



13 December 2024

Director Consumer Policy Unit
Market Conduct Division
The Treasury
Langton Crescent
PARKES ACT 2600

Via Email: consumerlaw@treasury.gov.au

Dear Sir/Madam

Thank you for the opportunity to comment on the consultation paper in relation to *Unfair Trading Practices* dated November 2024. Accommodation Australia (AA) is the peak industry body for hotels, motels and other accommodation providers, representing more than 1,000 properties and 120,000 rooms. AA is a division of the Australian Hotels Association, with over 5000 members nationally.

Useful background to our comments on the paper is the Australian Consumer Law *Travel and accommodation – an industry guide to the Australian Consumer Law (ACL)* published in 2013 by Treasury on behalf of all the state and territory fair trading authorities, the ACCC and ASIC. This guide sets out the extensive laws that protect consumers of accommodation and travel, including on-line bookings, representations and expectations, component pricing and cancellations. The Guide provides an excellent illustration of the extent of the existing consumer protection laws that relate to our industry.

As a member of the Australian Chamber of Commerce and Industry (ACCI), the AA supports the ACCI submission which questions the necessity for further legal requirements, particularly if the adoption of a general prohibition creates uncertainty as to the specificity of the legal obligation.

Our organisation is drawn to comment directly on the consultation paper as it specifically mentions accommodation bookings on page 6 in relation to “drip pricing” practices. Investigations with our members have not been able to find any evidence of this practice with bookings made directly with hotels. Our members were very clear that they do not, in any way, support drip pricing or dynamic pricing as it relates to hotel bookings and would be extremely concerned if On-Line Travel agents (OTA) who transact a large percentage of accommodation bookings were engaging in such practices.

There is difficulty in responding in more detail as the consultation paper does not provide specific examples or case studies of these pricing practices in accommodation bookings. The AA recommends Treasury should share more specific examples or indeed, remove future references to hotels in materials if no concerns exist.

More importantly, it would be useful if such examples could demonstrate how these practices would not be captured by the existing laws. The abovementioned ACL guide, for example, deals in detail with component pricing and the need for a single price as it relates to the existing laws.

In relation to some of the other practices mentioned in the consultation document, we are aware that OTA's taking accommodation bookings often use practices such as "last room available" at this price, or in this category. This would be a concerning, and completely insupportable practice if such a statement was not true, but in that scenario, it would, we would envisage, be captured by the current legal requirement to not advertise in a deceptive or misleading way. If it was true that there was only one room available, at least as it relates to that booking channel, then it is useful consumer information.

Treasury should note AA does not represent short term rental operators and this largely unregulated industry should not be included in comments or generalisations about the accommodation sector. We note short term rental operator AirBNB entered a legally enforcement undertaking with the ACCC in relation to "drip pricing" in 2015 after the ACCC found it *"engaged in misleading and deceptive conduct and made misleading representations by failing to adequately disclose to consumers in Australia particular mandatory fees on key pages of one or more of their online booking platforms."*

Then in 2023 the Federal Court ordered AirBNB to pay \$15 million in penalties and up to \$15 million in compensation to eligible consumers, after it admitted it misled consumers about the currency of the prices on its platform. ACCC Chair Gina Cass-Gottlieb stating: *"We took this case to send a strong signal to large digital platforms like Airbnb that they must comply with the Australian Consumer Law and not mislead consumers,"*.

In summary, AA is very supportive of the importance of protecting consumers against unfair and unreasonable practices, and specifically would be opposed to any practices such as drip pricing or dynamic pricing as defined in the consultation paper.

However, we would welcome more detail on where any concerning practices are occurring in our industry and how the existing and extensive current consumer protection laws would not be sufficient to deal with such practices. Without such evidence, it is difficult to support the introduction of either the general prohibition or the specific prohibitions.

We look forward to further consultation on this important issue.

Regards



JAMES GOODWIN
Chief Executive Officer