to disclose the specific businesses that will receive a consumer's details once provided, and the purposes for which those details will be used.
- Relying on purported "consent" to sales approaches that were generated through obscure, complex or misleading mechanisms that a reasonable consumer would not understand.

In practice, these examples commonly present as:

- Advertisements offering to "check your eligibility for government solar rebates", then using the consumer's details to initiate unsolicited sales approaches (door-to-door or tele-sales), without clearly disclosing this intention at the point of collecting the personal details.
- Businesses using pre-ticked boxes, generic statements or unrelated consent prompts to manufacture consent to be contacted, thereby bypassing existing unsolicited sales protections.
- Businesses engaging in high-pressure door-to-door or tele-sales which, as we observe on our frontlines, disproportionately harm consumers experiencing vulnerability.

Ensuring all parties engaged in lead generation are captured

Given the widespread outsourcing of lead generation, we consider that obligations should apply to all entities involved — both the party collecting personal information and downstream businesses that ultimately benefit from the leads.

When consulting on future legislation extending the UTP prohibition to business-to-businesses conduct, we **recommend** that Treasury look specifically at practices of harvesting and on-selling leads to businesses, with a view to prohibiting this trading of leads.

Onus of proof must be reversed for effective regulation

More generally, but using lead generation as an example, the opacity involved in many unfair practices by business presents real challenges for a consumer trying to bring and prove a claim against a trader. By its nature, the very conduct that satisfies the requirements of the UTP prohibition, is manipulative, distorts information and will be difficult to prove. In our experience, many clients don't know if they've engaged with lead generation, if anything they report having 'clicked on a Facebook ad' but don't have the evidence to make a regulator complaint or bring a case against the business under other existing laws.

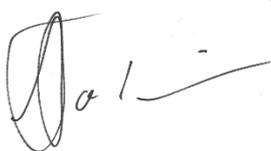
When combined with the inclusion of 'unreasonable' before manipulate or distort³, we are concerned that this information asymmetry and the disguised nature of conduct being regulated may make it near-impossible for a consumer to know the full extent of conduct and establish a contravention of the UTP prohibition.

In other contexts where such stark information asymmetries exist it has been managed by reversing the relevant onus of proof, for example in the financial services context under the ePayments code. To address the challenges consumers would face proving a claim of unfairness related to business practices they may not have visibility of or understand, we **recommend** reversal of the onus of proof in the final legislation. A consumer should be required to demonstrate harm suffered and indicate suspected contraventions, a business would then be required to prove that its conduct was fair.

Please contact **Jean Skeat** at **Consumer Action Law Centre** on 03 8554 6971 or at jean@consumeraction.org.au if you have any questions about this submission.

Yours Sincerely,

CONSUMER ACTION LAW CENTRE



Steph Tonkin | Chief Executive Officer

About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

³ Note: We strongly support the position presented in joint submission submitted by Consumer Policy Research Centre that use of the terms 'unreasonably manipulate' or 'unreasonably distort' create a much higher bar than intended for what may constitute an unfair business practice. We support their related recommendation to amend the definition to either remove the term 'unreasonably' in front of the words 'manipulate' and 'distort' or change the language to 'unreasonably influence'.