



## Summary of stakeholder roundtable on consumer protection measures

On Tuesday 7 June 2022, the ACCC held a virtual stakeholder roundtable via Microsoft Teams.

The purpose of the meeting was to facilitate discussion between key stakeholders on the consumer protection issues and potential remedies identified in the discussion paper and in stakeholder submissions to the discussion paper.

The roundtable was chaired by ACCC Deputy Chair Delia Rickard and facilitated by Digital Platforms Branch General Manager Kate Reader. ACCC Chair Gina Cass-Gottlieb, and Commissioners Liza Carver and Peter Crone were also in attendance. Key stakeholders in attendance included representatives from digital platforms, business users of platforms, consumer advocates, academics, and industry groups. Relevant Commonwealth Government agencies and departments attended in an observatory capacity.

The meeting agenda is **Attachment A**.

The following is a summary of the issues discussed during the roundtable.

### Scams, harmful apps or content and fake reviews

Stakeholders discussed the best approach to protecting consumers against scams, harmful apps or content and fake reviews, as well as potential models for measures to apply to digital platforms.

Most stakeholders supported legislated obligations or duties for digital platforms to protect consumers from scams, but there were different views about who the obligations should apply to. One stakeholder proposed that obligations to identify and disrupt scams should apply only to the largest platforms, since they are responsible for most harm, but several stakeholders expressed that such obligations should apply to all digital platforms, since scams are not limited to the largest platforms. Other stakeholders argued that any measures should apply across industries, since scams are common in other sectors like banking and telecommunications.

One stakeholder argued that the payments sector should be primarily responsible, noting support for the UK Contingent Reimbursement Model Code. Several stakeholders contended that more focus on preventing and disrupting scams is needed, with some noting that a lot of responsibility for redress currently lies with banks. One also cautioned that if banks pay for every scam loss, it could risk attracting more scam activity.

Some stakeholders argued that platforms should be liable for scam harms arising on their platform but noted that liability should be limited to cases where a scam has been promoted through paid advertising or where there is a significant fault by the platform.

Other stakeholders highlighted anti-scam measures that digital platforms have proactively taken, such as removing fake accounts, restricting advertising content, and notifying users who have interacted with a scammer when that scammer has been reported. Another

stakeholder commended these voluntary efforts but suggested that platforms should be held to a higher, enforceable standard.

One stakeholder noted that app store data restrictions can create challenges in identifying scammers and addressing scams. Another stakeholder opposed data separation measures, as this would prohibit platforms from using data collected in respect of one service to identify suspicious behaviour and scams on other services provided by the platform. However, they expressed support for industry-wide data sharing to help platforms and agencies identify scam signals across multiple platforms or services.

Some stakeholders also identified that any measures must be flexible, as scammers tend to adapt to evade efforts to catch them. One stakeholder signalled their support for consumer education measures, while another observed that, though important, these measures tend to lose effectiveness over time.

## Unfair trading practices, choice architecture and 'dark patterns'

Stakeholders discussed the most harmful types of unfair trading practices, choice architecture, and dark patterns, the types of measures that could protect consumers, and who they should apply to.

Stakeholders outlined a range of consumer harms that can result from dark patterns, such as loss of income, emotional distress, and harm to competition and trust. One stakeholder indicated that consumers were sharing more personal information than they intended and spending more than they otherwise would have because of these practices. Some stakeholders noted that some consumers may be particularly vulnerable to harm from these practices, including older consumers and culturally and linguistically diverse consumers.

Several stakeholders argued that there is no clear definition for what constitutes a dark pattern, and that dark patterns are not unique to digital platforms, highlighting the difficulties consumers often face when ceasing gym memberships or pay TV subscriptions. One noted that prompts and choice architecture can be used to benefit users – for example, by encouraging a user to update their security settings.

Broadly, stakeholders agreed that whole-of-economy reform is necessary, with one noting that industry- or sector-specific regulation could be open to avoidance and create compliance costs. Another stakeholder identified that sector-specific reforms could risk lulling consumers into a false sense of security in that sector.

Several stakeholders viewed existing laws as insufficient to address dark patterns, noting the limitations of the unconscionable conduct and misleading and deceptive conduct provisions in the Australian Consumer Law (ACL). One stakeholder observed that a range of dark patterns, such as making it difficult to leave a subscription or opt out of a service, are likely to fall outside the scope of existing legislation. Another stakeholder, however, argued that existing laws are adequate to address these practices.

There was significant support for an economy-wide unfair trading practices prohibition (UTPP). However, one stakeholder cautioned that there could be conflict between a UTPP and the need for platforms to be able to remove content rapidly to protect consumers

Some stakeholders expressed that, while a general UTPP was necessary, it would not be sufficient. Stakeholders suggested that specific prohibitions would be necessary or that the ACCC should develop guidance as to what constitutes an unfair trading practice.

Stakeholders also raised fair defaults as a potential remedy, and one supported certain provisions of the California Consumer Privacy Act, like prohibiting companies from hiding buttons or using double negatives. Other stakeholders suggested conduct that undermines consumer choice should be prohibited.

Stakeholders also suggested that fast-tracking current Privacy Act reforms would help to protect consumers, with one arguing that bringing consent in line with the EU's General Data

Protection Regulation (GDPR) would go a long way to addressing some of these harms. Another stakeholder suggested that other legislative provisions, including s18 of the ACL and Australian Privacy Principle 3.6, should be tested in the meantime.

One stakeholder noted that any reform should balance ease of use, consumer choice, and privacy.

## Dispute resolution

Stakeholders discussed the potential features of a dispute resolution framework for digital platforms, the effectiveness of models from other sectors and jurisdictions, and the issues that should be covered by dispute resolution standards.

Several stakeholders expressed support for external dispute resolution measures and suggested that they could address transactional issues including scams, user-to-user complaints, and small business complaints.

Stakeholders raised the Telecommunications Industry Ombudsman (TIO), Franchising Code regime mediator, and European dispute resolution platform as potential models. One stakeholder, however, observed that there may be issues with transferring the TIO model, given differences between the telecommunications and digital platforms sectors. Another suggested that rights should be limited to Australian residents to avoid creating a compliance burden. Several stakeholders noted that consumers often find it difficult and confusing to get issues resolved, and one raised that adding an additional regulatory authority may create further confusion.

Other stakeholders supported internal dispute resolution measures, including the development of minimum internal dispute resolution standards. Several suggested that making it easier for consumers to navigate the dispute resolution system should be a priority. One stakeholder also supported pro-consumer measures which prohibit restrictive dispute resolution clauses.

Some stakeholders noted that dispute resolution measures are not an alternative to regulator action to address systemic issues, and another suggested that the capability of existing regulators should be increased.

One stakeholder expressed that too much transparency about platforms' decisions could expose the system to abuse by bad actors.

## Transparency

Stakeholders discussed the transparency of algorithms, app review processes and ad tech services (including pricing), as well as platforms' transparency more generally.

Stakeholders recognised the importance of balancing transparency with protecting privacy and security of consumers, as well as mitigating the risk of bad actors taking advantage of information and protecting confidential business information.

Some stakeholders expressed that transparency is better utilised by regulators and researchers than individual consumers, such as to help enforce regulation or conduct research. Some participants also raised that privacy and algorithmic impact assessments should be provided to the regulator.

One stakeholder noted that transparency does not necessarily require giving away underlying code but could involve providing access to other information that assists with understanding the relevant algorithms.

Some stakeholders noted a range of transparency initiatives already offered by digital platforms, including public transparency reports and information on algorithm principles. Participants also noted industry initiatives underway in relation to ad tech services in

response to recommendations from the ACCC's Digital Advertising Services Inquiry report relating to transparency.

Stakeholders also raised examples of overseas regulation in relation to transparency, such as the Platform-to-Business Regulation in the European Union.

## Other Issues

In the final session, stakeholders were given the opportunity to raise other issues regarding consumer protection on digital platforms that had not yet been covered.

Several stakeholders supported data portability and interoperability as potential measures to address data advantages, noting the importance of reciprocity in data portability. Another advocated a duty-of-care approach to data and raised the Consumer Data Right as a good framework for addressing data advantages.

One stakeholder highlighted the challenges that researchers face in observing trends in mobile advertising, arguing that no platform provides a meaningful archive of ads with information about reach, spend and targeting. However, another stakeholder disputed this, noting the ad transparency and accessibility of APIs provided by platforms.

One stakeholder noted that business users are a category of consumer that also deserve protection, and another suggested that there should be central disclosure of changes to algorithms that affect business users.

# Attachment A

## ACCC DIGITAL PLATFORM SERVICES INQUIRY CONSUMER PROTECTION ROUNDTABLE AGENDA

DATE: 7 June 2022, 8:15-11:15am (AEST) Host: Delia Rickard, ACCC Deputy Chair

TIME		ITEM
8:15 – 8:30 am	15 mins	<b>Join meeting</b>
8:30am – 8:40am	10 mins	<b>Welcome and opening remarks</b>
8:40am – 9:10am	30 mins	<b>Scams, harmful apps or content and fake reviews</b> <ul style="list-style-type: none"><li>• How to protect consumers against scams, harmful apps or content and fake reviews</li><li>• Who is best placed to deal with scams, harmful apps or content and fake reviews</li><li>• Potential models for measures to apply to digital platforms</li></ul>
9:10am – 9:40am	30 mins	<b>Unfair trading practices, choice architecture and ‘dark patterns’</b> <ul style="list-style-type: none"><li>• What types of trading practices, choice architecture and ‘dark patterns’ are most harmful</li><li>• How to best protect consumers against such practices online</li><li>• Appropriateness of broad obligations or specific prohibited practices</li><li>• Who should obligations or prohibitions apply to</li></ul>
9:40am – 9:55am	<b>15 MINUTE BREAK</b>	
9:55am – 10:25am	30 mins	<b>Dispute resolution</b> <ul style="list-style-type: none"><li>• Potential features of a dispute resolution framework for issues arising on digital platforms</li><li>• Effectiveness of models from other sectors or jurisdictions</li><li>• What issues should be covered by dispute resolution standards</li><li>• Who should any dispute resolution obligations apply to</li></ul>
10:25am – 10:55am	30 mins	<b>Transparency</b> <ul style="list-style-type: none"><li>• What additional information do consumers and business users need for the market to function properly</li><li>• Who should be subject to any such transparency or reporting obligations</li><li>• Managing risks of free-riding on, manipulation of or gaming of algorithms</li></ul>
10:55am – 11:15am	20 mins	<b>Other issues</b>