Competition and Consumer Amendment (Unfair Trading Practices) Bill 2026

Federal

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MASTER ELECTRICIANS AUSTRALIA

Master Electricians Australia (MEA) is a peak industry association representing electrical contractors across Australia, majority of which are small and medium sized businesses and has been supporting Australia's electrical businesses since 1937. We are recognised by industry, government and the community as a leading business partner, knowledge source and advocate. You can visit our website at www.masterelectricians.com.au

MEA continues to support the overall intent of the *Competition and Consumer Amendment (Unfair Trading Practices) Bill 2026* (the Bill). However, we continue to request Government provision of clearer guidance passed to small businesses on understanding and compliance, with an education-first approach applied in the first instance of enforcement. MEA also recommends the Bill amend the wording of s 28B to provide a more explicitly narrow interpretation, as the current drafting appears vulnerable to broad or unintended interpretation to the detriment of small businesses.

Importantly, we urge the Government to expedite the separate consultation for small business protections against unfair trading conditions in light of ongoing concerns in the construction industry, including payment delays, standard form contracts, and fair remuneration.

Unfair Trading – General Prohibition

Business-to-Business

We acknowledge that s 28B ”does not apply if the supply is in the course of the consumer carrying on a business”. We also note that further consultation is proposed to determine the best approach to ensuring small businesses are adequately protected from unfair trading practices. In light of the unfair trading practices outlined below, we strongly advocate for expedited consultation to address protections and establish a general prohibition against unfair trading practices impacting small businesses under a business-to-business perspective

Manufacturer Compensation

It is not uncommon for our members to report they are unable to obtain compensation for a faulty product (examples being faulty pair coils and small-scale batteries). This commonly occurs because manufacturers refuse to take accountability. In turn, our members absorb material financial and administrative costs, including legal fees and time taken to rectify the faulty product at a client's site.

Unfair Contract Terms

Our members are typically engaged as subcontractors on large construction projects and are consequently subject to contracts containing unreasonable terms, with little power to negotiate or amend them. Such provisions can include linking subcontractor and head-contractor practical completion and lack of entitlements to delay costs. In addition, small businesses can be subject to standard for amendments which are not easily identifiable.

Security of Payment

The construction industry has always faced issues of non-payment and insolvencies.. ”In Australia, subcontractors complete over 80 per cent of construction work, [asserted to be] the highest portion in the world to pass financial risk down the construction contracting chain.”[1] The flow-on-effects of failures are broad, impacting the completion of projects.

When a head contractor becomes insolvent, subcontractors often go unpaid for completed work, shifting financial risk to those least able to absorb it. Losses, which can include materials, wages, and foregone earnings, quickly escalate into tens of thousands of dollars, threatening cash flow, business viability, and livelihoods. Persistent non-payment also undermines the sector’s ability to deliver essential housing, health, and commercial infrastructure, highlighting the need for stronger protections for small businesses.

Outside insolvencies, we continue to hear of trade contractors being unpaid for long periods, and builders refusing to return retention money.

Several reviews have been conducted, including the 2017 national review of Security of Payment Laws by John Murray AM. Since then, laws have been updated across the country, including the introduction of retention trust accounts in some jurisdictions.

Despite reforms, our 2025 joint industry survey shows slow and non-payment remain an issue for construction industry subcontractors (including electricians) with builders or head contractors often withholding retention money. Over 60% of respondents reported being unpaid in the past five years due to contractor insolvency, in both commercial and residential projects.

Retention money should be a key initial focus for government, as non-payment of retention money remains a significant issue in the construction industry.

MEA recommends the following measures be implemented to improve protection for small business contractors:

- *Harmonised SOP Frameworks* – For clarity around the country, let’s take the

[1] Department of Transport and Planning “Government Response to the Parliamentary INquiry into employers and contractors who refuse to pay their subcontrators for completed work” *Victorian Government* [October 2024], at 3 <attachment-2---government-response---final-revisions.pdf>

aspects that are working well and harmonise SOP frameworks. This should also include improved retention fund protections (see below).

- *Retention Fund* –Retention trust accounts are a good method of 'quarantining' subcontractor retention money in the event of insolvency, but don't address issues of head contractors / clients claiming ownership of retention for disputed reasons, and don't assist with return of non-cash security (e.g. bank guarantees). Under current frameworks, subcontractors need to initiate adjudication to resolve disputed claims for return of retention – something many are reluctant to do for fear of not getting future work. In addition, many jurisdictions do not permit adjudication for disputed return of non-cash security. Subcontractors incur costs and impacts on credit ratings when bank guarantees or insurance bonds are not returned.

  A solution to these issues is to have a central authority to hold retention money - similar to government rental bond schemes - with simple online processes for lodging payments and claiming return of retention. This would reverse the onus when retention is disputed, requiring the builder/client to lodge an adjudication application or proceedings.   A central holding facility should apply to all cash retentions and non-cash bonds/guarantees held by contracting parties in the construction industry. The earnings on the fund could contribute to funding the administration costs and potentially contribute to the expansion of the FEG to subcontractors (see below) or other industry improvements such as financial support for small-medium employers of apprentices.

- *Subcontractor Payment Guarantee (FEG)* - For a small business owner, lack of payment by a head contractor is akin to lost wages. We'd like to see a federal fund, similar to the FEG, to pay subcontractors for work if a head contractor becomes insolvent. Payments should be subject to reasonable limits and measures to avoid unreasonable claims.

You can read more about our position on this issue here.

Business-to-Consumer

Supporting Fair Practice

MEA supports the intent of s 28B. Businesses should not be engaging in misleading or manipulative practices, which is particularly important in the electrical industry as households and businesses increasingly adopt electrification technologies, systems, and rules that are completely new. It is critical that honest businesses remain reliable, and that unscrupulous actors are held to account to prevent erosion of consumer confidence in both the industry and the broader electrification transition.

However, MEA is concerned s 28B is vulnerable to overly broad interpretive scope (see below), reinforcing the importance of clear and practical guidance to assist small businesses in understanding their obligations.

Small Business Support

Guidance - MEA seeks support and greater guidance to help small businesses comply with s 28B. Unlike larger businesses, small businesses have limited resources and often lack internal expertise to assist with interpretation and/or compliance, making it challenging to keep pace with new obligations.

To support successful implementation, MEA encourages strengthened practical guidance on the interpretation of s 28B, including:

- Identifying what constitutes an unreasonable distortion of consumer decision-making with greater detail than the listed examples in s 28B (refer below)

- Providing practical examples of what is listed under s 28B(6)(c).

- Clarifying the extent to which businesses may be responsible for digital interfaces, automated systems or third-party software platforms they do not directly design or control.

- Ensuring small and medium enterprises do not have an unreasonable burden placed on them.

First Limb - Unreasonable Distortion (s 28B(2)(a)(ii)) - Paragraph 1.28 in the explanatory statements provides the following example of "unreasonable distortion":

> "This may occur when an environment is overwhelmingly complex or where a consumer is provided with excessive or confusing information that makes key information difficult to find or understand, or make the actions required to implement their choices unclear. Such an environment may result in a consumer taking the easiest or only option presented or not taking any action (such as not cancelling a membership despite initial attempts)."

We raise caution the above statement could be applied too broadly and become unintentionally detrimental to businesses. For example, small electrical contractors are often the last point of contact for consumers exploring Consumer Energy Resource options (and other such electrical industry examples) and can be incorrectly perceived as responsible for explaining complex technical details or benefits. While providing guidance to inquisitive customers, small electrical contractors should not be captured under s 28B where there is a genuine effort to assist without applying pressure to make a particular electrification decision – even if the information is considered complex. The above explanatory statement example illustrates why clear guidance is needed to protect honest businesses from unintended liability.

We further acknowledge that paragraphs 1.30–1.33 explain that the first limb is intended to "particularly target dark patterns in digital interfaces"; however, this is not readily apparent from the Bill's drafting alone. MEA encourages the Bill to be amended to better reflect this intended scope.

MEA also seeks greater clarification regarding the extent to which businesses, particularly small businesses, may be held responsible for third-party interfaces where they have undertaken reasonable inquiries to ensure compliance by the third party. Small businesses are especially likely to rely on third-party interfaces due to resourcing constraints, and this is an important nuance that should be addressed prior to passage of the Bill.

Second Limb – Cause of is Likely to Cause Detriment (s 28B(2)(b)) – This limb is prone to broad interpretation and could capture an objectively unreasonable range of "detriments". MEA calls for a higher threshold to be drafted to avoid ordinary inconveniences experienced by customers in pursuing a grievance from satisfying this limb. For example, the need for a customer to make multiple phone calls or engage in routine follow-up communication could potentially be interpreted as a detriment under the current drafting.

Pecuniary Measures

MEA encourages an education-first implementation approach, supported by clear guidance, to ensure small businesses understand and comply with the new framework before enforcement action is prioritised.

We applaud the explicit recognition in the explanatory materials at para 1.50 which acknowledges that –

> "While the maximum penalties are large, they represent the maximum amount … larger penalties should be available in relation to contravention by larger companies. This is important to ensure that these larger companies do not consider incurring penalties to just be a cost of doing business".

We encourage the Government to monitor judicial application of the intended tiered approach regarding business size as is the intended purpose of the Bill's drafting.

Subscription Contracts

Small Business Requirement

MEA commends the Government's acknowledgment that "small businesses often experience the same issues as individual consumers with respect to subscriptions are intended to be afforded the same protections [as consumers" (para 1.156 explanatory material) and protection against poor subscription practices imposed by other businesses.

Conclusion

MEA commends the Government's efforts to protect consumers against unfair trading practices. Protecting consumers from unscrupulous providers is critical to maintaining confidence especially in emerging industries such as electrification. At the same time, it is essential that genuinely well-intentioned businesses are not unfairly penalised by too broad or too strict an interpretation of the sections. We also note that clear guidance and practical support will help small businesses comply while continuing to assist consumers effectively and encourage the government to ensure this is readily available for small businesses.

We strongly encourage an education-first approach to enforcement, rather than immediate reliance on pecuniary penalties for small businesses, allowing them time to adjust and implement new practices.

MEA also urges the Government to expedite the separate consultation addressing small business protections, particularly in light of ongoing challenges in the construction industry, including delayed payments, standard form contracts, and fair remuneration.

By implementing robust consumer protections with targeted support for small businesses, the Government can achieve its goals without placing undue burden on honest small businesses, ensuring both consumer confidence and a sustainable, reliable industry.