ARA SUBMISSION
TREASURY REVIEW: INTERACTIONS BETWEEN ARTIFICIAL INTELLIGENCE AND AUSTRALIAN CONSUMER LAW

NOVEMBER 2024

The Australian Retailers Association (ARA) welcomes the opportunity to make a submission on Treasury's Review into the interaction between Artificial Intelligence (AI) and Australian Consumer Law (ACL).

The ARA is the oldest, largest, and most diverse national retail body, representing a $430 billion sector that employs 1.4 million Australians – making retail the largest private sector employer in the country. As Australia's peak retail body, representing more than 120,000 retail shop fronts and online stores, the ARA informs, advocates, educates, protects, and unifies our independent, national, and international retail community.

We represent the full spectrum of Australian retail, from our largest national and international retailers to our small and medium sized members, who make up 95% of our membership. Our members operate in all states and across all categories - from food to fashion, hairdressing to hardware, and everything in between.

EXECUTIVE SUMMARY

The ARA is aligned with the submission made by the Australian Chamber of Commerce and Industry (ACCI) to this review - primarily, that the ACL is largely fit-for-purpose to address any challenges arising from the adoption and use of AI in the retail sector, with some minor amendments required to enhance clarity and applicability.

The ARA believes the ACL's technology-neutral framework is well-suited to manage any risks associated with AI-enabled goods and services. However, targeted adjustments to definitions and liability provisions would provide additional certainty for both consumers and businesses. Importantly, this review should consider the broader context of ongoing regulatory reforms to avoid duplication and ensure coherence across legislative frameworks.

CONSIDERATIONS

Retailers' obligations under the ACL

The ACL outlines obligations for retailers, ensuring that goods and services meet consumer guarantees and safety standards. In our previous submission on the responsible use of AI, the ARA highlighted the importance of providing clarity in defining liability and obligations across the AI ecosystem, including developers, deployers, and retailers that use AI products developed and deployed by others.

This remains an ongoing area of consideration, particularly as the adoption of AI applications in retail becomes more widespread. The ARA therefore supports maintaining the ACL's technology-neutral framework while refining definitions and guidance to ensure clear roles and responsibilities for all parties involved in the production and supply of AI-enabled goods.

Safe and responsible AI in Australia

The ARA has previously supported responsible AI usage but has concerns about mandatory guardrails in high-risk settings, emphasising the need for balanced regulation that manages risks without stifling innovation. Our position remains that voluntary standards would be best placed to foster community confidence in AI without duplicating existing legislation, increasing complexity, or deterring adoption, particularly amongst small businesses.

We also retain our position that the classification of retail as a high-risk sector and reiterate that AI risks should be assessed on individual application by businesses, rather than broad a categorisation across the sector. If mandatory measures are required, the ARA recommends a framework approach that builds on current regulations, supplemented by targeted laws for specific risks, rather than new cross-economy AI Act.

The ARA emphasises the need for clear guidance, including examples and lists of high-risk applications, to help businesses translate principles into practice. It also calls for differentiated responsibilities between AI developers and deployers, recognising the limited control deployers have over AI risks. Special consideration should be given to small businesses, ensuring guardrails are proportionate to their risk profiles and resource capacities, avoiding unnecessary barriers to AI adoption.

Cyber Security Strategy

The Cyber Security Bill 2024 introduces new obligations for manufacturers and suppliers of connected products (i.e. Internet of Things (IoT) devices and network-connected devices), including compliance with security standards and reporting requirements for ransomware incidents.

These measures intersect with the retail sector's growing reliance on AI-powered, internet-connected devices. In our previous submission on the responsible use of AI, the ARA emphasised the need for consistent regulations across cybersecurity and AI frameworks to avoid duplication and ensure clarity for businesses.

The ARA continues to support security-by-design principles and harmonised obligations to safeguard both retailers and consumers in an increasingly digital landscape.

Privacy Act Review

The Australian Government's Privacy Act Review continues to progress, with the first tranche of the *Privacy Bill 2024* tabled in September 2024.

This Bill aims to introduce obligations for automated decision-making (ADM), a subset of AI where sophisticated algorithms make decisions with limited human intervention. The Privacy Bill 2024 includes a definition of ADM as a form of AI and establishes corresponding obligations for businesses, independent of any future overarching Australian AI Act or potentially revised ACL.

In our previous submission to the Privacy Act Review, the ARA emphasised the importance of balancing consumer protection with the operational realities of the retail sector. Proposals such as transparency around ADM processes and standardised consent requirements align with the ARA's recommendations to build consumer trust while minimising unnecessary compliance burdens.

The Privacy Act Review remains a significant consideration as its outcomes are likely to shape AI-related obligations and influence the broader regulatory landscape, including how ADM interacts with the ACL.

Consumer Guarantee and Supplier Indemnity

Consumer guarantees under the ACL remain fundamental to addressing product defects, including those arising from AI systems. However, AI-enabled goods introduce complexities in determining liability, particularly between developers, manufacturers, and retailers.

In our submission on the responsible use of AI, the ARA advocated for clearer guidance on liability allocation to ensure consumers are adequately protected without overburdening any single party in the supply chain. These issues continue to be explored as part of broader legislative and policy reviews, and alignment with other frameworks, such as the Cyber Security Strategy, will be critical.

RECOMMENDATIONS

In-line with these considerations and ACCI's position, the ARA makes the following recommendations.

Maintain the ACL's technology-neutral framework
The ARA supports retaining the ACL's foundational principles, which are outcomes-focused and adaptable to technological advancements.

Pursue targeted amendments to enhance clarity.
The ARA supports retaining the ACL's foundational principles, which are outcomes-focused and adaptable to technological advancements.

- Introduce definitions for "Artificial Intelligence" and "Automated Decision-Making" consistent with international standards.
- Clarify liability allocation between developers, deployers, and suppliers of AI-enabled goods and services.
- Align the ACL with other regulatory frameworks such as the Privacy Act and Cyber Security Bill to ensure consistency.

Minimise overlap with related government reforms
Many issues raised in the consultation paper overlap with other significant policy initiatives. The ARA recommends deferring major changes to the ACL until these related reforms are concluded, including:

- Safe and Responsible AI in Australia:
- Cyber Security Strategy;
- Privacy Act Review; and
- Consumer Guarantee and Supplier Indemnity Reforms.

Adopt a phased and coordinated approach
Regulatory changes should begin with non-binding guidance and industry consultation before progressing to formal amendments if needed. Clear, consistent definitions and obligations under the ACL must align with international standards and other domestic laws to ensure clarity for retailers.

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The ARA appreciates the opportunity to contribute to this review. We remain committed to working with Treasury to ensure that the ACL continues to protect consumers without stifling innovation in the retail sector as AI technologies evolve. Any queries in relation to this submission can be directed to policy@retail.org.au.