LIDC Australasian Chapter

Report on Australia’s framework for addressing harm arising from the use of superior market power

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## Purpose of this report

This report is prepared for the purpose of discussion among members of the International League of Competition Law (Ligue Internationale du Droit de la Concurrence or ‘LIDC’) at the annual congress to be held in Vienna between 9 and 12 October 2025. It has been prepared by a committee of members of the Australasian chapter of the LIDC and expresses their personal views and understanding of Australian law and does not necessarily represent the views of any of the organisations with which they are associated.

This report seeks to respond to ‘Question A’ set for discussion at the Congress:

*“Is the concept of the abuse of relative market power beyond market dominance necessary to ensure a functioning competition’ [policy and legal framework] ‘and what criteria should be used to assess it?”*

## Introduction

Australia has national legislation, delegated legislation and case law which creates a policy and legal framework which is intended to address the problem of imbalances in relative market power and harm arising from economic dependence. The framework includes:

**Legislation relating to Misuse of market power** – section 46 and 46A of the Competition and Consumer Act (C’th) [the CCA] and equivalent provisions in the Competition Code (which applies the law in each of the states and territories).

**Delegated legislation consisting of ‘Industry Codes’** that apply to specific sectors to redress imbalances of market power or problems arising from economic dependence – These Codes are made under Part IVB and IVBA of the CCA. They include the following:

* Franchising Code of Conduct
* Horticulture Code of Conduct
* Food and Grocery Code of Conduct
* Competition and Consumer (Industry Code – Electricity Retail) Regulations
* Dairy Industry Code
* Wheat Code
* Oil Code
* News Media and Digital Platforms Mandatory Bargaining Code

**Legislation relating to Fair Trading Practices** consisting of a prohibition on unconscionable conduct – Part 2-2 of the Australian Consumer Law and a Prohibition on Unfair Contract Terms in small business contracts – Part 2-3 of the Australian Consumer Law.

**Common law** – law thatis discerned through judicial determinations, this is particularly relevant in relation to the law of equity which has given rise to a prohibition on unconscionable conduct.

This report explains each component of the Australian framework for dealing with harm that arises to businesses from the use of superior market power. It also explains that the Australian Government is also consulting on the introduction of laws banning certain unfair trade practices. While these laws would mainly apply to consumers they are also intended to protect small businesses. Finally, the report mentions the role that the reinvigoration of National Competition Policy may play in addressing the question posed by the Congress question.

## Legislation relating to ‘misuse of market power’

Section 46 of the *Competition and Consumer Act 2010* C’th (the CCA) prohibits the “misuse of market power”.[[1]](#footnote-1) Subsection 46(1) contains a general clause, which, most notably, was significantly changed by the Competition and Consumer Amendment (Misuse of Market Power) Act 2017 (Cth). The current section 46(1) states:

*(1) A corporation that has a substantial degree of power in a market must not engage in conduct that has the purpose, or has or is likely to have the effect, of substantially lessening competition in:*

*(a) that market; or*

*(b) any other market in which that corporation, or a body corporate that is related to that corporation:*

*(i) supplies goods or services, or is likely to supply goods or services; or*

*(ii) supplies goods or services, or is likely to supply goods or services, indirectly through one or more other persons; or*

*(c) any other market in which that corporation, or a body corporate that is related to that corporation:*

*(i) acquires goods or services, or is likely to acquire goods or services; or*

*(ii) acquires goods or services, or is likely to acquire goods or services, indirectly through one or more other persons.*

The rest of the subsections in section 46, (3)-(8)[[2]](#footnote-2), provide guidance on the meaning of “substantial degree of power”. Although s46(8)(a) clarifies that “a reference to power is a reference to market power”,[[3]](#footnote-3) meaning that it is market power to which the prohibition applies, s46(8)(c) simultaneously refers to buyer power and seller power stating that: “a reference to power in relation to, or to conduct in, a market is a reference to power, or to conduct, in that market either as a supplier or as an acquirer of goods or services in that market”. There is also further relevant reference in subsection (5)(b)(ii), which explains that the entity can have substantial power in a market even if it does not have “absolute freedom from constraint by the conduct of” its suppliers or buyers.

* There are no cases under the current section 46 that would consider bargaining power. However, a few older cases under the previous provision of section 46, which included similar references to buyer power and seller power [s46(3C)(b)(ii) and s46(4)(c)], involved this power on vertical chain (bargaining power).[[4]](#footnote-4) Aside from an unsuccessful case regarding section 46, ***Universal Music Australia***,[[5]](#footnote-5) bargaining power played a considerable role in *Carlton United Breweries*,[[6]](#footnote-6) in which the court stated that the corporation had “a substantial degree of power in the market for beer in Australia and its market power as an acquirer of beverages cans in the beverage can market”,[[7]](#footnote-7) as well as in *Safeway*,*[[8]](#footnote-8)* in which the Full Court of the Federal Court of Australia addressed the concept of monopsony power.
* Safeway was the largest supermarket chain and the leading bread retailer in Victoria. The relevant market was defined as the wholesale market for the sale and acquisition of bread. [[9]](#footnote-9) Safeway's alleged misconduct centred on its refusal to buy from suppliers who offered lower prices to competing retailers. The Full Federal Court ruled that the ACCC failed to prove that Safeway held a substantial degree of power in the wholesale market. The Court clarified that individual bargaining power did not, in itself, constituted market power, [[10]](#footnote-10) and concluded that the ACCC had not provided sufficient evidence to establish that “Safeway had a substantial degree of market power.”[[11]](#footnote-11)

## Industry Codes to address market power imbalances

Australia is a federation in which there are overlapping legislative responsibilities between state and the national (federal) governments in relation to trade and commerce. The common law complements legislation. A system of industry or sector specific codes has developed as a complement to the Competition and Consumer Act (C’th) [the CCA].

The CCA which contains the Competition law and the Australian Consumer Law each have effect as legislation at the national level and in each state and territory. Codes are part of the national law but not the law of each state or territory.

The idea for codes came from an Inquiry conducted during 1996 and 1997 by the House of Representatives Standing Committee on Industry, Science and Technology. The Inquiry was known as the Reid Committee, and it was tasked with examining business conduct issues arising from commercial dealings between firms and aimed to find a balance towards fair trading practices in Australia.

The Inquiry resulted in a report tabled in the House of Representatives in May 1997 titled “Finding a Balance Towards Fair Trading in Australia”. [[12]](#footnote-12) The report highlighted many of the market power concerns of small businesses and proposed recommendations to address unfair practices and improve the regulatory environment for small enterprises.

The Reid Committee found evidence of unfair conduct directed towards small businesses in their dealings with more powerful firms including:

* *…“little or no ability to negotiate terms of the contract (often 'take it or leave it' contracts are used);*
* *inadequate disclosure of relevant and important commercial information which the weaker party should be aware of before entering the transaction.*
* *inadequate and unclear disclosure of important terms of the contract. particularly those which are weighed against the weaker party. This can occur through:* 
  + *the technical wording of" the document:*
  + *the 'theatre' of the negotiations whereby the small businessperson is under-represented, lacks the legal fire power brought to the table by the other party, and is discouraged (or not given the opportunity) to consider the details of the contract; and*
  + *the fact that the terms which can operate against the interests (the weaker party are not brought to the attention of that party, or their full import is not spelt out to that party.*
* *When smaller parties have committed themselves to a long-term relationship eg through a lease or a franchise, the dominant parties seek to vary the nature of the relationship so that it is more favourable to the dominant player.”*

Amongst other things in order, it recommended the introduction of a specific statutory protection against unfair conduct and *“the enactment of specific franchising legislation and this will provide the legislative underpinning for codes of practice in the franchising areas.”*

It also recognised that *“there will be other sectors where such codes of practice may be desirable and it would be desirable for a general power to be provided for the courts to take these into account in assessing unfair conduct.”*  It envisaged that the Codes *“would provide only limited legislative backing to codes of practice approved by the ACCC. The ACCC examination would ensure that such codes met adequate standards in respect of information disclosure, standards of conduct and dispute resolution.”* In addition, the Committee considered that the inclusion of such a Code approval provision would *“provide industry groups with the opportunity to codify their practices in association with affected groups, in a transparent and accountable fashion.”[[13]](#footnote-13)*

On 30 September 1997 Mr Reith the Minister for Workplace Relations and Small Business announced a decision to enact a provision enabling the making of Industry Codes as part of a small business support package. He explained that:

*“The fundamental objective of the government is, in the words of the”* [Reid Parliamentary] *“committee, to ‘induce behavioural change' where improved standards of commercial conduct are required, and not a mere desire to create a more litigious commercial environment. By adopting these measures, the government has ensured that the desired outcomes are achieved without unduly impacting on the operation of the open market or compromising the basic principles of contractual relations and commercial risk which remain at the core of our free enterprise economy.”*

The Government accepted the Reid Committee recommendation and enacted a new provision in the Trade Practices Act to give small business protection against unconscionable conduct as well as a provision to allow industry-designed codes of practice, in whole or part, to be legally underpinned and be made mandatory under the Trade Practices Act and enforced as breaches of the act. This was supported by a provision which allowed the ACCC to take representative actions on behalf of small business for misuse of market power by big business.

The Minister explained the importance of what he described as providing for ‘legal recognition of Codes of Conduct’. He said:

*“The government recognises that industry codes of practice can offer flexible and efficient mechanisms to address issues of business practice. However, experience has shown that for some codes of practice legislative underpinning is necessary to ensure the effective operation of the code and to achieve the desired behavioural change in industry sectors.*

*The government has accepted the principle of the Reid committee's recommendation 6.2. The bill I will be introducing will include in the Trade Practices Act a new part which will enable the whole or parts of codes of practice to be underpinned as either mandatory or voluntary codes, after an appropriate approval process.*

*This measure will provide small business with dual advantages—the benefit of participating in the design of industry regulation addressing unfair conduct, and the security of knowing that mandated codes or provisions of codes can be directly enforced under the Trade Practices Act.”[[14]](#footnote-14)*

In the nearly thirty years that have followed the introduction of the Code making power Codes have been introduced to deal with general business models that are seen as requiring specific ‘ex ante’ rules to remedy problems of market power imbalances (examples include the Franchising Code) or to deal with imbalances in market power between businesses in specific sectors (Dairy Code, Food and Grocery Code [Part IVB of the CCA], the Oil Code and the News Media Bargaining Code [Part IVBA of the CCA]). This model has also been used to establish rules;

* for the Gas Market [Gas Code - Part IVBB of the CCA];
* for payment surcharges [Payment Surcharge Code - Part IVC];
* to facilitate sharing of motor vehicle service and repair information [Part IVE of the CCA]
* for the Consumer Data Right [Part IVD of the CCA]; and
* to establish a scams prevention framework [Part IVF of the CCA].

Codes are made in a form of delegated legislation known as Regulations and are subject to sunsetting rules established by the Legislation Act 2003 (C’th). This means that they generally ‘sunset’, that is they are repealed automatically unless some review is undertaken, and a decision is made to extend or reform them. The sunsetting process is designed to ensure that legislative instruments are kept up to date and only remain in force for as long as they are necessary and effective.[[15]](#footnote-15) This process is intended to reduce the regulatory burden that would otherwise apply to businesses operating in Australia.

Codes may be established as either voluntary codes or mandatory codes. A voluntary code is voluntary in the sense that a business can decide to become a party to the Code. Once it is a party it must comply with the Code provisions. It can generally decide to withdraw from the Code. A mandatory Code applies as ex ante regulation to all parties specified in the Code. Alleged misconduct under a code can be the subject of an ACCC investigation in which it can use compulsory powers to acquire evidence or information and compel witnesses to provide evidence to it. The ACCC has power to take Federal Court proceedings seeking civil penalties and other relief including injunctions or mandatory orders compelling parties to comply with provisions of the Code or even take steps to remedy breaches of the law.

### Franchising Code

In 1997 Minister Reith announced that the first Code of Conduct to be given legal recognition would be made in relation to the franchising sector. He explained that the Government had decided to accept the Reid committee view that *“specific legislative measures were required to be taken to redress the imbalance in commercial relations between franchisors and franchisees.”* He said that the Franchising Code would be *“a mandatory code with key elements such as pre-contractual disclosure underpinned by the Trade Practices Act. These measures are essential to provide the franchising sector with the required certainty of operation and an equitable scheme of regulation across franchise systems.”*

The Franchising Code replaced a voluntary code that that had been developed by businesses in the franchising sector to address unscrupulous practices that had brought some participants in the sector into disrepute. The voluntary code had no clear consequences for code breaches and very little legal effect. The Franchising Code was reviewed and strengthened in 2008 and then in 2024. Each review has focussed on perceived imbalances between small business and larger more powerful businesses.

The Government funded the monitoring and enforcement of the Code by a Codes of Conduct Enforcement Unit established within the Australian Competition and Consumer Commission. The Code regulates franchising agreements and relationships between franchisees and franchisors it specifically requires disclosure documents to be provided by franchisors when selling franchises to franchisees. Following reviews the Franchising Code also requires dealings between the franchisors and franchisees to be ‘in good faith’.

### Oil Code

The second Code to be established under the new provisions was to relate to the oil industry where specific attention had to be given to *“strengthening the position of small business franchisees in the oil industry in relation to unfair conduct issues”.* The Oil Code regulates wholesale/retail relationships in the petroleum industry and covers supply agreements and pricing.  
Horticulture Code

A Horticulture Code of Conduct was first introduced in 2007 to regulate trade of fresh fruit and vegetables between growers, wholesalers and traders’ horticulture produce *‘to ensure transparency and clarity of transactions.’* Among other things the Code requires terms of trade to be in writing.

The Code also established a dispute resolution procedure that was intended to be timelier and more cost effective than formal court processes. That procedure was through an agency called the Australian Small Business and Family Enterprise Ombudsman (ASBFEO).

The ACCC was however given power to enforce the Code and given responsibility for providing information to growers and traders on the Code.

### Food and Grocery Code

The Food and Grocery Code of Conduct in Australia is now a mandatory code that regulates the interactions between large grocery businesses and their suppliers. It was introduced to address and mitigate concerns about harmful practices within the grocery industry, particularly those arising from an imbalance of bargaining power between supermarkets and their suppliers.  
  
The code was initially created as a voluntary measure in 2015 but became mandatory on April 1, 2025, after the Government accepted the recommendations of a Review conducted by former Competition Minister Dr Craig Emerson. The Emerson Review was established to consider claims of harmful practices in the grocery industry due to the imbalance of bargaining power between supermarkets and their suppliers. Dr Emerson’s final report, published on June 24, 2024, made 11 recommendations, including making the Code mandatory. This recommendation was intended to strengthen the Code's effectiveness and ensure compliance, with penalties of up to $10 million for serious breaches.  
  
The review also considered extending the Code's provisions to other retailers or wholesalers in the food and grocery sector and assessed the effectiveness of the Code in improving commercial relationships between retailers, wholesalers, and suppliers. The government supported these recommendations. In a joint announcement on 17 December 2024 the Minister for Agriculture Hon Julie Collins and Assistant Minister for Competition Hon Dr Andrew Leigh announced that the voluntary code had been reformed and made mandatory. They stated this action would *“protect suppliers and farmers and improve supermarket conduct with heavy penalties for breaches of the code.”* It would *“address imbalances in bargaining power between large grocery retailers or wholesalers and their suppliers and includes new obligations to protect suppliers from retribution and strengthened dispute resolution mechanisms for* *suppliers*.”

This transition to a mandatory code was driven by stakeholder feedback indicating that the voluntary code was ineffective in achieving its intended purpose of protecting suppliers and ensuring fair practices. This feedback was consistent with evidence gathered by the Dr Emerson during his review.

The ACCC is responsible for disseminating guidelines on the operation of the Code and it explains: “The code regulates how large grocery businesses do business with their suppliers.This includes:

* that they must deal with suppliers lawfully and in good faith
* that certain things must be included in grocery supply agreements
* how grocery supply agreements may be varied
* when payments may be required from suppliers for certain benefits and activities
* how they must communicate any requirements, standards or quality specifications for grocery products
* protections for suppliers against retribution
* certain additional protections for suppliers who supply fresh produce.

The code also provides for dispute resolution through mediation and arbitration.”[[16]](#footnote-16)

The code is mandatory for large grocery businesses. The large grocery businesses currently covered by the code are:

* ALDI Stores
* Coles Group Limited
* Metcash Food & Grocery Pty Ltd, and its related bodies corporate
* Woolworths Group Limited, and its related bodies corporate

A supplier is a business that supplies groceries for retail sale by another person or business in Australia. Suppliers to large grocery businesses are automatically protected by the code. Suppliers don’t need to sign up to the code. The code sets up a framework for grocery supply agreements. A grocery supply agreement is between a supplier and a large grocery business for the supply of groceries.

A grocery supply agreement is not just the principal agreement and documents made under that agreement. It includes all contracts or agreements between a large grocery business and a supplier that relate to the supply of groceries. A grocery supply agreement must set out:

* any delivery requirements
* the circumstances in which the large grocery business can reject groceries
* when suppliers will be paid, and circumstances in which payment may be withheld or delayed
* the duration of the agreement, if the agreement is intended to operate for a limited time
* any quantity and quality rules
* the circumstances in which the agreement may be terminated.

The code limits the ability of large grocery businesses to vary a grocery supply agreement. A large grocery business must not vary a grocery supply agreement without the written consent of the supplier, unless several conditions are met. These conditions include that the grocery supply agreement expressly allows them to do so, and the variation is reasonable in the circumstances. A large grocery business must not vary a grocery supply agreement with retrospective effect under any circumstances.

The ACCC is responsible for enforcing the code. It has the power to investigate and take appropriate enforcement action[[17]](#footnote-17). Breaches of the code by large grocery businesses may result in substantial civil penalties. The food and grocery code does not apply when it conflicts with the:

* [dairy code](https://www.accc.gov.au/business/industry-codes/dairy-code-of-conduct)
* [franchising code](https://www.accc.gov.au/business/industry-codes/franchising-code-of-conduct), or
* [horticulture code](https://www.accc.gov.au/hortcode).

The dairy code will apply to a large grocery business’s relationship with dairy farmers, where the large grocery business buys milk directly from those farmers. This is in its capacity as a ‘processor’ under the dairy code. Otherwise, a large grocery business’s relationship with its suppliers, such as other farmers and other dairy processors, will be covered by the food and grocery code.

For breaches of the Food and Grocery Code of Conduct, the penalties can be quite severe. They are designed to ensure compliance and protect suppliers from unfair practices. The penalties include:

* Infringement Notices: The Australian Competition and Consumer Commission (ACCC) can issue infringement notices for breaches of civil penalty provisions. The penalty amounts for these notices can be substantial.
* Civil Penalties: For more serious breaches, the penalties can be the greater of:  
  - $10 million,  
  - Three times the value of the benefit gained from the contravening conduct, or  
  - 10% of the turnover in the preceding 12 months.

These penalties are among the highest corporate penalties under any industry code in Australia and are intended to ensure that non-compliance is not seen as a mere cost of doing business.

### Dairy Code

Very late season retrospective changes to farmgate prices paid by Australia’s two largest dairy processors in April 2016 caused significant detriment to dairy farm businesses in the southern part of Australia. It was the culmination of a deterioration in business outcomes for many dairy farmers that coincided with de-regulation of the dairy sector and the transfer of dairy processing from cooperatives to large corporations often with overseas owners. This was the context in which the Australian Government directed the ACCC to conduct a market study into the Dairy Sector. The ACCC’s final report was published in April 2018.[[18]](#footnote-18)

Amongst other things the ACCC’s report found that there were ‘significant imbalances in bargaining power at each level of the dairy supply chain’. The ACCC identified “a range of market failures resulting from the strong bargaining power imbalance and information asymmetry in farmer-processor relationships”. They concluded that these practices ultimately cause ‘inefficiencies in dairy production’.

The ACCC made eight recommendations for improved transparency and allocation of risk in the commercial relationship between dairy processors and farmers including a mandatory code of conduct to address the market failures they had identified.

The Government accepted the ACCC’s recommendation for a Code after further consultation with dairy processors, farmers and industry groups in 2018 and 2019. Among other things the Code was intended to protect producers from unfair contracts, introduce greater transparency and set up a regulation flexible enough to allow innovation and diversity in the dairy industry.

The *Competition and Consumer (Industry Codes Dairy) Regulations 2019* C’th commenced operation on 1 January 2020 and governs relationships between dairy farmers, processors and industry groups. It covers milk supply agreements and pricing. A key provision requires milk processors to annually and simultaneously announce their lowest price for milk they intend to purchase from dairy farmers over the next year. This gave effect to an ACCC recommendation which was intended to restore the imbalance in bargaining power between farmers and processors. It was intended to increase the ability of farmers to respond to market signals, make standard industry practices fairer and ensure risks are borne by the appropriate party.[[19]](#footnote-19)

Under the Code as originally made a review was required of the operation of the Code in 2021. That review suggested certain amendments to improve the operation of the Code and a further review after 2023[[20]](#footnote-20). In November 2024 the Government announced a second review of the Code which was to be supported by a consultation group involving stakeholders including industry participants. The outcome of the review wasn’t announced at the time writing.

### Gas Code

Australia's Gas Market Code, also known as the Mandatory Gas Code of Conduct, was introduced as part of the Federal Government's Energy Price Relief Plan announced on December 9, 2022. The primary purpose of this plan was to shield Australian families and businesses from the adverse impacts of predicted energy price spikes.  
The Gas Code was implemented to address concerns about gas supply and pricing on the east coast of Australia. It includes several key elements:

* A temporary price cap of $12 per gigajoule (GJ) introduced to anchor wholesale contract negotiations between gas producers and buyers.
* A Regulatory Framework: The Code is part of a broader suite of reforms that includes amendments to the Competition and Consumer Act 2010 to insert a new Part IVBB, which regulates the conduct of gas market participants.
* Supply Commitments: The Code aims to ensure that east coast gas users can contract for gas at reasonable prices and on reasonable terms. It includes measures to secure domestic supply commitments from producers.

The Australian Competition and Consumer Commission (ACCC) is responsible for monitoring and enforcing compliance with the Code. This includes investigating alleged breaches and ensuring that market participants adhere to the prescribed guidelines. The introduction of the Gas Code reflected the Federal Government's willingness to intervene in the domestic gas market to ensure adequate supply and reasonable pricing, particularly in light of potential forecast shortfalls in supply. The Code is designed to provide certainty for both producers and consumers, helping to stabilize the market and protect Australian gas users from excessive price volatility.

### Enforcement of Codes

There have been a relatively small number of matters in which the ACCC has taken enforcement action under Industry Codes. The ACCC has taken action to enforce the Dairy Code of Conduct, including compliance checks and enforcement actions against companies for failing to comply with the code.

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| **Lactalis Australia – Dairy Code breaches and $A950,000 penalty – September 2022**  The Federal Court found Lactalis Australia Pty Ltd (Lactalis) breached the Dairy Code of Conduct by failing to meet some of its obligations in relation to the 2020-21 milk season, in court proceedings brought by the ACCC. The code commenced in 2020 to address systemic transparency issues and bargaining power imbalances between dairy farmers and processors.  The Court found that Lactalis breached the code when it failed to publish its milk supply agreements on its website by the code’s deadline of 2 pm on 1 June 2020, and instead required dairy farmers to sign-up through a web portal to receive them by email. The Court also found that Lactalis breached the code by publishing and entering into agreements that allowed them to unilaterally terminate the agreement in circumstances that did not amount to a material breach. In particular, Lactalis was permitted to unilaterally terminate the agreement when, in their opinion, the farmer had engaged in “public denigration” of processors, key customers or other stakeholders. The Court also found that Lactalis did not fail to meet the code’s “single document” requirement, which is intended to provide a single source of farmers’ obligations, to provide farmers with certainty regarding the content of their agreement.  The Court ordered Lactalis Australia to pay $950,000 in penalties for contravening the Dairy Code of Conduct. |

The ACCC has enforced the Franchising Code including actions against franchisors for failing to act in good faith, provide disclosure documents, or comply with other obligations under the code.

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| **Jump Swim Franchise - $A23 million penalty ordered – May 2021.**  The franchisor Jump Loops Pty Ltd (in liquidation) (Jump Swim) was ordered to pay penalties of $A23 million for making false or misleading representations and wrongly accepting payments from franchisees, in proceedings taken by the ACCC. Jump Swim offered ‘Jump Swim’ branded learn-to-swim school franchises for sale between March 2016 and July 2019. The Federal Court declared, by consent, that Jump Swim falsely represented to 174 franchisees that they would have an operational swim school within 12 months of signing a franchise agreement. Most of those franchisees never received an operational swim school. It also declared, by consent, that Jump Swim accepted payments from 127 franchisees when Jump Swim knew, or ought to have known, that there was no reasonable basis for believing that they would be able to supply the franchisee within 12 months, or within a reasonable period of time. The founder and former managing director of Jump Swim, Ian Michael Campbell, was also ordered by the Court to pay $500,000 in compensation to franchisees, and to pay a penalty of $400,000. The Court also made orders, by consent, restraining Mr Campbell from being involved in carrying on a business as or of a franchisor in Australia for three years and from making representations about timeframes or wrongly accepting payment relating to a franchise for a period of 5 years. The Court made these orders against Mr Campbell after finding he had been knowingly concerned in Jump Swim’s contraventions, being the false and misleading representations made to franchisees who had signed up to operate a swim school, and wrongful acceptance of payments from franchisees. |

## Relative Market Power and Australian Consumer Law

The issue of whether there are any rights of action to deal with perceived wrongs arising out of an apprehended use of relative market power is not one to be specifically found in Australian law.

Rather, the issue is better addressed by identifying what analogous rights of action there may be for parties feeling aggrieved by what might be characterised elsewhere as deceptive, unfair, sharp or exploitative conduct (and which may also look like anti-competitive behaviour yet falling short of an abuse of dominance or market power or fulfilling the criteria for an otherwise anti-competitive arrangement).

Some of the sector and industry specific codes and regulations referred to above will cover some of these unfair practices. However, Australia has also proceeded down the route of identifying and codifying certain behaviours as being unacceptable breaches of consumer rights and fair-trading laws. These have been legislated in the CCA through a specific schedule called the Australian Consumer Law (“ACL”).

The ACL does is to take traditional common law and equitable remedies such as misrepresentation and unconscionable conduct and makes it clear in legislation that these practices are unacceptable and unlawful. Whilst not a species of pure competition law, the impugned behaviours often arise in circumstances where there is an asymmetry or inequality of bargaining power, or where one party has particular knowledge or data which it utilises or communicates in a matter in a way (or not at all) and which takes undue advantage of its counterparties who are not in a position to respond meaningfully.

These rights of action can therefore be perceived as a halfway has between this mix of common law and equitable remedies grounded in concepts of fairness, deception and unconscionable conduct (legal analysis), and traditional and binary competition law enforcement rights arising out of abuse of market power (economic analysis).

The ACL was also the culmination of the process of the harmonisation of Australian competition and consumer law across its States and Territories. Australia’s various States and Territories had always recognised the need to protect consumers’ interests as well as those of local small business in particular but there was no mandated single market imperative as found in the original EEC and subsequent Treaties. However, this fragmentation resulted an excessive piecemeal and regional approach to fair trading issues with the result that free trade as between the States and Territories could be unduly restricted and distorted. There was good sense to introduce the harmonisation wrought by the ACL for a variety of reasons. States and Territories may still have their individual approaches but these are subject to the ACL.

Therefore, an overarching point about these ACL rights and remedies is that they constitute mandatory rules. Stop. This means that parties cannot contract out of them in their arrangements with others and that they apply to any action relevant to business in Australia. Domestic and international corporations are aware of this now, particularly where these protections now quite often work to their benefit. This is due to a feature of the ACL which is that some of the remedies which are designed for consumer protection can actually be enforced by small businesses and smaller corporations. Corporations may claim the benefits of various ACL provisions in the same way as consumers and business agreements are drafted accordingly, including asset purchase and share purchase agreements.

The purpose and enforcement of the ACL provisions therefore extends beyond the ACCC and consumers as commonly understood.

However, none of these protections exist to protect the foolish or foolhardy or to protect against risk in the normal cut and thrust of commerce.

### Misleading or deceptive conduct

Section 18 of the ACL provides that a *“person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive”.*

This prohibits statements, conduct or actions (including silence or omissions) between trading parties or parties and consumers. Whilst a general prohibition unrelated to market power, it becomes more pointedly important as a potential remedy for present purposes where the misrepresentation or deception arises due or is contributed to by an asymmetry our inequality of bargaining power, or where the counterparty might lack the knowledge, means or ability to discern whether they are being told is fair, transparent and reasonable. Basically, it prohibits sharp or unfair practice in commercial relations.

Whether a statement or conduct has the effect of being misleading or deceptive is a question of fact. No person should make a statement or engage in conduct unless they reasonably believe it to be true or have reasonable grounds for so believing. That question of reasonableness may vary depending on who the addressable audience or market is and have regard to their intrinsic qualities. The degree of actual and informed knowledge of the counterparty having regard to the qualities to be reasonably expected of them becomes relevant.

There are no penalties for breach of section 18 ACL but actions in damages and injunctions frequently arise.

### Unconscionable conduct

A more concrete example of Australian statutory protection is found in the prohibition on unconscionable conduct. There are two acknowledged prohibitions in the ACL. Whilst this looks awkward, the ACL is effective here.

Section 20 of the ACL contains the first prohibition and provides that a *“person must not, in trade or commerce, engage in conduct that is unconscionable, within the meaning of the written law from time to time”*.

Section 21 of the ACL contains the second prohibition and provides that:

*“a person must not, in trade or commerce, and connection with:*

*(a) supply or possible supply of goods our services to a person:*

*(b) the acquisition or possible acquisition of goods or services from a person;*

*engage in conduct that is, in all the circumstances, unconscionable”.*

Section 20 prohibits traditional unconscionable conduct as understood by the traditional laws of equity in Common Law jurisdictions dating back many centuries.

Section 21 codifies a new and distinct genus of unconscionable conduct in Australian law called statutory misconduct. This is more often utilised in enforcement activities by the ACCC.

### Unconscionable conduct and the common law

In very general terms, unconscionable conduct generally refers to a reprehensible, sharp or underhand acts by one person which oppresses or takes undue disadvantage of another party. It is sensible to identify the traditional equitable approach in Australia on unconscionable conduct and then the statutory approach.

Kitto J of the Australian High Court (equivalent to the European Court of Justice or the US or UK Supreme Court) in Blomley v Ryan (1956) 99 CLR 362 at 415 stated:

*“[t]he court has power to set aside a transaction… whenever one party to a transaction is at a special disadvantage in dealing with the other party because of illness, ignorance, inexperience, impaired faculties, financial need or other circumstances affecting his ability to conserve his own interest, and the other party unconscientiously takes advantage of the opportunity thus placed in his hands.”*

This was later elaborated upon by Deane J in Louth V Diprose (1992) 175 CLR 621 at 637 where he commented that unconscionable conduct occurred if:

*“a party to a transaction was under a special disability in dealing with the other party to the transaction with a consequence that there was an absence of any reasonable degree of equality between them and, that special disability was sufficiently evident to the other party to make it prima facie unfair or unconscionable to procure, retain the benefit of, the disadvantaged party’s assent to the transaction in the circumstances in which he or she procured or accepted it.”*

Section 21 is more facilitative of the enforcement of unconscionable conduct claims as that section understands them although, in general terms, these principled statements relating to section 20 should equally apply.

In each case, the issue is the unacceptable conduct on any rational standard given the inequality of the circumstances. The Australian High Court commented in a section 21 case of ACCC v Kobelt (2019) 267 CLR thus:

*“Conduct may be unconscionable, within the meaning of ACL section 21, where the conduct does not involve dishonesty, but that does not mean that the absence of dishonesty or other moral taint is an irrelevant consideration. The question is whether, objectively determined, the conduct and involves such a departure from accepted community standards as to warrant at being characterised as unconscionable.”*

This is why the statutory unconscionable conduct provision is arguably wider and a better avenue for enforcement purposes than section 20.

This chimes well with the concept of sharp practice particularly in a situation where there is an inequality or mismatching bargaining power being engaged into take advantage of a counterpart but which, in pure competition law terms, may fall short of an abuse of market power per se.

The Federal Court summed it up in ACCC V Lux Distributors Pty Ltd [2013] FCAFC 90:

*“The statutory norm is one which must be understood and applied in the context in which the circumstances arise. The context here is consumer protection directed at the requirements of*

*honest and fair conduct free of deception. Notions of justice and fairness are central, as our vulnerability, advantage and honesty.”*

In their approach to interpretation of section 21, the Australian courts are guided by section 22 of the ACL which identifies those matters which the court should have regarded for the purposes of identifying whether statutory unconscionable conduct has occurred (and these are reflected in subsequent case law as noted here already). This guidance is accurate in identifying all relevant behaviour and provides:

*“Without limiting the matters to which the court may have regard for the purpose of determining whether a person (the supplier) has contravened section 21 in connection with the supply or possible supply of goods or services to a person (the customer), the court may have regard to:*

*(a) the relative strengths of the bargaining positions of the supplier and the customer; and*

*(b) whether, as a result of conduct engaged in by the supplier, the customer was required*

*to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the supplier; and*

*(c) whether the customer was able to understand any documents relating to the supply or possible supply of the goods or services; and*

*(d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the customer or a person acting on behalf of the customer by the supplier or a person acting on behalf of the supplier in relation to the supply or possible supply of the goods or services; and*

*(e) the amount for which, and the circumstances under which, the customer could have acquired identical or equivalent goods or services from a person other than the supplier; and*

*(f) the extent to which the supplier’s conduct towards the customer was consistent with the supplier’s conduct in similar transactions between the supplier and other like customers; and*

*(g) the requirements of any applicable industry code; and*

*(h) the requirements of any other industry code, if the customer acted on the reasonable belief that the supplier would comply with that code; and*

*(i) the extent to which the supplier unreasonably failed to disclose to the customer:*

*(i) any intended conduct of the supplier that might affect the interests of the customer; and*

*(ii) any risks to the customer arising from the supplier’s intended conduct (being risks that the supplier should have foreseen would not be apparent to the customer); and*

*(j) if there is a contract between the supplier and the customer for the supply of the goods or services:*

*(i) the extent to which the supplier was willing to negotiate the terms and conditions of the contract with the customer; and*

*(ii) the terms and conditions of the contract; and*

*(iii) the conduct of the supplier and the customer in complying with the terms and conditions of the contract; and*

*(iv) any conduct that the supplier or the customer engaged in, in connection with their commercial relationship, after they entered into the contract; and*

*(k) without limiting paragraph (j), whether the supplier has a contractual right to vary*

*unilaterally a term or condition of a contract between the supplier and the customer for the supply of the goods or services; and*

*(l) the extent to which the supplier and the customer acted in good faith.*

There are severe penalties for breach of section 21 as well as exposure to actions for damages and injunctions. A maximum penalty of $A50 million or up to 30% of Australian turnover in the year of the contravention may apply. It is not unusual to see penalties of multiples of more than A$10m. Enforcement actions are regularly taken by the ACCC.

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| **ACCC v Dukemaster**  Commercial rentals - A landlord wanted unreasonable rent for the renewal of a shop lease (which it represented as below market value) and required a very short timeframe for its tenants to respond to the proposed rental offer. The landlord's conduct involved small business owners who had little or no ability to speak or read English and the landlord was aware of this. The landlord also failed to comply on an ongoing basis with Victorian retail leasing legislation and threatened to evict or send letters of demand to certain tenants. The landlord's conduct was unconscionable. [ACCC v Dukemaster Pty Ltd](https://www.accc.gov.au/media-release/federal-court-finds-retail-landlords-conduct-unconscionable)[[21]](#footnote-21) |

### Unfair contract terms

Anyone familiar with the EU’s 1993 Unfair Contract Terms Directive will recognise the types of protections contained in section 23 of the ACL dealing with similar issues in consumer and small business contracts which are standard form contracts. The purpose of these provisions is to deem an offending term void.

There is no hard and fast definition of what a standard form contract is. Section 27(2) details factors which a court should consider in determining whether a contract is a standard form contract and these are:

Section 24 of the ACL identifies what an unfair term is and section 25 provides non-exhaustive examples. However, these are not determinative of the matter per se. These provisions protect consumers and businesses with less than 100 employees or less than A$10m turnover. Without limiting section 24, the following examples of the kinds of terms of a consumer contractor are small business contract that may be unfair:

***Section 24   Meaning of unfair***

*(1)  A term of a consumer contract or small business contract is unfair if:*

*(a)  it would cause a significant imbalance in the parties&#39; rights and obligations arising under the contract; and*

*(b)  it is not reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term; and*

*(c)  it would cause detriment (whether financial or otherwise) to a party if it were to be applied or relied on.*

*(2)  In determining whether a term of a contract is unfair under subsection (1), a court may take into account such matters as it thinks relevant, but must take into account the following:*

*(a)  the extent to which the term is transparent;*

*(b)  the contract as a whole.*

*(3)  A term is transparent if the term is:*

*(a)  expressed in reasonably plain language; and*

*(b)  legible; and*

*(c)  presented clearly; and*

*(d)  readily available to any party affected by the term.*

*(4)  For the purposes of subsection (1)(b), a term of a contract is presumed not to be reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term, unless that party proves otherwise.*

**Section 25 Examples of unfair terms**

*Without limiting section 24, the following are examples of the kinds of terms of a consumer contract or small business contract that may be unfair:*

*(a)  a term that permits, or has the effect of permitting, one party (but not another party) to void or limit performance of the contract;*

*(b)  a term that permits, or has the effect of permitting, one party (but not another party) to terminate the contract;*

*(c)  a term that penalises, or has the effect of penalising, one party (but not another party) for a breach or termination of the contract;*

*(d)  a term that permits, or has the effect of permitting, one party (but not another party) to vary the terms of the contract;*

*(e)  a term that permits, or has the effect of permitting, one party (but not another party) to renew or not renew the contract;*

*(f)  a term that permits, or has the effect of permitting, one party to vary the upfront price payable under the contract without the right of another party to terminate the contract;*

*(g)  a term that permits, or has the effect of permitting, one party unilaterally to vary the characteristics of the goods or services to be supplied, or the interest in land to be sold or granted, under the contract;*

*(h)  a term that permits, or has the effect of permitting, one party unilaterally to determine whether the contract has been breached or to interpret its meaning;*

*(i)  a term that limits, or has the effect of limiting, one party’s vicarious liability for its agents;*

*(j)  a term that permits, or has the effect of permitting, one party to assign the contract to the detriment of another party without that other party’s consent;*

*(k)  a term that limits, or has the effect of limiting, one party’s right to sue another party;*

*(l)  a term that limits, or has the effect of limiting, the evidence one party can adduce in proceedings relating to the contract;*

*(m)  a term that imposes, or has the effect of imposing, the evidential burden on one party in proceedings relating to the contract;*

*(n)  a term of a kind, or a term that has an effect of a kind, prescribed by the regulations.*

They are classic consumer protections although there are some exceptions for certain types of marine shipping and investment schemes. Australia also has implied warranties on sale of goods and supply of services which includes a prohibition on contracting out of certain consumer goods and services guarantees. This is similar to many other common law and OECD jurisdictions.

Australia implements similar prohibitions in its corporations and securities legislation and in sector specific regulation like energy. These cumulative provisions signpost an intent and effort to deal with fair trading issues falling short of the complexity of a competition law analysis or enforcement but they do all share the qualities of condemning sharp behaviour going beyond what is reasonable or acceptable having regard to degrees of knowledge, means and so power where there is a demonstrable asymmetry of relationship.

The ACCC has taken ‘compliance action’ that has led to changes to industry wide standard form terms or practices which the ACCC considered amounted to ‘unfair’ contract terms. A good example is action the ACCC took in the Chicken Meat processing section. That action was taken following a market study undertaken at the direction of the Government by the ACCC into the supply of perishable agricultural goods and the extent to which bargaining power imbalances exist in those markets. The ACCC’s 2020 Perishable Agriculture Goods Inquiry final report noted that it had identified unfair contract terms were contained in standard form contracts between chicken meat processors and chicken growers.[[22]](#footnote-22)

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| **Chicken Meat Processor contract terms of concern to the ACCC**  As a result of an ACCC investigation following its market study, several chicken meat processors agreed to amend certain terms in their contracts with chicken growers. Examples of the concerning terms include:   * Unilateral contract variation clauses, including price variations in favour of the chicken meat processors. * Terms that allowed processors to require growers to make significant unplanned capital investments during the term of the contract. * Imbalanced termination clauses allowing a processor to terminate a grower’s contract with a shorter notice period than if the grower sought to terminate. |

The ACCC has also taken specific cases against firms an example is a case taken against Fuji Business Innovation Australia.

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| **ACCC v Fujifilm Business Innovation Australia**  Fuji supplies a range of business products on a lease basis. Fuji also services these products, and supplies software and print management services. The Federal Court declared 38 contract terms from 11 types of Fuji standard form small business contracts for printers and related software unfair. These included:   * Automatic renewal terms permitting Fuji to renew contracts for a further period unless customers cancelled the contract a certain number of days before the end of the contract term. * Disproportionate termination terms allowing Fuji to terminate contracts in a significantly wider range of circumstances than those allowing customers to terminate, if any. * Liability limitation terms which limited Fuji’s liability or required the customer to indemnify Fuji without the customer having corresponding rights. * Termination payment terms which required customers to pay extensive exit fees to Fuji if the contract was terminated, including charges that Fuji could unilaterally set. * Unfair payment terms requiring customers to pay Fuji for licensed software under the contracts irrespective of whether Fuji delivered the software and to pay for goods prior to delivery. * Unilateral variation terms including charges, in favour of Fuji. * The Court ordered injunctions preventing Fuji from relying on and entering into any small business contracts containing the unfair terms and ordered that Fuji implement a ‘compliance program’. |

## Future directions?

The Australian Government has been actively working on proposals to introduce laws against unfair trading practices. In various market studies reports the ACCC has proposed the introduction of laws against unfair trading practices. The Government is considering introducing a general prohibition on unfair trading practices. This would be a principles-based approach aimed at addressing harmful conduct not covered by existing specific prohibitions. In addition to the general prohibition, there are proposals for specific prohibitions targeting certain unfair practices. These include subscription traps, hidden fees, dynamic pricing, and deceptive online practices.[[23]](#footnote-23)

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| **Examples of conduct the ACCC considers an unfair trading practices law could address**   * The use of choice architecture and other practices in both offline and online environments designed to get consumers [or small businesses] to agree to unfair or unfavourable contract terms, with limited opportunity for consumers to be informed about their rights and obligations. This includes:   + - Using clickwrap agreements containing take-it-or-leave-it terms and bundling consents in policies that are long, complex, and unclear, to obtain unreasonable rights to use data.     - Presenting terms, conditions and privacy policies in a way that consumers [or small businesses] cannot readily understand.     - Strategically over-disclosing product details to hide key information consumers require to make an informed decision. * Business practices that seek to dissuade consumers [or small businesses] from exercising their contractual or other legal rights, including requiring the provision of unnecessary information in order to access benefits.[[24]](#footnote-24) * Businesses failing to disclose key information, or key changes to a product or closely related product, in circumstances where a consumer [or small business] would reasonably expect that information to be disclosed. There have been a number of cases where, despite a failure to disclose such material information causing consumer harm, courts have considered the conduct as not constituting misleading or deceptive conduct.[[25]](#footnote-25) * The use of negative choice architecture such as forced action and friction which significantly impedes consumer choice and autonomy, such as:   + - Changing click sequences on a website – where consumers are asked multiple questions during the ordering process, and halfway through the positions of ‘yes’ and ‘no’ buttons on screen are reversed.     - Crosses that do not close the window and link to something else (e.g., ads for a product), or ‘next’ buttons which then become an ‘agree’ button.     - When Microsoft Edge users tried to enable the DuckDuckGo browser extension, Edge repeatedly disabled it despite a user confirming multiple times they wanted it to be installed.[[26]](#footnote-26)     - When Chrome users tried to enable the Ecosia browser extension, Chrome presented a pop up noting that the Ecosia extension can “read and change your data” and “read a list of your most frequently visited websites”. It also framed the “cancel” button more prominently than the “add extension” button.[[27]](#footnote-27) * Intermediaries and platforms failing to implement reasonable measures to protect their customers [including small businesses] from fraudulent practices by third parties using their services. * Business practices that seek to dissuade small businesses from exercising their contractual or other legal rights. * Systemic actual or effective refusal to provide remedies to small businesses that they are legally entitled to. * Businesses failing to disclose changes to a product or closely related product in circumstances where a small business customer would reasonably expect that change to be disclosed. * Intermediaries and platforms failing to implement reasonable measures to protect their customers from fraudulent practices by third parties using their services. * Large businesses relying on contract terms – that are not unfair contract terms on their face – in an unreasonable manner or according to a self-serving interpretation. * Businesses using search engine manipulation tactics to redirect consumers away from the products and services of a competitor and to their product or service instead. * Online marketplaces and other intermediary platforms using ranking algorithms, and other practices to unfairly influence the purchasing decisions of consumers, such as by prioritising the platform’s own products over others selling on the platform; or requiring third-party sellers to take up related services such as the marketplace’s own shipping fulfilment services to secure necessary visibility to consumers. * Platforms failing to implement due process procedures for key decisions or actions such as decisions to suspend or terminate user accounts, or having unreasonably one-sided and arbitrary process for such decisions or actions, which have a significant impact on users, including business users. For example, inconsistently applying review policies to business’s products or services which are sold or advertised on the platform.[[28]](#footnote-28) |

The Australian Treasury consultation papers obtained feedback from many stakeholders including the ACCC, the Australian Securities and Investments Commission and business groups representing small and large businesses. The Treasury process includes assessing the potential benefits to consumers and compliance costs for businesses. There is also consideration for extending these prohibitions to financial services to ensure alignment between the Australian Consumer Law (ACL) and financial services laws under the ASIC Act. These proposals aim to strengthen consumer and small business protections and ensure fair trading practices across various sectors.

The current Government position is reflected in a joint announcement in March 2025 by the Ministers for Small Business and Financial Services and Assistant Minister for Competition announced the Government plans. They said:

*“The Albanese Government will extend a crackdown on Unfair Trading Practices to small businesses after last year’s commitment to protect consumers.*

*We heard during consultation on protecting consumers from Unfair Trading Practices that it is important to also extend protections to small businesses, who face power imbalances when dealing with larger businesses.*

*This is why the Albanese Labor Government will also address this significant gap in legal protections for small businesses, where thousands of businesses – including in the construction, agriculture and retail sectors – have experienced unfair practices that cause substantial harm.”[[29]](#footnote-29)*

1. And also, section 46A which applies in the trans-Tasman market. [↑](#footnote-ref-1)
2. There is no subsection (2). [↑](#footnote-ref-2)
3. Subsection 46(8)(a). [↑](#footnote-ref-3)
4. We use the term “bargaining power’ to refer to both. [↑](#footnote-ref-4)
5. ***Universal Music Australia Pty Ltd v ACCC* [2003] FCAFC 193.** [↑](#footnote-ref-5)
6. *TPC v Carlton United Breweries Ltd* (1990) 24 FCR 532. [↑](#footnote-ref-6)
7. *TPC v Carlton United Breweries Ltd* (1990) 24 FCR 532, at 533. [↑](#footnote-ref-7)
8. *ACCC v Australian Safeway Stores Pty Ltd* (2003) 129 FCR 339. [↑](#footnote-ref-8)
9. Ibid, at [297]. [↑](#footnote-ref-9)
10. Ibid, at [517]. [↑](#footnote-ref-10)
11. Ibid, at [520]. [↑](#footnote-ref-11)
12. ‘Finding a balance towards fair trading in Australia’ – House of Representatives Standing Committee on Industry, Science and Technology May 1997 [↑](#footnote-ref-12)
13. Discussion in Chapter 6 of the Reid Committee report [↑](#footnote-ref-13)
14. Mr Peter Reith Minister for Workplace Relations and Small Business see Hansard 30 September 1997 page 8765 [parlinfo.aph.gov.au] [↑](#footnote-ref-14)
15. The sunsetting process under section 50 of the Legislation Act 2003 generally involves the following elements:

    * Automatic Repeal: Legislative instruments are automatically repealed, or "sunset," after a period of 10 years from their registration date unless specific action is taken to preserve them. This encourages regular review and assessment of the need for each instrument.
    * Review Process: Before an instrument is due to sunset, the responsible Department or Agency must review it to determine whether it is still needed and whether it is operating effectively. This review process which is often conducted using an independent reviewer involves consultation with stakeholders and consideration of the instrument's impact and relevance.
    * Preservation or Remaking: If the review determines that the instrument is still necessary, it can be preserved by remaking it or incorporating its provisions into primary legislation. If it is no longer needed, it can be allowed to sunset and thereby cease to have effect.
    * Exemptions: Certain legislative instruments may be exempt from sunsetting if they considered to be of a continuing or ongoing nature, or if they are made under Acts that provide for their exemption.

    [↑](#footnote-ref-15)
16. See the ACCC website for more detail on the operation of the Code - https://www.accc.gov.au/business/industry-codes/food-and-grocery-code-of-conduct. [↑](#footnote-ref-16)
17. ACCC has extensive investigative powers and can initiate Federal Court. For more information see the ACCC website - [enforcement action](https://www.accc.gov.au/business/industry-codes/food-and-grocery-code-of-conduct/enforcement-of-the-food-and-grocery-code) [↑](#footnote-ref-17)
18. ACCC Dairy Inquiry Final Report https://www.accc.gov.au/system/files/1395\_Dairy%20inquiry%20final%20report.pdf [↑](#footnote-ref-18)
19. Australian Government response to the review of the Dairy Industry Code published March 2022. See agriculture.gov.au [↑](#footnote-ref-19)
20. See agriculture.gov.au website - https://www.agriculture.gov.au/agriculture-land/farm-food-drought/meat-wool-dairy/dairydairycode#:~:text=Second%20Review%20of%20the%20Dairy,2024%20Have%20Your%20Say%20process. [↑](#footnote-ref-20)
21. Decision of Federal Court - Gordon J Australian Competition and Consumer Commission v Dukemaster Pty Ltd [2009] FCA 682 [↑](#footnote-ref-21)
22. ACCC Perishable agricultural goods inquiry published November 2020 https://www.accc.gov.au/about-us/publications/perishable-agricultural-goods-inquiry-report [↑](#footnote-ref-22)
23. See ACCC Submission to Australian Treasury Consultation on unfair trading practices dated December 2024 - https://www.accc.gov.au/system/files/accc-submission-treasury-unfair-trading-practices-consultation-december-2024.pdf [↑](#footnote-ref-23)
24. For example, as noted in the ACCC’s Digital Platforms Inquiry: ACCC, 2019, Digital Platforms Inquiry, Final Report, p.26 [↑](#footnote-ref-24)
25. For example, ACCC v LG Electronics Australia Pty Ltd [2019] FCA 1456; Director of Consumer Affairs Victoria v Good Guys Discount Warehouses (Australia) Pty Ltd [2016] FCA 22; ACCC v Medibank Private Ltd [2018] FCAFC 235 [↑](#footnote-ref-25)
26. ACCC Publication in 2021, Digital Platform Services Inquiry, Report No. 3 Search Defaults and choice screens, pg. 65 [↑](#footnote-ref-26)
27. ACCC Publication in 2021, Digital Platform Services Inquiry, Report No. 3 Search Defaults and choice screens, pg. 65 [↑](#footnote-ref-27)
28. See ACCC submission to Treasury on Unfair Trade Practices page 8 and 9 - https://www.accc.gov.au/system/files/accc-submission-treasury-unfair-trading-practices-consultation-december-2024.pdf [↑](#footnote-ref-28)
29. Media Release by The Hon Julie Collins MP, The Hon Stephen Jones MP and The Hon Andrew Leigh MP dated 14 March 2025 - https://ministers.treasury.gov.au/ministers/julie-collins-2024/media-releases/albanese-labor-government-extend-unfair-trading [↑](#footnote-ref-29)