



THE HON STEPHEN JONES MP
ASSISTANT TREASURER AND MINISTER FOR FINANCIAL SERVICES

Ref: MC24-008978

5 JUL 2024

Ms Susan Templeman MP
Chair
Standing Committee on Petitions

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Dear Chair

Thank you for your correspondence concerning Petition EN6080, requesting legislation to ensure software sold in Australia remains in a functional state after the end of the product's support period. Your correspondence has been referred to me for response.

In Australia, businesses are generally free to set the terms and conditions for the products they sell. For digital products such as video games, consumers often purchase a licence to use the product and do not have direct ownership over that product. This means that consumers' rights in relation to digital products are primarily governed by the terms and conditions set by the businesses in the associated licencing agreement.

Terms and conditions in licencing agreements are subject to the statutory protections in the Australian Consumer Law (ACL). Under the ACL businesses are prohibited from engaging in unconscionable, misleading or deceptive conduct. The ACL also prohibits businesses from making false or misleading representations about the goods or services they sell, and from including unfair terms in their licencing agreements where these are standard form contracts. A standard form contract is prepared by one party to a contract with the other party having little or no opportunity to negotiate terms. Terms are unfair if they:

- cause a significant imbalance in the rights and obligations of the parties under the contract,
- are not reasonably necessary to protect the legitimate interests of the party who gets an advantage from the term, and
- would cause financial or other harm to the other party if enforced.

In October 2022, the Government passed legislation through the More Competition, Better Prices Bill to strengthen unfair contract terms protections. The amendments came into effect on 9 November 2023 and introduced a civil penalty regime prohibiting the use of and reliance on unfair contract terms in standard form contracts.

The Australian Competition and Consumer Commission (ACCC) provides further information about unfair contract terms on its website, available at: www.accc.gov.au/business/selling-products-and-services/contracts#toc-unfair-contract-terms.

The ACL also creates a basic set of guarantees for consumers who purchase goods or services, including digital products such as video games. These are intended to ensure consumers receive the goods or services they have paid for. When one or more of these guarantees has not been met, the consumer is entitled to a remedy. The type of remedy depends on the circumstances but may include a repair, replacement or refund.

The Government is currently considering options to improve the effectiveness of the consumer guarantee provisions of the ACL. These include consideration of penalties and enforcement mechanisms to ensure businesses comply with their obligations.

The ACCC has published guidance about consumer guarantees. This provides information on how consumers can protect their rights when buying goods or services, including digital products, and is available at: <https://www.accc.gov.au/consumers/buying-products-and-services/consumer-rights-and-guarantees>.

I trust this information will be of assistance to you.

Yours sincerely



The Hon Stephen Jones MP