



23 February 2026

Director
Consumer Policy Unit
The Treasury
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Dear Director

UNFAIR TRADING PRACTICES – FIRST CONSULTATION OF LEGISLATION

The Australian Finance Industry Association (AFIA) is the only peak body representing the entire finance industry in Australia¹. We appreciate the opportunity to respond to the Unfair Trading Practices exposure draft consultation.²

We represent over 150 members, including bank and non-bank lenders, finance companies, fintechs, providers of vehicle and equipment finance, car rental and fleet providers, and service providers in the finance industry. We are the voice for advancing a world-class finance industry and our members are at the forefront of innovation in consumer and business finance in Australia. Our members finance Australia's future.

We collaborate with our members, governments, regulators and customer representatives to promote competition and innovation, deliver better customer outcomes and create a resilient, inclusive and sustainable future. We provide new policy, data and insights to support our advocacy in building a more prosperous Australia.

¹ [Australian Finance Industry Association \(afia.asn.au\)](https://afia.asn.au).

² [Unfair Trading Practices Consultation - Treasury \(February 2025\)](#)

INTRODUCTORY COMMENTS

AFIA welcomes the opportunity to comment on the Unfair Trading Practices Exposure Draft legislation. While we support the goal of strengthening consumer protections, it is essential that the reforms clearly distinguish between genuinely harmful conduct and ordinary, efficient, and transparent business practices.

As presently drafted, several elements of the Bill and Explanatory Memorandum (EM) risk capturing benign commercial behaviour. In this submission, we focus on the following aspects of the proposed Bill:

1. The broad behavioural tests, unclear detriment thresholds; and
2. An undifferentiated treatment of mobility-related business models, such as car rental, fleet and subscription operators, car subscription services, and pricing adjustments based on supply levels and market demand.

AFIA believes ensuring clarity, proportionality, and alignment with existing regulatory frameworks will be critical to achieving the Bill's objectives without imposing inappropriate or duplicative obligations on sectors already subject to extensive compliance requirements.

In this regard, AFIA makes the following **recommendations**:

- Clarify and refine the definition of consumer harm by introducing a requirement for material detriment.
- Improve the behavioural criteria to avoid over-capture so that it does not capture ordinary commercial conduct and business actions to address mismatched demand and supply factors.
- Recognise legitimate pricing adjustments and operational cost-recovery practices in the mobility sector.
- Clarify that car subscription services are not traditional 'subscriptions' and exclude car rental, leasing and subscription services from Division 4A.

ENSURING CONSUMER HARM IS CLEAR AND EVIDENCE BASED

AFIA suggests the Bill and EM be amended to ensure the concept of consumer harm is clear and evidence-based, and that the criteria noted is improved as follows:

1. The current draft risks capturing benign conduct due to broad behavioural language

The current drafting risks capturing benign conduct due to the broad behavioural language proposed in the Bill and the EM. For example, the EM defines unreasonable manipulation as exploiting "common cognitive or behavioural biases," even where no misleading conduct exists. This threshold is subjective and risks inconsistent enforcement.

2. The concept of 'detriment' needs clearer linkage to demonstrable and material harm

The Bill defines detriment to include financial or non-financial harm, including wasted time, without requiring quantification. We propose that Treasury incorporate:

- A requirement for material detriment; and

- A clearer explanation of what level or type of detriment is in scope. For example, the material detriment is expressed as being economically meaningful, foreseeable, and more than a trivial inconvenience.

3. Reasonableness must be better calibrated to business reality

The general prohibition requires both limbs to be satisfied (manipulation/distortion and detriment), although we appreciate the intent of the examples provided in subsection 28B(5), they could be interpreted in such a way as to be applied to regular business practices such as offering optional extras or prices reflecting operational constraints at a point in time.

AFIA suggests Treasury clarify that the following business practices are not prohibited:

- Commercially necessary practices;
- Cost-reflective operational needs; and
- Interfaces designed for usability, rather than persuasion.

RECOGNISING LEGITIMATE BUSINESS PRACTICES

The mobility and transport sector is required to change business and operational settings based on customer demand and other commercial factors. For example, there are industry practices where operational needs are required that result in pricing adjustments and/or additional costs or fees, such as location return or fleet reposition fees, which are legitimate and necessary commercial practices in the mobility and transport sector.

These pricing mechanisms enable car rental, fleet and subscription operators to balance supply and demand efficiently across locations and time-of-day, ensuring vehicle availability where and when consumers need them. Without the ability for pricing adjustments, the sector would face vehicle shortages, stranded fleet stock, and ultimately higher uniform prices and/or lack of vehicle availability for all consumers.

Importantly, such practices are not designed to unreasonably manipulate consumers, nor do they, in their ordinary operation, distort a consumer's capacity to make informed decisions (particularly where prices are transparently displayed at the time of booking).

AFIA notes that the EM already recognises that the general prohibition is not intended to capture "legitimate, generally accepted marketing practices". To avoid uncertainty or unwarranted enforcement, the Bill should distinguish more clearly between harmful manipulation and legitimate pricing adjustment practices that ensure supply and demand mismatches are managed and the associated commercial costs are addressed.

AFIA recommends that the EM explicitly acknowledge the acceptability of supply-demand-based pricing adjustments within the mobility and transport sectors. Such clarification would align with the EM's stated

intent while avoiding the risk of mischaracterising efficient, transparent commercial practices as ‘unfair trading’.

Furthermore, the EM currently includes examples of prohibited “dark patterns” (such as false urgency or obstructive interface design) but does not provide corresponding examples of reasonable, lawful commercial conduct.

AFIA proposes that Treasury expand the EM to include explicit examples of accepted practices (particularly pricing adjustments) so that businesses and regulators alike can clearly distinguish them from manipulative behavioural techniques.

In addition, move-car or relocation fees should be recognised as legitimate business practice and cost-recovery mechanisms, not consumer manipulation. From time to time, car rental, fleet and subscription operators must routinely reposition vehicles to meet customer demand and other operational and logistical reasons. For example, charging a relocation or move-car fee is transparent, operationally necessary, and non-behavioural; it does not “unreasonably distort the environment” in which consumers make decisions and should therefore not fall within the scope of the unfair trading prohibition.

CAR SUBSCRIPTION SERVICES ARE NOT TRADITIONAL SUBSCRIPTIONS

Car subscription products function far more like short- to medium-term leases involving the transfer, use, and eventual return of a physical vehicle, and therefore should not be treated as digital-style consumer subscription service.

Given this fundamental difference (and the existing regulatory frameworks already governing leasing, insurance, motor-vehicle safety, and contractual obligations) car subscription arrangements should be expressly excluded from Division 4A to avoid misclassification and inappropriate regulatory burdens, compliance costs and commercial interventions.

1. Car subscriptions include core features of a lease and should not be treated as consumer “subscriptions.”

Subscription contract obligations in Division 4A are designed for goods/services that consumers can start and stop digitally—e.g., streaming, app-based digital services. The EM explicitly excludes *leases* from the definition of “subscription contract.”

Car subscription arrangements share characteristics of motor vehicle leasing:

- fixed-term or short-to-medium-term possession of a physical asset
- return of the asset at the end of the term
- obligations relating to maintenance, damage, and insurance
- limited availability of the asset (fleet-dependent)
- inability to scale supply infinitely (unlike digital subscriptions)

These are materially different from ongoing digital or online retail service subscriptions, and therefore should fall within the lease exclusion. AFIA recommends that this exclusion be explicitly clarified.

2. The EM recognises ambiguity around hybrid leasing/subscription models—this must be resolved.

The EM recognises that excluded categories are those where existing legal frameworks already regulate consumer protections (e.g. hire-purchase, instalment contracts).

Car subscription arrangements likewise operate within existing leasing, insurance, motor vehicle safety, and contract law frameworks, making the subscription obligations duplicative and inappropriate.

3. Vehicle access is a physical transfer of property and not an automatic, recurring supply of digital services.

Division 4A requirements around:

- six-monthly notifications;
- renewal warnings;
- “easy to cancel” online pathways; and
- pre-contract statements about auto-renewal reflect a digital-services paradigm where consumer lock-in is the perceived harm.

In contrast, car subscription termination requires the **physical return of a vehicle (and asset)**, similar to the end of a lease (as distinct from a single click or deactivation of a service). Treating these services as equivalent to digital subscriptions (e.g. gym memberships, streaming services, media subscriptions) imposes obligations that do not fit the operational realities of the industry.

4. Short-medium-term car access is effectively a rolling lease combined with mobility services.

Auto-renewing month-to-month arrangements are not “subscriptions” in the sense contemplated by the Bill, and therefore, should be explicitly exempted alongside leases and hire-purchase because they resemble:

- short-term leases;
- fleet rental agreements; or
- fixed-term leasing with flexible termination rights.

CLOSING COMMENTS

AFIA notes that this was a very brief consultation, allowing only 14 days to contribute. This is an important, complex and wide-ranging proposed reform. Reforms of such significance would benefit from greater consideration of industry participants, and stakeholders to ensure they are technically accurate and match the policy intent of the Government.

It is difficult to provide a submission in a brief timeframe – when this consultation was not signposted previously – that ensure Treasury advice is well-informed and can clearly articulate industry’s technical and policy feedback. A more considered approach will be required to strike the right balance for any future adjustments to this policy initiative.

AFIA submits that the Bill will be more effective, targeted, and proportionate if its core concepts, consumer harm, detriment, and behavioural influence, are expressed with greater clarity and centred in evidence-based thresholds.

Providing explicit recognition of legitimate commercial terms and business practices, including pricing adjustments and operational cost-recovery mechanisms, as well as customer expectations, will reduce the risk of misdirected enforcement, and ensure regulatory settings remain supportive of efficient, transparent, and flexible mobility and transport offerings reflecting the different needs and preferences of customers in Australia.

Likewise, expressly excluding car subscription arrangements from Division 4A will prevent the misclassification of lease-like vehicle access models, and avoid imposing obligations that do not reflect the operational realities of the sector and creating anti-competitive implications. This approach would also reflect the realities of how these offerings are used by customers, and the nature of flexible vehicle (asset) management.

By adopting these recommendations, Treasury can deliver a regime that meaningfully protects consumers, while preserving the integrity and viability of Australia’s mobility and motor leasing industries. Should you wish to discuss our submission or require additional information, please contact me or Dr Emma Penzo at Emma.Penzo@afia.asn.au.

Yours sincerely



Roza Lozusic
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