IGEA

interactive games & entertainment association

Submission to ACCC

Response to Digital Platform Services Inquiry Issues Paper for March 2025 Final Report

August 2024

IGEA acknowledges and pays respect to the past and present Traditional Custodians and Elders of this land and the continuation of cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander peoples. We would like to extend our acknowledgments to the indigenous people from countries overseas and recognise their strength, wisdom and creativity.

1. Introduction

The Interactive Games & Entertainment Association (IGEA) welcomes the opportunity to provide a submission to the ACCC's consultation on its tenth and final report of the 5-year Digital Platform Services Inquiry. This latest consultation focuses on three topics, namely: international regulatory developments; major developments in digital platform markets; and identifying potential or emerging issues.

1.1 About IGEA

IGEA is the industry association representing and advocating for the video game industry in Australia, including the developers, publishers and distributors of video games, as well as the makers of the most popular gaming platforms, consoles and devices. IGEA has over a hundred members, from emerging independent studios to some of the largest technology companies in the world. Amongst our various activities, IGEA also organises the annual Games Connect Asia Pacific conference for Australian game developers and the Australian Game Developer Awards that celebrate the best Australian-made games each year.

Video games are a beloved Australian activity and significantly benefit Australian game players, the wider community, and the economy. Video game developers and publishers are the innovators, creators and business leaders reimagining entertainment and transforming how we learn and play. Four in five Australians play games, with 94% of Australian households having a device for playing video games, mainly for enjoyment and relaxation, and games are increasingly being used for serious and educational purposes, including by governments.[1] Video games provide a digital outlet for Australian art, culture, stories and voices, and Australian-made video games are among Australia's most successful and valuable cultural exports. Our medium also brings kids into STEM and helps them build technology skills that will feed Australia's workforce needs.

In supporting local content, the video game industry is a major contributor to the Australian digital economy. According to our data, video games are worth around $4.21 billion annually in Australia,[2] while Australian-made games brought in $345.5 million in largely export revenue last year.[3] Moreover, because the video game industry uniquely sits at the intersection of entertainment, the arts and technology, video game companies hire a wide range of artistic, technical and professional roles and are thus a wellspring of high-quality sustainable careers, and are an engine for growth in the Australian national economy. Indeed, Australian game developers are internationally renowned, and ours has the potential to be one of Australia's most important future growth industries and an integral component of the government's vision for Australia to be a top 10 digital economy and society by 2030.

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[1] IGEA, 'Australia Plays' (August 2023), https://igea.net/2023/08/australia-plays-2023/.

[2] IGEA, 'Australians subscribe to video game growth' (Media Release, June 2023), https://igea.net/2023/06/australians-subscribe-to-video-game-growth/.

[3] IGEA, 'Aussie game developers pull in $345.5 million for local economy' (Media Release, December 2023), https://igea.net/2023/12/2023-agds/.

1.2 Overview

Overall, we support competition and consumer laws that are modern, practical, sensible, evidence-based and compatible with the digital economy, including for the video game industry ecosystem.

The ACCC indicates that it "has not previously examined competition and consumer issues in online gaming markets but observes there may be current practices in the online gaming industry giving rise to potential competition and consumer concerns", including distribution and interoperability, subscription services, and 'manipulative or deceptive design elements' in games.[4] This follows from the ACCC's announcement in March this year that its latest 2024-25 compliance and enforcement priorities "will focus on consumer protection and fair trading issues for small business including misleading or deceptive conduct in influencer marketing, online reviews, price comparison websites and in-app purchases – especially in the video gaming industry".[5]

At the outset, while the ACCC suggests there *could be* potential competition and consumer concerns associated with online gaming, it *has not* clearly identified any particular issues, based on firm policy evidence, that would indicate a systemic issue and that current consumer protections are inadequate in Australia. In the absence of any substantiated evidence to the contrary, the ACCC has not presented a case for regulatory reform. Therefore, our strong preference would be to maintain the status quo.

More importantly, the video game industry has long been at the forefront of ensuring online consumer protections. It is not only for ethical reasons, but a business imperative for the industry, in a highly competitive global market.

As part of providing a safe online space for users, the industry has effectively implemented measures to safeguard all users, especially younger players, for decades. Accordingly, the video game industry has pioneered empowering players and parents with easy-to-use tools, including for managing playtime, spending, online privacy, and access to age-appropriate games. The industry's serious commitment and responsibility to these protections are built around global industry best practices. Supplementing this, the industry also adheres to strict domestic and international data and consumer protection laws.

The video game industry therefore takes consumer protection very seriously, offering high levels of safeguards so players and parents can enjoy video games and have positive experiences.

It is also important to ensure that reference to the video game industry is properly defined to avoid unintentionally conflating issues that may arise more broadly in digital platforms. The primary purpose of video games is in its name – to play video games and entertainment,

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[4] ACCC, Digital Platform Services Inquiry – March 2025 – Final Report, (Issues Paper, 25 July 2024), p. 12, https://www.accc.gov.au/system/files/dpsi-10-final-report-issues-paper.pdf (ACCC Issues Paper).

[5] ACCC, 'Cost of living and digital economy shape 2024-25 compliance and enforcement priorities' (Media Release, 7 March 2024), https://www.accc.gov.au/media-release/cost-of-living-and-digital-economy-shape-2024-25-compliance-and-enforcement-priorities.

offering immersive experiences, adventure, activities and storytelling.[6] This is in contrast to socialising in a manner synonymous with other online platforms where they may be primarily intended for user communication. To this end, online game features are vastly different from other online services. Moreover, due to the industry's longstanding commitment to combating illegal and broadly unacceptable content within their services, built with inherent safety-by-design considerations, we believe our industry has a lower risk of hosting illegal and harmful content.

We would therefore caution against introducing additional reforms that overreach and create regulatory uncertainty and complexity to the current Australian consumer protection landscape without proper identification and assessment of the problems (if any) and potential solutions based on firm policy evidence. As a matter of good regulatory practice and policy design, any regulatory measure should be well-defined, reasonable and clearly scoped, provide sufficient flexibility that is future-proofed for evolving technologies, and be supplemented by relevant industry guidance to enable sufficient regulatory clarity and certainty.

In the absence of firm policy evidence to the contrary, we believe the existing consumer protections under Australian law are sufficient to adequately address consumer concerns arising from online games.

Below is a summary of our recommendations to this consultation.

Topic	**Recommendations**
Existing consumer protections	Should there be questions as to the adequacy of consumer protections, a more comprehensive assessment should be undertaken to whether the range of consumer protections (not limited to the Australian Consumer Law) are sufficient, and whether any proposed reforms overlap with existing legislative and regulatory arrangements. Robust policy evidence gathering should extend beyond stakeholder opinion. Behavioural studies would be useful for informing any proposed consumer related regulatory reforms.
Consumer purchases in video games	In absence of firm policy evidence to suggest otherwise, we consider that consumer purchases are adequately covered by various consumer protection regulatory measures under Australian law.
Other matters	In the absence of clarity regarding the scope of 'manipulative or deceptive design elements', the existing consumer protection regime should be considered adequate.

[6] For example, see: https://www.comeback.world/2023/05/12/difference-between-social-media-video-games/.

Topic	Recommendations
	Further consideration could be given to developing regulatory guidance regarding lawful and unlawful advertising, online disclosure, and privacy practices in user design interfaces.

2. Competition in the video game industry

In its Issues Paper, the ACCC "understands there may be competition concerns regarding the distribution of online games (including through subscription services and/or mobile app stores), as well as interoperability concerns related to the ability to play online games across multiple platforms (including consoles)".[7] While we cannot comment on specific cases (particularly since none are identified in the Issues Paper), we would like to offer the following general observations regarding the overall level of competition in the industry.

The video game industry is one of the most competitive consumer markets, locally and around the world. With numerous developers and publishers, three major consoles, mobile devices, and multiple digital storefronts available on PC, consumers are spoiled for choice in terms of how they play games and what games they play. Australian video game players have hundreds of thousands of titles that they can choose to play. Game devices and marketplaces compete aggressively with each other to attract game developers and publishers to use their platforms, who in turn compete with each other for players. The end result is sustained downward pressure on the prices of consoles and games and the creation of innovative and diverse business models that allow many video games to be made available for free, for a nominal cost, or through subscription models.

Of all of Australia's cultural products, quality gaming content is arguably the most sought after and rewarded. Creatives in our sector, including even very small studios, have some of the most direct and accessible opportunities to find audiences. Whereas many other creative sectors may have multiple gatekeepers, talented video game developers can easily publish their games across a range of platforms, giving them an immediate worldwide market. To encourage game creation, gaming platforms provide significant support and provide competitive terms for content creators, who also retain all of their IP. There are many examples of early-stage Australian developers who have made games that found global success.

Elaborating further on the above:

- There are tens of thousands of video game businesses in the world, including hundreds or thousands of companies in Australia chiefly or partially involved in making, selling or otherwise supporting the video game industry. This includes the hundreds of studios and individuals creatively designing and developing Australian video games, including the makers of some of Australia's most successful digital exports of the past decade and more.

[7] ACCC Issues Paper, p. 12.

- There are a number of significant and popular video game platforms, handheld devices, and a variety of storefronts operating on PCs. These platforms need content from game developers just as much as game developers need these platforms, leading to continued and strengthening competitive tension throughout the video game industry. Just as game developers have a wide range of choice of platforms for distributing their games (and selling their games concurrently on multiple platforms is often the norm), consumers likewise have a wide range of choices of devices and platforms for finding and playing the games that they love. This diversity and competition are likely to intensify as innovative new video game streaming services are launched over the coming months and years and they hungrily compete for content and audiences.
- Companies in the sector have, since the birth of the industry, often spanned more than one category of video game business and have contributed to multiple segments of the value chains. This is normal, and it has helped to grow the industry and market. For example, video game console owners have invested in game development studios to ensure more and better games are brought to their platforms. Most major publishers are also game developers and may support their own ecosystem of studios that compete with each other in addition to the wider industry. Even many smaller independent Australian developers in recent years have expanded to games publishing services to diversity their revenues and to support fellow Australian and overseas game developers. We have also seen some major game publishers and developers expand into their own digital platforms and storefronts, competing directly with console owners and providing an increasing number of storefronts for developers and gamers to find each other.

Rather than reducing competition, we would argue that these industry trends have enriched the industry and fuelled the industry's growth by inhibiting monopolistic behaviour, increasing distribution channels, rapidly expanding the number of video game studios and increasing the commercial options available to individual video game businesses to succeed. It has also put pressure on the profit margins of platforms and storefronts as they face fierce competition to secure good gaming content and audiences. This has benefited consumers by significantly expanding the choice of video game options available to game players. There has never been a time when video games have been more plentiful than now, and tens if not hundreds of thousands of new games are finding audiences every year.

The diversity and competition in the video game industry have also helped to lower the cost of video games, with an almost unlimited number of free games currently available in the market. In fact, some of the most popular games in the world right now are free to play. Even with paid games, there has been a universal trend of continually falling purchase prices for even the most expensively-produced 'AAA' video games – certainly adjusted for inflation, if not in outright purchase costs. At the same time, despite this increased competition, the video game industry continues to grow in terms of investment dollars and the number of businesses and workers all around the world.

3. Consumer protections in video games

In its Issues Paper, the ACCC raises potential consumer concerns about some online games, with the following examples:[8]

> *With most online games being sold and distributed globally through online subscription services, consumers are increasingly reliant on licensing to access online games. The use of these types of licensing arrangements may give rise to consumer concerns as their limitations may be unclear to consumers, who typically may not understand, or be adequately informed, that they are not buying permanent access and ownership over content.*
>
> *Some online games may employ manipulative or deceptive design elements, giving rise to consumer concerns. Children and teenagers may be particularly susceptible to such practices given they are often less aware than adults of commercial practices and messaging.[9] Examples include the use of design elements which may cause users to make unintended purchases,[10] including in-game purchases, representations that products can be obtained 'for free' through extended game play when in reality it is virtually impossible for users to do so, and a lack of transparency about the probability (or improbability) that loot boxes[11] contain rare items.*

3.1 Existing consumer protections

Australia has a range of robust safeguards in place that ensure consumers are properly protected against Australian Consumer Law (ACL) related issues, and other consumer safeguards such as online safety and privacy. Under the ACL alone, for example, there are existing ACL protections that cover misleading or deceptive conduct, unconscionable conduct, unfair contract terms, and specific trading practices.

In addition to the current ACL protections, it should be recognised that various consumer protections are available, including under privacy, data stewardship, classification and online safety legislations and regulations. Should there be questions as to the adequacy of consumer protections, it is important to determine whether these current protections collectively provide sufficient consumer protections, and whether any proposed reforms would create regulatory overlap with existing arrangements. We also note that the Government is currently reviewing several of these areas.

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[8] ACCC Issues Paper, p. 12.

[9] *International Consumer Protection and Enforcement Network, Best practice principles: Marketing practices directed towards children online, June 2020, pp 8, 13-14.*

[10] *For example, representations that purchases are 'one-off' purchases, when in fact they may be billed monthly.*

[11] *'Loot boxes', 'treasure chests' or 'mystery boxes' are items that players purchase within a game. The content of these boxes is unknown before purchase, but players are generally hoping for items or rewards. In some countries such as Belgium and the Netherlands, loot boxes are regulated as a form of gambling, however this is not currently the case in Australia.*

As an aside, notwithstanding the current protections available to consumers in Australia, we strongly urge the ACCC to exercise caution in assessing the responses to the consultation that seek reforms without firm policy evidence, including comprehensive and precise identification of specific harmful practices as well as gaps in current law for addressing those harms. Otherwise, there would be a missed opportunity for a genuine assessment of potential regulatory gaps in the existing consumer protection arrangements.

In the absence of firm policy evidence to the contrary, we believe the existing consumer protections are sufficient to adequately address consumer concerns arising from online games.

Recommendations:

- **Should there be questions as to the adequacy of consumer protections, a more comprehensive assessment should be undertaken to whether the range of consumer protections (not limited to the ACL) are sufficient, and whether any proposed reforms overlap with existing legislative and regulatory arrangements.**
- **Robust policy evidence gathering should extend beyond stakeholder opinion. Behavioural studies would be useful for informing any proposed consumer related regulatory reforms.**

3.2 Consumer purchases in video games

Video games use diverse and innovative revenue models to meet the different preferences and budgets of players. Some games, including many successful Australian games, are supported by in-game advertising, subscription models, seasonal or downloadable content, or in-game spending, which is where players buy digital items that can be used within a game. Further, with game development and the selling of digital games becoming more democratised, in-game spending like loot boxes has helped to sustain and keep most smaller developers and indies afloat, where the majority of games are free-to-play.

Players support the vast majority of games that use in-game spending because they help to keep the cost of games low, with many of the most popular games that use it able to be played for free, while giving players the option to directly support the games they love. These days, players expect games to be an ongoing service with well-maintained servers and regular new content. Revenue generated by in-game spending helps to fund these costs.

Increasing transparency and addressing community concern is a focus of our industry. Our industry provides transparency around in-game spending via the International Age Rating Coalition (IARC) classification tool, which gives consumer guidance of 'in-game spending'. All major gaming devices also enable players and their parents and carers to easily restrict or turn off in-game spending. Our industry has committed to disclosing the probabilities, or 'drop rates', of loot box items, and some developers have formalised principles around

how loot boxes are used. For example, industry has globally committed that consumers will be more informed about the probability of receiving items in loot boxes (drop rates).[12]

In addition, our industry continues to work with the government on new measures to increase the transparency of loot boxes. This has included implementing the new M classification for loot boxes, along with the R 18+ classification for simulated gambling in video games from 22 September 2024, as part of the Government's Stage 1 Classification Reforms.[13] We consider that regulation of loot boxes in video games is therefore well-covered for protecting consumers and does not warrant any further regulation.

Finally, as mentioned above, there are existing ACL protections that cover misleading or deceptive conduct, unconscionable conduct, unfair contract terms, and specific trading practices. These should be sufficient to conduct enforcement related to digital games, including in the area of consumer related purchases.

In absence of firm policy evidence to suggest otherwise, we therefore consider that the existing consumer protections under Australian law adequately cover consumer related purchases.

Recommendation: In absence of firm policy evidence to suggest otherwise, we consider that consumer purchases are adequately covered by various consumer protection regulatory measures under Australian law.

3.3 Other matters

Setting aside the existing consumer protections in place, the Issues Paper refers to 'manipulative or deceptive design elements' as potential consumer issues in games, especially amongst children and teenagers. In this context, we understand that the ACCC has previously used the term 'dark patterns' to label such practices. In particular, the ACCC defined 'dark patterns' as "elements of user interfaces which have been designed to make it difficult for users to express their actual preferences, or which nudge users to take certain action that may not be in their best interests".[14]

The video game industry (as a whole and globally) takes consumer protection very seriously, offering high levels of safeguards so players and parents can enjoy video games and have positive experiences. The industry adheres to strict domestic and international

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[12] IGEA, 'Global Video Game Industry Commits to Further Inform Consumer Purchases' (Media Release, 8 August 2019), https://igea.net/2019/08/global-video-game-industry-commits-to-further-inform-consumer-purchases/.

[13] Minister for Communications, 'New mandatory minimum classifications for gambling-like games content' (Media Release, 23 September 2023), https://minister.infrastructure.gov.au/rowland/media-release/new-mandatory-minimum-classifications-gambling-games-content.

[14] ACCC, 'Digital platform services inquiry – Search defaults and choice screens' (Interim report No. 3, September 2021), p. 57, https://www.accc.gov.au/about-us/publications/serial-publications/digital-platform-services-inquiry-2020-25-reports/digital-platform-services-inquiry-september-2021-interim-report.

data and consumer protection laws, supplemented with age-appropriate video game content labelling scheme, along with other measures. The industry also has long-pioneered in empowering players and parents with easy-to-use tools, including for managing playtime, spending, online privacy, and access to age-appropriate games. The industry's serious commitment and responsibility to these protections are built around global industry best practices, according to the following pillars: age-appropriate pre-contractual information; safety by design in online environments; tools to enable players, parents, and caregivers to set the permissions that are appropriate for them or their children; and enabling consumer redress and efficient and proportionate enforcement.

While the ACCC previously offered a proposed definition for 'dark patterns', there is no clear or agreed definition for this concept and when it would be considered inappropriate under consumer law. This would be subjective and open to interpretation. We therefore welcome the ACCC's decision to not use this problematic term in the latest Issues Paper.

This issue is not limited to Australia. Overseas, the concept of a 'dark pattern' is vague, overly broad, and inconsistently defined or applied. This presents a significant challenge to meaningfully distinguish between practices that can be highly beneficial to consumers and the market (e.g. accessible free games with ads), and unlawful practices such as misleading or deceptive conduct. Therefore, the ACCC should be extremely cautious in attempting to define such a concept, as it would unlikely produce meaningful value and outcomes. For similar reasons, we also consider the use of the term 'manipulative or deceptive design elements' to be just as vague.

In the absence of clarity regarding the scope of 'dark patterns' or 'manipulative or deceptive design elements', we believe the existing consumer protections should adequately address consumer concerns, such as misleading or deceptive conduct.

Additionally, further regulatory guidance could be produced based on existing material regarding lawful and unlawful advertising, online disclosure, and privacy practices, for example. These could be applied in the context of user design interfaces.

Recommendations:

- **In the absence of clarity regarding the scope of 'manipulative or deceptive design elements', the existing consumer protection regime should be considered adequate.**
- **Further consideration could be given to developing regulatory guidance regarding lawful and unlawful advertising, online disclosure, and privacy practices in user design interfaces.**

Thank you for allowing IGEA to contribute to the ACCC's consultation. For more information on any issues raised in this submission, please contact us at policy@igea.net.