



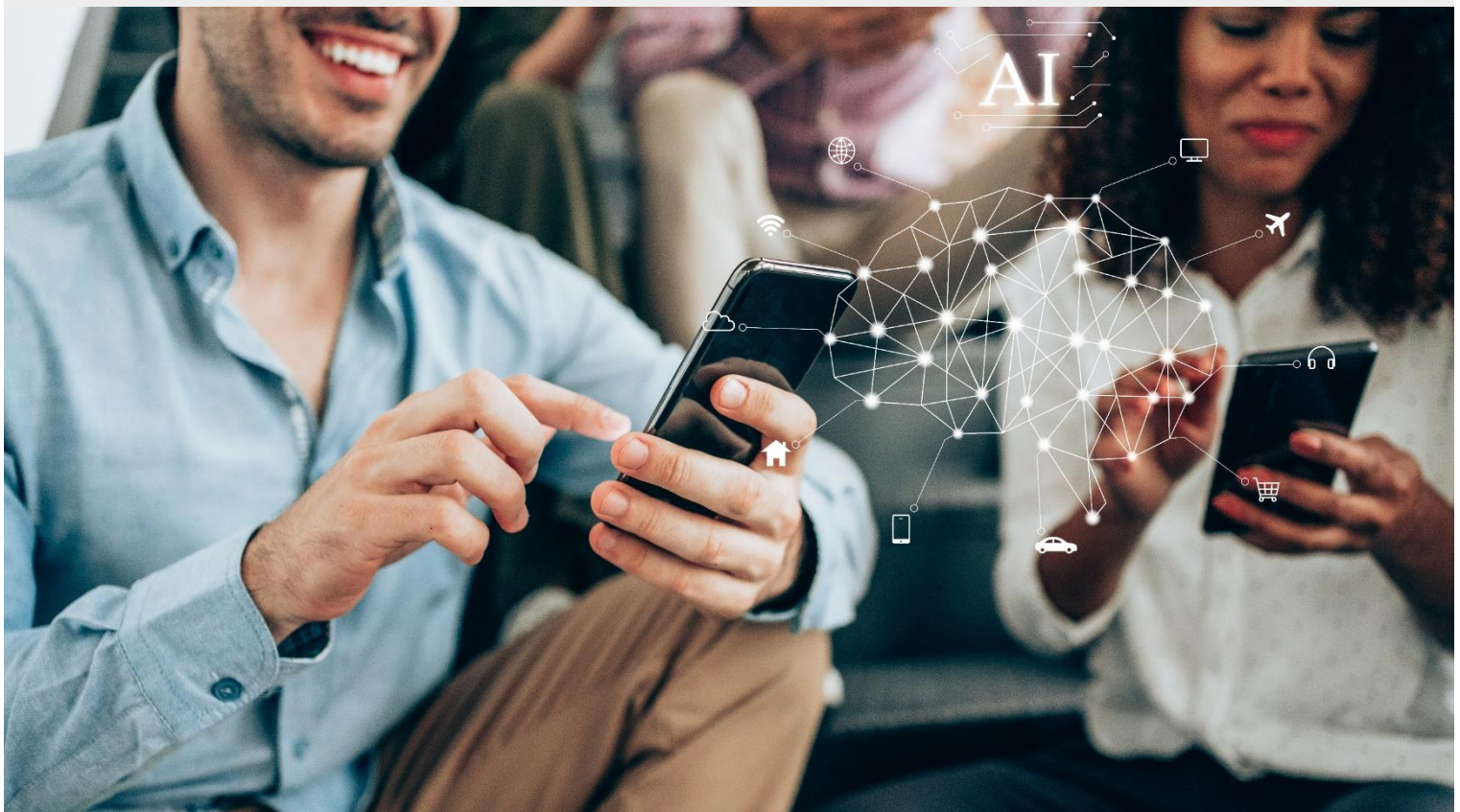
Australian Government
The Treasury



Review of AI and the Australian Consumer Law

Final report

October 2025



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In the spirit of reconciliation, the Treasury acknowledges the Traditional Custodians of country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all Aboriginal and Torres Strait Islander peoples.

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Executive Summary

The Australian Consumer Law (ACL) is an economy-wide, principles-based and technology-agnostic framework which aims to improve consumer wellbeing through consumer empowerment and protection, foster effective competition and enable the confident participation of consumers in markets. Since its introduction, the ACL has generally been effective at responding to evolving consumer harms in the face of economic and technological changes. As AI-enabled goods and services enter the market, the ACL remains an important framework to support consumers and businesses safely realise the benefits of AI.

This Final Report of the *Review of AI and the Australian Consumer Law* details that, when considered in combination with other relevant legal frameworks, the ACL is broadly capable of adapting effectively to the increasing uptake of AI-enabled goods and services. While several opportunities are identified to improve clarity and certainty within select provisions, the breadth of the ACL's principles-based consumer protections remain a key strength of the framework.

The Review makes 6 findings:

Finding 1	The principles-based protections provided under the ACL are generally well adapted to address the potential consumer law risks of AI enabled goods and services.
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Finding 2	Uncertainty regarding the distinction between goods and services, including AI enabled goods and services, presents a barrier to applying the ACL to new and emerging technologies. This uncertainty may be reduced through: <ul style="list-style-type: none">- targeted amendments to the legislated list of items expressly included in the definition of 'goods' in the ACL, and- updating education materials and regulatory guidance to provide greater clarity on the application of the ACL to software-enabled goods and services, including AI enabled goods and services.
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Finding 3	The existing remedy and liability provisions under the ACL are broad and remain appropriate in an AI context. Additional clarity regarding the existing obligations of businesses across the AI supply chain may be realised through targeted amendments to the definition of 'manufacturer'.
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Finding 4	Existing manufacturer defences to defective goods actions available under the ACL remain broadly appropriate in an AI context. Technical amendments may be required to ensure existing defences operate as intended in the context of software-enabled goods, including AI enabled goods, where the manufacturer continues to exercise a degree of control over the good post-supply.
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Finding 5	The nature of AI enabled goods and services does not necessitate specific changes to current powers available to the Australian Competition and Consumer Commission (ACCC). Regular review of the ACCC's powers should continue in order to ensure the ongoing sufficiency of those powers in contexts including, but not limited to, AI.
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Finding 6	The protections available under the ACL provide Australian consumers of AI-enabled goods and services with similar, and in some cases enhanced, protections when compared to those available to consumers in the EU, UK and Singapore.
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1 Introduction

The Australian Government is taking an integrated approach to responding to the impacts of AI. In the 2024-25 Budget, the Australian Government invested \$39.9 million over five years for the development of policies and capability to support the safe and responsible adoption and use of AI, including work to clarify and strengthen existing laws. This Review forms part of this work.

The Review considered whether the ACL remains fit-for-purpose in an evolving AI-enabled landscape to protect consumers and support the responsible use of AI by businesses. The Review also considered how future developments in AI-enabled goods and services could be managed by Australia's consumer protection framework.

Public consultation formed a core component of the Review. Treasury released the *Review of AI and the Australian Consumer Law* discussion paper on 15 October 2024, inviting submissions by 12 November 2024. The discussion paper sought views on a range of issues, including:

- how well adapted the ACL is to support Australian consumers and businesses to manage potential consumer law risks of AI-enabled goods and services,
- the application of well-established ACL principles to AI-enabled goods and services,
- the remedies available to consumers of AI-enabled goods and services under the ACL, and
- the mechanisms for allocating liability among manufacturers and suppliers of AI-enabled goods and services.

The fundamental principles that underpin existing consumer laws and the mirror provisions of the ACL contained in the *Australian Securities and Investments Commission Act 2001*, which regulate financial products and services, were not in scope of the Review. The findings of the Review will nevertheless support consideration of whether further work is required to harmonise or modify consumer protections in other laws, including those applying to the provision of financial products and services.

This Final Report is informed by submissions received in response to consultation and views provided by stakeholders as part of two stakeholder roundtables. Submissions received in response to consultation are available on the Treasury website.

This Report builds on consultation undertaken by the Department of Industry, Science and Resources (DISR) on *Safe and responsible AI in Australia* in June 2023¹ and the subsequent September 2024 discussion paper on proposed mandatory guardrails for AI in high-risk settings ('proposed mandatory guardrails').² The Review, and further developments under the safe and responsible AI agenda, will inform Commonwealth, state and territory Consumer Affairs Ministers' ongoing consideration of consumer protection and AI issues in 2025.³

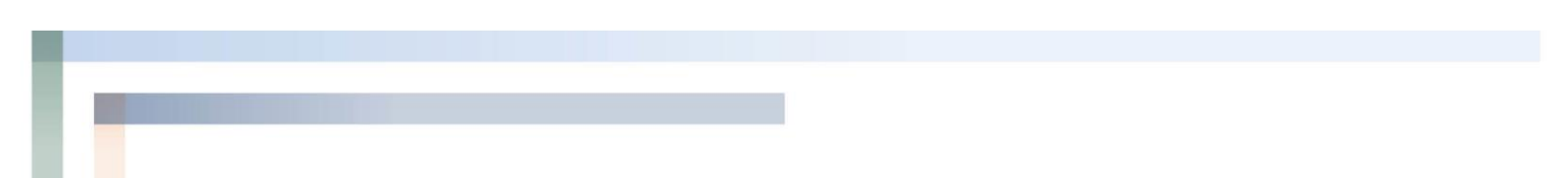
AI and consumer goods and services

AI is already delivering benefits to Australian consumers and businesses through a wide variety of AI-enabled goods and services. Through its continued integration across markets, AI is enabling

¹ DISR, *Safe and responsible AI in Australia*, [Discussion paper](#), June 2023.

² DISR, *Safe and responsible AI in Australia*, [Proposals paper for introducing mandatory guardrails for AI in high-risk settings](#), September 2024.

³ The Hon Stephen Jones MP, [Consumer Affairs Ministers renew commitment to protecting consumers, with an ambitious agenda for 2025](#), December 2024.



innovation which can help foster economic growth, competition and productivity gains. For example, digital assistants can help consumers by providing recommendations, controlling lighting and heating at home, and collating voice generated shopping lists. Chatbots allow businesses to deliver enhanced, productivity improving, service offerings, such as providing 24-hour customer support in a variety of languages. Demand for AI-enabled goods and services is expected to grow into the future.

The integration of AI into goods and services may amplify or augment existing risks. However, AI systems vary considerably in their design, function and capabilities. Given this diversity, proportionate risk-based regulation is required to support the safe and responsible use of AI.

Supporting consumer confidence when purchasing AI-enabled goods and services, and certainty for businesses looking to adopt AI technologies, is critical to realising the benefits of AI. As noted in the *Review of AI and the Australian Consumer Law* discussion paper,⁴ some AI systems may have characteristics which could lead to greater risks for consumers. For example:

- **Adaptability and learning:** AI systems can improve their performance over time and adapt by learning from data, sometimes in a manner catered to individual consumers. This differs from previous technologies, such as simpler forms of software, which often follow pre-defined rules and need explicit programming.
- **Autonomy:** Services and products embedded in AI technology or stand-alone AI applications are becoming increasingly autonomous. AI systems can make decisions independently and pervasively, without human intervention at any stage of the decision-making process, if designed that way.
- **Opacity or lack of explainability:** This is often referred to as the ‘black box’ problem. The most advanced AI models are trained on vast amounts of data that is difficult for humans to efficiently process, and which may not have been curated or documented prior to ingestion for training. The complexity and limited study of data reasoning techniques hinder a comprehensive understanding of their outputs.

Harms from AI misuse and failure may occur on several levels. Depending on the context of AI’s deployment these may include:

- **Harms to people:** such as physical or psychological injury and exclusion from access to opportunities and services.
- **Harms to groups of people:** such as bias and discrimination based on protected attributes.
- **Harms to organisations:** such as introduction or identification of unknown vulnerabilities in common enterprise software, or a cyber-attack exposing training data causing reputational and commercial harm.
- **Collective harms to society:** such as growing economic inequality, mis- and disinformation and spread of extreme or misogynist content or eroding social cohesion.

The breadth of the challenges posed by AI are not confined to a single legal domain and, accordingly, a wide range of legislative frameworks are relevant to AI. Within this ecosystem, the ACL provides an important framework in regulating the relationship between suppliers, manufacturers and consumers.

⁴ Treasury, Review of AI and the Australian Consumer Law, [Discussion paper](#), October 2024

The Review heard that a key objective for many stakeholders is to ensure that the existing economy-wide protections provided under the ACL apply equally to AI-enabled goods and services.

The legislative landscape

The ACL is Schedule 2 to the *Competition and Consumer Act 2010*. It is the principal consumer protection law in Australia and is jointly administered by the ACCC and state and territory consumer protection agencies. The ACL is a generic law which applies in the same way to all sectors and in all Australian jurisdictions. This means that all consumers in Australia enjoy the same rights and all businesses have the same obligations, irrespective of which state or territory they engaged in transactions. The ACL is supplemented across the economy by specific legislative frameworks applying to particular goods and services.⁵

The ACL empowers consumers by addressing imbalances in information and bargaining strength with a combination of specific rules and principles-based standards. These include:

- prohibitions against misleading or deceptive conduct and unconscionable conduct,
- prohibitions against false or misleading representations,
- consumer guarantees that ensure goods and services meet minimum standards and rights for consumers to obtain a remedy where these standards are not met, and
- liability for manufacturers for goods with safety defects.

Australia's national consumer policy framework is evolving, and the Review complements a number of reform processes currently underway which are designed to strengthen the ACL. Key changes being considered include amending the ACL to address unfair trading practices and reforms to introduce civil prohibitions and penalties to enhance the effectiveness of the consumer guarantees and supplier indemnification provisions.⁶ While these reforms are not specifically directed to AI-enabled goods and services, when legislated, they would apply equally to both traditional and AI-enabled goods and services. In response to consultation, stakeholders acknowledged the benefits of these broader reforms for all goods and services, including AI-enabled business offerings.

The Government is also progressing a range of other initiatives relevant to AI which are expected to contribute to the economy-wide framework of consumer protections. These initiatives include:

- **2023-2030 Australian Cyber Security Strategy** which provides the roadmap that will help realise the Australian Government's vision of becoming a world leader in cyber security by 2030.⁷
- **Implementation of the Government Response to the Privacy Act Review** which aims to strengthen the protection of personal information, and the control individuals have over it.⁸

⁵ For example, goods which meet the definition of a medical device can be covered by both the ACL and the *Therapeutic Goods Act 1989*.

⁶ Treasury, [Unfair trading practices, Consultation paper](#), November 2024; Treasury; [Consumer guarantees and supplier indemnification under the ACL, Consultation paper](#), October 2024.

⁷ Department of Home Affairs, [2023-2030 Australian Cyber Security Strategy](#), November 2023.

⁸ Attorney-General's Department, [Government Response to the Privacy Act Review](#), September 2023.

- **The Scams Prevention Framework** which sets out obligations on regulated entities (including banks, telecommunications providers and certain digital platforms) to prevent, detect, disrupt, respond to and report scams.⁹

2 Managing risks to realise benefits

This chapter examines how effectively the ACL is positioned to minimise potential AI-related consumer harms. This chapter also reflects the Review's consideration of whether the unique characteristics commonly associated with AI systems reveal gaps in existing consumer law protections.

There was broad support amongst stakeholders for the current consumer protection framework. Many stakeholders generally considered that the ACL is well adapted to manage potential AI-related consumer harms. A common theme cited by stakeholders was that the economy-wide, principles-based and technology-agnostic nature of the ACL enables the framework to adapt to new technologies, while retaining core protections, consistency and fairness across different industries and contexts. Stakeholders also noted reforms underway to the ACL in relation to unfair trading practices and consumer guarantees and supplier indemnification would bolster protections available to consumers, benefiting consumers, suppliers and manufacturers of AI-enabled goods and services.

Although many stakeholders indicated that the ACL is well placed to respond to AI-related consumer harms, a small number of stakeholders expressed concerns that the emergence of AI-enabled goods and services may reveal gaps in the ACL. These stakeholders expressed particular concern in relation to:

- the psychological risks posed by AI-enabled goods and services,
- the potential for AI-enabled technologies to mislead consumers,
- highly individualised AI-enabled advertising,
- the use of creative content by AI, and creators' rights in relation to that content,
- the sufficiency and appropriateness of existing consumer guarantees, and
- the ability of government and regulators to ban or remove unsafe AI-enabled goods and services from the marketplace where needed.

The concerns expressed by some stakeholders in relation to AI-enabled goods and services in some cases reflected broader concerns regarding the application of the ACL to software-enabled goods and services generally. In addition, the vast majority of stakeholders noted that the ACL forms part of a broader legislative ecosystem relevant to the regulation of AI-enabled goods and services and did not support expanding the ACL to address harms regulated under other legislative frameworks, for example in relation to discrimination and privacy.

The following sections outline how the ACL can respond to the key consumer risks examined in the process of this review. Overall, the principles-based protections contained in the ACL are well-placed to address these risks both now and into the future.

⁹ Treasury, [Scams Prevention Framework](#), February 2025.

Safety

Product safety is essential to consumer wellbeing and confidence. The ACL provides a framework to prevent and remedy a broad range of safety-related consumer harms, including through recalls, bans and obligations to comply with mandatory standards, consumer guarantees and a framework for imposing liability on manufacturers of defective goods.

Safety, particularly psychological safety, of AI-enabled goods and services was a key theme for stakeholders engaging with the Review. While stakeholders broadly regarded the existing legislative arrangements as sufficient, some stakeholders submitted that there are gaps in how the ACL may treat psychological safety concerns associated with AI-enabled goods and services.

The ACL incorporates the concept of safety in a broad sense and adopts a variety of mechanisms to minimise consumer harm. Where consumer harm does arise, the ACL provides access to a wide range of remedies for consumers, including consumers of AI-enabled goods and services. Recent reforms to the mandatory safety standards regime also mean the ACL could, if required, be effectively used to respond to changes in consumer risks as AI-enabled business offerings evolve in the future.

Protection for psychological safety

The ACL establishes the liability of manufacturers for goods with safety defects under Part 3-5. Under this part, consumers may bring claims against a manufacturer if they sustain injuries due to a safety defect in the goods supplied, or experience loss or damage arising from injuries suffered by another person.¹⁰ This framework applies to both traditional and AI-enabled goods.

Some stakeholders advocated for expanding the concept of ‘safety defect’ to ensure that manufacturers of AI systems could be held liable for psychological harm which may be caused by AI-enabled goods. Concerns, for example, were raised about the potential for consumer harm arising from AI chatbots or character avatars which may encourage self-harm or harm to others. Relatedly, some stakeholders queried the types of psychological harm which may be covered by Part 3-5, given ‘personal injury’ under the *Competition and Consumer Act 2010* is defined to exclude an impairment of a person’s mental condition which does not consist of a recognised psychiatric illness.¹¹

Under the ACL, a safety defect arises where goods are not as safe as persons are generally entitled to expect and whether a defect exists is assessed having regard to a number of factors.¹² Part 3-5 provides mechanisms whereby individuals suffering loss or damage as a result of a safety defect associated with a good can seek to recover the amount of loss or damage suffered from the responsible manufacturer.¹³ While this framework has not yet been applied to cases involving psychological harm, the courts have interpreted the loss and damage available to consumers under remedial provisions of the ACL broadly.¹⁴ It has been suggested, in light of this approach, that the existing Part 3-5 framework may, in an appropriate case, support claims for loss or damage arising

¹⁰ ACL s 138-139.

¹¹ *Competition and Consumer Act 2010* s 4.

¹² ACL s 9(1).

¹³ ACL ss 138-9.

¹⁴ *Marks v Gio Australia Holdings Ltd* (1998) 196 CLR 494

from a safety defect where the loss or damage results from an impairment of a person's mental condition other than a recognised psychiatric illness.¹⁵

Beyond the ACL, the Government is taking steps to ensure that AI is used in a physically and psychologically safe way. For example, the Government has announced it will legislate a Digital Duty of Care which places the onus on digital platforms to proactively keep Australians safe and better prevent online harms.¹⁶

Product recalls

The Review heard that stakeholders considered it was important for action to be taken quickly where it is apparent that there is a risk posed by certain AI-enabled goods and services to both physical and psychological safety.

Under the ACL, if a product will or may cause injury, or is non-compliant with mandatory standards or bans, the supplier can voluntarily take action to recall it and must then notify the Commonwealth Minister within 2 days.¹⁷ The Minister also has broad powers to require a compulsory recall of consumer goods, informed by intelligence and advice from ACL regulators.¹⁸ Goods can be recalled if it appears that such goods will, or may, cause injury to any person. It is not necessary for the Minister to form the view that the goods in question create an imminent risk of death, serious illness or injury to initiate a recall. The Minister's powers are also supported by the voluntary online product safety pledge which commits signatories to strengthening product safety in online business, including by removing unsafe products within 2 business days and responding to data requests within 10 business days.¹⁹

The powers conferred on the Minister to intervene in the market where there is a risk of injury are broad and can be used to require a recall of both traditional and AI-enabled goods. While product recalls have not been issued to date on the basis of a risk of psychological injury, it may be possible to make such an intervention in the future. A Minister-initiated product recall is resource intensive and therefore is likely to be effective at addressing only the most serious cases of potential consumer harm associated with AI-enabled goods.

However, the ACL also provides the ability for ACL regulators or any impacted person to seek an injunction where a person engages, or proposes to engage, in conduct that would contravene the ACL.²⁰ Injunctions are granted by courts and can compel or prohibit a person from doing a thing. Although a risk to consumers' mental or physical wellbeing does not necessarily indicate a contravention of the ACL, in appropriate circumstances an injunction may provide a mechanism to address consumer safety concerns relating to an AI-enabled good or service.

¹⁵ Michael Guihot, 'Putting the 'personal' back into injuries: An interpretation of Pt 3-5 of the Australian Consumer Law' (2014) 21(3) *Competition and Consumer Law Journal* 232. Damages may also be available to consumers of AI-enabled goods and services as a result of disappointment and distress arising from a failure to meet consumer guarantees in specific circumstances: *Moore v Scenic Tours Pty Ltd* (2020) 268 CLR 326.

¹⁶ The Hon Michelle Rowland MP, [New Duty of Care obligations on platforms will keep Australians safer online](#), November 2024.

¹⁷ ACL s 128.

¹⁸ ACL s 122.

¹⁹ ACCC, [Product Safety Pledge](#), April 2021. As at February 2025, signatories to the pledge are AliExpress, Amazon Australia, Catch.com.au, eBay Australia, MyDeal.com.au.

²⁰ ACL s 332.

Mandatory standards

Some stakeholders suggested mandatory safety standards should be made to address the risk of consumer harm associated with AI-enabled goods. In some cases, this view was also accompanied by a recommendation that the ACL be amended to permit the making of mandatory standards for services beyond product related services. For example, one submission to consultation suggested that a new mandatory standard could give legislative force to the Voluntary AI Safety Standard.²¹

Under the ACL, the Commonwealth Minister with responsibility for consumer affairs can make a mandatory safety standard.²² Mandatory safety standards set out requirements which must be complied with to supply consumer goods or product-related services in Australia. ‘Consumer goods’ include things intended, or likely to be used, for domestic or household use or consumption.²³ ‘Product-related services’ include services for or relating to:

- the installation of consumer goods,
- maintenance, repair or cleaning of consumer goods,
- assembly of consumer goods, or
- delivery of consumer goods.²⁴

A mandatory safety standard for a consumer good can set requirements including:

- the way the good is made,
- what it contains,
- how it is designed,
- what tests it needs to pass, and
- whether any warning or instructions need to accompany the good.²⁵

In 2024, the Australian Government amended the mandatory safety standards regime, including to more easily recognise international and overseas standards in Australian mandatory standards. The reforms also improved the enforceability of safety standards by allowing the regulator to request certain information and documents in relation to compliance with safety standards.²⁶

The majority of stakeholders did not support the making of mandatory safety standards at this point in relation to AI-enabled consumer goods and product related services. Broadly, the Review found that the ACL itself is well placed to address consumer law risks associated with AI-enabled goods and services and also did not find evidence which would support the making of a mandatory safety standard at present. However, consideration could be given in future to utilising the amended mandatory standard framework to address emerging AI consumer harms should the need arise. Any consideration of new safety standards for AI-enabled consumer goods would be informed by ongoing work on Safe and Responsible AI across Government. The question of whether the mandatory safety

²¹ DISR, [Voluntary AI Safety Standard](#), September 2024

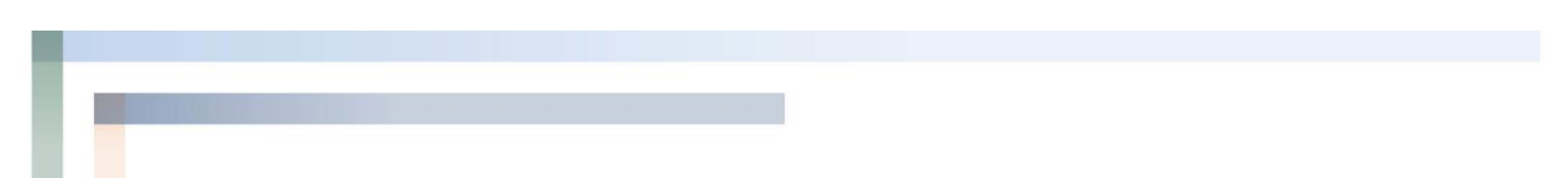
²² ACL ss 104.

²³ ACL s 2.

²⁴ ACL s 2.

²⁵ ACL s 104(2).

²⁶ *Treasury Laws Amendment (Fairer for Families and Farmers and Other Measures) Act 2024*.



standard regime itself should be expanded to cover a broader range of services is beyond the scope of the Review.

Misleading or unfair AI-enabled conduct

The ACL plays an important role in ensuring consumers are not misled and are not subject to unconscionable behaviour by businesses. These protections apply equally to consumers of AI-enabled goods and services and include prohibitions on misleading or deceptive conduct, unconscionable conduct and false or misleading representations.²⁷ As noted above, the Government has announced it will work with states and territories on amendments to the ACL to address unfair trading practices.

The existing protections for consumers to address misleading conduct and other sharp commercial practices are a longstanding feature of Australia's consumer protection framework and are supported by a substantial body of case law. Given this, most stakeholders regarded the existing protections as adequate and sufficiently flexible to address risks which may arise in an AI context. Some stakeholders separately reflected that some challenges associated with enforcing these existing protections may be addressed through the introduction of amendments to the ACL to address unfair trading practices.

While the majority of stakeholders considered that the ACL is well positioned to protect consumers from misleading AI-generated content, some observed that misleading or deceptive conduct is easier to establish in cases involving misrepresentations and factual errors, rather than cases involving omissions and evaluative errors.²⁸ As a result, more difficulty may arise in circumstances where an AI-enabled good or service causes a consumer to be misled by omission, or through subtler forms of personal persuasion through targeted AI-enabled advertising.

Some stakeholders also expressed concern that broader integration of AI technologies may increase the risk of misleading or deceptive conduct occurring in trade and commerce generally and inadvertently, possibly creating challenges for smaller or less sophisticated businesses using off-the-shelf AI systems.

AI and misleading by omission

Under the ACL, misleading or deceptive conduct can include a failure to act, for example by silence or omission.²⁹ Silence or omission may be considered misleading where there is a reasonable expectation that a fact, if it exists, will be disclosed. This may occur if a business provides some information to a consumer but does not mention important details the consumer should know that are relevant to their decision. In an AI context, this may involve a consumer using an AI-enabled service to obtain information which, when provided, excludes information which the consumer may have reasonably expected would have been disclosed.

Whether it is reasonable for a consumer to expect that certain information will be provided is assessed objectively and on a case-by-case basis. In addition, the ACL does not require businesses to disclose information with total disregard for their own interests. Just because information would be useful to a consumer does not mean that businesses are under an obligation to provide it. Additionally, there cannot be a reasonable expectation that information will be disclosed if the information was not known.

²⁷ *Australian Consumer Law (ACL) ss 18, 20-1, 29.*

²⁸ Evaluative errors are errors in judgement that are brought about by conduct that influences decision-making processes or fundamental attitudes towards a brand.

²⁹ See, e.g., *Miller & Associates Insurance Broking Pty Ltd v BMW Australia Finance Ltd* (2010) 241 CLR 357.

Applied to an AI context, a business that uses a chatbot to recommend appliances to a consumer from a range that it supplies would not necessarily mislead a consumer by failing to identify that a particular appliance is available at a lower price from a different business, if it was not programmed to access that data. However, the business may engage in misleading or deceptive conduct if it allows consumers to form a reasonable expectation that the chatbot will assist them in comparing prices for appliances across all businesses, but then fails to provide such a comparison.

While consumers may increasingly use AI-enabled goods and services to obtain information, the incorporation of AI in goods and services does not necessitate amendments to the operation of this well-established area of the ACL. Although stakeholders correctly identify that it may be challenging in some circumstances for consumers to establish that they have been misled or deceived by AI technologies failing to provide information, this burden remains appropriate and reflects the balance struck throughout the ACL of protecting the interests of consumers, manufacturers, and suppliers.

Chapter 3 considers the role of guidance and education in enhancing regulatory clarity to ensure that businesses understand their obligations and that consumers know their rights and remedies.

AI and advertising

Advanced technologies, including those that use AI systems, are increasingly used to promote and sell products through highly personalised advertising. Where these technologies are not used appropriately, such as personalising offers or pricing without consumers' knowledge or advertising to vulnerable consumers, this may lead to an increase in misleading or deceptive conduct.

The provisions of the ACL which prohibit misleading or deceptive conduct and false and misleading representations apply regardless of the technology through which the advertising is used or enabled. For example, in 2022, the ACCC successfully obtained an order that a business pay penalties for misleading representations arising because the operation of an algorithm created outputs that misled consumers.³⁰

Ensuring businesses comply with their obligations under the ACL when trading in the digital economy is one of the ACCC's 2025-26 enforcement priorities.³¹ In addition, in October 2024, the Government announced that it would introduce a general and specific prohibitions in the ACL to address unfair trading practices including deceptive and manipulative online practices that aim to confuse or overwhelm consumers.³²

Taken together, the standards of advertising expected of businesses engaging in trade and commerce in Australia remain uniform and unambiguous. Those seeking to integrate AI into their advertising practices, or utilising AI to make representations to consumers generally, must take the necessary steps to ensure these standards of conduct are upheld. Guardrail 6 of the Voluntary AI Safety Standard provides guidance to businesses on the steps they can take to inform end-users regarding AI-enabled decisions, interactions with AI and AI-generated content.

³⁰ *ACCC v Trivago N.V.* [2020] FCA 16.

³¹ ACCC, [Compliance and enforcement priorities](https://www.accc.gov.au/about-us/accc-priorities/compliance-and-enforcement-priorities), February 2025. <https://www.accc.gov.au/about-us/accc-priorities/compliance-and-enforcement-priorities>

³² The Hon Anthony Albanese MP, [Albanese Government to stop the rip offs from unfair trading practices](#), October 2024.

Misleading or deceptive conduct

Misleading or deceptive conduct in trade or commerce is prohibited under the ACL.³³ A key feature of the prohibition on misleading or deceptive conduct is that it can be contravened without fault. That is, a person who acts honestly and reasonably may contravene the prohibition if their conduct is misleading.³⁴

Some stakeholders reflected that the absence of a fault element may raise particular concerns in an AI context as a result of the propensity of certain AI systems to ‘hallucinate’ or generate erroneous outputs. As a result, it was suggested that this aspect of the ACL may have a detrimental impact on the willingness of business, particularly small business, to adopt new AI-enabled technologies.

The prohibition on misleading or deceptive conduct, regardless of intention, is fundamental to the operation of Australia’s consumer protection framework. That AI may ‘hallucinate’ does not warrant a re-examination of this prohibition. Many businesses, including those that use AI, must assess the risk that their systems or processes may mislead a consumer and the onus is on businesses to ensure the technologies they use are fit-for-purpose. However, not all businesses are equally placed to undertake this assessment and undertaking this due diligence may be particularly difficult for smaller, less sophisticated businesses seeking to realise the productivity benefits of AI.

While small businesses, like other businesses, are prohibited from engaging in misleading or deceptive conduct, in some cases the ACL may operate to protect small businesses (as a consumer) where this conduct arises as a result of the integration of off-the-shelf AI systems. In particular, subject to certain exceptions, the consumer guarantees under the ACL will apply to a business transaction if the goods or services purchased cost less than \$100,000.³⁵

For example, if a small business (Business A) purchased an off-the-shelf subscription for an AI system from a large supplier of AI-enabled services (Business B) for \$1,000 per month to provide its customers with 24-hour chatbot online support, this would be considered a consumer purchase and the consumer guarantees would apply. Accordingly, Business A may have recourse to Business B where the chatbot service it purchased misleads or deceives Business A’s customers. While Business A would be liable for the misleading conduct, it could obtain a remedy from Business B where the malfunction which caused that misleading conduct amounted to a breach of the guarantee of fitness for purpose.

To avoid harm to consumers arising from misleading or deceptive conduct, and associated penalties, all businesses should ensure that when using AI technology the limitations of this technology are made clear to consumers. Consumers can also benefit by considering whether representations made to them in trade and commerce align with their goals and objectives and seeking to understand the limits of technologies they engage with.

Unfair contract terms

Under the ACL, a court may declare terms in standard form consumer and small business contracts unfair and impose substantial penalties.³⁶ A term of a standard form contract is unfair if it:

- causes a significant imbalance in the parties’ rights and obligations,

³³ ACL s 18.

³⁴ *Butcher v Lachlan Elder Realty Pty Ltd* (2004) 218 CLR 592, 634 [139].

³⁵ *Competition and Consumer Regulations 2010* reg 77A.

³⁶ ACL ss 23-4.

- is not reasonably necessary to protect the legitimate interests of the party who would be advantaged by the term, and
- would cause significant financial or non-financial detriment to a party if the term were enforced.

AI's intersection with the unfair contract terms ('UCT') framework was not a focus for the majority of stakeholders. However, stakeholders representing the arts sector raised concerns with the application of the UCT framework in a copyright context. In particular, these stakeholders considered that terms which grant rights to train AI models using creator's content should be deemed unfair under the ACL.

A strength of the UCT framework is that it is able to be applied to a broad range of standard form contracts covering all types of subject matter. The ACL itself does not deem provisions of standard form contracts to be unfair, but rather provides a flexible framework for courts to apply in resolving disputes in relation to contracts typically offered on a 'take it or leave it' basis. It is highly likely that a tailored reform aimed to address a specific contractual risk arising in certain types of contracts, such as those pertaining to the training of AI models, would be inconsistent with the policy intent of the UCT framework. The UCT framework is separately scheduled to be reviewed in late 2025.³⁷

While the upcoming review of the UCT framework could potentially consider the way its principles apply to standard form contract terms relating to copyright, among other things, the ACL is not the primary legislative framework through which the Australian Government is considering how copyright applies to AI. In December 2023, the Government established the Copyright and Artificial Intelligence Reference Group (CAIRG). The purpose of the CAIRG is to better prepare for future copyright challenges emerging from AI. The CAIRG has an initial focus on the use of copyright material as inputs for AI systems.

Consumer guarantees

The ACL contains a basic set of guarantees for consumers who buy goods and services from manufacturers and suppliers in Australia.³⁸ Different consumer guarantees apply to goods and services and, where a guarantee is not met, a consumer is entitled to a remedy. The consumer guarantees for goods and services are summarised in Box 1.

Most stakeholders advocated for retaining the existing suite of consumer guarantees under the ACL as they provide flexibility and are readily applicable to AI-enabled goods and services. However, some stakeholders advocated for software-specific consumer guarantees, such as guarantees in relation to the duration of software and security updates, and to the interoperability of software. Consumer advocates in particular noted that consumers require access to software updates and other protections to ensure their products remain fit for purpose.

Throughout the public consultation process, the Review observed a close connection between (i) the perceived sufficiency of existing consumer guarantees and (ii) uncertainty over how the existing ACL protections are likely to apply to AI-enabled business offerings, including due to definitional uncertainty in relation to the distinction between 'goods' and 'services'. This uncertainty is examined further in **Chapter 3**.

³⁷ *Treasury Laws Amendment (More Competition, Better Prices) Act 2022*.

³⁸ Subject to certain exceptions, goods and services acquired for business use are covered by consumer guarantees where either (i) they cost less than \$100,000, (ii) if they cost over \$100,000, are commonly bought for personal, domestic or household use or (iii) the good is a vehicle or trailer that is used mainly to transport goods on public roads.

The consumer guarantees under the ACL apply to computer software. While AI is likely to be considered a *type* of software under the ACL, detailed consideration of possible additional consumer guarantees which could apply to *all* software is beyond the scope of this Review. However, the Australian Government is progressing work across other legislative frameworks which will benefit consumers engaging with software-enabled goods and services, including AI-enabled goods and services. This includes work in relation to unfair trading practices and online safety.³⁹

Box 1: Overview of consumer guarantees⁴⁰



Goods

The consumer guarantees require that goods:

- are of **acceptable quality**, which includes that they are safe and free from defects, have an acceptable appearance and finish, and do everything that they are commonly used for
- are **fit for purpose**, including for any purpose that the consumer told a business before purchasing, or that the business told the consumer it would be fit for
- **match any descriptions** made by the business
- **match any demonstration model or sample** on which the consumer made their decision
- **meet any extra promises** made by the business about performance, condition and quality
- **come with full title** and ownership of the goods
- **come with undisturbed possession**, so no one has a right to take the goods away
- **not carry any hidden debts** or extra charges
- **have spare parts and repair facilities available** for a reasonable time after purchase (unless the consumer is told otherwise prior to purchase).



Services

For services, the consumer guarantees require the service:

- is provided with **due care and skill**
- is **fit for its purpose**, including for any purpose that the consumer told a business before buying the service, or that the business told the consumer the service would be fit for
- is **delivered within a reasonable time** (when there is no agreed time frame).

Relevant to concerns that the ACL may not address cyber security risks related to consumer products, and that consumers may obtain insufficient ongoing support from manufacturers, the Australian Government recently passed the *Cyber Security Act 2024*. This legislation provides powers for the Minister to mandate security standards for smart devices. Under these standards, relevant manufacturers will be required to declare that a product has complied with security requirements in the relevant standard and to define the support period available to consumers.

Under this legislation, and as part of the *2023-2030 Australian Cyber Security Strategy*, the Government announced it would co-design options to legislate a mandatory cyber security standard for consumer-grade smart devices such as internet-connected televisions, watches, kitchen appliances

³⁹ Treasury, [Unfair trading practices, Consultation paper](#), November 2024; The Hon Michelle Rowland MP, [New Duty of Care obligations on platforms will keep Australians safer online](#), November 2024.

⁴⁰ The descriptions of the various guarantees above synthesise relevant provisions but are not intended as legally accurate statements of law.

and home assistants. A voluntary labelling scheme will also be developed, providing additional guidance for consumers to inform their smart device purchasing decisions. This will help to mitigate against information asymmetries that currently exist in the smart device market, as cyber security information becomes more easily accessible and understandable for consumers. The mandatory product standard will also ensure that smart devices are built with minimum security and maintained for specified minimum periods.

The consumer guarantees have been designed to apply to a wide range of technologies, including those developed after their introduction. While the ACL does not provide software-specific consumer protections, the consumer guarantees provided under the ACL remain an important protection for consumers using AI-enabled goods and services. Although specific classes of AI-enabled goods and services may be subject to additional regulation as markets mature, the flexibility of the consumer guarantees framework remains a key strength of the ACL.

Uncertainty over the application of the existing consumer guarantees available under the ACL as they apply to AI-enabled goods and services is discussed further in **Chapter 3**.

Finding 1

The principles-based protections provided under the ACL are generally well adapted to address the potential consumer law risks of AI-enabled goods and services.

3 Delivering regulatory clarity and certainty

Clarity in how the ACL applies to goods and services is critical to ensuring that businesses understand their obligations and that consumers know their rights and remedies. Uncertainty, or a lack of clarity, may discourage consumers from acquiring AI-enabled goods and services and prevent businesses from investing in AI to improve the goods and services they offer.

While stakeholders generally supported retaining the existing scope of the ACL, many also expressed that the application of the ACL to AI-enabled goods and services, or software-enabled goods and services more broadly, was uncertain in some cases.

Stakeholders noted that categorising an AI-enabled business offering as a ‘good’ or ‘service’ under the ACL can be particularly challenging and a significant source of uncertainty. As noted above, this distinction is important for consumers, manufacturers and suppliers as different consumer guarantees apply to goods and services under the ACL. Additionally, the ACL contains a framework that imposes liability on manufacturers of goods with safety defects. As a result, the type of protection provided by the ACL to consumers, and the scope of remedies which may be available, turns on whether a business offering is characterised as a good or a service. Even where an AI-enabled business offering can be effectively categorised as a good or service under the ACL, the Review also heard that some stakeholders are unclear as to how the principles-based consumer guarantees may apply and the standards they impose.

This chapter considers these two main sources of uncertainty: definitional uncertainty in relation to ‘goods’ and ‘services’ and the application of principles-based guarantees to AI-enabled goods and services. It also considers the role of guidance and education in enhancing regulatory clarity and certainty.

Definitional uncertainty – goods and services

The ACL applies to a broad range of goods and services. The ACL does not provide an exhaustive list of the goods to which it applies but defines goods to *include* goods such as vehicles, animals, minerals and computer software.⁴¹ Services are also broadly and inclusively defined and include the performance of work (such as clearing a blocked drain), providing facilities (such as renting out a hall for a party), conferring rights, benefits and facilities for a payment (such as allowing the use of copyrighted music for a royalty) and certain contracts.⁴²

The definitions of ‘goods’ and ‘services’ are mutually exclusive. Although goods and services can be supplied together, if the transaction as a whole is properly characterised as a supply of goods, the transaction must be characterised as the supply of goods. As a result, under the ACL a consumer cannot claim for both faulty goods *and* faulty services in the provision of those goods.⁴³

Stakeholders have expressed that there is uncertainty in applying the categories of ‘goods’ and ‘services’ to AI-enabled products, including that they:

- challenge conventional concepts of ‘goods’ and ‘services’, and therefore introduce uncertainty in how the definitions apply, and
- are often offered as a bundled package (mixed supply) making it difficult to determine if it is a good or a service.

Definitional uncertainty in the context of the ACL is not unique to AI-enabled business offerings and has been expressed in relation to the ACL’s application to software-enabled offerings more generally. This arises, in part, because software-enabled business offerings, including many AI-enabled offerings, involve a mixed supply of a tangible physical good and services. For example, a security system that stores footage online involves a mixed supply of goods (the security system) and services (cloud storage) which would most likely be collectively characterised as a good; however, each assessment will turn on the particular transaction in question.

The complexity of the assessment which may be required to reach the conclusion regarding whether an offering is a good or service is exemplified in the case of *Australian Competition and Consumer Commission v Valve Corporation (No 3)* (‘*Valve*’).⁴⁴ This case confirmed that intangible computer software supplied digitally through an online platform are goods. However, certain elements bundled with the software such as non-executable data may not be goods. *Valve* demonstrates that to determine whether a digital product is a good or service may require an involved assessment of the nature of each digital component of the product, beyond the capacity of many consumers, manufacturers, and suppliers. Given this uncertainty, many stakeholders commented on the need for additional regulatory guidance and education, and/or legislative change.

A smaller number of stakeholders considered legislative change would assist to resolve uncertainty in the application of the ACL to AI-enabled goods and services. Amongst those stakeholders who suggested legislative change, common reforms proposed included:

- introducing a new category of ‘digital products’ into the ACL with new or bespoke protections and obligations, or

⁴¹ ACL s 2.

⁴² ACL s 2.

⁴³ See, e.g., *Zhang v United Auctions* [2013] NSWCTTT 6.

⁴⁴ *ACCC v Valve Corporation (No 3)* [2016] FCA 196.

- expanding the definition of goods to *expressly* cover digital products.

Where stakeholders expressed support for a new category of digital products, the addition of ‘digital content’ in the United Kingdom’s (UK) *Consumer Rights Act 2015* (UK) was often a point of reference. The digital content category was introduced in the UK as part of the *Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013* (UK). This regulation implemented an EU directive that introduced digital content into EU law. While this reform did not introduce bespoke protections for consumers of digital content, it served to provide protections and remedies which aligned with the characteristics of this class of goods.⁴⁵

Introducing a new category of digital products may enable software-enabled goods, including AI-enabled goods, to be more easily situated within the ACL framework. However, if introduced, uncertainty would remain or possibly increase in the case of mixed supply as it would involve characterising transactions as a whole as a digital product, a good or a service. This issue is particularly acute in the UK legislative context in the case of Internet of Things (IoT) devices which incorporate digital content and a physical good.⁴⁶

While introducing a new category could provide bespoke protections in relation to digital products, such a change would represent a structural shift in Australia’s consumer protection framework. Given the potential for increased regulatory burden associated with such a change, it is likely only justifiable where the existing framework is demonstrably deficient in its application to software-enabled goods, including AI-enabled goods. The Review did not find such evidence.

In contrast to introducing a new category of digital products under the ACL, clarifying the definition of ‘goods’ to expressly include appropriately defined digital products, may provide similar practical benefits without the associated regulatory burden. Although goods are already expressly defined to include computer software,⁴⁷ further particularisation of the definition to refer to digital products, or a similar class of software-enabled goods, may – informed by appropriate consultation – reduce uncertainty and give clarity to consumers, manufacturers, suppliers and regulators. Unlike introducing a third category of digital products under the ACL, clarifying the definition of goods would retain the existing mutually exclusive distinction between goods and services, simplifying assessments of mixed supply. Consumers, manufacturers and suppliers would also have the benefit of drawing on their existing experience and relevant case law on applying consumer guarantees to goods, reducing uncertainty and regulatory burden.

More fulsome consideration of potential legislative changes, including of associated costs and benefits, could form part of consideration of the outcomes of this review by the Consumer Ministers Network.

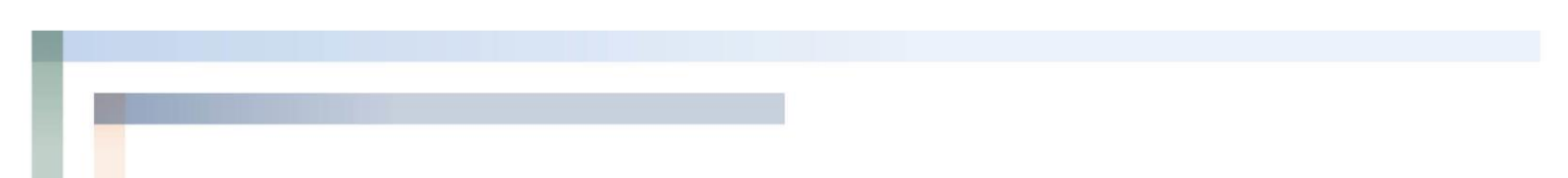
Principles-based consumer guarantees

As outlined in **Chapter 2**, the consumer guarantees provide a basic set of protections for consumers of goods and services. The consumer guarantees provided under the ACL are principles-based. As such, the standards that they provide are broad and flexible, outlining desired outcomes for consumers while allowing businesses to adapt their practices on how this is achieved.

⁴⁵ [Explanatory notes to the Consumer Rights Act 2015](#) (UK) ch 3.

⁴⁶ David Lindsay, Genevieve Wilkinson and Evana Wright, ‘Responding to the challenges of consumer internet of things devices: The case of reforming the Australian consumer guarantees’ (2022) 29(3)1 *Competition and Consumer Law Journal* 226.

⁴⁷ ACL s 2.



In response to consultation, some stakeholders expressed that it is harder to apply principles-based consumer guarantees to AI-enabled goods and services, and software-enabled goods and services more broadly, compared to traditional goods and services. This is partly due to consumers being more familiar with traditional goods and services and, in many cases, holding clear expectations about how such a good or service should perform. By comparison, in the context of new and emerging technologies such as AI, many early adopter consumers do not have a clear reference point against which to assess their experience, and expectations in relation to these goods and services are evolving. Uncertainty over whether an AI-enabled good or service has met the standards required under the consumer guarantees can be further complicated, including in circumstances where:

- the consumers' input plays a role in the quality of the AI-enabled output, for example in voice-activated AI-enabled home assistants, or
- goods or services are capable of adapting and personalising outputs over time.

A level of uncertainty is inherent in principles-based laws, particularly in the context of new and emerging technologies. The alternative would be a prescriptive approach with laws that specify obligations and duties. While this approach may be relatively clear for a time, its inherent inflexibility may mean the law does not respond to market developments, leading to gaps. The ACL's principles-based approach has, to date, largely avoided such technology specific gaps emerging, reducing the need for regular amendment. As consumers, manufacturers and suppliers become familiar with new technology and as markets mature, uncertainty in the application of principles-based consumer guarantees is expected to reduce.

In addition to the expected reduction of uncertainty over time, the consideration by courts of matters involving AI-enabled goods and services produces case law to guide interpretation and provide clarity. While judicial consideration of certain aspects of the ACL framework remains sparse, this is likely to change in future as a result of reforms being progressed to amend the consumer guarantee and supplier indemnification regime. These reforms include the introduction of contraventions for failing to provide the remedies businesses are required to under the consumer guarantee and supplier indemnification regime. ACL regulators would be able to pursue litigation for alleged breaches of the provisions. The ACCC has indicated that these reforms will likely result in new jurisprudence that ACL regulators and businesses could integrate into their compliance approaches.⁴⁸

Education and guidance

Regulatory guidance materials articulate the regulatory decision-making process and how a regulator administers the law for which it is responsible. By comparison, education materials are more general in nature and are aimed at informing or teaching the public about a general topic or concept. Appropriately targeted and reliable education and regulatory guidance materials can be a flexible and timely way for responsible agencies to inform consumers and businesses about the application of existing regulatory frameworks to new and emerging technologies.

There was considerable support among stakeholders for education materials and/or regulatory guidance that clarifies how the ACL applies to software- and AI-enabled goods and services. Stakeholders commented that education and guidance can help consumers to understand their rights and empower them with the knowledge to make informed decisions, particularly in circumstances where aspects of the existing consumer guarantees may be less readily understood in their application

⁴⁸ ACCC, [Improving consumer guarantees and supplier indemnification provisions under the ACL, Submission \[PDF 461 KB\]](#), February 2022.

to software-enabled goods and services. It may also help manufacturers and suppliers understand their obligations. It was suggested that additional education materials or greater guidance may increase consumers' willingness to adopt AI-enabled goods and services, allowing the benefits of AI to be more readily realised by consumers and businesses.

Feedback received during the course of the Review suggests that additional ACCC-published educational materials may deliver an immediate benefit. While stakeholders commented on the potential benefit of educational materials in relation to the application of the ACL to AI-enabled goods and services specifically, it is likely that these benefits could be realised through additional education materials relating to a broader class of software-enabled goods and services. The Review observed that existing ACCC-published education materials relating to the ACL currently have few references to software-enabled goods and services, tending instead to provide examples involving traditional goods and services. While acknowledging that educational materials cannot be published to address every type of possible transaction to which the ACL may apply, there may be scope to make these materials more representative for the increasing number of consumers acquiring software-enabled goods and services, including AI-enabled goods and services. For example, while less than half of Australian adults (47%) had smart devices such as smart TVs, wearables or smart speakers in 2018, this figure had risen to 83% by 2022.⁴⁹ It is expected that such an approach may increase consumer confidence generally in understanding how the ACL may apply to software-enabled goods and services, including those which are AI-enabled.

Uncertainty over the application of the ACL to software-enabled goods and services, including AI-enabled goods and services may also be reduced through additional regulatory guidance. However, regulatory guidance is only beneficial where it is reliable and up-to-date. As a result, additional guidance in this context is likely to be of most value to consumers, manufacturers and suppliers once the regulatory ecosystem applying to these goods and services settles and reform processes currently underway, including in relation to the use of AI in high-risk settings, are concluded.

Finding 2

Uncertainty regarding the distinction between goods and services, including AI-enabled goods and services, presents a barrier to applying the ACL to new and emerging technologies. This uncertainty may be reduced through:

- targeted amendments to the legislated list of items expressly included in the definition of 'goods' in the ACL, and
- updating education materials and regulatory guidance to provide greater clarity on the application of the ACL to software-enabled goods and services, including AI-enabled goods and services.

⁴⁹ ACMA, [Communications and media in Australia series – How we use the internet: Executive summary and key findings \[PDF 231 KB\]](#), December 2022, p 4.

4 Accessing remedies

It is critical for consumers to be able to effectively assert their rights, and for manufacturers and suppliers to understand their obligations under the ACL. Ensuring a clear understanding of rights, remedies and obligations is particularly important to encourage uptake of AI by consumers and across the supply chain.

This chapter examines the appropriateness of remedies under the ACL for consumers of AI-enabled goods and services, barriers faced by consumers in accessing those remedies, supply chain complexities and the distribution of liability across those supply chains. The chapter concludes with a consideration of the functioning of relevant defences available for manufacturers of AI-enabled goods with safety defects.

Appropriateness of remedies

The ACL contains a range of remedies available when a business provides a good or service that does not meet consumer guarantees. These remedies may include a repair, replacement, refund or contract cancellation.⁵⁰ When a consumer suffers damage or loss because of such a failure, they are also entitled to seek compensation. The remedies available to a consumer where a good or service fails to meet a consumer guarantee depend on whether that failure is ‘major’ or ‘minor’ and are summarised in Box 2.



Box 2: Consumer guarantees, failures and remedies

Major failures⁵¹ occur where a good is unsafe, where a good is significantly different from the description, where the problem is such that the consumer would not have purchased the good or service if they had known about the problem, or where a good or service is not fit for its stated purpose, and cannot easily be fixed within a reasonable time.

When there is a **major** failure with a **good**, the consumer can choose to return the good for a refund or replacement or keep the good and seek compensation for the drop in value.

When there is a **major** failure with a **service**, the consumer can choose to cancel the contract and seek a refund for money paid, less a reasonable amount for any work done so far. Alternatively, they may keep the contract and negotiate a reduced price for the drop in value of the service.

If the failure is **minor**, the seller or manufacturer can choose to provide a repair, replacement or refund, or, in the case of services, resupply.

Stakeholders regarded the remedies available under the consumer guarantees as broadly appropriate in the context of AI-enabled goods and services. However, a small number of stakeholders queried whether:

⁵⁰ ACL Ch 5, Pt 5-4.

⁵¹ There is a major failure if a good or service has a major failure as described above, or 2 or more failures that are not major failures individually but, when taken as a whole, would have stopped a reasonable consumer fully acquainted with the nature and extent of the problems from buying the good or service: ACL ss 260, 268.

- the remedy of a repair or replacement is appropriate when applied to AI-enabled goods
- the remedy of re-supply is appropriate when applied to AI-enabled services, where the fault may lie in the underlying algorithm
- harms resulting from discrimination and mis- or disinformation are suitably covered.

As with traditional goods and services, the appropriateness of a particular remedy available under the ACL will be context specific and the ACL is not prescriptive in the particular remedy to be provided. Instead, a range of remedies are available to suppliers, manufacturers and consumers so that an appropriate solution suitable in the circumstances can be provided.

The existing approach for determining what remedy would apply to a consumer guarantee failure, by reference to whether it is 'major' or 'minor', applies equally to AI-enabled goods and services. In practice, this means in the case of major failures, consumers would retain their ability to choose the remedy which they deem most appropriate. In the case of minor failures, manufacturers and suppliers will choose a remedy that is appropriate in the circumstances, having regard to the nature of the failure and their capacity to rectify it.

Beyond remedies for breaches of consumer guarantees, the remedy provisions contained in Part 5-2 of the ACL also provide additional redress options for consumers. The provisions for damages and compensation orders contained in sections 236 and 237 enable consumers to bring actions for damages and apply to a court for compensation orders. These general provisions remain suitable to provide a broad range of remedies to consumers who suffer loss associated with contraventions of the ACL, including those involving AI-enabled goods and services.

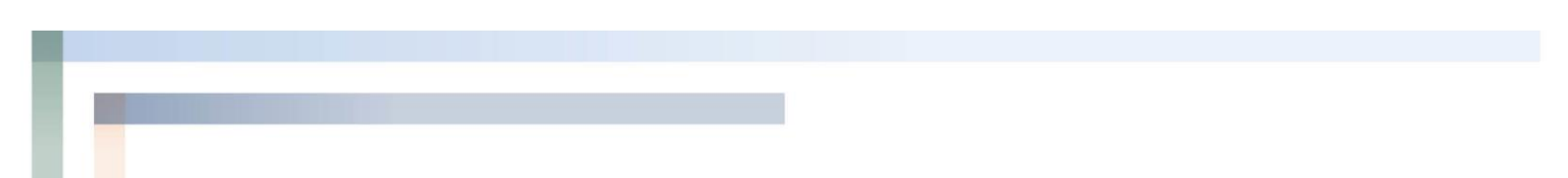
While the ACL's remedial framework is broad, in some cases, the most appropriate remedies will exist outside the consumer protection framework. For example, the *Age Discrimination Act 2004*, *Disability Discrimination Act 1992*, *Racial Discrimination Act 1975*, and *Sex Discrimination Act 1984*, as well as frameworks such as the *Fair Work Act 2009* and relevant state and territory legislation collectively provide a range of protections against discrimination that can be applied across various contexts, including those involving AI.

The information available to the Review indicates the breadth and adaptability of the existing remedial framework under the ACL means it is well placed to ensure consumers have access to appropriate remedies now and into the future. Continuing work on the Australian Government's safe and responsible AI agenda will further consider remedies for consumers across other frameworks.

Practical barriers to accessing remedies

While the remedies available to consumers under the ACL are broadly appropriate for AI-enabled goods and services, a concern commonly expressed among stakeholders was that consumers may face practical evidentiary challenges in successfully accessing the remedies available to them. It was contended that the opacity associated with some AI systems may present challenges for consumers.

The operation of some AI models may be extremely difficult to explain. Even where evidence of underlying functionality is available, the nature of that information may be difficult for non-experts to understand. As a result, consumers of AI-enabled goods or services may face substantial difficulties when seeking to obtain evidence regarding the operation of an AI-enabled good or service in support of a claim made under the ACL. For example, an AI-enabled assistant on a business' website may make a product recommendation to a consumer which, following the purchase, the consumer finds to be unsuitable for the desired purpose causing significant financial loss. In these circumstances, the



consumer may face difficulties in obtaining damages under the ACL without specific technical information relating to the operation of the AI-enabled assistant.

Such issues are likely to be difficult for consumers to navigate given that information related to an AI model which may corroborate a claim may hold significant commercial value or be considered valuable intellectual property. This issue is not unique to the AI context and businesses in a range of circumstances may be reluctant to provide consumers with information which would substantiate a complaint. This information asymmetry can make it harder for consumers to obtain a remedy.

The increasing complexity of consumer goods and services more broadly – not just those incorporating AI – are presenting evidentiary challenges to a wide range of consumers. The 2023 Australian Consumer Survey found that many consumers are finding it difficult to obtain remedies from manufacturers and suppliers for consumer guarantees failures.⁵² The survey found that 31% of surveyed consumers who had recently experienced a problem and taken action had not yet had their problem resolved, while of the 69% of those whose issues were resolved, a third were not satisfied with the resolution. The survey also highlighted that only 23% of surveyed consumers were able to resolve their problem directly with the relevant business.

In practice, the burden of evidence which consumers of AI-enabled goods and services may face, as with consumers of traditional goods and services, is context dependent. A consumer seeking a remedy from a supplier for failure of a consumer guarantee does not need to diagnose the precise cause of a malfunction, but rather demonstrate that a malfunction has occurred.⁵³ Consumers are therefore protected from onerous evidentiary burdens for more minor matters. By contrast, under other ACL remedial provisions a consumer seeking compensation for damages through a tribunal or court will face a higher evidentiary burden in establishing causation between a malfunction and any associated harms. This higher evidentiary burden, though potentially challenging to meet, is appropriate given the higher financial and other risks involved for all parties.

The evidentiary burdens imposed on consumers of AI-enabled goods and services are applicable to both simple and highly complex goods and services. Imposing an evidentiary burden on consumers seeking remedies under the ACL is intended to strike the right balance for consumers, manufacturers and suppliers. It is expected that proposed reforms to the consumer guarantee and supplier indemnification provisions will encourage businesses to comply with their obligations under the ACL, incentivising businesses to reach satisfactory outcomes with consumers without the need for tribunal and or court processes. Barriers to accessing customer support, where businesses make it difficult for consumers to contact them about problems with goods or services, is also being considered as part of the Government's consultation on proposed reforms to address unfair trading practices.

Consideration of evidentiary burdens in the context of AI-enabled goods and services is not unique to Australia. For example, the EU's proposed AI Liability Directive (AILD) aims to address concerns that there may be evidentiary challenges in establishing liability for damage caused by an AI system's opaque, complex and autonomous nature.⁵⁴ While not yet implemented, if enacted the AILD would seek to address these concerns by providing a presumption of a causal link between the fault of the defendant and the failure of an AI system, under certain circumstances.

⁵² Kantar Public, Australian Consumer Law Survey, Final report, December 2023, [Australian Consumer Survey 2023 Final Report](#), p 71, Australian Consumer Law website.

⁵³ See, e.g., *Capic v Ford Motor Company (No 3)* [2017] FCA 221.

⁵⁴ [Proposal for a Directive of the European Parliament and of Council on adapting non-contractual civil liability rules to artificial intelligence \(AI Liability Directive\) \(Explanatory Memorandum, No COM\(2022\)496 final, 28 September 2022\)](#).

Stakeholder views on replicating an AILD approach in Australia was mixed. Some stakeholders expressed that it may provide a potential solution to some of the complexities that consumers may encounter in attributing liability to a manufacturer or supplier in an AI context. Conversely, other stakeholders expressed concern with an approach that would reverse the long-established onus of establishing causation.

While the AILD provides for a presumption of causation under limited circumstances in an EU context, the Review found insufficient evidence that such an intervention is required in Australia. It is a well-established principle of common law that one party (the plaintiff) should not be able to hold another party (the defendant) liable for any loss suffered, unless the plaintiff can establish the defendant's conduct caused the plaintiff's loss. While it may be reasonable to consider the appropriateness of evidentiary burdens faced by consumers under the ACL, particularly for complex software-enabled goods and services, detailed consideration of this issue is beyond the scope of this Review.

Supply chain complexities and establishing liability

AI systems often involve a complex network of parties responsible for different aspects of the system's development, deployment and integration into consumer goods and services. The supply chain and lifecycle of an AI system can vary significantly depending on context, such as whether the systems are developed in-house or by an external developer.

Concerns were raised by a number of stakeholders, particularly those representing the business community, in regard to the complexity of those supply chains and how that complexity may affect the distribution of liability. Those stakeholders expressed concern at a lack of clarity as to whom would be deemed a 'manufacturer' within the supply chain. Uncertainty was also raised about circumstances where multiple AI systems may be interacting with each other, and that many businesses across AI supply chains may be based overseas. Small business representatives noted the lack of resources and relative sophistication of those businesses may increase their vulnerability to costs associated with supply chain complexity.

Stakeholders also contended that supply chains for AI-enabled goods and services may be further complicated where parties who sit downstream from AI model developers modify the underlying model for their own purposes. For example, an AI model may be developed and sold to multiple organisations, with each individual organisation training that model on their own information and data to enable bespoke outputs.

While AI supply chains, and the technology underlying them, can exhibit complexities, this is not unique to AI as many traditional goods and services are delivered through complex and cross-jurisdictional supply chains. For example, a vehicle such as a caravan may have a complex supply chain involved in its construction. One party may purchase any number of component parts to the caravan which are ultimately assembled into the final good purchased by a consumer. While the determination of which party or parties are considered to be a manufacturer may vary on a case-by-case basis, the ACL does not specify how such relationships should be formed between parties in every supply chain. Instead, the ACL provides broad definitions which, to date, have proven to be generally adaptable to a variety of different circumstances and technologies.

The AI market and supply chain is still developing and new market participants may require time to understand how the ACL applies to them. However, the Review did not identify any reason unique to AI that would prevent these same definitions from applying in this context. Fundamentally, it is incumbent on parties within AI supply chains to understand how their business models are likely to be treated under the ACL and the attendant obligations and responsibilities relevant to them. However,

opportunities may exist for targeted legislative amendments to enhance clarity and certainty to support manufacturers of software-enabled goods, including AI-enabled goods.

Section 7(1)(a) of the ACL currently defines a manufacturer as including ‘a person who grows, extracts, produces, processes or assembles goods’. Although goods are defined to include computer software (and computer software is therefore ‘manufactured’ within the meaning of the ACL), elements of this definition are more readily and clearly applied to traditional goods. Clarifying the definition of a manufacturer within the ACL to *expressly* refer to manufacturers of digital products – or a similarly described class of software-enabled goods – may address some of the supply-chain complexity uncertainty raised in response to consultation. Any review would likely benefit from considering alignment between the ACL and other frameworks, as well as the potential amendments to the definition of ‘goods’ discussed in **Chapter 3**.

While clarification may benefit manufacturers of AI-enabled goods, the ACL is intended to largely inoculate consumers from the complexity of the supply chain which may sit behind any good, including AI-enabled goods. Under the consumer guarantees, for example, suppliers are required to provide consumers with a repair, replacement or refund when there has been a failure. Manufacturers are then held liable for indemnifying (reimbursing) suppliers for the cost of providing the consumer with a remedy where the manufacturer is at fault for the consumer guarantees’ failure.⁵⁵

Manufacturers cannot contract out of their supplier indemnification obligations.⁵⁶ The effect is that the consumer need only engage with the supplier of the good regardless of the complexity of the underlying supply chain. Similarly, a consumer seeking a remedy for a defective good under the ACL is expressly protected from instances where there is an unidentified manufacturer.⁵⁷ As with consumer guarantees, the result is that the consumer only needs to engage with known parties, regardless of the complexity of the underlying supply chain.

Establishing liability

In establishing supplier or manufacturer liability under the ACL, the conduct, knowledge or intention of directors, employees and agents may, under certain circumstances, be considered when determining the state of mind of a corporation (‘corporate attribution’).⁵⁸

Some stakeholders raised that the introduction of AI into decision-making processes, or as a tool for making representations to consumers, may have implications for establishing liability in this way. For example, concern was expressed over whether existing mechanisms for establishing liability may operate as intended in circumstances involving autonomous or semi-autonomous AI systems.

The approach to corporate attribution contained in the ACL reflects similar approaches taken across many Commonwealth statutes.⁵⁹ Different approaches to attributing knowledge, intent or conduct to corporations received detailed consideration as part of the Australian Law Reform Commission’s 2020 report on Corporate Criminal Responsibility.⁶⁰

⁵⁵ Where the manufacturer of a good does not have a place of business in Australia, the ACL defines the term ‘manufacturer’ to include a person who imports goods into Australia: *ACL s 7*. A reference to ‘manufacturer’ in this report should be read as including ‘importer’.

⁵⁶ Manufacturers may, however, limit their liability in relation to goods which are not ordinarily acquired for personal, domestic, or household use (i.e. certain commercial goods): *ACL s 276A*.

⁵⁷ *ACL s 147*.

⁵⁸ *Competition and Consumer Act 2010 s 139B*.

⁵⁹ ALRC, Corporate criminal responsibility, [Discussion paper 87](#), November 2019.

⁶⁰ ALRC, Corporate criminal responsibility, [ALRC report 136](#), August 2020.

No evidence was provided as part of the Review that existing arrangements for attributing liability to corporations are unsuitable in the context of supplier and manufacturer adoption of AI technologies. However, the emergence of new technologies over time, including agentic AI, may necessitate further consideration of the mechanisms available under the law to ensure the ACL is realising its policy intent. If required, consumers and businesses would benefit from this consideration occurring in a coordinated way across legislative frameworks, to avoid regulatory dislocation and preserve certainty.

Defences to defective goods actions

The Review sought views from stakeholders on the applicability and suitability of defences under the ACL which may warrant re-examination in the context of AI-enabled goods and services. In this regard, some stakeholders expressed concerns with defences available to manufacturers in defective goods actions.

As noted in **Chapter 2**, a good has a safety defect if it does not meet the level of safety the public is generally entitled to expect. The expected level of safety will vary from case to case, and whether a safety defect exists is a matter for the court.⁶¹ The factors the court may take into account when determining whether a good has a safety defect are summarised in Box 3.



Box 3: Safety defects and compensation

The court will take various factors into account when determining whether a good has a safety defect, including:

- how and for what purposes the product has been marketed
- product packaging
- the use of any mark in relation to the product
- instructions and warnings for assembly and use
- what might reasonably be expected to be done with the product
- the time when the product was supplied.

Under the ACL, a consumer can seek compensation from a manufacturer who has supplied a good with a safety defect, if that good has caused loss or damage.

Consumers who suffer loss or damage because of safety defects in a manufacturer's goods can take legal action against the manufacturer or make a complaint to the regulator. Defences available to manufacturers in such matters are:

- the safety defect did not exist at the time of supply by the manufacturer ('time of supply defence')
- the safety defect only existed because a mandatory standard was complied with

⁶¹ ACL s 9.

- the safety defect could not have been discovered at the time the manufacturer supplied the goods because there was insufficient scientific or technical knowledge at that time ('state-of-the-art defence')
- the product was a component of a finished product and the safety defect is only attributable to:
 - the design of the finished goods or the markings on or accompanying them
 - instructions or warnings included in those finished goods.

Stakeholder feedback focused on the time of supply and state-of-the art defences.

Time of supply and manufacturer control

Stakeholders supported retaining the time of supply defence in the context of AI-enabled goods; however, noted that the provision as presently drafted may not achieve this policy intent in all circumstances.

The apparent policy intent behind the time of supply defence is to insulate manufacturers from liability for safety defects that arise after they could reasonably be considered to maintain control of the goods. For traditional goods, the time of supply and the time at which control is relinquished by the manufacturer are the same. By contrast, certain software-enabled goods, including AI-enabled goods, may enable a manufacturer to continue to update software after the time of initial supply and in a way which materially affects the safety of the good. For example, a manufacturer of a smart fridge may continue to provide software updates after the fridge is sold to a consumer. Such updates may alter the functioning of the software, including functionality which may impact product safety.

A defence that relies on the time of *supply*, rather than the time at which *control* is relinquished, in some cases may not reflect the reality of how consumers experience certain software-enabled goods and the ongoing relationship with manufacturers. While this changing relationship is not unique to AI, reconsideration of the framing of this defence may nevertheless be warranted in order for the policy intent of the defence to be realised.

In considering how the time of supply defence may be amended, consideration could be given to alignment with existing provisions within the ACL which expressly incorporate the concept of control to ensure a greater level of consistency.⁶² However, any change to this provision would require careful consideration to ensure the effective functioning of the defence is retained, while reducing regulatory uncertainty..

State-of-the-art defence

In relation to the state-of-the-art defence, stakeholders questioned whether this defence may be overly broad if applied to AI-enabled goods. In particular, it was suggested that, as a manufacturer may be unable to predict all possible outputs arising from an AI-enabled good, the manufacturer may be able to rely on the defence that they did not know that such an output would occur in order to avoid liability in a defective goods action.

The purpose of the state-of-the-art defence is to shield manufacturers from liability in circumstances where they could not have known of the existence of a safety defect with the technology available at the time of supply. To be successful, the manufacturer must not establish that *they* did not have knowledge of the safety defect, rather that the safety defect could not have been discovered by

⁶² The concept of control is already reflected elsewhere in the ACL: see ss 259, 271.

anybody at the time. The defence therefore imposes a high bar on manufacturers and means manufacturers must keep up to date with advances in relevant knowledge after putting goods into circulation. For example, if it becomes known that certain code used in a large language model (LLM) is prone to produce safety defects, and the manufacturer of that LLM could have discovered and remedied that prior to a safety defect arising, it is highly unlikely the manufacturer would be able to successfully rely on the state-of-the-art defence.

While close attention should continue to be given to how the state-of-the-art defence is pleaded in matters involving AI-enabled goods under Part 3-5, the Review did not find evidence to suggest that the current settings require recalibration at this time. If the defence is found to be operating in an unintentionally broad manner in future, consideration should then be given to adjustments to ensure the intent of the defence is retained.

Finding 3

The existing remedy and liability provisions under the ACL are broad and remain appropriate in an AI context. Additional clarity regarding the existing obligations of businesses across the AI supply chain may be realised through targeted amendments to the definition of ‘manufacturer’.

Finding 4

Existing manufacturer defences to defective goods actions available under the ACL remain broadly appropriate in an AI context. Technical amendments may be required to ensure existing defences operate as intended in the context of software-enabled goods, including AI enabled goods, where the manufacturer continues to exercise a degree of control over the good post-supply.

5 Administration

In adopting the ACL in 2010, the Commonwealth, state and territory governments agreed to retain their own consumer regulators for administration and enforcement. Consequently, the ACL is administered under a ‘one-law, multiple-regulator’ model. Each ACL regulator is independent, has its own enabling legislation and exercises its powers and functions accordingly. The regulators of the ACL are:

- the ACCC, in respect of systemic conduct in trade or commerce at a national level and consistent with published priorities, and conduct involving the use of postal, telephonic and internet services
- state and territory consumer protection agencies, in respect of conduct engaged in by persons carrying on a business in, or connected with, the respective state or territory.

Each ACL regulator has a compliance and enforcement policy which details the compliance and enforcement powers and tools available to them under the ACL and supporting legislation. These include court action, infringement notices, enforceable undertakings, administrative resolutions, guidance and education, formal written warnings to a business, dispute resolution, and public

warnings or other public statements.⁶³ When enforcing the law, ACL regulators seek to take proportionate action, aiming to ensure compliance and deter offending conduct, encourage the effective use of compliance systems and, as appropriate, seek penalties through court action.

Some submissions to this Review suggested that the ACCC may require additional powers to be able to effectively regulate AI-enabled goods and services. The speed and scalability of AI was frequently referenced as a point of concern, with the potential for many breaches of the ACL to occur within short periods of time. The takedown regime in the *Copyright Regulations 2017* made under the *Copyright Act 1968* and removal notices given by the eSafety Commissioner under sections 109 and 110 of the *Online Safety Act 2021* were referenced as possible models on which additional powers could be modelled.

While approaches vary across regulators, the ACCC has access to a broad range of powers under the *Competition and Consumer Act 2010* to address risks which may emerge in the marketplace, including those which may arise due to AI-enabled goods and services. These include powers to seek an injunction and issue public warning notices.⁶⁴ While the sufficiency of the ACCC's powers to undertake its regulatory activities are regularly reviewed, the Review did not find evidence that the nature of AI-enabled goods or services necessitate changes to existing powers available to the ACCC.

Some stakeholders also suggested that, as many parties in the AI supply chain may be based overseas, there may be practical difficulties for ACL regulators in enforcing the ACL. While pursuing actions against entities in other jurisdictions is complex, this complexity is not unique to AI-enabled goods and services. In view of this, the ACCC's information gathering powers were clarified in 2022 to explicitly specify that the ACCC can serve certain notices in or outside of Australia.⁶⁵ In addition, following the Federal Court Legislation Amendment Rules 2022, leave of the court is no longer required to serve originating applications on parties outside of Australia. This amendment reduces previous barriers to claims being brought under the *Competition and Consumer Act 2010* against overseas entities, including those involved in the provision of AI-enabled goods and services.

Finding 5

The nature of AI-enabled goods and services does not necessitate specific changes to current powers available to the Australian Competition and Consumer Commission (ACCC). Regular review of the ACCC's powers should continue in order to ensure the ongoing sufficiency of those powers in contexts including, but not limited to, AI.

6 International perspectives

Governments across the world are considering how best to realise the benefits and manage risks associated with AI. In response to consultation, stakeholders expressed that their views were informed by international approaches to AI regulation. Given the global nature of AI supply chains, the similarities and differences between Australia's national consumer protection framework and similar jurisdictions are a focal point for both consumers and businesses.

⁶³ ACL ch 5.

⁶⁴ ACL ss 223, 232.

⁶⁵ *Treasury Laws Amendment (Energy Price Relief Plan) Act 2022*.

This chapter considers how Australia’s consumer protection framework is positioned to respond to risks from AI-enabled goods and services when compared to the consumer protections laws of select comparable jurisdictions: the European Union (EU), the United Kingdom (UK) and Singapore.

European Union

In the EU, consumer protections are governed by ‘directives’ or ‘regulations’ made by the European Commission. A directive is a legislative act that sets out a goal and requires each member state to draft its own legislation transposing the directive to achieve the goal. By contrast, a regulation is a binding legislative act, directly applicable in its entirety across each EU member state. Regulations do not require separate implementation by EU member states.

Attachment A maps core protections relevant to consumers of AI-enabled goods and services to the EU’s consumer protections regime. Overall, the directives that make up the EU’s framework offer largely comparable consumer protections to those in the ACL. Some of the key differences are:

- There is no direct equivalent for unconscionable conduct in EU law. However, the EU prohibits ‘unfair commercial practices’, including ‘aggressive practices’ which, in certain circumstances, may amount to unconscionable conduct under the ACL.
- While protections equivalent to the consumer guarantees apply to goods and digital services in the EU, no statutory guarantees apply to non-digital services. As discussed in **Chapter 2**, under the ACL the consumer guarantees apply to both goods and services.
- Consumer remedies for a failure to meet the EU’s equivalent of consumer guarantees are more closely linked with the time of supply. There is a statutory presumption that if a defect manifests within 6 months of supply the defect was present at the time of supply. However, remedies are generally only available if the failure occurs within 2 years of supply. In Australia, the period for which goods and services must conform with the consumer guarantees depends on what would be reasonable, given the cost and quality of the good or service. As such, a consumer may have a longer period to seek a remedy in Australia, depending on what is reasonable.
- The EU consumer protections regime does not apply to business-to-business transactions unless specified. In Australia, business transactions are generally protected under the ACL, subject to certain restrictions. For example, under the ACL consumer guarantees will generally apply to a business transaction under \$100,000.

In addition to the consumer protection regime, the EU has also enacted regulations that seek to more directly address harms that may arise from AI-enabled goods and services. These include the Data Act,⁶⁶ which regulates access to and use of IoT products and related service data, the AI Act,⁶⁷ which prohibits certain applications of AI and provides mandatory transparency requirements, the Digital Services Act,⁶⁸ which regulates the design, organisation and operation of digital platforms (including

⁶⁶ [Regulation \(EU\) 2023/2854 of the European Parliament and of the Council of 13 December 2023 on harmonised rules on fair access to and use of data.](#)

⁶⁷ [Regulation \(EU\) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence.](#)

⁶⁸ [European Parliament and Council Regulation 2022/2065 of 19 October 2022 on a single market for digital services.](#)



marketplaces), and the Digital Markets Act,⁶⁹ which regulates large digital platforms. The protections afforded by these acts are more closely aligned to reforms being progressed through other processes across Government and operate in addition to the protections afforded by the ACL. These include implementation of the Government Response to the Privacy Act Review, the *2023-2030 Australian Cyber Security Strategy* and the consumer recommendations of the ACCC's Digital Platform Services Inquiry.⁷⁰

The proposed AILD, described in **Chapter 4**, also aims to address specific AI concerns in adapting non-contractual civil liability rules to AI, including by imposing a presumption of causality on businesses under certain circumstances. The AILD is not finalised and there are ongoing discussions on its direction. If the presumption of causality is enacted, it may lower barriers to accessing remedies for consumers in the EU. However, as discussed in **Chapter 4**, replicating such an approach in Australia would represent a significant break with legal convention, and there is currently insufficient evidence that such an intervention is required under the ACL.

Overall, Australian consumers of AI-enabled goods and services enjoy similar protections to consumers in the EU. While individual consumers in the EU may have easier access to remedies under certain circumstances, such as during the first 6 months after a good is supplied, remedies in Australia are available to both individuals and businesses and accessible for a longer period. Ongoing work on implementing the Government Response to the Privacy Act Review, the *2023-2030 Australian Cyber Security Strategy*, and the consumer recommendations of the ACCC's Digital Platform Services Inquiry may serve to supplement protections contained in Australia's consumer protection framework, reflecting the multi-framework approach adopted in the EU.

United Kingdom

As a former member of the EU, the UK's consumer protection framework is currently broadly consistent with the EU. The UK's consumer protection framework is mainly contained in 2 key pieces of legislation - the *Consumer Protection from Unfair Trading Regulations 2008* (UK) (CPUTR) and the *Consumer Rights Act 2015* (UK) (CRA). The CPUTR largely enacts EU Directive 2005/29 on unfair commercial practices and does not apply to business-to-business transactions. The CRA protects consumers in respect of unfair contracts, provides statutory rights for consumers and establishes a strict liability regime for damages caused by defective products.

In addition to the consumer protections framework, the UK has enacted comprehensive product safety and product liability legislation. The *General Product Safety Regulations 2005* (UK) aims to ensure that all consumer products on the market are safe by imposing safety obligations on producers and distributors. In addition, the *Consumer Protection Act 1987* (UK) establishes a strict liability regime for damage caused by defective products. Unlike the EU, there is no specific rights to access information, or presumptions that assist to establish defectiveness or causation.

As the UK consumer protections regime continues to, in large part, reflect that of the EU, the differences between the UK consumer protections regime and the ACL are similar to those in the EU as outlined above. **Attachment A** maps core protections relevant to consumers of AI-enabled goods and services to the UK's consumer protection regime. Key differences between jurisdictions are:

⁶⁹ [European Parliament and Council Regulation 2022/1925/EU of 14 September 2022 on contestable and fair markets in the digital sector.](#)

⁷⁰ [ACCC, Digital platform services inquiry 2020-25.](#)

- Under the UK's equivalent to the ACL's misleading or deceptive conduct provisions, certain statutory defences are available to traders which are not available in Australia. These include a 'due diligence' defence set out in Regulation 17 of the CPUTR that all reasonable precautions and due diligence was undertaken to avoid an offence being committed.
- The UK's equivalent to the consumer guarantees are the consumer statutory rights set out in the CRA. Under the CRA, different remedies apply from 30 days after supply, while in Australia the rights established under the consumer guarantees do not differ after 30 days.
- The statutory consumer rights in the UK apply explicitly to 'digital content', where no such distinction exists within the ACL. This is discussed further in **Chapter 3**.

The UK has issued a framework for responsible AI development and 'principles' for regulators to apply in responding to AI-related risks.⁷¹ However, there is currently no targeted legislative response in the UK to AI in consumer goods and services. The Starmer Government has flagged an intention for legislative intervention in relation to AI, but no proposals have yet been released.⁷²

Overall, the UK's consumer protection regime provides broadly equivalent protections to consumers of AI-enabled goods and services to those afforded to consumers in Australia. This regime, together with the AI development framework and accompanying principles are unlikely to offer UK consumers of AI-enabled goods and services better protections compared to consumers in Australia.

Singapore

Singapore's consumer protection regime is contained in a number of pieces of legislation and generally offers narrower protections than the ACL, as outlined in **Attachment A**.

Singapore's principal consumer protection law is the *Consumer Protection (Fair Trading) Act 2003* (Singapore) (CPFTA). The second schedule of the CPFTA contains a list of specific practices that are prohibited, and this list shares similarities to the prohibitions on misleading or deceptive conduct and unconscionable conduct contained in the ACL. Unlike in Australia, the CPFTA applies only to consumer transactions, and a statutory maximum of S\$30,000 applies to claims in most circumstances.

In addition to the CPFTA, the *Sale of Goods Act 1979* (Singapore) implies a number of guarantees into contracts for sale of goods that are functionally similar to the consumer guarantees for goods in the ACL. Singapore does not provide consumer guarantees, or an equivalent thereof, for services. There is also no general prohibition on unfair contract terms in Singapore. However, the *Unfair Contract Terms Act 1977* (Singapore) does prohibit some specific standard terms in consumer contracts.

In contrast to Australia, the UK and EU, Singapore's product safety regime is not primarily contained in statute. Consumers must rely on common law principles and various statutes, including the protections in the CPFTA and *Sale of Goods Act 1979* (Singapore) where available. Where claims for damages exceed S\$30,000, consumers must rely on negligence or other tortious causes of action.

Singapore has not implemented legislation that is targeted at protecting consumers from risks arising from AI-enabled goods and services. However, Singapore has published guidance on AI including:

⁷¹ Competition and Markets Authority, [CMA AI strategic update](#), 29 April 2024.

⁷² UK Parliament Hansard, [King's Speech](#), 17 July 2024.

- The Model AI Governance Framework for Generative AI, which provides guidance on addressing key ethical guidance and governance issues when deploying AI.⁷³
- The Advisory Guidelines on use of Personal Data in AI Recommendation and Decision Systems, which sets out best practices for how organisations should handle personal data and how they should inform customers of the use of that data. The guidelines are not legally binding.⁷⁴

Overall, Singapore's consumer protection regime and voluntary AI guidance and frameworks provide consumers in Singapore with more limited rights than consumers of AI-enabled goods and services in Australia.

Finding 6

The protections available under the ACL provide Australian consumers of AI-enabled goods and services with similar, and in some cases enhanced, protections when compared to those available to consumers in the EU, UK and Singapore.

⁷³ AI Verify Foundation and Infocomm Media Development Authority, [Model governance framework for generative AI \[PDF 3.6 MB\]](#), 30 May 2024.

⁷⁴ Personal Data Protection Commission Singapore, [Advisory guidelines on use of personal data in AI recommendation and decision systems](#), 1 March 2024.



Multi-jurisdiction Case study: AI-enabled vacuum cleaner

An individual consumer acquires an AI-enabled vacuum cleaner. The vacuum cleaner uses speech recognition to allow the consumer to control the product by voice command. While the vacuum cleaner is in use shortly after purchase, the vacuum cleaner fails to change direction and collides with a piece of furniture, damaging it in the process.

Australia

An Australian consumer would be able to seek a remedy under the consumer guarantees for failure to meet the guarantee of acceptable quality. Unless the fault with the vacuum cleaner met the threshold to be considered a major failure, it would be considered a minor failure so the supplier or manufacturer would need to supply, at minimum, a repair. They may also choose to provide a refund or replacement.

The test of whether a good is of acceptable quality considers whether the good is fit for all purposes for which it was supplied, is acceptable in appearance and finish, is free for defects, is safe, and is durable. It is up to the consumer to establish that the AI-enabled vacuum was not of acceptable quality, but there is no requirement for the consumer to identify a specific fault.

An Australian consumer may be able to seek compensation for damage to the furniture if it is considered reasonably attributable to the AI-enabled vacuum cleaner. Compensation could include paying for the damage caused by the vacuum cleaner and transportation costs incurred from fixing the damage.

European Union

The AI-enabled vacuum cleaner could be regarded as either a good or a digital service in the EU. Consequently, an individual EU consumer could seek a remedy under the EU's equivalent of consumer guarantees in Directive 2019/770⁷⁵ which applies to goods or Directive 2019/771⁷⁶ which applies to digital services. In either case, remedies that the consumer can seek are a repair or replacement, reduction in price or termination of the contract. Compensation for the damaged furniture may not be directly sought through these directives.

As the failure occurred within the first 6 months of supply, there is a statutory presumption that the defect was present at the time of supply.

As an alternative to the consumer guarantees, an EU consumer may also access a remedy under Directive 2024/2853⁷⁷ on product safety for damage resulting from the AI functionality. In this case, the consumer could seek compensation for damage caused to the furniture.

United Kingdom

A UK consumer could seek a remedy under the UK's equivalent to consumer guarantees in the CRA. If the failure occurred within the first 30 days of supply, the consumer could reject the goods and seek a refund. If it is after 30 days, a consumer can seek a repair or replacement. If a repair or replacement is not practical or possible, or fails, the consumer may claim a full refund (or a price reduction if they wish to keep the vacuum cleaner).

As with the EU, there is a statutory presumption that the defect was present at the time of supply.

The consumer does not have a right to seek compensation for the damaged furniture under the CRA.

Singapore

A Singaporean consumer may obtain a remedy under the CPFTA, depending on the representations made by the supplier about the AI-enabled vacuum's capabilities. Remedies available under the CPFTA are a right to a repair or replacement, or a reduction in the price of goods. While likely not applicable in this scenario, there is a limit of S\$30,000 to claims.

To access the remedy, a Singaporean consumer would need to demonstrate that the vacuum cleaner did not work as advertised.

There is no right of compensation for the damaged furniture under statute in Singapore, and a consumer wishing to seek damages for the damaged furniture would have to bring an action in tort.

7 Conclusion

Since its introduction, the ACL has generally proven effective and adaptable in empowering and protecting consumers. The ACL's economy-wide and principles-based approach to improving consumer wellbeing has largely responded to a changing economy and evolving consumer harms. The ACL will remain an important framework for consumers, manufacturers and suppliers as technological change continues at a rapid pace, including due to AI.

AI is already delivering benefits to Australian consumers and businesses and demand for AI-enabled goods and services is expected to grow into the future. However, the integration of AI into goods and services has the potential to amplify or augment risks for consumers. In responding to these risks, proportionate regulation is required which protects consumers while also supporting the safe and responsible adoption of AI across the economy.

The Review identified that the ACL is broadly capable of adapting effectively to cover AI-enabled goods and services, and to the introduction of AI into business practices. While opportunities exist to enhance regulatory clarity and certainty in some areas, the scope of the existing protections and mechanisms for providing remedies remain appropriate. In addition, it is expected that reforms currently underway in relation to unfair trading practices and consumer guarantees and supplier indemnification arrangements will further the strengthen the operation of the ACL to the benefit of consumers, suppliers and manufacturers of AI-enabled goods and services.

Improving clarity and certainty in the operation of the ACL benefits consumers, manufacturers and suppliers. In many cases, stakeholders acknowledged the opportunities for improving clarity and certainty identified by the Review are applicable to a broader class of software-enabled goods and services, including AI-enabled goods and services. Continuing work across Government to support the safe and responsible adoption and use of AI will also contribute to improved clarity and certainty.

The Review has adopted a forward-looking approach, however, AI technology continues to develop quickly. Mechanisms currently exist under the ACL that enable Government and regulators to address changes in consumer risks which may arise in future. Treasury, the ACCC, and state and territory regulators all have a role to play in monitoring continuing AI-related developments. As with other emerging consumer law issues, existing governance arrangements used to administer and develop the ACL provide an avenue for undertaking this monitoring effort.

Consumer Affairs Ministers have agreed that ensuring consumer protection laws remain fit-for-purpose to protect consumers using AI-enabled products and services is a policy priority for 2025. Further consideration of the treatment of AI-enabled goods and services under the national consumer protection framework will be considered through this mechanism.

⁷⁵ Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services.

⁷⁶ Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods.

⁷⁷ Directive (EU) 2024/2853 of the European Parliament and of the Council of 23 October 2024 on liability for defective products.

Key terminology

Term	Definition*
Agentic AI	AI that is capable of accomplishing multi-step tasks in pursuit of a high-level goal with little or no human oversight.
AI-enabled goods and services	<p>Goods and services which, when made available to consumers, involve a consumer directly interacting with an AI system.</p> <p><i>For example: A security system which uses facial recognition is an AI-enabled good and an online chatbot to assist with consumer queries is an AI-enabled service.</i></p>
AI model	<p>The raw, mathematical essence that is often the ‘engine’ of AI applications.</p> <p><i>For example, the ChatGPT app is an AI system. Its core engine, GPT-4, is an AI model.</i></p>
AI system	<p>A machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments. Different AI systems vary in their levels of autonomy and adaptiveness after deployment.</p> <p>The tools or techniques AI systems can employ vary widely and may include: machine learning, computer vision, natural language processing, expert systems and speech recognition.</p>
Developer	An organisation or individual who designs, builds, trains, adapts, or combines AI models and applications.
Large language model (LLM)	A type of generative AI that specialises in the generation of human-like text.
Software-enabled goods and services	Goods and services which, when made available to consumers, involve a consumer directly interacting with software, whether or not that software uses AI technology.

**These definitions are used for the purposes of this paper. Treasury acknowledges that preferred terminology surrounding AI continues to evolve.*

Attachment A – International comparisons to the ACL

European Union

ACL protection	EU directive	Comparison
<p>Misleading or deceptive conduct</p> <p>False or misleading representations</p>	<p><i>Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers</i></p> <p><i>Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market</i></p> <p><i>Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising</i></p> <p><i>Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights</i></p> <p><i>Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 as regards the better enforcement and modernisation of Union consumer protection rules (Omnibus Directive)</i></p>	<p>The EU consumer protection regime includes a prohibition against ‘unfair commercial practices’, which include misleading acts and omissions. This general protection is similar to the protections against false, misleading or deceptive conduct afforded to Australian consumers under the ACL.</p>
<p>Unconscionable conduct</p>	<p><i>Directive 98/6/EC</i></p> <p><i>Directive 2005/29/EC</i></p> <p><i>Directive 2006/114/EC</i></p> <p><i>Directive 2011/83/EU</i></p> <p><i>Directive (EU) 2019/2161</i></p>	<p>There is no concept of 'unconscionable conduct' under EU law. However, the prohibition against ‘unfair commercial practices’ extends to ‘aggressive practices’ which may capture a subset of conduct prohibited by the Australian prohibition against unconscionable conduct.</p>

Unfair contract terms	<i>Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts</i>	Consumers in the EU benefit from similar protections against unfair contract terms in standard form contracts available to Australian consumers under the ACL. Unlike in Australia, small businesses do not benefit from protections (other than in respect of data transactions).
Consumer guarantees	<i>Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services</i> <i>Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods</i>	<p>Consumers in the EU enjoy guarantees equivalent to those in the ACL (with the exception of the guarantee as to undisclosed securities in section 53) in respect of goods and digital services, but there are no statutory guarantees applicable to non-digital services.</p> <p>In the EU, remedies are only required to be available where a failure occurs within two years of supply. There is a statutory presumption in the EU that if a defect manifests within the first six months, it was present at the time of supply.</p> <p>In Australia, a consumer has longer to seek a remedy where a good or service does not comply with consumer guarantees. The period for which goods and services must conform with the consumer guarantees depends on what would be reasonable, given the cost and quality of the item.</p>
Product safety	<i>Directive (EU) 2024/2853 of the European Parliament and of the Council of 23 October 2024 on liability for defective products</i>	<p>In the EU, a product liability regime is currently available to any natural person who suffers damage (including personal injury or death, damage to personal property or destruction or corruption of data) caused by unsafe products. It provides similar protections as the product safety regime in the ACL.</p> <p>The EU has recently legislated a new legal framework concerning product liability, which will apply to products placed on the market or put into service after 9 December 2026. The regime provides improved access to information and establishes a presumption of defectiveness in certain circumstances.</p>

United Kingdom

ACL protection	UK law	Comparison
Misleading or deceptive conduct False or misleading representations	<i>Consumer Protection from Unfair Trading Regulations 2008</i> (UK) (CPUTR)	<p>The CPUTR is a key part of the UK's consumer protection framework. In 2025, the CPUTR will be replaced by the <i>Digital Markets, Competition and Consumers Act 2024</i> (UK). The provisions will remain largely equivalent with some supplementation.</p> <p>Regulation 3 of the CPUTR prohibits unfair commercial practices. Regulations 5 and 6 of the CPUTR relate to misleading actions and misleading omissions. Apart from some minor differences, these are broadly equivalent to those in EU Directive 2005/29.</p>

		In Australia, silence (even an unintentional omission) can amount to misleading or deceptive conduct in contravention of section 18 of the ACL. As such, the CPUTR' provisions concerning misleading omissions does not afford UK consumers greater protection than the protection provided under the ACL.
Unconscionable conduct	Consumer Protection from Unfair Trading Regulations 2008 (UK) (CPUTR)	Like in the EU, the UK regime does not otherwise have a protection against the Australian concept of 'unconscionability'. Regulation 7 of CPUTR prohibits 'aggressive commercial practices' which can include harassment, coercion or undue influence. For something to be deemed 'aggressive', there must be a degree of heavy-handedness in suppliers' conduct. This makes the protection potentially narrower than under the ACL.
Unfair contract terms	Consumer Rights Act 2015 (UK) (CRA)	The CRA applies to business to consumer transactions. It contains a 'grey list' of terms which may be considered as unfair and a 'blacklist' of terms which are considered to be unfair and are banned under the CRA. These are broadly comparable to those under the EU Directive 93/13. Like under the ACL, an unfair term will be void and severed from the contract. The contract will otherwise continue to bind the parties. Businesses are protected from certain unfair terms under the Unfair Contract Terms Act 1977 (UK) (UCTA).
Consumer guarantees	Consumer Rights Act 2015 (UK) (CRA)	Consumers in the UK enjoy statutory guarantees broadly equivalent to those in the ACL. Unlike the EU, statutory guarantees in the UK apply to the sale of goods, digital content and services to consumers. Consumers in the UK have a short-term 30 day right to reject goods that do not comply with the statutory guarantees. The rejection period in Australia is more flexible, running from the date of supply to the consumer, until the fault or problem would reasonably be expected to appear. After 30 days, consumers in the UK have a right to a repair or replacement. If a repair or replacement is not practical or possible, or fails, consumers may claim a full refund (or a price reduction if they wish to keep the product).
Product safety	General Product Safety Regulations 2005 (UK) (GPSR) Consumer Protection Act 1987 (UK) (CPA)	Product safety and product liability in the UK is substantially similar to Australia. The GPSRs impose safety obligations on producers and distributors. A safe product is one that, under normal or reasonably foreseeable conditions of use, does not present any risk or only the minimum risk compatible with the product's use and intended users. The GPSR provides for the publication of regulations and standards applicable to products, against which products' safety can be assessed. Breach of the GPSRs gives rise to criminal sanctions.

		The CPA imposes establishing a strict liability regime for damage caused by defective products. Where injury or damage occurs, consumers are entitled to compensation for death, personal injury or damage to private property exceeding £275 (excluding the defective product itself).
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Singapore

ACL protection	Singaporean law	Comparison
Misleading or deceptive conduct False or misleading representations	Consumer Protection (Fair Trading) Act 2003 (Singapore) - Second Schedule	The Singaporean regime gives consumers a right to sue where, during a 'consumer transaction', a supplier engages in conduct that may reasonably deceive or mislead a consumer or makes a false claim. Unlike in Australia, the regime in Singapore applies only to consumer transactions and the quantum of damages recoverable for contraventions of the regime is capped.
Unconscionable conduct	Consumer Protection (Fair Trading) Act 2003 (Singapore) - Second Schedule	Consumers in Singapore also have a right to sue where a supplier knowingly takes advantage of a consumer not in a position to protect their own interests or understand the transaction. This is narrower than the Australian statutory concept of unconscionable conduct which does not require a finding that a consumer was suffering a special disadvantage or vulnerability.
Unfair contract terms	Unfair Contract Terms Act 1977 (Singapore)	Consumers in Singapore have a much narrower protection against unfair contract terms than is available in Australia. Clauses will only be deemed unfair if they exclude or restrict liability for a party's own breaches, or claim to entitle a party to render a contractual performance substantially different from what was reasonably expected, or to render no performance at all. There is otherwise no general prohibition against unfair contract terms
Consumer guarantees	Sale of Goods Act 1979 (Singapore) – Sections 12 to 15 Consumer Protection (Fair Trading) Act 2003 (Singapore)	Consumer guarantees available in Singapore are similar to those in Australia. However, only a subset give rise to consumer remedies, resulting in less beneficial consumer protection than that afforded in Australia. The CPFTA provides a right to a repair or replacement, or a reduction in the price of goods where there is non-conformity with <i>certain</i> of the terms implied by the <i>Sale of Goods Act 1979</i> (Singapore)
Product safety	No single law – common law principles and various statutes	Singapore does not have a single comprehensive product liability regime. Instead, consumers must rely on common law principles and various statutes, including the protections in the CPFTA and consumer guarantees (where applicable). Where claims for damages exceed S\$30,000, consumers must rely on negligence or other tortious causes of action