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Welcome to the thirteenth edition of Consumer *Express*

The Gadens team of consumer, retail and commercial experts across Australia has collaborated to bring you the thirteenth edition of Consumer *Express*, capturing the legal developments most relevant to businesses operating in an increasingly complex consumer environment.

A defining feature of the consumer and retail landscape in early 2026 is uncertainty. Ongoing cost of living pressures, volatile input costs and shifting consumer behaviour have made demand harder to predict and pricing decisions more sensitive than ever. Consumers remain engaged, but increasingly value conscious, placing greater weight on transparency, trust and fair treatment. This heightened scrutiny aligns closely with regulators' focus on fairness based reforms and enforcement, many of which are explored in this edition.

Consumer law reform is a key focus of this edition of Consumer *Express*. We delve into the Federal Government's proposed prohibition on unfair trading practices, a major development under the Australian Consumer Law that will shape the future of digital businesses, subscription services and customer journeys. Alongside this, we examine the next phase of the unfair contract terms reform, highlighting where businesses may still be exposed and how future changes could further affect standard form contracts. We also look at the proposed merger reforms, which point to a more hands on regulatory approach, raising important considerations for businesses planning acquisitions or other consolidation activity.

Managing contractual and commercial risk and governance remains critical for many organisations. This edition considers the Personal Property Securities Register (**PPSR**), focusing on the practical consequences that can arise from registration errors, lapses and inaccurate collateral descriptions, issues that often surface at the worst possible time. We also unpack recent changes to the Commonwealth Procurement Rules, explaining what the increased prioritisation of Australian owned businesses and SMEs means in practice, and where foreign owned suppliers face new constraints when engaging in Commonwealth procurement.

Digital regulation continues to accelerate. This edition examines influencer marketing *and the heightened expectations around authenticity, disclosure and accountability in online promotion, as regulators increasingly scrutinise social media practices*. Practical guidance is also provided on compliance with the Online Safety Act, which has broad application for businesses operating online. For bricks and mortar retailers, we analyse the recent Bunnings facial recognition technology decision, offering timely clarification on privacy obligations and reinforcing the importance of governance, transparency and proportionality when deploying emerging technologies in store. This decision is relevant to so many of our clients, not just those in the consumer and retail sectors.

This edition also addresses brand protection, with analysis of the High Court's decision in *Taylor v Killer Queen LLC & Ors*, highlighting the risks of relying on reputation alone and the importance of proactive trade mark strategy. Finally, we examine new legal duties relating to customer driven violence in retail settings, outlining the steps businesses must take to protect workers and meet rising work health and safety expectations.

As this edition goes live, the Federal Court has handed down its highly anticipated judgment in the ACCC's proceedings against Coles over its 'Down Down' pricing campaign. We will explore the implications of this pivotal decision further in our next edition.

We hope you find this edition of Consumer *Express* practical and insightful, and we welcome your questions and feedback.

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Australia's unfair trading practices reforms move closer

By Adam Walker, Partner and Emilie Reddish, Graduate

Following the release of exposure draft legislation directed at certain 'unfair trading practices' in February 2026, which we canvassed at the time, the Australian Government introduced into Parliament the Competition and Consumer Amendment (Unfair Trading Practices) Bill 2026 on 1 April 2026.

This represents a significant step in the Government's broader reform agenda for Australian Consumer Law (ACL). The Bill's overall structure remains consistent with the exposure draft – a general prohibition on unfair trading practices, targeted reforms addressing unfair subscription practices, and strengthened regulation of 'drip pricing' and hidden fees – though with a notable change to the general prohibition and further consultation to occur on subscription contract detail.

Although the Bill must still pass Parliament and will not commence until 1 July 2027, businesses now have meaningful visibility on where the reforms are likely to land and can begin embedding relevant principles into their operations.

A new general prohibition on unfair trading practices

Overview

The central feature of the Bill is a principles based prohibition on unfair trading practices, designed to capture conduct that falls outside existing ACL prohibitions but nonetheless undermines consumer decision making.

With a notable change from the exposure draft, the prohibition applies to conduct that, in connection with the supply or offer to supply goods or services to a consumer (not a body corporate, and not acquiring in the course of business):

- does or is likely to do either or both of the following:
- manipulates the consumer.
- unreasonably distorts the environment in which the consumer makes a decision.
- causes, or is likely to cause, detriment to the consumer.

Manipulation and unreasonable distortion

While the Bill introduces concepts of 'manipulation' of a consumer and 'unreasonable distortion' of consumer decision making, these concepts are not defined. Further, whereas the exposure draft prohibited **unreasonable** manipulation of a consumer, the Bill has removed the qualifier of 'unreasonableness'.

It will therefore be left to the courts to do substantial interpretive work, particularly given that the prohibition is intended to be technology-neutral and adaptive. Conduct may amount to manipulation even where it involves commonly used design, marketing or optimisation techniques, depending on context and effect.

The Bill includes a nonexhaustive list of conduct that may amount to unfair trading practices, including:

- impeding the consumer's ability to exercise legal rights or seek legal remedies.
- failing to disclose material information to the consumer.

- disclosing material information to the consumer in a complex, ineffective, unclear, unintelligible, ambiguous, untimely or overwhelming way.
- creating an environment (including by using design elements in digital interfaces) that places the consumer under unreasonable pressure in relation to, or obstructs the consumer from, making or fulfilling the consumer's decision.

The explanatory memorandum elaborates on these examples. For instance, impeding legal rights could include failing to provide accessible customer support; information disclosure failures could include obscuring key terms in large volumes of material; and creating an obstructive environment could include the use of dark patterns or personalised pressure tactics.

Detriment

Importantly, actual detriment need not be established for a contravention to occur – a likelihood of detriment (even if non-financial) is sufficient.

Practical implications

There is a material shift from what businesses say to how consumers are guided to decisions, with compliance risk increasingly sitting in product design, user experience and customer journey decisions. Key implications include:

- **Holistic scrutiny of consumer journeys**, particularly in digital environments, including how information is sequenced, emphasised or obscured.
- **Cumulative 'dark pattern' risk**, where individually defensible design elements may collectively distort consumer choice.
- Greater focus on **A/B testing and optimisation** practices, particularly where experimentation materially alters consumer behaviour.
- Increased attention on **postsale design**, including account management, complaint handling and pathways for consumers to exercise their rights.

Targeted prohibition on unfair subscription practices

Overview

The Bill also introduces prescriptive obligations for 'subscription contracts', reflecting a clear policy focus on so-called 'subscription traps'.

Broadly speaking, a subscription contract, where the consumer automatically incurs liability to pay unless action is taken to cancel, will be categorised as one of the following:

- Indefinite period.
- Fixed period.
- Initial free period.
- Initial discount period.

The regime will expressly not extend to 'excluded subscription contracts', including leases and licences of real estate, hire-purchase contracts, instalment payment contracts, childcare and school tuition supply, and any other contracts prescribed by regulation.

Notably, public utility contracts and contracts for the supply of prescription healthcare products are no longer expressly excluded and may be captured unless excluded by regulation.

Core obligations

With refinements from the exposure draft, the Bill imposes three core obligations on suppliers offering subscription contracts:

- **Clear, upfront disclosure** of key subscription terms prior to signup.
- **Lifecycle reminders or notices** at prescribed points during the subscription.
- Access to a **simple and straightforward cancellation mechanism**.

These obligations are designed to apply across the subscription lifecycle: entry, continuation and exit.

Disclosure

Suppliers offering goods or services under a subscription contract must disclose prescribed information to prospective consumers prior to sign-up. This includes:

- All liabilities (whether current or future) under the contract, such as the price of the subscription, any other fees or charges but excluding optional or elective add-ons.
- The contract duration, including any free trial or fixed period.
- The arrangements for renewal, extension or continuation of the contract, including automatic renewals.
- Any notice requirements the subscriber must meet to end the contract.
- How the subscriber can end the contract.

Disclosure must be in such manner as may be prescribed by the regulations and otherwise made either:

- in a legible, prominent and unambiguous way in close proximity to the point of contract.
- in a comprehensible, audible and unambiguous way within a reasonable time before the consumer agrees.

Reminders

The Bill establishes a framework for suppliers to notify prescribed information at prescribed times during the life of the contract to subscribers under:

- subscription contracts with a **consumer requirement**, being contracts where the goods or services are acquired wholly or predominantly for personal, domestic or household use.
- subscription contracts with a **small business requirement**, being standard form contracts where the subscriber:
  - enters into the contract in the course of carrying on business.
  - either employs fewer than 100 staff at a full-time equivalent (**FTE**) or has an annual turnover under $10m.

Rather than prescribing exact content and timing in the primary legislation, these matters will be set by regulation, allowing flexibility by contract type, industry and risk profile.

Cancellation

Suppliers must provide an easytofind and straightforward mechanism for consumer and small businesses to exit subscription contracts, requiring only those steps reasonably necessary to end the contract and protect the subscriber's interests.

In practical terms, cancelling should not be more difficult than signing up to it.

Practical implications

Key implications include:

- Disclosure obligations shifting to the **point of decision**, rather than relying on terms and conditions alone.
- The obligation being triggered by the **offer of a subscription**, meaning marketing and sales materials must align with formal disclosures.
- **System and process changes** to support automated lifecycle reminders.
- **Simplification of cancellation pathways**, with additional steps requiring clear, objective justification.

Strengthened regulation of transaction based charges

Overview

The Bill also strengthens the regulation of transaction based charges, addressing perceived gaps in the existing ACL 'single price' requirement.

While existing laws require disclosure of a single price that includes all quantifiable amounts at the time of representation, they do not always require upfront disclosure of mandatory transaction based fees applied during the purchase process.

Under the new regime, where a business displays a 'base price', it must also disclose specified information about any applicable 'transaction based charge'.

What is a transaction based charge?

A transaction based charge is an amount payable at the same time as the base price but additional to it. Excluded charges include optional charges, payment method surcharges (to the extent permissible), taxes or government-imposed fees, and any charges prescribed by regulation.

How must transaction based charges be displayed?

Any transaction based charge must be displayed in close proximity to the base price, in a legible, prominent and unambiguous way, not hidden in fine print or on another page. Specifically, the display must include:

- The charge amount (or method of calculation where the amount is not yet determinable).
- Clear information that the charge is a per transaction charge.
- Whether and when the charge is or may be payable (e.g. where different transaction methods attract different charges).
- If the base price includes the transaction based charge, the transaction based charge must also be displayed.

Practical implications

These obligations apply to offers for goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption. Notably, because the test focuses on the type of goods or services (not the acquirer's purpose), certain business-to-business transactions may also be captured unless the offer is made exclusively to a body corporate.

Key implications include:

- **Upfront disclosure of mandatory fees wherever a base price is shown**, including in advertising and search results.
- Careful explanation of **per-transaction charges** to avoid misleading impressions of total price.
- Clear articulation of **variable or conditional charges**, including geographic or channel based fees.

Preparing for the new consumer law landscape

Taken together, these reforms represent a structural expansion of Australian consumer law. The focus shifts further from whether conduct is misleading to whether it manipulates, pressures or distorts consumer choice.

With commencement scheduled for 1 July 2027, businesses have a defined transition window and a clear signal of future enforcement priorities. Early preparation will allow organisations to reduce compliance risk, embed consumer-centric design principles, and avoid reactive redesign under regulatory pressure.

Gadens' consumer law specialists can assist businesses in translating these anticipated reforms into practical compliance strategies across marketing, product design and customer operations.

Unfair contract terms reform: Signals for emerging risks and regulatory direction

By Adam Walker, Partner and Lisa Haywood, Senior Associate

In February 2026, the Federal Government released its consultation paper, *Review of the Amended Unfair Contract Terms Protections* (Consultation Paper). The government is seeking feedback on the November 2023 reforms to the unfair contract terms (UCT) regime in Australia but, notably, has indicated it is considering further reform to the UCT regime and an expansion of its application.

At a time where the government has also released draft legislation prohibiting unfair trading practices and is consulting laws relevant to supermarket pricing and loyalty transparency, it is clear there is a strong focus on 'fairness' policy agenda in Australian commerce.

While the response period to the Consultation Paper has now closed, businesses can anticipate likely reforms to the UCT regime and should consider the other likely impacts of the government's reform program.

Recap: what is the UCT regime and who does it apply to?

Protections for consumers and small businesses from UCTs are found in the Australian Consumer Law (**ACL**) and, in the case of financial services, the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**). The UCT provisions in the ACL are intended to protect personal, domestic and household consumers, and small businesses of a particular size, from unfair terms in standard form contracts.

A provision in a standard form contract may be deemed to be an unfair contract term if it meets all of the following criteria:

a. Causes a significant imbalance in the rights and obligations of the parties.

b. Is not reasonably necessary to protect the legitimate interests of the party it benefits.

c. Causes detriment to one party if the other party seeks to rely on it.

Further details regarding the scope and application of the UCT regime can be found in our previous article here.

What issues has the government called out?

The key issues the government has sought feedback on are the following:

1. **Improved remedies and enforcement:** One of the most significant changes to the UCT regime in 2023 was the inclusion of large financial penalties for contraventions. These were intended to act as a strong deterrent against businesses using 'take it or leave it' contracts and accepting the risk of an impugned term merely being declared void.

The Consultation Paper seeks feedback on how effective the new remedies and enforcement provisions have been in discouraging the use of unfair contract terms and whether the introduction of civil penalties has impacted the prevalence of unfair contract terms in standard form small business and consumer contracts.

2. **Expanded class of contracts:** The 2023 amendments significantly expanded the class of contracts involving 'small businesses' in a B2B situation that were captured under the regime. A B2B contract now falls under the UCT regime if at least one party either employs fewer than 100 full-time equivalent (FTE) persons or has an annual turnover of less than $10m for the previous income year. In addition, the ASIC Act was also amended so that the upfront price threshold increased from $300,000 to $5m, capturing an expanded class of small business standard form contracts. Treasury estimates that 98% of businesses were regarded as 'small businesses' for the purposes of the regime such that the UCT regime has become a regulatory consideration for nearly all Australian businesses.

   The Consultation Paper seeks to understand the extent to which expanding the definition of small business contracts increased the number of contracts subject to the new regime, whether the expanded thresholds are appropriate and functioning as intended, and what have been the costs of compliance for businesses as a result of the expansion. Given the number of businesses impacted by the regime as a result of the threshold change, nearly all businesses in Australia could have a say on this point regarding the implications on their business.

3. **Expanded application of the UCT provisions to the franchising sector:** The Franchising Code of Conduct is a mandatory industry code that regulates the franchising sector in Australia. Although franchisees have various protections under the Code and many will be small businesses who receive the benefit of the UCT regime (refer to our previous article here), not all franchisees get the benefit of the UCT regime.

   In March 2025, the government announced an intention to extend the application of the UCT regime, and unfair trading practice laws, to all businesses regulated by the Code.

   Through the current Consultation Paper, the government is now exploring the best means to introduce these reforms, such as through the general prohibitions in the ACL or otherwise being more targeted through the Code. Whether a mandatory application of the UCT regime to all franchise agreements will have a significant impact on the sector is unclear (given it already applies to a large portion of the sector), however there is a clear tension to be resolved when it comes to government intervening in private transactions between parties who have sufficient size and capacity to make their own commercial choices.

4. **Clarifying and strengthening provisions:** The concept of a 'standard form contract' is not defined at law. Instead, the law includes a list of factors to which the Court must at least turn its mind. The 2023 amendments added further clarification. The Consultation Paper seeks to confirm whether the amended guidance is sufficient to clarify when a contract is a 'standard form contract'.

5. **Exclusions from UCT provisions in the ASIC Act:** The 2003 amendments clarified that two kinds of long-standing life insurance contracts were excluded from the UCT regime. These are: guaranteed renewable life insurance policies (contracts whereby the insurer agrees to continue to provide cover on the terms of the original contract so long as the policy holder continues to pay premiums) and life insurance policies that have been replaced, linked or unlinked. Many of these contracts are legacy contracts. The Consultation Paper seeks feedback around whether the definitions for these types of policies are clear and able to be applied in practice.

Though the 2023 reforms have been in effect for a relatively short period, there have been several notable judicial decisions, and regulatory action taken by the ACCC, that continue to shape the understanding of the UCT regime. This builds on a base established under the original form of the regime, first with consumers and then with small businesses.

For businesses at present who think their preferred form of contract is not 'standard form', it would be worthwhile testing whether that view is justifiable, being particularly mindful that this is an issue being canvassed by the government in the present Consultation Paper.

For businesses generally, it is useful to periodically review any standard form contracts that may be in use to determine if they continue to align with current approaches with respect to what may be at risk of being an unfair contract term. At the same time, it is advisable to be mapping exposures from the government's reform agenda across product, pricing and contract flows.

NOTIFICATIONS ON – A recap of Australia's new mandatory merger notification regime

By Adam Walker, Partner, David Fleming, Partner and Lisa Haywood, Senior Associate

Australia's most significant reform of its merger control framework in decades is here, with the new mandatory and suspensory merger notification regime replacing the previous voluntary informal merger clearance system for applicable transactions put into effect from 1 January 2026. We recap the main features of the new merger regime and take a look at how quickly the Australian Competition and Consumer Commission (ACCC) has been assessing transactions in the first few months of the new regime.

What transactions are captured by the new mandatory merger notification regime?

Acquisitions of shares or assets in targets which carry on business in Australia and meet applicable control and monetary thresholds must be notified to and approved by the ACCC before the transaction can be put into effect (unless a relevant exemption applies). Otherwise, the transaction is void and the parties will be exposed to significant penalties of up to the greater of A$100m, three times the benefit gained from the conduct or 30% of Australian group turnover. Both Australian and offshore acquirers can be captured where Australian revenue or assets are involved.

What are the key monetary thresholds?

The key monetary thresholds for acquisitions of shares and assets are as follows:

Large or larger merged firm threshold	Very large acquirer threshold
Acquisition of shares or assets that comprise all or substantially all of business	
• Combined Australian revenue of acquirer and its connected entities plus target is ≥A$200m; and • **Either**: – Australian revenue of target ≥A$50m; – Cumulative Australian revenue of target plus any acquisition in same industry by acquirer and its connected entities in last 3 years (after subtracting certain exclusions) ≥A$50m;* or – Transaction value ≥A$250m.	Australian revenue of acquirer and its connected entities is ≥A$500m; and • **Either**: – Australian revenue of target ≥A$10m;or – Cumulative Australian revenue of target plus any acquisition in same industry by acquirer and its connected entities in last 3 years (after subtracting certain exclusions) ≥A$10m.*
Acquisition of assets that do not comprise all or substantially all of business	
– Australian revenue of acquirer and its connected entities is ≥A$200m; and – Transaction value ≥A$200m.	– Australian revenue of acquirer and its connected entities is ≥A$500m; and – Transaction value ≥A$50m.

Note: An entity is 'connected' to the acquirer if they are related bodies corporate, one controls the other (including joint control by an associate, except where an associate only as a result of certain minority protection rights), or they are both controlled by a common entity.
* Acquisitions of targets with Australian revenue of less than A$2m excluded.

Additional control and voting power thresholds for share acquisitions

In the case of share acquisitions, the transaction must also meet either of the following control or voting power thresholds to be notifiable (i.e. in addition to the monetary thresholds above):

Control threshold	Voting power thresholds
Acquisition results in acquirer (together with any associates) gaining 'control' of target, in the sense of having the capacity in practice to determine the outcome of decisions about the company's financial and operating policies	• Private companies: from ≤20% to >20%. • All entities: from ≥20% (but ≤50%) to ≥50%. • Public companies* (where already controlled): from ≤20% to >20%. • Public companies* (where no control before or after acquisition): from <20% to ≥50%.

* Includes Australian listed companies or schemes and proprietary companies with over 50 members

No 'safe harbour' for transactions falling below mandatory notification thresholds

Transactions which fall below the mandatory notification thresholds can still contravene Australian merger law if they are likely to have the effect of substantially less competition in a relevant market. The ACCC expects that such transactions will be voluntarily notified.

Exemptions and particular provisions

Not all acquisitions meeting the thresholds above require notification. Key exemptions include:

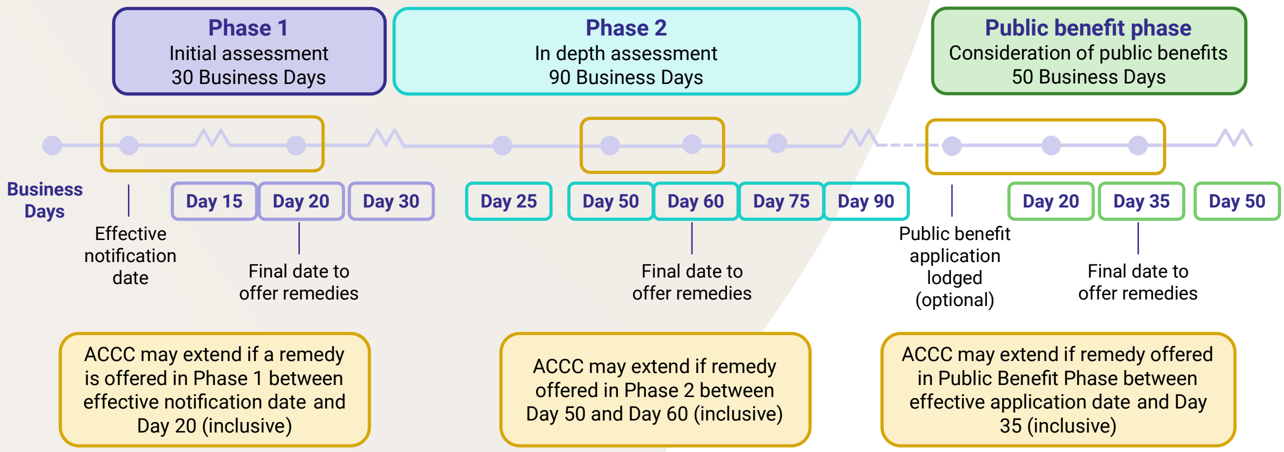
- Internal restructures and reorganisations.
- Acquisitions of shares in an Australian listed company or scheme, or an unlisted company with >50 members, which do not result in the acquirer holding more than 20% of voting rights.
- Acquisitions of assets or an interest in land in the ordinary course of business (except patents).
- Certain land acquisitions including for the purpose of developing residential premises or operating a land development or management business, land entities for either of those purposes, lease extensions and renewals, sale and leaseback arrangements, land development rights and acquiring a further interest in land or quasi-land rights after an initial equitable interest has been notified.
- Certain acquisitions in relation to financial market infrastructure, financial securities, debt instruments, money lending, financial accommodation and security interests.
- Acquisitions by external administrators or persons in analogous roles.
- Certain acquisitions by superannuation entities.
- Specific exempting laws of Federal or State Government.

The exemptions are technical in nature and must be applied carefully to avoid noncompliance.

There are also special rules for supermarkets and land ownership relating to the two main supermarket chains in Australia, Coles and Woolworths.

ACCC assessment process and timeline for notified transactions

The ACCC assesses a notified transaction to identify if it is likely to substantially lessen competition in a relevant market. It can approve unconditionally, approve with conditions or not approve notified transactions. Details of notified transactions are published on the ACCC's website within one business day of the ACCC receiving the application (with very limited exception). The timeline for the ACCC review process (subject to statutorily permitted extensions) is as follows and will vary depending upon the complexity of the deal:



Note: This figure focuses on key dates related to remedies. See chapters 6, 7 and 8 for information about other key dates and steps.

Source: ACCC merger process guidelines (December 2025)

Notifiable transactions that do not raise material competition concerns should be cleared by the ACCC at the end of the Phase 1 process, while transactions which raise more substantive competitive issues may be subject to a more rigorous Phase 2 ACCC review process.

The ACCC reported that in the first three months of the new regime, it had received 50 merger notifications, of which it had approved 39 during Phase 1 and two notifications were progressed to Phase 2 (with the remainder still under phase 1 review), for an average Phase 1 decision time of 18 business days. The ACCC also confirmed that it had met its goal of 80% of mergers being cleared or waived (see further below) within 20 business days. However, these timeframes tend to understate the overall time taken for ACCC clearance, as the ACCC expects pre-notification discussions with the parties about the transaction before the application is formally lodged, which could potentially take weeks or even months for more complex transactions.

Approved transactions are subject to a 14 day wait period before they can be implemented. A party dissatisfied with an ACCC determination may apply to the Australian Competition Tribunal for a review and which must be made within 14 calendar days after the ACCC's publication of its reasons for the decision.

ACCC notification waiver process

Parties involved in non-controversial transactions which meet the notification thresholds but clearly have no competition issues can seek an ACCC waiver of the notification requirements. This involves a separate ACCC notification waiver application, with the ACCC having 25 business days to grant a waiver (there is no default waiver if not granted in time). Notification waiver decisions are published on the ACCC's website within one business day of the ACCC's decision.

The ACCC reported that in the first three months of the new regime, it received 108 notification waiver applications, of which it had granted 70 and declined 6 (with 32 remaining under assessment), with an average ACCC decision time of 11 business days. Acquisitions which are not granted a waiver need to be separately notified to the ACCC if they meet the relevant thresholds.

Fees payable in connection with notification

The following filing fees apply to each stage of the ACCC's review process (the fees payable are cumulative):

Stage	Fee (FY25/26)
Notification waiver application	\$8,300
Phase 1: Notification of proposed acquisition	\$56,800
Phase 2	If a transaction value is: ≤\$50m, the fee is \$475,000. >\$50m and ≤\$1b, the fee is \$855,000. >\$1b, the fee is \$1,595,000. The transaction value is the higher of the market value of the acquired shares/assets or consideration receivable from the acquisition.
Public benefits application	\$401,000
Tribunal review	0.12% of transaction value up to A\$2.95m.

Key considerations for businesses

Some practical considerations for businesses navigating the new mandatory merger notification regime include:

- The new merger regime is complex and the consequences of non-compliance are very serious, with the transaction being automatically void and the parties potentially exposed to significant penalties.
- The potential application of the new merger regime therefore needs to be assessed early and any notification requirements built into the transaction documents (e.g. ACCC condition precedents) and the deal timetable.
- While the ACCC has so far been meeting its stated merger review timeframes, parties need to build in additional time for pre-notification ACCC engagement, which is not included in the reported figures.
- The 20% and 50% voting power thresholds and extended definition of control mean that investors need to be vigilant to prevent inadvertent crossing of these thresholds (e.g. through incremental share acquisitions, placements, debt-equity conversions or other arrangements).
- Parties need to be conscious of public exposure of the deal, with information on transactions being available on the ACCC website during the review process and notification waiver decisions also being published.
- Potential exemptions from merger notification are technical and require careful consideration.

Personal Property Securities Register: The basics

By Breanna Davies, Partner, Clementine Woodhouse, Special Counsel and Kevin McVeigh, Senior Associate

What is the PPSR? How to remove a PPS registration

The Personal Property Securities Register (**PPSR**) is the Australian public register on which details of security interests in personal property can be registered by secured parties and searched by others.

The PPSR covers most personal property (i.e. property other than real estate). The security interests covered by the PPSR include all interests in property which secure payment or performance of an obligation (e.g. mortgages over motor vehicles or retention of title arrangements) as well as certain leases, bailments and consignments of property.

The register is used by secured parties to show they have rights over personal property which secure debts or obligations owed to them.

The PPSR can be searched (for a small fee) to research:

- whether particular property (e.g. a car, truck or boat) is subject to a security interest which has been registered on the PPSR.
- what registrations have been made against a person (e.g. an individual or company) – known as a 'grantor'.

Despite the PPS regime reaching its 14-year anniversary earlier this year, we find that there is still a great deal of uncertainty and confusion surrounding it. It is common for secured parties to make incorrect PPS registrations or fail to register at all.

It is also common for secured parties to fail to remove PPS registrations in a timely fashion when required to do so. Our experience is that issues with PPS registrations can cause significant delays and complications during transactions for the sale of businesses and sale of assets. These issues are exacerbated where third parties with PPS registrations do not understand their obligations under the PPS regime and do not respond promptly to requests to remove their registrations (when they are obsolete or incorrect).

Improper PPS registrations can also be an issue for any finance arrangements you may have. If the terms of your finance arrangements prohibit you from granting further security interests, improper registrations made by other counterparties may create an impression that you have breached your finance arrangements. Regular PPS searches may assist with monitoring this and addressing any incorrectly registered security interests early, before they become an issue with your financier or with any other transactions you wish to complete.

How do I search the register?

You can search the PPSR here

You can search:

- yourself - to identify whether there are registrations which are no longer current or incorrectly registered and should be removed.
- your counterparties - to understand whether they have granted security interests over some or all of their personal property which may affect you (e.g. if you are acquiring a business or asset).
- specific items of property (e.g. motor vehicles, patents, trade marks and designs) – to understand whether the property is subject to a security interest (e.g. if you are acquiring a truck or intellectual property).

The table below sets out the identifiers you can search against (depending on the type of grantor you are searching for or the type of property you are searching for):

Entity type	Details
Company	ACN
	ARBN (if any)
	Name
	ABN
	Former names
Corporate trustee of trust	ACN of corporate trustee
	ABN of corporate trustee
	ARBN (if any) of corporate trustee
	Name of corporate trustee
	ABN of the trust (if it has one)
	Name of the trust
Individual trustee of trust	Surname, given names and date of birth of individual trustee
	ABN of the trust (if it has one)
	Name of trust
Individual	Surname, given names and date of birth
Managed investment scheme	Registered scheme's ARSN

What do the different registrations mean?

A PPSR search for a corporate grantor can yield a massive range of results. Common registrations include:

- Registrations in respect of 'All Present and After-Acquired Property' of the grantor (AllPAP Registrations) – these registrations are often made by banks or other financial institutions or lenders which have taken security over all the assets of a grantor under a general security agreement (formerly a fixed and floating charge).
- Registrations against the VIN of a motor vehicle – these registrations are often made by financiers or vehicle lessors and indicate that the relevant vehicle is subject to finance or it is leased by the grantor.
- Registrations in respect of 'other goods' – these registrations relate to the specific property identified in the registration and can relate to a wide variety of transactions. The property covered by the registration may be leased, mortgaged, or may be property supplied to the grantor to which the supplier retains title.

How can I remove registrations made against me which I don't think should be there?

If you do not understand why a registration has been made against you, or hasn't been removed, or don't believe it should have been made, you should do the following steps:

Step 1: Contact the secured party using their details supplied on the PPS registration and request removal/amendments as appropriate. The matter may be resolved at this step.

If you are not able to resolve the issue with the secured party at Step 1, it is possible to follow an administrative process through the PPS Registrar to remove registrations or alternatively apply to the Court. We recommend that you seek legal advice with either or both these avenues as the legislation governing the PPSR is highly prescriptive (e.g. there are very specific time periods to comply with, and requirements for service of notice etc).

Step 2: An amendment demand is sent to the secured party at their registered address for service. Dispute may be resolved at this step.

Step 3: If you are not able to resolve the issue with the secured party at Step 2 (i.e. the secured party refuses to comply, or does not respond) you can commence (after waiting five business days after the amendment demand has been sent) either:

- the 'administrative process' (whereby the PPS Registrar will notify the secured party seeking a response as to why the removal/amendment has not occurred).
- the 'judicial process' (whereby you apply to the Court for an order about the amendment demand).

We ordinarily advise our clients to follow the administrative process, given it is a less costly exercise, although it can be more prolonged than the 'judicial process'.

For more information or assistance, please do not hesitate to contact us.

This article was originally published in an earlier edition of Consumer Express and has been republished on the basis that the issues discussed remain as relevant today as when it was first published.

Changes to 'Australian business': What foreign-owned companies need to know

By Breanna Davies, Partner, Brittany Dorney, Senior Associate and Sebastien Butler, Graduate

Commonwealth Procurement Rules

The Commonwealth awarded 86,926 procurement contracts with an aggregate value of $104.9b in the 2024-2025 financial year.[1] Noting the tendering opportunities created by such significant procurement expenditure, it is critical that private sector clients keep informed of updates to the Commonwealth Procurement Rules (**CPRs**).

The CPRs govern how Commonwealth entities procure goods and services ensuring that procurement activities achieve value for money, encourage competition, and are an efficient, effective, economical and ethical use of public resources.

On 17 November 2025, reforms to the CPRs commenced and affect how competition is encouraged in the Commonwealth's procurement activities (**2025 CPRs**).[2]

Of note, the procurement threshold has increased from $80,000 to $125,000. Contracts valued up to $80,000 accounted for 59% of Commonwealth contracts by volume in the 2024-2025 financial year. The 2025 CPRs are clearly intended to capture a greater volume of lower-value procurements.

Local suppliers were favoured in Commonwealth procurement activities throughout the 2024-2025 financial year, with businesses holding an Australian address awarded 88.3% of Commonwealth contracts by value.[3] However, under the 2025 CRPs, a clearer distinction is drawn between local presence and Australian ownership, which may materially affect the ability of foreign-owned companies to secure CRPs.

1 Statistics on Australian Government Procurement Contracts | Department of Finance
2 Notably, the reforms only apply to an Approach to Market issued on or after 17 November 2025.
3 Statistics on Australian Government Procurement Contracts | Department of Finance

Australian businesses

A significant departure in the 2025 CPRs is the replacement of the non-discrimination rule with a new rule that actively prioritises Australian businesses.

An 'Australian business' is a business (including any parent business) that satisfies the following limbs:

- has 50% or more Australian ownership or is principally traded on an Australian equities market.
- is an Australian resident for tax purposes.
- has its principal place of business in Australia.

Therefore, even if the entity is a tax-resident and headquartered in Australia, it will not qualify as an 'Australian business' unless it (or its parent) meets the 50% Australian ownership test or is principally traded on an Australian equities market. The ownership requirement has been a critical hurdle for our foreign-owned clients operating in Australia.

Small and medium enterprises

Participation by small and medium enterprises (**SME**) in Commonwealth procurement has increased year on year since the 2022-2023 financial year. Most recently, SME accounted for 84% of suppliers to the Commonwealth in the 2024-2025 financial year.[4]

SME participation in Commonwealth lower-value procurement will continue to trend as the 2025 CPRs contain a new requirement that Commonwealth entities prioritise SME for procurements with an expected value under $125,000 from the Management Advisory Services Panel, People Panels, and standing offers managed by the Digital Transformation Agency.

A SME is classified as an Australian business with fewer than 200 full-time equivalent employees. This adds a further layer of prioritisation that foreign owned companies should be aware of when engaging with Commonwealth procurement processes.

Implications for procurement activities

In short, if a business does not meet the 'Australian business' definition, it will not be invited to make submissions for Commonwealth procurements valued below $125,000 in the first instance.

However, a foreign-owned company may still participate in below-threshold procurements where no Australian business has the capacity to deliver the requirements, or where the requirements are highly specialised and not available from an Australian business.

Therefore, the practical impact of the 2025 CPRs to a foreign-owned company will depend on the nature and value of their contracts with the Commonwealth and the level of competition from qualifying Australian businesses in that industry.

For foreign-owned businesses looking to qualify as an 'Australian business' under the new rules, restructuring options may be available, though they would need to involve taking on Australian investors with at least 50% ownership. Any such restructure would need to be carefully considered in light of broader corporate, tax, and commercial implications.

4 Statistics on Australian Government Procurement Contracts | Department of Finance

Compliance: Your most valuable collab

By Breanna Davies, Partner, Kelly Griffiths, Partner, Lisa Haywood, Senior Associate and Lucy Hardyman, Lawyer

Influencer marketing has become a cornerstone of brand strategy and presents unprecedented opportunities to reach audiences that may otherwise have remained untapped. The evolution of influencer marketing has occurred at such lightning speed that many brands, agencies and creators have failed to stay across the complex regulatory frameworks that governs influencer marketing - with regulator sweeps demonstrating significant levels of non-compliance.

In this article, we examine the key regulatory frameworks that govern influencer marketing, the bodies that oversee these frameworks, and key tips for compliance.

Australian Consumer Law

Australia has a national consumer law known as the Australian Consumer Law (**ACL**) (found in Schedule 2 of the *Competition and Consumer Act 2010* (Cth)) that applies nationally (and has been given effect by applicable State and Territory consumer laws).

The ACL is regulated by the Australian Competition and Consumer Commission (**ACCC**).

The ACL prohibits a range of conduct including a person, in trade or commerce, from engaging in misleading or deceptive conduct. This prohibition is not limited to the supply of goods or services and therefore has broad reaching application, including in relation to influencer marketing. The ACL also contains specific prohibitions in relation to false or misleading representations. There are different ways in which influencers and brands may mislead consumers in social media advertising. For example, by:

- Making incorrect statements about their relationship with a brand, product or service.
- Omitting key information in their posts, such as underlying commercial relationships, sponsorships or other incentives received to promote a brand, product or service.
- Disclosing brand relationships in a way that is vague, confusing or hard to notice.

Breaches of the ACL carry significant penalties, with maximum penalties for corporations reaching the greater of $100m, 3 times the benefit obtained, or 30% of adjusted turnover during the breach period.

For individuals, penalties can reach up to $2.5m per breach. However, we note that the ACCC only issued its first financial penalty to an Australian business for an influencer not disclosing paid content in March this year to online printing service, Photobook Shop, for failing to disclose it paid and commissioned influencers for reviews; the fine was $39,600. The conduct included specifically requesting that influencers did not disclose that the product was free or sponsored, as well as substantively editing a review to remove negative content. ACCC Deputy Chair Catriona Lowe said:

"Businesses must not mislead consumers by posting misleading reviews or failing to disclose when an influencer has been paid to create social media content, whether that payment is free gifted products or services, or money."

"Influencers can be a powerful marketing tool, and the Australian Consumer Law applies as much to the digital world as it does to bricks and mortar retailers."

Compliance tips for brands, agencies and creators

So, what are some key things brands, agencies and creators can do when developing influencer marketing material to ensure compliance with the relevant legislative frameworks, codes and regulations?

1. **Evidence:** Ensure you can substantiate the statements you are making in connection with goods or services being advertised.
2. **Industry specific obligations:** Where you are advertising goods or services that are industry specific (e.g. financial products or therapeutic goods) ensure you familiarise yourself with the relevant legal requirements that relate to these goods and services. If you unsure, seek legal advice.
3. **Review content before posting:** All content should be reviewed from a compliance and legal perspective before it is posted or shared with a creator's community. Preparing internal review checklists can assist in ensuring potential risks/non-compliant material in influencer advertising is not missed during the review process.
4. **Clearly distinguishable:** Always disclose a material connection with brands: payments, gifts, affiliate commissions, discounts, free services should be clearly distinguishable from regular content. Use unambiguous terms such as #ad, #sponsored or #paidpartnership.
5. **Upfront and obvious disclosure:** Make disclosure of material connections clear, upfront and hard to miss: don't hide them buried in hashtags.
6. **No false or misleading claims:** Ensure all content is truthful and not false or misleading. Misleading endorsements or testimonials, scripted review content or fake reviews can breach the relevant industry standards as well as applicable legislation/codes such as the ACL, ASIC Act, the National Law and the TGA Code.
7. **Ongoing training:** Brands and agencies should conduct training for employees and content creators around legal obligations, risks and key compliance requirements to ensure all parties are across the requirements for compliance.
8. **Written agreements:** Brands, agencies and creators should have written agreements in place that deal with, amongst other things, compliance with laws, disclosure obligations, audit and review rights, indemnities for non-compliance and accuracy expectations.
9. **Recording keeping and audits:** Maintain evidence of disclosures, communications between agencies, brands and creators and content drafts.

Deeper dive into the regulations

Australian Association of National Advertisers and Ad Standards

The Australian Association of National Advertisers (**AANA**) is the peak industry body for advertisers in Australia, representing brands, overseeing self-regulation, and developing advertising codes, specifically the AANA Code of Ethics (the **Code**). The Code is a voluntary code that applies to advertising and marketing in Australia on a self-regulation basis. While the Code is voluntary, there is a presumption that advertising and marketing in Australia will comply with the Code. The Code is also supplemented by a Code of Advertising and Marketing to Children, Food and Beverage Advertising Codes, Environmental Claims Code and Wagering Advertising Code.

While failure to comply with the applicable AANA codes does not result in any legal penalties, it can have significant reputational impacts for brands, agencies and creators alike. A breach of one of the AANA Codes may also be a breach of law, including under the ACL or the Therapeutic Goods Advertising Code (**TGA Code**), which may attract penalties (depending on the form and substance of the breach).

Ad Standards is Australia's advertising regulator. It independently handles complaints under the advertising industry codes that are established by the AANA. Ad Standards will also review competitor complaints via the Ad Standards Industry Jury. Decisions made by Ad Standards are shared publicly, naming and shaming brands which breach relevant requirements of the codes.

Australian Influencer Marketing Council

The Australian Influencer Marketing Council (**AiMCO**) is the not-for-profit, industry-led body for influencer marketing in Australia. AiMCO has also established an Influencer Marketing Code of Practice (**AiMCO Code**). The AiMCO Code encourages the adoption of appropriate industry practices in order to support professional standards within influencer marketing in Australia. It aims to align with the Code. Similarly to the AANA codes, compliance with the AiMCO Code is voluntary, is not enforceable by law and non-compliance does not result in any financial penalties. However, it is generally expected that influencers will comply with this Code. The risk of non-compliance is largely reputational damage, which is not insignificant.

Industry specific regulation

Other government regulators such as the Australian Securities and Investments Commission, the Therapeutic Goods Administration (**TGA**) and the Australian Health Practitioner Regulation Authority are also responsible for regulating influencer conduct and content in their jurisdictions.

TGA and the Therapeutic Goods Advertising Code

The TGA regulates the advertising of therapeutic goods. Therapeutic goods are goods:

a. *that are represented any way to be, or that are, whether because of the way in which the goods are presented or for any other reason, likely to be taken to be:*
   - *(i)* ***for therapeutic use***
   - *(ii) for use* ***as an ingredient or component in the manufacture of therapeutic goods***
   - *(iii) for use as a container or part of a container for goods of the kind referred to in subparagraph (i) or (ii).*

b. *included in a class of goods the sole or principal use of which is, or ordinarily is, a therapeutic use or a use of a kind referred to in subparagraph (a)(ii) or (iii).*

All advertisements relating to therapeutic goods must comply with the TGA Code, except if advertisements of such goods are prohibited. Prescription medicines and controlled drugs may not be advertised to the public.

The TGA Code does not permit anyone engaged in the production, marketing or supply of the advertised therapeutic good (or a member of their immediate family, without disclosure) to make testimonials. This includes paid influencers, or any person who has or will receive valuable consideration in exchange for the testimonial. Critically, this prohibition does not apply to endorsements more broadly.

In assessing whether an influencer can be paid for promotion of a therapeutic good, it is important to understand the difference between an endorsement and a testimonial. An endorsement is a form of support, approval or sanction of a therapeutic good, whereas a testimonial is a type of endorsement involving a person who claims to have used a therapeutic good making a statement about that good. This distinction is important: an influencer can be paid to endorse a therapeutic good, but cannot be paid to provide a testimonial about it. This means that, in practice, brands can often find a pathway forward to continue working with influencers in relation to therapeutic goods, provided the content does not cross into testimonial territory.

It is also worth noting that the TGA Code specifically uses the term 'valuable' consideration, not merely 'consideration'. This suggests that the consideration must confer an economic benefit. There is an argument that a 'sample' (i.e. not a full size version of the product) provided solely to enable a review may not meet the threshold for 'valuable consideration'. A single-use sample provided for the sole purpose of enabling a review is unlikely to confer a sufficient economic benefit to meet this requirement. This may, in limited circumstances, allow brands to provide samples to influencers in order to generate testimonials. However, the influencer should still disclose that the brand provided the sample for the purposes of the review. This area of the TGA Code is currently under active consideration, with the TGA reviewing aspects of the Code.

Depending on the nature of the breach of the TGA Code, the below penalties may apply pursuant to the *Therapeutic Goods Act 1989* (Cth). However, in practise, it is rare for the TGA to commence civil penalty proceedings for breaches of the TGA Code unless the conduct involves sustained non-compliance coupled with the making of restricted representations.

The TGA's standard enforcement approach is graduated: the first step is ordinarily a warning letter, or an advertising direction and prevention notice with a requirement to take corrective action. If the individual or entity fails to comply at that stage, the TGA may issue an infringement notice with a financial penalty. It is only in the most egregious cases that the TGA would escalate to civil penalty proceedings. Brands, agencies and influencers should therefore be aware of the following maximum statutory penalties, whilst understanding that initial enforcement is more likely to take the form of a warning or infringement notice:

- **Aggravated offence** (if the advertisement causes or is likely to cause harm/injury): Up to **5 years' imprisonment or 4,000 penalty units ($1,320,000), or both**.
- **Civil penalty** (non-compliance with the TGA Code): **5,000 penalty units ($1,650,000) for individuals and 50,000 penalty units ($16,500,000) for corporations**.
- **Standard offence** (noncompliance without causing harm): Up to **12 months' imprisonment or 1,000 ($330,000) penalty units**, or both. For example, an influencer claims that a particular sunscreen which is not registered on the Australian Register of Therapeutic Goods 'provides SPF50+ protection for everyday use', but that advertisement does not cause harm.
- **Strict liability offence** (regardless of knowledge or intent): Up to **100 penalty units ($33,000)**.
- **Continuing offence:** Each day of continued noncompliance attracts a separate offence with additional daily penalties up to **10%** of the maximum penalty for that offence. For example, an influencer who fails to remove a non-compliant therapeutic goods advertisement after being directed by the TGA may commit a continuing offence.

Australian Securities and Investment Commission

The Australian Securities and Investments Commission (**ASIC**) strictly regulates 'finfluencers' (financial influencers) who promote financial products or provide advice without an Australian Financial Services licence. Key actions include targeting misleading content, unlicensed advice on high-risk products (e.g., crypto, CFDs). The types of penalties available for breaches by individuals and corporations in relation to financial products include:

- **Imprisonment:** Individuals acting as unlicensed financial services providers can face up to **five years' imprisonment**.
- **Fines (Criminal):** Individuals may face fines of up to 600 penalty units ($198,000).
- **Fines (Civil):** For individuals, civil penalties can be the greater of 5,000 penalty units (approximately $1.650,000) or three (3x) times the benefit gained.
- **Corporate Penalties:** Corporations engaging finfluencers can face fines of over $1m. For companies, penalties can reach the greater of 50,000 penalty units ($16.5m) or 10% of annual turnover.

Australian Health Practitioner Regulation Agency

The *Health Practitioner Regulation National Law* (NSW) (**National Law**), administered by the Australian Health Practitioner Regulation Agency, governs how regulated health services may be advertised.

Section 133 of the National Law states that a person must not advertise a regulated health service, or a business that provides a regulated health service, in a way that:

- is false, misleading or deceptive or is likely to be misleading or deceptive
- offers a gift, discount or other inducement to attract a person to use the service or business, unless the advertisement also states the terms and conditions of the offer
- uses testimonials or purported testimonials about the service or business
- creates an unreasonable expectation of beneficial treatment
- directly or indirectly encourages the indiscriminate or unnecessary use of regulated health services.

In 2022, the National Law was amended and one of the changes was to increase the maximum penalty for advertising offences. For an individual, the maximum financial penalty per offence increased from $5,000 to $60,000, and for a body corporate the maximum financial penalty per offence increased from $10,000 to $120,000. The process for managing advertising breaches under the National Law is set out in section 1.3 of the guidelines.

The *Guidelines for advertising a regulated health service* (**Guidelines**) have been developed jointly by the National Boards under section 39 of the National Law. The Guidelines sets out how regulated health services can and cannot be advertised.

Key takeaway

The key takeaway for brands, agencies and creators is that compliance cannot be an afterthought. It must be embedded in every stage of an influencer engagement, from initial briefing through to content approval and ongoing monitoring. Written agreements that clearly allocate compliance obligations, robust review processes, and regular training are not optional extras but essential components of any responsible influencer marketing strategy. Those who invest in getting compliance right will not only avoid regulatory risk but will build the trust and credibility that underpins lasting brand value.

Scrolling with safeguards: Australia's Online Safety Act explained

By Lara Cresser, Partner, Ellen Baker, Senior Associate, Lisa Haywood, Senior Associate and Lucy Hardyman, Lawyer

Australia has emerged as a global leader in regulating the rapidly evolving online landscape, with the introduction of a world-first centralised online safety regime in 2022, anchored by the *Online Safety Act 2021* (Cth) (**Online Safety Act** or **OSA**), and more recently, a landmark social media ban for children under 16.

As governments worldwide grapple with the regulatory balancing act of combating online harms, without impeding freedom of speech and privacy, and remaining technology-neutral, Australia's online safety regime offers both a robust and challenging legal pathway to navigate for both Australian and overseas businesses.

The obligations under the OSA apply broadly to businesses that provide online services accessible to Australians, regardless of where those businesses are incorporated or physically located. The OSA captures everything from social media platforms, search engines, websites, dating apps, gaming platforms, AI chatbots and other 'relevant electronic services'. Global organisations can be subject to compulsory information requests, take-down notices and civil penalties where harmful and illegal content is available to end-users in Australia.

In this article, which will be the first of a series of instalments analysing the Online Safety Act, we begin to explore some of the obligations imposed on businesses under the OSA, its extra-territorial reach, and practical ways to navigate the ever-evolving landscape of online content in Australia.

What services are captured by the OSA?

The broad application of the OSA means it applies to a range of different online service providers with Australian end-users.

The requirements and obligations that apply to online service providers under the OSA will differ, depending on which of the eight categories the online service falls into.

The relevant types of services under the OSA, include:

1. **Social media service (SMS):** includes services where the sole or primary purpose is to enable online social interaction between two or more end-users and allows end-users to post material (e.g. Facebook, Instagram,

Snapchat, YouTube and Reddit).

2. **Relevant electronic service (RES):** includes electronic services that allow end-users to: (1) communicate via email, instant messaging, SMS, MMS or a chat service; or (2) play online games with other end-users. This definition has a very broad application and will apply to any website that has a chat service that allows end-users to communicate (e.g. Telegram and Discord).
3. **Designated internet service (DIS):** includes services that allow end-users to access material using an internet carriage service, or a service designated by the Minister for Communications (the Minister) by legislative instrument. A DIS does not include a social media service, relevant electronic service or an on-demand program service. Examples include most apps and websites accessed by Australian end-users, including online news and entertainment websites, retail websites, and information apps (e.g. Tripview).
4. **Internet carriage service (ICS):** means a listed carriage service that enables end-users to access the internet, for example, mobile network operators and broadband providers (e.g. Optus, Telstra).
5. **Hosting service:** means a service that hosts stored material that has been provided on a social media service, relevant electronic service, or designated internet service (e.g. Amazon Web Services).
6. **Manufacturers, suppliers and installers of equipment:** means people who manufacture, maintain, supply or install equipment for use by end-users in Australia in connection with a social media service, relevant electronic services, designated internet service or internet carriage service (e.g. Apple and Samsung).
7. **App distribution service:** means a service that enables end-users to download apps using a carriage service (e.g. Apple App Store and Google Play Store).
8. **Search engine service:** is a service designed to collect, organise and/or rank material on the internet with the primary purpose of allowing end-users to search the service's index of material for results in response to the end-user's queries (e.g. Microsoft, Bing and Google Search).

Extraterritorial application

The objective of the OSA is to improve and promote online safety for Australians, however its application extends outside of Australia. That matters for global businesses: if end-users in Australia can use your service, you should assume the OSA may be in play, even if your company has no local entity or staff.

Some key considerations are:

- Can people in Australia access the service (including via app stores, web access, or marketing)?
- Can people in Australia access content (including links, images, files, or messages)?
- Does the service enable end users in Australia to interact (e.g. comments, messaging, chat, multiplayer functionality)?

Even where a service has global reach, the OSA's architecture expects providers to have controls that operate effectively for end users in Australia (including compliance readiness when the regulator asks questions). In practice, eSafety can issue notices to global platforms requiring removal or restriction (geo-blocking) of content accessible to end-users in Australia.

Codes, standards and 'reasonable steps': the compliance backbone

Industry codes and standards

A central mechanism of the OSA, is the use of industry codes (developed by industry and registered by eSafety) and standards.

The codes and standards are risk-based, with requirements placed on service providers that are proportionate to the risk their service presents with respect to 'Class 1' and 'Class 2' material under the National Classification Scheme. The requirements in the codes and standards are outcomes-based, while endeavouring to remain technology-neutral, and allow service providers to take different approaches to achieve these outcomes.

The codes include the:

- Consolidated Industry Codes of Practice for the Online Industry (Class 1A and Class 1B Material) (**Unlawful Material Codes**).
- Relevant Electronic Services – Class 1A and Class 1B Material Industry Standard 2024 and Designated Internet Services – Class 1A and Class 1B Material Industry Standard 2024 (together, **Unlawful Material Standards**).
- Consolidated Industry Codes of Practice for the Online Industry (Class 1C and Class 2 Material) (**Age-Restricted Material Codes**).

Service providers must comply with one Unlawful Material Code or Standard, and one Age Restricted Material Code, for each separate service they provide. If a service meets the definition of multiple service types under the OSA, and could be subject to several codes or standards, the service provider is generally required to comply with the code or standard that reflects the services predominant purpose.

Basic Online Safety Expectations

Separately, the OSA empowers the Minister to determine Basic Online Safety Expectations (known as **the Expectations** or **BOSE**) for certain service classes. A BOSE determination does not itself impose a duty enforceable in court, but it is still highly practical because eSafety can issue reporting notices requiring providers to explain how they are meeting expectations, failure to respond is enforceable.

Under the current *Online Safety (Basic Online Safety Expectations) Determination 2022*, providers are expected to, amongst other things:

a. take 'reasonable steps' to prevent and minimise unlawful and harmful content and activity on their services
b. provide accessible reporting and complaint mechanisms

c. maintain transparent terms, policies and enforcement processes that promote user safety.

Compliance implication: eSafety can compel providers to produce detailed reports explaining how they meet each expectation under the BOSE and can publicly assess and publish whether a service provider is compliant.

Social media minimum age obligations

A headline reform is the social media minimum age framework introduced to the OSA by the *Online Safety Amendment (Social Media Minimum Age) Act 2024* (**Online Safety Amendment**). The Online Safety Amendment took effect on 10 December 2025, with significant civil penalties for systemic failures by platforms to take 'reasonable steps' to prevent under 16 account holding.

Even for businesses that are not 'age restricted social media platforms', the reform is instructive: it signals the direction of future regulation, a greater focus on child safety, age assurance, and demonstrable controls (plus regulatory willingness to scrutinise implementation).

For an in depth analysis of the Online Safety Amendment, please see Gadens' commentary here.

Key takeaways

- **The Online Safety Act has broad and extraterritorial reach:** The OSA applies to any online service accessible to users in Australia, regardless of whether the provider is incorporated or operates overseas or does not have a physical presence in Australia. Overseas operators are not beyond the eSafety Commissioner's reach. Global businesses should proactively assess their exposure, as civil penalties may apply for failing to comply with the OSA.
- **The regime captures far more than 'social media':** The OSA captures any online service accessible to Australians across eight categories, with tiered obligations based on service type and risk profile.
- **BOSE is not legally enforceable, however eSafety can compel providers to prove compliance:** eSafety can compel providers to produce detailed reports explaining how they meet each expectation under the BOSE and can publicly assess and publish whether a service provider is compliant.
- **The regulatory bar is likely to rise further:** Proposed reforms, including a potential digital duty of care, indicate a shift towards preventative obligations that place greater responsibility on platforms to address foreseeable online harms before they occur. Businesses should be planning ahead rather than reacting to enforcement.

What's next?

Following the independent Statutory Review of the Online Safety Act published February 2025, the review found that the OSA operates primarily to help people after they have experienced online harm. The review recommended that Australia should adopt a duty of care for online services, requiring service providers to take reasonable steps to proactively identify, assess and mitigate foreseeable risks of online harms to people in Australia so that responsibility shifts from individuals to digital platforms. Australia won't be the first country to adopt a digital duty of care, as the government is considering legislative reform to align with the duties of care in the UK and EU online safety regimes.

The government consultation period closed on 7 December 2025, so we expect to hear more on the proposed introduction of a digital duty of care in the coming months.

Keep an eye out for our next instalment in this series where we begin to deep-dive into the complex OSA regime.

gadens

Facial recognition technologies in retail: Clarifying the expectations

By Mitchell Wright, Partner, Dudley Kneller, Partner and Charlotte Cheng, Graduate

In February 2026, the Administrative Review Tribunal (**ART**) delivered a decision that reshapes the privacy landscape for facial recognition technology (**FRT**) in retail settings. This decision follows from Bunnings Group Limited's (**Bunnings**) appeal of the Australian Privacy Commissioner's (**Commissioner**) determination in 2024, which found that Bunnings had breached the *Privacy Act 1988* (Cth) (Privacy Act) by collecting customers' personal and sensitive information through the use of FRT (we previously discussed the determination in depth in the 12th edition). While this finding was partially overturned by the ART, key privacy obligations were reaffirmed. This article examines the ART's considerations and discusses the implications for retailers currently using or considering adopting FRT.

What happened?

Between 6 November 2018 and 30 November 2021, Bunnings operated FRT in 62 stores across New South Wales and Victoria which captured realtime facial images of all customers entering stores from CCTV footage. The FRT system then converted these facial images into unique vector sets and compared them against a database for individuals known to pose a risk to Bunnings' operations. The database contained individuals who were previously involved in or reasonably suspected to have perpetrated actual or threatened violence to staff or customers, organised retail crime, refund fraud, or serious theft at Bunnings' retail stores.

Under the Australian Privacy Principles (**APPs**) set out in the Privacy Act, unless an exception applies, an APP entity must only collect sensitive information if the individual provides consent and if the information is reasonably necessary for one or more of its functions and activities. Bunnings attempted to justify its collection and use of sensitive information without obtaining customer consent by relying on the exception of 'permitted general situations'. This was unsuccessful at first instance, as the Commissioner concluded that Bunnings did not meet the exemption and therefore interfered with the privacy of individuals. Bunnings then appealed the Commissioner's determination to the ART.

ART's considerations

The ART upheld the Commissioner's finding that the information collected using the FRT system is classified as 'sensitive information'. However, it also found in Bunnings' favour that it could rely on 'permitted general situations' to collect facial images and facial vector information using FRT without customer consent. This is because the collection of information was necessary for Bunnings to take appropriate action in relation to suspected unlawful activity which related to its functions or activities (**Unlawful Activity Exemption**), and it was necessary to lessen or prevent serious threats to the life, health or safety of individuals or the public (**Serious Threats to Safety Exemption**). The ART provided benchmarks for these exemptions as follows:

Unlawful Activity Exemption

A business must demonstrate that it:

- had reason to suspect that unlawful activity, or misconduct of a serious nature, relating to its functions or activities has been, is being or may be engaged in
- reasonably believed that the collection was necessary to take appropriate action.

The ART accepted that Bunnings had reason to suspect unlawful activity had or was occurring from its extensive evidence in relation to threatening situations, assaults or harassment, robbery or actual harm that occurred in its stores. The ART was satisfied that Bunnings had a 'very serious problem with violence and theft being committed by repeated offenders' and that it had responded by implementing the FRT to identify, monitor and respond to repeat offenders. It was reasonable for Bunnings to believe that this response was necessary because there was evidence that FRT significantly reduced in-store theft, the lack of effective alternative measures due to its unique security challenges with its store layout and design, as well as the benefits of FRT being proportionate to its privacy risks.

Serious Threats to Safety Exemption

A business must demonstrate that it:

- is unreasonable or impracticable to obtain individuals' consent to the collection.
- reasonably believed that collection was necessary to lessen or prevent a serious threat to the life, health or safety of individuals or the public.

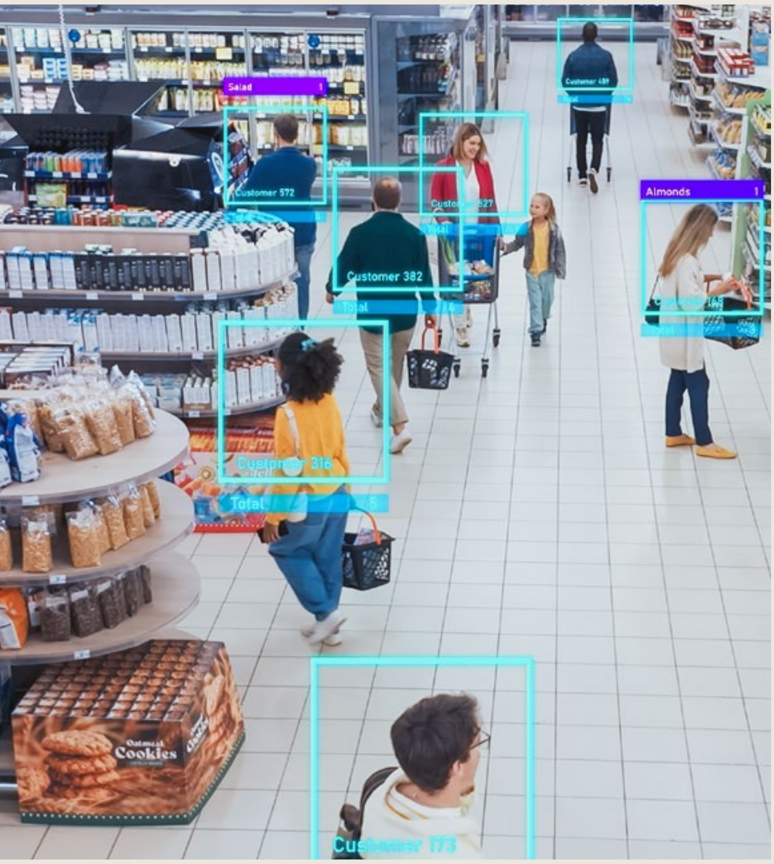
The parties agreed that (a) was met, and the ART found that Bunnings' belief that FRT would prevent serious threats to safety was reasonable as supported by evidence provided in the Unlawful Activity Exemption.

Bunnings still needs to improve its privacy practices

Despite succeeding on the exemption arguments, the ART found that Bunnings breached several privacy obligations in relation to:

Notice

Bunnings is required to provide notice to individuals about the collection of their personal and sensitive information under the APPs. The ART did not accept that its notices were sufficient, considering the content, practical factors such as the speed of the FRT system, the size and nature of the stores, and demographics of Bunnings' customers.



Governance

Bunnings' governance requirements failed to comply with the APPs as it did not conduct any formal written privacy impact assessment or privacy threshold assessment in relation to the FRT. It also did not take reasonable steps to implement practices, procedures and systems to comply with the APPs.

Transparency

The ART was not satisfied that Bunnings' privacy policies were sufficiently transparent as they did not refer to FRT. They merely made references to video surveillance and cameras in store.

No blanket 'green light'

While the ART's decision provides a useful threshold for businesses to rely on 'permitted general situations' exemptions to combat retail crime and ensure the safety of staff and customers, it made clear that these exemptions are subject to a robust criteria that must be assessed on a case-by-case basis. The outcome of Bunnings' case is due to its unique circumstances, including its unique security challenges and history of retail crime. It is important to keep in mind that this is not a 'green light' for businesses to use FRT or similar technologies to collect sensitive information without customer consent. It is also worth noting that the thresholds for reliance on these exemptions may be different for collecting personal information without consent.

Further, the Commissioner noted that the ART's decision reiterates the importance of ensuring compliance with the APPs. It is a cautionary tale for businesses to uplift their practices and procedures for baseline privacy obligations including privacy notice requirements, governance requirements, and privacy policy requirements.

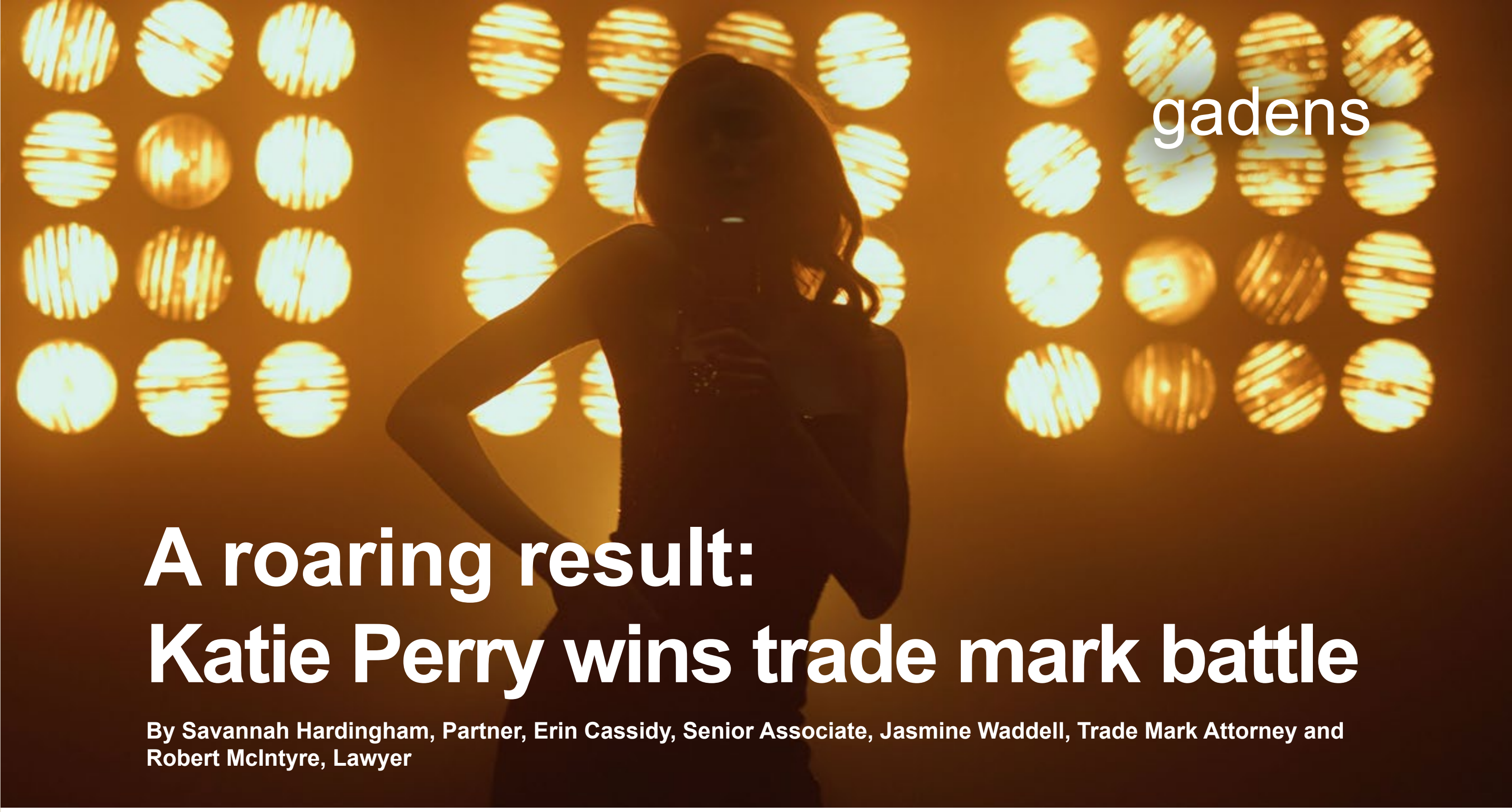
Recommendations

In light of the ART's decision, we recommend that businesses looking to use or already use FRT, consider:

1. If seeking to rely on exemptions for the collection of personal information and sensitive information instead of consent:
   a. Reviewing the circumstances and evidence to support that FRT is the right solution.
   b. Whether FRT's specific function will provide or contribute to the required outcome.
   c. Whether there are less privacy intrusive options which may have a similar outcome.
2. What notices are in place to notify individuals about the use of FRT.
3. What specific governance steps must be taken to assess the privacy risk, such as a privacy impact assessment, and what internal policies or procedures are needed to comply with the Privacy Act and APPs.
4. If their privacy policy is up to date and reflects the use of FRT.

For a more detailed analysis of the ART's decision, you may explore this article.

Contact our team if you need support to assist your business in navigating the evolving compliance landscape of technology.



A roaring result: Katie Perry wins trade mark battle

By Savannah Hardingham, Partner, Erin Cassidy, Senior Associate, Jasmine Waddell, Trade Mark Attorney and Robert McIntyre, Lawyer

What began as a simple coincidence, became a protracted dispute between Australian designer Katie Perry and global pop star Katy Perry, over who has the right to trade mark the name in relation to clothing in Australia.

In March 2026, the High Court of Australia (High Court) delivered its decision in *Taylor v Killer Queen LLC* [2026] HCA 5. In a 3-2 decision, the High Court confirmed that in order to challenge a trade mark based on a reputation in a competing mark, that reputation must arise from actual use of the mark for the relevant goods or services. Being well-known in one area will not automatically lead to that reputation spilling over into other categories and giving rise to consumer confusion.

In this article, we delve into the 'Hot N Cold' history of this case, and its important take aways.

Background

A chronology of key events in this case is set out below:

- In 2002, Katheryn Elizabeth Hudson adopted the stage name 'Katy Perry' (**Singer**) (to avoid any confusion with actress, Kate Hudson), and by 2008 was performing under that name internationally.
- In 2007, Sydney fashion designer Katie Perry (later Katie Taylor, after her marriage in 2015) (**Designer**) launched a clothing label under her birth name 'KATIE PERRY'. In May 2007 the Designer registered the domain name katieperry.com.au.
- In September 2007 the Designer applied to register a KATIE PERRY logo mark in class 42 for 'clothing and fashion designing' services, but did not appreciate that clothing goods belong in a different class (class 25).
- On 29 September 2008 (**Priority Date**), the Designer filed a new application for the trade mark KATIE PERRY for clothing in class 25 (**Application**). The Designer was aware of the Singer at this time, having heard Katy Perry's hit single 'I Kissed a Girl' sometime after its April 2008 release.
- In 2009, the Singer sought to oppose the Application, however the notice of opposition was filed after the deadline and the Application was registered. The Singer also issued a cease-and-desist letter to the Designer, while selling Katy Perry-branded clothing merchandise in Australia despite her knowledge of the Designer's registration.
- Between 2009-2018, the Singer continued selling merchandise in Australia during multiple tours, with no court proceedings commenced during this period.
- In 2019, the Designer sued the Singer and her corporate entities in the Federal Court, alleging trade mark infringement arising from the Singer's use of KATY PERRY in relation to clothing. The Singer filed a cross-claim seeking the cancellation of the Designer's KATIE PERRY registration. Following a trial, in 2023 the Designer succeeded in her infringement claim against the Singer's entities, the Singer herself did not infringe, since she was using her own (stage) name and the Singer's cross-claim failed.
- In 2024, the Full Federal Court (on appeal) overturned the trial decision on the basis that the Singer had an earlier reputation in Australia in the KATY PERRY trade mark that had been 'unduly confined'. The Court concluded that, as a result of this reputation, deception or confusion between the two marks was likely at the time the Designer filed her trade mark application and cancelled the Designer's registration.
- The Designer then sought and was granted special leave to appeal to the High Court. This appeal focused on the cancellation of the Designer's KATIE PERRY trade mark registration, specifically examining whether the Full Federal Court erred in its application of sections 60, 88(2)(c) and 89 of the *Trade Marks Act 1995* (Cth).

- In March 2026, the High Court handed down its judgment. The High Court allowed the Designer's appeal against the cancellation of her trade mark registration, which it reinstated.

The High Court's judgment

The section 60 appeal centred on the Singer's reputation in Australia at the Priority Date, and whether that reputation was sufficient to void the Designer's registration. According to the majority, it wasn't. The Singer hadn't used her name in relation to clothing in Australia, the fact that she was known as a singer didn't mean that she was automatically known for clothing, or that consumers would assume that she would sell clothing.

The other key issue was whether the landscape had changed by the point the Singer filed the cross-claim seeking the cancellation of the Designer's registration in 2019, such that the use of the Designer's mark at that point, would be likely to deceive or cause confusion among Australian consumers (under section 88(2)(c)). Again, the majority's view was that it hadn't – while the Singer was world famous by this time, this factor actually weighed against a likelihood of consumer confusion.

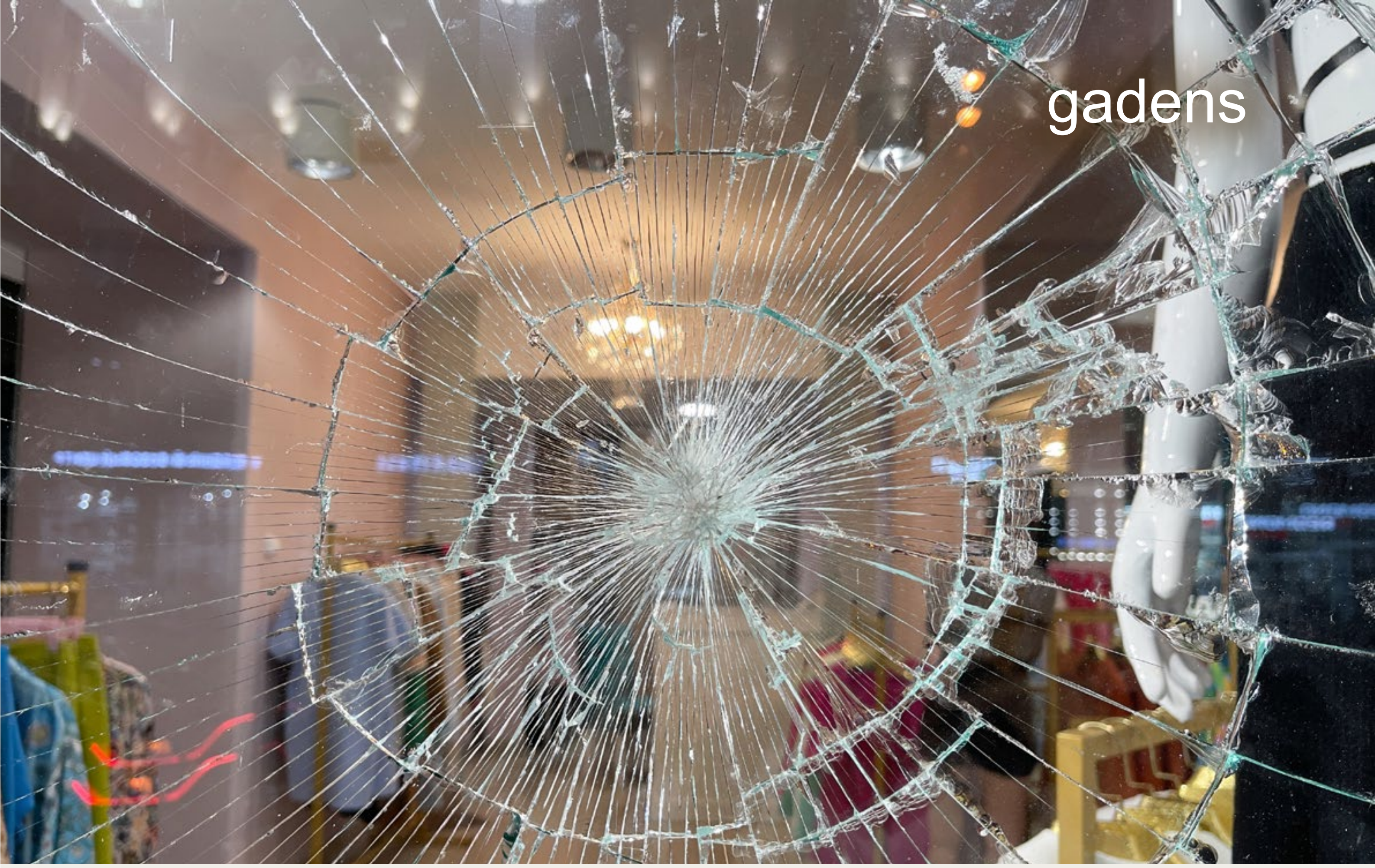
The High Court also criticised the conduct of the Singer's company, with Justice Steward describing it 'as that of a persistent or assiduous infringer' of the Designer's rights. Costs were awarded to the Designer.

The case will now return to the Full Federal Court for it to consider outstanding issues, including the Singer's liability for the Designer's infringement claim.

What does this mean for businesses?

This decision serves as a timely reminder for businesses to stay 'Wide Awake' to risk and protect their key brands by:

- registering trade marks early, especially when expansion to new markets is on the cards. Relying on reputation alone can fall short
- engaging specialised trade mark lawyers to avoid filing errors, which can lead to a loss of rights
- enforcing rights promptly.



Managing customer driven violence: A legal and WHS imperative for organisations

By Kiri Jervis, Partner, Siobhan Mulcahy, Partner, Louise Rumble, Partner, Samuel Manns, Associate and Natalie Lambropoulos, Graduate

Customer driven violence is no longer confined to late night venues or emergency services. Across Australia, workers in retail, banking, healthcare, transport and service environments are increasingly subjected to abuse, threats and physical assault. What was once dismissed as 'part of the job' is now firmly recognised as a serious work health and safety (WHS) risk, exposing organisations to regulatory, financial and reputational consequences if not properly managed.

Why is customer driven violence now a systemic risk?

Violence and aggression as a WHS hazard

Customer driven violence is no longer episodic. It reflects a sustained change in customer behaviour that has materially altered the risk profile of consumer facing work, particularly in retail, hospitality, logistics, deliveries and high volume service environments. Frontline workers are increasingly absorbing heightened public frustration, often with limited controls at the point of service.

Under the model WHS framework, organisations must eliminate, or otherwise minimise, risks to health and safety so far as reasonably practicable. This includes risks to both physical and psychological health. Psychosocial hazards expressly include violence and aggression, bullying, sexual and gender-based harassment, and conflict or poor workplace relationships.[1]

These duties operate alongside the national positive duty under the *Sex Discrimination Act 1984* (Cth) to eliminate sexual harassment, sex-based harassment, hostile work environments on the ground of sex, and related victimisation.

The conduct workers experience often extends beyond raised voices to intimidation, threats, gendered abuse and sexual harassment. Lone workers and younger employees are particularly exposed. Where post-incident support is inadequate, the risk of disengagement and psychological harm increases.

1 SafeWork Australia, 'Psychosocial hazards', *Managing Health and Safety* (Web Page) www.safeworkaustralia.gov.au/safety-topic/managing-health-and-safety/mental-health/psychosocial-hazards.

Hate crime and prohibited hate group developments

The *Criminal Code Amendment Hate Crimes Act 2025* (Cth) strengthened offences for advocating force or violence against protected groups, created new offences for threatening force or violence against groups or members of groups, and expanded the prohibited symbols regime. Although these are criminal laws, they interact with workplace risk where public facing staff are targeted, or where online hostility spills into physical locations. Organisations should be aware of the potential for increased criminal exposure where threatening conduct or prohibited symbols appear in or around the workplace and ensure they have effective prevention, reporting and police referral protocols.

What the numbers are saying right now

The data highlights a persistent escalation in rates of workplace violence. Two in three workers report experiencing customer aggression, with one in four encountering it at least weekly.[2] From 2017 to 2022, serious claims for assault and exposure to workplace violence increased by 56%, with women making claims at materially higher rates than men.[3] Safe Work Australia's data and sector survey reports indicate that serious workers' compensation claims for assault and exposure to workplace violence have increased over the same amount of time, with customers and clients being the primary source of violence.[4]

The financial and operational implications are significant. Organisations face higher premiums, greater legal and investigation costs, service interruptions, store closures, reduced trading hours and lower productivity. National statistics show that mental health claims carry longer durations of time away from work, which compounds cost and resourcing pressures.[5] Additionally, incidents can be quickly amplified on social media which has the potential to damage the brand and reputation amongst the customers or clients, investors and insurers.

Regulatory and legal landscape

Regulator prevalence

Regulators are increasingly scrutinising how organisations manage psychosocial risk. A structured risk management approach is expected, including hazard identification, consultation, implementation of controls and regular review.

The Safe Work Australia Model Code of Practice for managing psychosocial hazards emphasises the hierarchy of controls, prioritising work design and environmental controls over training or resiliencebased approaches.[6] This position has been reinforced by the *Work Health and Safety Regulation 2025* (NSW) and the *Occupational Health and Safety (Psychological Health) Regulations 2025* (Vic).[7]

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2 Sonder, *Safety Gap Report 2025* (21 July 2025) https://sonder.io/resources/guides/safety-gap-report-2025-customer-aggression.

3 SafeWork Australia, *Workplace and work-related violence and aggression in Australia* (Data Report, August 2024) https://data.safeworkaustralia.gov.au/sites/default/files/2024-08/Work-related-violence-and-aggression_Report_August2024.pdf.

4 Ibid.

5 SafeWork Australia, *Key Work Health and Safety Statistics Australia* (Report, October 2025) https://data.safeworkaustralia.gov.au/sites/default/files/2025-10/Key_Work_Health_and_Safety_Statistics_Australia_2025.pdf.

6 SafeWork Australia, *Managing Psychosocial Hazards at Work* (Code of Practice, July 2022) www.safeworkaustralia.gov.au/sites/default/files/2022-08/model_code_of_practice_-_managing_psychosocial_hazards_at_work_25082022_0.pdf

7 SafeWork NSW, Managing Psychosocial Hazards at Work (Code of Practice, May 2021) www.safework.nsw.gov.au/__data/assets/pdf_file/0004/983353/Code-of-Practice_Managing-psychosocial-hazards.pdf.

Technology driven controls, including artificial intelligence and facial recognition systems, give rise to interconnecting legal obligations that organisations must manage alongside WHS duties. The use of [AI in the workplace] presents both opportunities and legal risk, particularly where automated decision making, surveillance or biometric data is involved. Organisations need to ensure that AI initiatives are subject to appropriate governance, documented risk assessments and ongoing review.

Incident notification reforms

Safe Work Australia published amendments to the model Work Health and Safety Act that significantly expand incident notification requirements.[8] Once enacted into state and territory laws, organisations will be required to notify the regulator of:

- Violent incidents that expose a person to a serious risk of psychological harm, as an expressly identified notifiable incident.
- Extended absences of 15 or more consecutive days due to a work-related injury or illness.
- Suicide and attempted suicide where there is an indication of a link to work or the work environment.

The reforms further clarify serious injury and illness definitions and expand the duty to preserve evidence including digital records and witness details.[9]

Penalties and enforcement risk

Failure to implement effective psychosocial hazard controls or to notify reportable incidents can result in improvement notices, enforceable undertakings, or prosecution. Penalties under the model laws are significant, and industrial manslaughter offences now apply across Australia, carrying very large fines for corporations and potential imprisonment for officers. Regulators increasingly expect boards and senior leaders to actively verify that critical controls for violence and other associated hazards are in place and operating effectively.

Next steps for organisations

Preventative measures

Organisations must ensure appropriate preventative measures are in place to manage violence and aggression in the workplace. This includes:

Workplace design

Environmental and engineering controls should be the first line of defence against violence and aggression. Responses should reflect the hierarchy of controls that regulators expect for psychosocial hazards, not just traditional physical risks.[10] Organisations should consider the following:

- Improving visibility through clear lines of sight, appropriate lighting, monitored entry points and secure cash handling areas.
- Limiting access to objects that could be used as weapons.
- Design counters and workstations to provide separation where needed.
- Regular testing of panic and duress alarms, and CCTV devices.
- Where logistics and delivery are involved, practical measures such as route planning, time of day controls, lone worker check ins and GPS monitoring.

Work systems

Effective systems of work play a critical role in preventing and managing incidents. Organisations should consider the following:

- Rostering adequate staffing during predictable peak periods.
- Where there are known or repeat aggressors, responses should be structured and consistent, including behavioural management plans, trespass notices, and preagreed escalation to centre security or police.
- Empowering staff with clear pre-incident controls, such as the ability to refuse service safely when required.
- Additional obligations when using AI-enabled safety technologies, including AI-assisted CCTV analytics that detect escalating behaviour, crowding or distress indicators, automated alert systems linked to duress alarms, and facial recognition technology to identify known repeat aggressors. While these tools can strengthen early intervention, improve response times and reduce reliance on frontline workers to personally manage high-risk interactions, their use must be carefully designed to comply with privacy, surveillance and discrimination laws and integrated into a broader violence prevention framework.

Training and education

Organisations should focus on ensuring their workers can respond to violence and aggression through effective training and education, including:

- Scenario-based training that moves beyond standalone elearning modules and instead focuses on building skills in situational awareness, early intervention, deescalation, and safe withdrawal when risks escalate.
- Where AI driven monitoring or biometric technologies are introduced, workers should be consulted early, trained on how technologies operate in practice, and reassured about the limits of their use. Transparent communication and consultation about purpose, data handling and escalation pathways is critical to ensuring that technology supports safety rather than undermining psychological wellbeing.

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8 *Model Work Health and Safety Legislation Amendment (Incident Notification) 2025* (Cth).

9 SafeWork Australia, *WHS notifications: Incidents, extended absences and suicides* (Factsheet, December 2025) www.safeworkaustralia.gov.au/sites/default/files/2026-03/whs_notifications_incidents_extended_absences_suicides_factsheet_dec2025_update.pdf.

10 SafeWork NSW, Managing Psychosocial Hazards at Work (Code of Practice, May 2021) www.safework.nsw.gov.au/resource-library/list-of-all-codes-of-practice/codes-of-practice/managing-psychosocial-hazards-at-work.

Coordination across supply chains

Effective prevention depends on clear consultation and coordination across the supply chain. This may include landlords and centre management in shopping centres, franchisors and franchisees in network models, labour hire providers, and delivery or security partners. A coordinated approach should ensure:

- Clear documentation of the roles and responsibilities of all individuals.
- Effective agreements that address security coverage, incident escalation pathways, evidence preservation, and information sharing following incidents.
- Ensuring practical coordination and consultation, not just contractual arrangements, in line with regulator expectations.

Policies and culture

Organisations should ensure workplace culture and policies are effective in managing violence and aggression. These measures are important in reducing risk and supporting regulatory compliance, and include:

- A violence prevention policy which discloses behavioural standards, security rules, and escalation pathways. This should make clear the expectations about unacceptable conduct by customers, visitors, and workers, prohibited symbols or behaviours, and when police involvement is mandatory.
- Clear policies relating to preserving incident sites and evidence, including digital records such as CCTV footage, phone data, emails, and witness contact details.
- Ensuring leaders and supervisors role model expected behaviours, reinforce standards consistently, and intervene early in cases of internal aggression, bullying, or harassment. Respect@Work obligations and WHS duties should be considered together, so managers understand that both frameworks require proactive prevention, not just complaint handling.[11]
- Actively encouraging workers to report workplace violence and aggression, given research has identified that workers are likely under-reporting the incidents they experience.[12]

Effective incident responses

Organisations must ensure they have effective initial response measures to deal with violence and aggression in the workplace. This includes:

- **Safety:** Securing the area and contacting emergency services where required.
- **Documentation:** Incidents should be recorded promptly and evidence preserved. Under recent model law changes, preservation obligations extend beyond the physical scene to include relevant digital records and witness details.[13]
- **Notification:** Review and update incident notification procedures to align with the model law amendments released on 5 December 2025.
- **Referral:** Where incidents involve threats or hostility directed at protected groups, or the use of prohibited symbols, ensure police referral pathways are followed and internal policies are applied consistently.
- **Review:** Look beyond individual actions to examine system controls, staffing arrangements, environment, and training. Any lessons learned in this review should be incorporated into future preventative measures.

Post-incident management

After an incident, timely support matters. Organisations should make clinical and practical support visible and easy to access. This includes embedding psychological first aid, promoting employee assistance services, and offering safe rostering, modified duties, or adjusted hours where needed. Strong recovery systems help reduce harm, support recovery, promote workforce stability, and reinforce that safety is a shared responsibility.

Key takeaways

Customer driven violence is a legal, operational and reputational risk requiring proactive management. Organisations that invest in safer environments, strong systems of work, frontline capability and coordinated responses across complex operating models are better placed to protect their people and meet rising regulatory expectations.

With expanded psychosocial duties (more on this here from Gadens), enhanced incident notification obligations, the Respect@Work positive duty and evolving hate crime laws, inaction now carries significantly greater consequences.

Proactive action now is not only safer, but it is the smarter legal, operational, and reputational choice.

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11 SafeWork Australia, 'WHS Duties', *Sexual and gender-based harassment* (Web Page) www.safeworkaustralia.gov.au/safety-topic/hazards/sexual-and-gender-based-harassment/whs-duties.

12 WorkSafe Victoria, 'Managing the risk of work-related violence', *Aggression or violence* (Web Page, 19 November 2025) www.worksafe.vic.gov.au/managing-risk-work-related-violence.

13 *Model Work Health and Safety Legislation Amendment (Incident Notification) 2025* (Cth).

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