

The Year Ahead: 2024 Competition & Consumer Law in Australia

Key themes:

- 1. Significant competition and consumer reform driven by cost of living.** The government is pursuing an ambitious, multi-pronged reform agenda, which addresses issues at the heart of competition and consumer law in Australia. This includes renewal of the national competition policy, merger reforms, a potential new economy-wide prohibition on unfair practices, a review of post-employment restraints, a focus on the aviation sector and more. In the digital economy we will see further progress on new digital platform consumer measures (including scam codes) and competition rules, following the government's in-principle acceptance of the ACCC's recommendations in its report in DPSI 5.
- 2. "Louder, faster, stronger" enforcement by the ACCC, using all the "tools in the toolbox".** The ACCC's enforcement team is attempting to address issues promptly, relying on a wider range of tools available to it. Expect to see greater use of consumer redress orders (in addition to already high penalties), as well as increased reliance on infringement notices.
- 3. Consumer law enforcement at the fore.** With significant maximum penalties available, including for unfair terms, the ACCC will continue to focus on bringing consumer law proceedings in the next 12 months.
- 4. More private actions.** Recent years have seen an uptick in private proceedings, including class actions, alleging breaches of competition, consumer and privacy laws. This year, Epic's proceedings against Apple and Google (and related class actions) regarding mobile app distribution will be heard.
- 5. Greater co-ordination between regulators.** An increasing intersection of competition, consumer protection, privacy, online safety and data issues is driving greater co-operation between regulators, in Australia and abroad.

ACCC compliance and enforcement priorities 2024-25

- Competition, consumer product safety and fair trading concerns re: **environmental claims and sustainability**.
- Competition, consumer and fair trading concerns in the **supermarket sector** including **food and groceries**.
- Competition in **essential services** especially **telecommunications, electricity, gas and financial services**.
- Misleading pricing claims re: **essential services** especially in **energy and telecommunications**.
- Competition and consumer issues in the **aviation sector**.
- Consumer and fair trading issues in the **digital economy**.
- Improving compliance with consumer law by **NDIS providers**.
- **Unfair contract terms** in consumer and small business contracts.
- Improving compliance with **consumer guarantees**, especially in consumer electronics, plus misconduct regarding delivery timeframes.
- Consumer **product safety** issues re: **young children**.

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Competition law

1. **Merger Reform:** As part of the [Competition Review](#) being undertaken by the Competition Taskforce, an overhaul of Australia's merger control regime is being [considered](#). Major changes to the merger control process and substantive test proposed by the ACCC are among the proposed options for reform. The Competition Review is also looking at **non-compete clauses** (see below).
2. **Non-compete Clauses / Post-employment Restraints:** Following the Australian Government's [2023 White Paper on Jobs and Opportunities](#), which identified non-compete clauses as potentially hampering job mobility, innovation

and wages growth, the Competition Review will also look at their impacts on labour markets and the economy, and explore potential areas for reform. A consultation paper is expected in early 2024.

3. **Resale Price Maintenance:** The ACCC has noted it has observed an increase in resale price maintenance conduct, which is per se illegal. We expect to see further high profile enforcement of RPM contraventions, as a way of enhancing specific and general deterrence.

Consumer law

1. **Scams Code Framework:** Following the establishment of the National Anti-Scam Centre, the Government has committed to introduce industry codes to combat scams, with an initial focus on banks, digital communications platforms and telecommunications providers. [Consultation](#) on a proposed framework is underway. This is a priority area, given the huge losses Australians incur to scammers ([\\$3.1 billion in 2022](#)).
2. **Unfair Trading Practices:** The outcome of [consultation](#) on a proposed unfair trading practices prohibition is expected this year. Although the [proposal contemplated economy-wide application](#), it was directed at many online practices, including dark patterns, hard-to-cancel subscriptions and click wrap consents for tracking and data collection.
3. **"Designated Complaints":** A designated complaints function for the ACCC will likely be introduced this year, enabling designated consumer and small business

advocates to raise significant or systemic issues and have them prioritised by the ACCC, modelled on the UK regime.

4. **Consumer Guarantees:** Consumer guarantees are a likely area of reform, particularly in relation to the current lack of penalties for failure to honour them. In the meantime, enforcement of consumer guarantee rights is expected to ramp up as part of the focus on cost of living issues.
5. **First UCT case:** New unfair contract terms laws took effect last year. In 2024 we may see the ACCC bring its first case under the new laws, seeking penalties.
6. **Sustainability / Environmental focus:** Following the publication of its guidelines on [Making environmental claims](#) in 2023, the ACCC will soon release further guidance specifically on emissions claims. The Greenwashing Inquiry report, referred by the Senate early last year, is due in June 2024. The ACCC is also closely monitoring EU developments regarding environmental claims.

Digital economy

1. **Ex Ante Digital Platform Regulation:** The Government [announced](#) its in principle support of the ACCC's recommendations to introduce digital platform consumer measures (see Scams Code and Unfair Trading Practices above and Dispute Resolution below) and mandatory service-specific codes for designated digital platforms containing targeted competition obligations. Treasury will work on framework design, informed by further consultation and international developments.
2. **Dispute Resolution:** The Government has called for digital platforms to develop voluntary internal dispute resolution standards by July 2024, and has signalled further work on external dispute resolution requirements.
3. **News Media Bargaining Code:** In December 2023 the government announced it [will](#) adopt all [recommendations](#) coming out of Treasury's review of the code, but as yet, no platform has been designated.

4. **ACCC Digital Platform Services Inquiry (DPSI):** The [inquiry](#) continues with the 8th interim report - examining [data broker services](#) - due on 31 March. There are two 6-month phases left, with a final report due to Treasury by 31 March 2025. The ACCC's 9th interim report will revisit competition and consumer issues in general search and consider the role of generative AI.
5. **Continued scrutiny by the Digital Platforms Unit:** The specialist unit is investigating Apple's restriction of third-party access to NFC technology, and Google's ad tech business, and further investigations are likely. We expect focus on expanding ecosystems including through M&A, self-preferencing, restrictions on interoperability, fair dealings with small businesses and consumers, dark patterns, contextual advertising and data collection following the demise of third-party cookies, scams, hard-to-cancel subscriptions and fake reviews.

Cases to watch

ACCC v Meta: alleging false, misleading or deceptive conduct by publishing scam cryptocurrency advertisements featuring prominent Australian public figures.

ACCC v eHarmony: alleging false, misleading or deceptive conduct in relation to membership services, including autorenewal and early cancellation.

ACCC v Qteq: alleging bid rigging and market sharing conduct in the oil and gas services industry.

ACCC v Mastercard: alleging misuse of market power and exclusive dealing with purpose of substantially lessening competition in supply of debit card acceptance services.

ACCC v Delta Building: penalties to be decided in National Gallery bid-rigging case.

ACCC v Qantas: alleging false, misleading or deceptive conduct by advertising tickets for flights cancelled but not removed from sale.

Epic / Google / Apple litigation and class actions: alleging app stores have misused their market power and engaged in unconscionable conduct by restricting distribution and imposing a 30% commission. Hearing in March-July 2024.

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