Commonwealth Consumer Affairs Advisory Council

App purchases by Australian consumers on mobile and handheld devices:

Inquiry Report

July 2013
Dear Assistant Treasurer

CCAAC would like to thank you for the opportunity to conduct an inquiry into app purchases by Australian consumers on mobile and handheld devices. Apps are becoming increasingly popular amongst Australian consumers. It is evident that apps offer many benefits, including through their ability to increase the functionality of a user’s handheld device. However, CCAAC has also uncovered circumstances where consumers have experienced difficulties when purchasing, downloading and using apps. The prevalence and aggressiveness of in-app purchases for some apps has been a common cause for concern for consumer stakeholders.

CCAAC views this inquiry as only the start of the conversation. There is an ongoing need for industry, government and consumer stakeholders to continue to monitor consumer outcomes in this new market. It is hoped that CCAAC’s findings will help support further work in this regard. In particular, CCAAC has identified concerns relating to the refunds and complaints processes of some app stores and proposes a range of improvements that could be made. In addition, CCAAC considers that improvements could be made to the manner in which information is provided to consumers, including with regards to in-app purchases.

While CCAAC has not identified a need for additional industry-specific regulation, it acknowledges that regulatory options could play a role in improving outcomes for the community. It would be appropriate to consider whether there is a need to re-examine the issues in two years’ time. In this regard, CCAAC has written to industry stakeholders to encourage them to make some practical changes to their current practices and it is noted that some app stores have adjusted practices in advance of the release of this report.

CCAAC has also identified an opportunity for the Australian Government to report on this work to partner economies, including through the Organisation for Economic Co-operation and Development and the International Consumer Protection and Enforcement Network.

I offer my thanks to and acknowledge the expertise and commitment of the CCAAC members in completing this inquiry. Work on this inquiry was led by Ms Deborah Healey, Mr Peter Kell and Mr Gordon Renouf with contributions from other colleagues. I also thank those who provided submissions to CCAAC as well as those who met with CCAAC throughout the duration of the inquiry.

I am pleased to enclose a copy of CCAAC’s inquiry report.

Yours sincerely

Colin Neave
Chairman, Commonwealth Consumer Affairs Advisory Council.
EXECUTIVE SUMMARY

PART I

Advancements in technology and the increasing use of the internet have changed the way consumers and businesses use handheld devices. Handheld devices have become performance-enhancing tools, with their functionality increased by software applications, often referred to as ‘apps’, that are developed and distributed through app markets. A number of community concerns have been raised about apps and app markets. Some of these issues include:

• **where critical information is not disclosed when purchases or downloads are made** such as the way their personal information will be used, the resource usage of the app, and its true cost (including through in-app purchases);

• **where disclosure documents are difficult to navigate** including when determining which information is important and where excessive time and effort is required to find and assess the information;

• **difficulties in relying on supplier reputation** as a rapidly changing market means supplier reputation and reliability cannot be fully tested and users can be exposed to exploitation by fly-by-night operators aiming to deceive unfamiliar users;

• **the appropriateness of certain apps for children** including where aggressive marketing strategies that promote in-app purchases are used, the simulation of gambling, and issues associated with billing for unintended purchases;

• **post sales complaints difficulties** when seeking to make a complaint about the nature of the app or to request a refund; and

• **exposure to malicious content** including scams, viruses or apps that exploit user information.

PART II

The use of smartphones and other handheld devices in Australia has increased dramatically over the past few years. In the Australian Communications and Media Authority’s (ACMA) report on smartphones and tablets, it was highlighted that at the end of May 2012, there were 8.67 million people 18 years and over with a smartphone, compared with 4.25 million in June 2011 (a 104 per cent increase over that period of time).\(^1\)

As m-commerce plays an increasingly important role relative to traditional forms of e-commerce (such as through websites or desktop computing), businesses are likely to desire new ways to engage with customers using mobile and handheld devices including through apps. Accordingly, there remains considerable scope for further growth in app markets.

As many consumers now use apps on a regular basis, app developers are becoming increasingly savvy in converting app popularity into business revenues. For example, they can earn income from advertisements, fees charged to download or install an app, fees charged for ongoing use of the app (such as a subscription fees charged on a monthly basis) or fees charged (as in-app purchases) to use specific features of an app.

It is common for apps to be available as both free and premium versions. Free apps are downloaded without upfront costs, while premium apps can be purchased at the initial download point. Generally, free versions are not fully functional and may come with advertising mechanisms inbuilt. To remove such restrictions the user is required to purchase the premium version of the app or make in-app purchases.

An app that was free to install but that requires a consumer to make in-app purchases — such as subscriptions or the purchase of specific items to unlock the app’s full features — is often referred to as a ‘freemium’ app. There are a number of downsides of the ‘freemium’ app model for consumers. In particular, some apps may exploit behavioural vulnerabilities or may actively encourage ‘pester power’ when they are used by children.

**PART III**

Understanding the cause of negative consumer experiences is also important so that they can be considered in the light of current measures that may, to some extent, address community concerns. Broadly speaking, issues related to the purchase and use of apps fall into five broad categories.

- **Inappropriate information** — important information related to the use of apps, including with respect to billing and in-app purchases, may be absent or incorrect.

- **Ineffective disclosure** — consumers may be provided with information related to the use of apps, including with respect to billing and in-app purchases; however, this information is not presented in a manner which is easily accessed or understood by the user.

- **Lack of familiarity with a new product** — consumers lack familiarity with app markets, handheld devices and new business models (for example freemium apps) with consumers unaware of new risks that may exist.

- **Unsupervised use, and targeted marketing towards children** — devices may be used in a manner not anticipated by the owner where in-app marketing is targeted to children (and where the owner’s billing information is saved).

- **Difficulties for consumers when seeking to make a complaint or seeking a refund** — consumers may lack practical options for redress when experiencing a problem, including difficulties finding contact information and where app stores encourage users to contact the app developer for refunds.

A number of submissions highlighted that app markets and developers do not provide sufficient information with respect to billing information, in-app purchases, app features,
data usage, and the complaints and refunds process. Information on app resource use, including battery as well as data use, is particularly useful where an app is resource intensive or likely to use resources that go beyond the user’s expectations. It is acknowledged that it can be difficult to provide this information in a manner that is meaningful to the user; however developers have a responsibility to ensure accurate information is provided to support user expectations about an app’s use of resources.

While consumers are usually provided with information before the download or purchase of an app, the information displayed to consumers is not always provided in a form that is accessible and easy to read. Consumers are also concerned as to the adequacy of the information being disclosed within the app itself. The inadequate disclosure of information can make it difficult to ensure that a consumer has understood their rights and all of the terms and conditions associated with making a purchase, and can therefore increase the likelihood of unwanted purchases.

The popularity of handheld devices, particularly tablets and smartphones, and the explosion of app markets has been a relatively new phenomenon. Accordingly, consumers may not be entirely familiar with how they work and the business models designed to monetise app popularity. Fly-by-night operators trade on consumers’ unfamiliarity of the reputation of app developers. They may establish an app developer brand that sounds credible, with the intention of fleecing unsuspecting users.

Apps are becomingly increasing popular with children, particularly given the increase in games that are available as apps. Some parents may not recognise the need to supervise children’s use of mobile applications or be aware of the various tools available to them to control children’s use of apps. A number of recent media reports highlight situations where children have been able to use apps in a way that was unlikely to have been foreseen by the parent. Children may make a number of in-app purchases without the knowledge of their parents or where aggressive marketing encourages children to use pester power. Other apps may present material that is not age-appropriate to the user, including the advertising of adult services such as online gambling.

The submissions highlighted that many app stores do not issue refunds where users experience technical issues, that refund policies can vary significantly between stores and that they do not issue refunds for in-app purchases. The submissions also identified where users were provided with information implying that refunds are not issued by app stores irrespective of the circumstances.

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2 For example, see submissions by ACCAN, CALC and CHOICE.
4 For example, see submission by WMC Global and ACCAN.
5 For example, see submission by ACCAN.
PART IV

Regulatory frameworks

The Australian Consumer Law (ACL) is the principal consumer protection legislation in Australia and it applies in all states and territories and to all consumer transactions, including transactions made online or using a handheld device. The ACL requires an app developer’s representations about the functionality of an app to be accurate and provides for remedies in the event that they are not. The consumer guarantee provisions are capable of applying to the purchase of apps. In addition, under the unfair contract terms provisions of the ACL, it is unlawful to include certain terms in standard form consumer contracts (for example, contracts for supply of goods or services for personal, domestic or household use or consumption).

The ACL is enforced by Commonwealth, state and territory consumer agencies. A range of penalties are available for breaches of the ACL, including injunctions, declarations, damages, compensatory orders, orders for non-party consumers and non-punitive orders. Penalties of up to $1.1 million for a corporation and $220,000 for an individual can be sought where false and misleading representations have been made. Together, these consumer protections ensure that consumers get what they pay for.

The Issues Paper outlined a number of other laws, enforcement options and initiatives that may address some concerns related to the purchase and use of mobile phone apps. These included:

- the common law of contract, including in relation to the legal capacity of minors and children to enter contracts;
- the law relating to electronic transactions (Electronic Transactions Act 1999 (Cth));
- state and territory sale of goods laws (for example, the Goods Act 1958 (Vic));
- state and territory laws relating to minors who enter into contracts (for example, the Minors (Property and Contracts) Act 1970 (NSW));
- laws relating to pre-contractual conduct and disclosure obligations which may apply when accessing payment facilities on mobile devices (National Consumer Credit Protection Act 2009 (Cth));
- the law protecting personal information that is collected by companies (Privacy Act 1988 (Cth));
- Government agencies and industry ombudsmen with responsibilities for ensuring appropriate industry conduct including, the Australian Competition and Consumer Commission (ACCC), the ACMA and the Telecommunications Industry Ombudsman (TIO); and

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The Australian Guidelines for Electronic Commerce.7

A number of additional protections were identified by the submissions, including the Telecommunications Act 1997, the Telecommunications Consumer Protection Code 2012, the Mobile Premium Services Code 2011, the Broadcasting Services Act 1992, the Classification (Publication, Films and Computer Games) Act 1995, as well as function specific regulation (for example apps that facilitate gambling may fall within the purview of the Interactive Gambling Act 2001). It is noted that not all of these protections apply to all uses of apps on mobile and handheld devices.

App market and platform protections

Most platforms and app markets have inbuilt tools capable of addressing community concerns about the purchase and use of apps.8 They may not, however, always be applied. In this regard there are clear benefits in improving consumers’ awareness about these features to encourage their use. Current tools available to consumers include content filtering settings which can prevent access to apps that do not meet the accepted content rating set by the user. This setting allows the user to limit access to content which is inappropriate for children.

A Personal Identification Number (PIN) option, or similar, can also be set to prevent other users of a device from changing the content filtering settings or making any purchases or downloads within an app store. Generally, a PIN or password is required for all users of a device to make any purchases. Most app stores offer this protection to consumers.

Many app purchases occur through app stores that have established clear policies with respect to refunds and returns. Some app stores provide its customers with a window of time, for example 15 minutes, to obtain a refund on app purchases for a change of mind. Although this is not a widespread industry practice, the period of time for a user to obtain a refund (for a change of mind) will usually depend on agreements that are made between the app store and the developer. For in-app purchases, consumers are generally directed by the app store to seek a refund from the developer of the app.

App markets are exposed to the same kind of incentives which exist in physical goods markets (such as a desire to improve reputation). Consumers are able to avoid apps that are unlikely to be suitable to their needs by using a credible app store and relying on that store’s customer ratings, content ratings (on the age suitability of an app), and user feedback. While this may not resolve all of the issues considered in this review, they remain effective for connecting users with suitable apps.

Most of the issues considered in this report are reflected in the experiences of consumers internationally. While CCAAC is unaware of any new regulatory frameworks that have been developed to specifically address the issues considered here, consumers abroad have access to a range of consumer laws and other protections.

8 For example, see submissions by AIMIA, AIIA, GDAA and iGEA, Google, and AMTA.
PART V

Industry, governments and consumers have a collective responsibility in ensuring positive consumer experiences when using apps.

CCAAC favours actions that address the underlying cause of the problem, are likely to be achievable and do not impose excessive burdens on market participants that engage positively with consumers. At this time, CCAAC does not identify additional regulation as an appropriate response to the issues. CCAAC considers that the protections afforded under generic consumer laws (and other regulatory frameworks) have the potential to provide the right balance between the needs of consumers and industry participants where industry participants continue to engage with reported consumer problems in an effective way.

CCAAC supports the process of consumer policy making outlined within the Organisation for Economic Co-operation and Development’s (OECD) Consumer Policy Toolkit (the Toolkit).9 The Toolkit is a key project of the OECD Committee on Consumer Policy and examines how behavioural economics can be used to support consumer policy development. CCAAC would also encourage policy makers to consider the Toolkit when reviewing the findings of this report.

Actions by industry and governments

CCAAC proposes a number of practical measures that could be taken by industry, governments and consumers to improve consumer experiences. Each suggested action in some way addresses the underlying causes that have been identified.

Refunds

There are some basic practices that should be adopted to ensure compliance with consumer laws and improve consumer experiences when seeking refunds:

• App stores should offer consumers a sufficient window of time through which users are able to automatically obtain a refund for a change of mind, an accidental purchase or if an app is revealed to be unsuitable to the user’s needs after download.

• Policies around refunds should be determined in accordance with the ACL and it should be clear in user guidance that app stores may be obligated to issue a refund if an app or in-app purchase fails to meet a consumer guarantee.

• App stores should ensure that statements such as ‘this in-app purchase cannot be refunded’ or ‘all purchases made through this app store are ineligible for refund’ are not used so that consumers are not misled about their rights.

• Users seeking a refund for app or in-app purchases should only be referred to the app developer where the refund is requested due to a change of mind.

9 For information on the toolkit, including a companion prepared to provide practical guidance on its application in an Australian context, please see <http://www.consumerlaw.gov.au/content/Content.aspx?doc=consumer_policy/cp_policy_toolkit.htm>.
• The appropriate contact details or mechanism through which a user can request a refund from an app store should be easily found, and intuitively accessible through the app store.

• App stores should only process in-app purchase payments where the app developer can demonstrate that it has clear and satisfactory processes in place for users to request a refund (or if refunds can be easily processed through the app store) if a consumer guarantee has not been met.

**Provision of information**

For information at the point of sale, there is no one size fits all approach as to what information should be provided and how to provide it effectively. As a rule of thumb, app developers and app stores should aim to ensure that users have clear expectations about how the product works by drawing specific attention to features that may cause loss or harm if they are not well understood, or unusual features of the app. In this regard, CCAAC considers that:

- critical information — including information about the cost of an app, its appropriateness for children, any extraordinary resource usage and other risks — should be provided to the user prior to purchase; and

- critical information must be provided with a focus on achieving user understanding so that it can be understood by the vast majority of consumers.

App stores should give consideration as to how users can be better informed about the existence of in-app purchases at the time an app is downloaded or purchased. Some suggestions include:

- introducing a categorisation of apps as being ‘free with in-app purchases’ where the making of in-app purchases is an important part of a user’s experience of that app;

- indicating a typical daily spend where ongoing use of an app requires ongoing in-app purchases or a user subscription; and

- a warning message indicating that ‘in-app purchases are required for full functionality of this app’ to be provided to the user after requesting to download or purchase the app.

Disclosure statements present different and unique challenges which are common to a range of complex products. Terms and conditions as well as privacy statements are complex documents that are often difficult to simplify to easily accessible statements. However, this information is often not prepared with the end user in mind, and many users will simply continue without reading. A key implication of this is that app developers and app stores need to ensure that critical information is provided to consumers in a variety of ways, and in a manner that is sufficiently prominent (that is, not only as part of a disclosure statement). More broadly, CCAAC agrees, with Office of the Australian Information Commissioner (OAIC), that disclosure statements should be:

- honest, accurate and specific;
• easy to understand;
• prominently positioned;
• accessible to consumers with a disability; and
• updated when necessary.

User guidance, industry engagement and ongoing monitoring

CCAAC is of the view that consumer and other government agencies should partner in order to develop simple and clear guidance on the complaints handling responsibilities of app stores, app developers as well as government agencies (including through agencies’ websites). CCAAC considers that options for the development of this guidance should be identified and considered by the Education and Information Advisory Committee of Consumer Affairs Australia and New Zealand (CAANZ).

CCAAC considers that it would be beneficial for industry stakeholders to develop and promote industry best practices. Industry best practices should include those practices that, when implemented, are suitable to the needs of both industry and consumer stakeholders. While consumer laws and other regulatory frameworks provide a minimum standard of conduct to ensure that community expectations are met, industry best practices should go above what these minimum standards require and should ensure that consumers are provided with the best user experiences within the context of the industry.

In CCAAC’s view there are a number of areas where stronger industry engagement with consumers could be beneficial. Although the success of a business is dependent on its responsiveness to the needs of its customers, there may be occasions where a business does not adequately meet the needs of all customers who use its products or services. As with any rapidly developing market, there is a risk that the needs of some customers may be overlooked.

In CCAAC’s view industry and governments should continue to improve their understanding of m-commerce related issues and to monitor consumer experiences. Industry has an interest in improving consumer experiences overall and has an obligation to ensure that its products comply with all existing laws. Government agencies, including consumer agencies, need to ensure that they remain alert to and capable of addressing issues that arise in new and complex markets. The need for additional action, including regulatory intervention, should be identified by Commonwealth, state and territory consumer agencies as part of their continued monitoring of consumer experiences in app markets. CCAAC encourages consideration to be given to the need for additional action two years after the release of this report.

Appropriate enforcement

CCAAC supports the consideration of consumer complaints in accordance with relevant compliance and enforcement policies. However, CCAAC considers that many consumers may experience frustration, including where consumer laws have been breached, without making a complaint to consumer agencies. This may be due to the relatively low value of purchases or a perception that making a complaint will not give the desired outcome.
CCAAC has proposed that the ACCC and other government agencies work with industry stakeholders to improve consumer experiences, including through the development and promotion of industry best practices. Any outcomes of this work could be used as the basis for an international approach to improving outcomes within app markets. This could be achieved through international forums such as the OECD Committee on Consumer Policy and the International Consumer Protection and Enforcement Network (ICPEN).
THE COMMONWEALTH CONSUMER AFFAIRS ADVISORY COUNCIL

CCAAC TERMS OF REFERENCE

CCAAC is an expert advisory panel, which provides advice to the Assistant Treasurer on consumer policy issues.

CCAAC’s terms of reference are to:

• consider issues, reports and papers referred to it by the Minister and report to the Minister on their consumer policy implications, and in doing so take account of the need for well-functioning markets with confident consumers;

• identify emerging issues affecting Australian markets and consumers and draw these to the attention of the Minister; and

• when considering consumer policy issues, take account of their competition and other relevant economic implications.

Membership

The membership of CCAAC consists of:

• Mr Colin Neave AM (Chair);
• Ms Carolyn Bond AO;
• Professor Stephen Corones;
• Ms Lynda Edwards;
• Ms Deborah Healey;
• Mr Peter Kell;
• Mr Gordon Renouf;
• Dr Rhonda Smith; and
• Mr Ray Steinwall.
TERMS OF REFERENCE

On 5 November 2012, the Assistant Treasurer, the Hon David Bradbury MP, released the Terms of Reference for this inquiry.

The Commonwealth Consumer Affairs Advisory Council (CCAAC) will conduct an inquiry into the experiences of Australian consumers with downloading apps, including free and paid apps, and making in-app purchases, on mobile phone and handheld devices.

Under its terms of reference, CCAAC will examine the following matters as part of its inquiry:

- the characteristics, features and trends of app markets in Australia;
- consumer experiences when downloading and using such content, including when used by children;
- adequacy of the information being disclosed to consumers about the costs associated when downloading and using this content before and after it is downloaded;
- adequacy of existing measures to address any consumer concern, including the legal protections available to consumers, the adequacy of default settings to ensure consumers are making an active decision before incurring additional charges, the availability and ease of use of ‘opt out’ features, the adequacy of existing parental controls for app stores and how these controls are promoted to consumers, and any other industry initiatives; and
- actions that can be taken by consumers, industry and governments to help improve consumer experiences when making in-app purchases, including international approaches.
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<tr>
<td>App</td>
<td>An application that operates on a mobile or handheld device that has been developed to fulfil a particular purpose or function.</td>
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<tr>
<td>App developer</td>
<td>The entity that develops an app that is made available through app stores.</td>
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<tr>
<td>App market</td>
<td>An ecosystem of app developers, app stores, and users.</td>
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<tr>
<td>App store</td>
<td>A mechanism through which apps are purchased (downloaded) and sold.</td>
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<tr>
<td>Digital content</td>
<td>Content that may be downloaded through an app store or an in-app purchase, but that cannot by itself be described as an app (for example movies, books or music).</td>
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<tr>
<td>Handheld device</td>
<td>Any ‘smart’ device — for example a device capable of having apps installed — that can be operated within the hands of its operator including smartphones, tablets and other similar devices.</td>
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<tr>
<td>Handheld device manufactures</td>
<td>Businesses that are responsible for the manufacturer and marketing of handheld devices (for example Apple, Samsung or Nokia).</td>
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<tr>
<td>In-app purchase</td>
<td>A purchase that is made within an app, usually to access specific features or associated content.</td>
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<tr>
<td>M-commerce</td>
<td>The delivery of electronic commerce capabilities through use of mobile and handheld devices.</td>
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<tr>
<td>Platform</td>
<td>The software that supports a handheld device’s basic functions (for example Android, iOS or Windows Phone).</td>
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PART I — INTRODUCTION

Advancements in technology and the increasing use of the internet have changed the way consumers and businesses use handheld devices. Handheld devices have become performance-enhancing tools, with their functionality increased by software applications, often referred to as ‘apps’, that are developed and distributed through app markets. App markets can be thought of as an ecosystem of app developers, app stores, and users.

The rapid growth in smart devices and the increasing popularity of apps demonstrates that overall, consumer experiences have been positive. While apps are becoming increasingly popular amongst Australian consumers, a number of community concerns have been raised about apps and app markets. As with any emerging market, app markets are subject to some teething problems as the market expands and is exposed to new challenges. While challenges in emerging markets will often resolve themselves, there is a role for governments to monitor consumer experiences and to support industry and consumer stakeholders, particularly where consumer detriment is systemic and disproportionate to the wider benefits of a new market.

This inquiry is the result of CCAAC’s study into app markets and purchases made by Australian consumers on mobile and handheld devices. It examines aspects of consumer experience with m-commerce, including purchases made with little difficulty when using stored credit card data, in-app purchases and other areas of community concern.

CONTEXT OF THE REVIEW

On 5 November 2012, the Assistant Treasurer, the Hon David Bradbury MP, released Terms of Reference for a CCAAC inquiry into app purchases by Australian consumers on mobile and handheld devices.

On 12 December 2012, CCAAC released an Issues Paper and survey (the Survey — see Appendix 1 for results) to canvass the views of interested stakeholders. CCAAC received 17 non-confidential written responses to the Issues Paper and 96 responses to the Survey. Towards the conclusion of the consultation period, further targeted consultations were held with selected stakeholders (see Appendix 2 for an overview of the consultation process).

This study draws on submissions made following the Issues Paper, the results of the Survey, further targeted consultations and other research.

FEATURES OF APP MARKETS

App markets allow consumers to purchase (although some apps are offered free of charge) and download apps that allow the user to perform a particular task and access information or other content. App stores may be integrated with other supply networks that facilitate the distribution of digital content such as books, music, movies and television shows. Apps exist across different platforms, although apps may be distributed through multiple app stores for a given platform.
Examples of app stores include the Apple App Store, Google Play, the Windows Phone Store and the Blackberry App World, which are examples of app stores for the Apple, Android, Microsoft and BlackBerry platforms.

**Key actors in app markets**

There are a number of key stakeholders who have an interest in app markets. Each group has an important role in ensuring the ongoing viability of app markets, and is reliant on other market participants. These groups include:

- **Platform developers** (developers of the software that supports a handheld device’s basic functions, for example Android, iOS or Windows Phone) — Platform developers require active and dynamic app markets to be available on their platforms in order to encourage use and adoption by users and handheld device manufacturers.

- **Handheld device manufacturers** (businesses that are responsible for the manufacture and marketing aspects associated with handheld devices, for example Apple, Samsung or Nokia) — Handheld device manufacturers promote apps as part of their value proposition to consumers.

- **App developers** (the entity that produces an app that is made available on app markets) — App developers rely on app markets for the distribution of their apps and to monetise their intellectual property.

- **App stores** (a mechanism through which apps are purchased, downloaded and sold) — App stores need a balance of app developers and users in order to gain popularity within app markets.

- **Users** (consumers who purchase, install and use apps) — Users rely on app stores to purchase and download apps, and app developers to produce innovative and functional new apps.

**Figure 1 — Key actors in app markets**
App functions and use

App functions can include anything from reading a menu in a foreign language to sharing photos instantaneously around the world with friends and family. Apps use the processing power of a handheld device and inbuilt devices (such as a camera) to perform any number of tasks. In doing so, apps are capable of dramatically enhancing the functionality of a user’s handheld device.

The most common way to install an app is through a handheld device’s internet connection. Some apps make ongoing use of an available internet connection; however, many apps are fully functional independent of the internet.

It is not possible to provide an exhaustive list of app functions given the vast quantity of apps available through app markets. However, some common app functions include providing users with:

- information such as news, business and finance, books and educational resources;
- tools to interact with other users including through audio and video, social media and email;
- games for entertainment;
- specific tools that allow a particular task to be performed (such as taking a photo or translating the characters of a foreign language);
- multimedia and other digital content (such as movies and music); and
- the ability to personalise and customise a handheld device.

Overview of Consumer Concerns

The issues raised by consumers are wide ranging reflecting the complex nature of apps and their associated products. While this inquiry report does not exhaustively address all of the concerns raised by stakeholders, it attempts to comment broadly on most of the issues, including an assessment of their cause and effect. Some of these issues include:

- where critical information is not disclosed when purchases or downloads are made such as the way their personal information will be used, the resource usage of the app, and its true cost (including through in-app purchases);
- where disclosure documents are difficult to navigate including when determining which information is important and where excessive time and effort is required to find and assess the information;
- difficulties in relying on supplier reputation as a rapidly changing market means supplier reputation and reliability cannot be fully tested and users can be exposed to exploitation by fly-by-night operators aiming to deceive unfamiliar users;
- the appropriateness of certain apps for children including where aggressive marketing strategies that promote in-app purchases are used, the simulation of gambling, and issues associated with billing for unintended purchases;
Introduction

- *post sales complaints difficulties* when seeking to make a complaint about the nature of the app or to request a refund; and

- *exposure to malicious content* including scams, viruses or apps that exploit user information.

These issues will be considered in the light of current measures that exist to support consumers when using apps.

**NOTE ON THE SCOPE OF THIS REVIEW**

A number of submissions commented that many of the abovementioned issues are not unique to apps when they are used on mobile and handheld devices. For example, many of these issues may apply equally to apps downloaded and installed on other electronic devices including televisions. Similarly, some of the issues may not be unique to consumers’ use of apps. For example, issues relating to cyber-safety, product disclosure, new business models and exploitation by fly-by-night operators can occur to users of other technologies or platforms.

CCAAC notes that this inquiry’s terms of reference requests an examination of the experiences of Australian consumers when using mobile phone and handheld devices. This inquiry has a specific focus on these products. However, CCAAC acknowledges that there is value in considering the issues more broadly and that technology neutral principles should be applied when considering what actions can be taken by industry, governments and consumers.

**Structure of this report**

Part II provides an overview of Australia’s digital app economy including methods to monetise app popularity. Part III examines the nature and causes of negative consumer experiences. Part IV considers existing protections made available to Australian consumers, including through regulatory and other arrangements. Part V discusses what actions can be taken by industry, consumer and government stakeholders to improve consumer experiences.
PART II — AUSTRALIA’S DIGITAL APP ECONOMY

The use of smartphones and other handheld devices in Australia has increased dramatically over the past few years. In the Australian Communications and Media Authority’s (ACMA) report on smartphones and tablets, it was highlighted that at the end of May 2012, there were 8.67 million people 18 years and over with a smartphone, compared with 4.25 million in June 2011 (a 104 per cent increase over that period of time).10 This same report also noted the number of people 18 years and over who downloaded an app during June 2012 at 4.45 million, up from 2.41 million in June the previous year (an 85 per cent increase).

There is also a significant and increasingly important app developers industry in Australia. From being non-existent a decade ago, the Australian app developers industry is estimated to have grown at an annualised rate of 177.2 per cent over the past five years to be worth $294.5 million in 2012-13.11 The Game Developers’ Association of Australia (GDAA) and the Interactive Games & Entertainment Association (iGEA) joint submission noted that Australia’s mobile game market was worth $400 million, representing approximately 4.2 per cent of the global mobile game market.

Apps are likely to become more popular as users look for increased functionality from their mobile and handheld devices. As m-commerce plays an increasingly important role relative to traditional forms of e-commerce (such as through websites or desktop computing), businesses are likely to desire new ways to engage with customers using mobile and handheld devices including through apps. Accordingly, there remains considerable scope for further growth in app markets.

THE UNIVERSAL APPEAL OF APPS

Globally, the appeal of apps can be illustrated through the large quantity of apps downloaded each year and the increasing number of apps available through app markets. Apple reported that downloads from the Apple App Store passed 40 billion in January 2013, with 20 billion apps downloaded in 2012, while the number of Android apps downloaded reached 25 billion in September 2012.12

The growth in the number of available apps has also increased significantly over time. The Apple App Store has over 775,000 apps for the iPhone, iPod and iPod touch as of January 2013.13 As of October 2012, Google has 700,000 apps available for the Android platform14
and the Microsoft Windows Phone Store has 120,000 apps available for download\textsuperscript{15}. Combined, these platforms have over 1.5 million apps and more than 65 billion downloads among them.

**MONETISING APP POPULARITY**

With 95 per cent of respondents to the Survey indicating that they frequently, often or occasionally download apps (see Chart A2), app markets are increasingly valuable and the ability to monetise app popularity is an important incentive that drives innovation.

As many consumers now use apps on a regular basis, app developers are becoming increasingly savvy in converting app popularity into business revenues. Expanding app markets have also created new opportunities for businesses to reach consumers. App markets have also provided app developers with new ways to generate income, often without parallel in physical goods markets. For example, they can earn income from advertisements, fees charged to download or install an app, fees charged for ongoing use of the app (such as a subscription fees charged on a monthly basis) or fees charged (as in-app purchases) to use specific features of an app. App developers may sometimes rely on a combination of these.

**Free and premium versions**

It is common for apps to be available as both free and premium versions. Free apps are downloaded without upfront costs, while premium apps can be purchased at the initial download point. Generally, free versions are not fully functional and may come with advertising mechanisms inbuilt. To remove such restrictions the user is required to purchase the premium version of the app or make in-app purchases.

App developers will typically offer a basic version of an app for free and in doing so, developers are able to reach a wider audience which maximises the user base that is available to earn revenues from, including through advertising and offering in-app purchases.

**Freemium apps**

Once an app is downloaded, an in-app purchase may be required to access specific functions, features or associated content. An app that was free to install but that requires a consumer to make in-app purchases — such as subscriptions or the purchase of specific items to unlock the app’s full features — is often referred to as a ‘freemium’ app.

Developers may sometimes prefer the freemium business model as it allows them to extract more value out of their product by drawing on existing customer relationships. In-app purchases provide an income stream to the app developer that may sometimes be in lieu of additional income that could be earned through advertising or upfront fees.

It appears as though in-app purchasing is an important feature of app markets with 97 per cent of respondents to the Survey frequently, often or occasionally coming across in-app purchases when using apps (see Chart A3) with approximately half of respondents

indicating they had made an in-app purchase. Furthermore, 60 per cent of respondents that had made an in-app purchase indicated that they frequently, often or occasionally make in-app purchases (see Chart A4).

The GDAA and the iGEA joint submission identified that in-app purchases are seen by the industry as a means to prevent or reduce copyright infringement as it requires users to make ongoing purchases in order to progress through games. In-app purchases may also allow app developers to maximise their revenues by maximising their take of a user’s willingness to pay. For example, app developers can earn income through advertising from users that would not be willing to pay an upfront fee, while users who are willing to pay only for certain features (such as a removal of in-app advertising) can choose to do so. In this regard consumers may also benefit from greater choice about how they purchase and use an app.

There are a number of downsides of the freemium app model for consumers. In particular, some apps may exploit behavioural vulnerabilities or may actively encourage ‘pester power’ when they are used by children.

**BUSINESS MODELS, PRODUCT INTEGRATION, AND OPEN AND CLOSED MARKETS**

There are a number of different business models that are used by key participants in app markets. Different business models can lead to different user experiences. Broadly speaking, app markets can either be open or closed.

**Closed app markets**

Closed app markets operate on platforms that are linked to a particular handheld device or app store. Users who wish to install apps are typically required to install apps through a single app store. This form of product integration allows handheld device manufacturers to have greater control over the value chain. The business model used by Apple provides an example of a closed app market. Users of Apple handheld devices operate an Apple platform, and can purchase and download apps through the Apple App Store. Closed app markets may be less susceptible to developers of malicious apps as they are capable of being more tightly controlled by the platform developer.

**Open app markets**

Open app markets operate on platforms that are not linked to a particular handheld device manufacturer or app store. Their accessible nature means that open app markets have the potential to reach a wider audience. Google’s Android platform is a notable example of an open app market platform. Android can be installed on a range of different devices, and its open source nature allows it to be customised to suit manufacturer requirements. Furthermore, Android users are able to download apps from a range of app stores, although many Android users download and purchase apps through Google Play. Open app markets may be more susceptible to developers of malicious apps as a key feature of these markets is that they are open to a greater number of app developers.

**Business models and user experiences**

While closed and open app markets offer both advantages and disadvantages, it would appear as though consumers face additional risks when engaging with open app markets. This risk emerges where app markets expose users to fly-by-night operators, or otherwise untested app developers, that would experience difficulties in gaining exposure through
closed app markets. While additional risks may exist, users are able to mitigate these risks by relying on credible app stores and other reputational mechanisms. In addition, open app markets offer many other advantages for users, including the potential for greater choice and more fierce competition.

While some of the issues considered in this inquiry have the potential to be more prevalent in open app markets, they remain common to both open and closed markets. Accordingly, CCAAC does not consider that separate consideration should be given to consumer issues in closed and open app markets.

**FINDINGS**

App markets are rapidly expanding alongside the proliferation of smart devices. The number of apps available across a multitude of platforms — as well as the volume of apps downloaded each year — make app markets a significant and important emerging market. There remains considerable scope for further growth in app markets.

There are a range of approaches to monetising app popularity. This includes the offering of both free and premium versions, in-app purchases, and in-app advertising. Industry participants may also adopt varying degrees of product integration including by offering apps through closed or open app markets. The business models used by industry participants to monetise app popularity can have impacts on the experiences of consumers.
PART III — CONSUMER EXPERIENCES IN THE AUSTRALIAN APP MARKET

The rapid proliferation of app markets and smart devices demonstrate that apps are a popular product for Australian consumers. The Survey indicated that 66 per cent of respondents had either a good or very good overall impression of the app market (see Chart A1). Apps are able to improve our lives in many ways including enhancing productivity, providing new forms of entertainment, and supporting users in their daily lives. Apps can also enhance the operation of handheld devices by increasing their functionality and thereby improving consumers’ experiences on such devices. There are many apps available that are either free or low in price, and the ease of which they can be purchased and downloaded, the simplicity of the software and the specificity of the content make them an attractive product.

Despite the popularity of apps, the submissions have nonetheless identified a number of community concerns associated with their use, as outlined in Part I.

CAUSES OF NEGATIVE CONSUMER EXPERIENCES

It is useful to consider the cause of any identified negative consumer experiences as actions by industry, government and consumers may be more effective where they address the underlying cause of a problem. Understanding the cause of negative consumer experiences is also important so that they can be considered in the light of current measures that may, to some extent, address community concerns.

Broadly speaking, issues related to the purchase and use of apps fall into five broad categories.

• **Inappropriate information** — important information related to the use of apps, including with respect to billing and in-app purchases, may be absent or incorrect.

• **Ineffective disclosure** — consumers may be provided with information related to the use of apps, including with respect to billing and in-app purchases; however, this information is not presented in a manner which is easily accessed or understood by the user.

• **Lack of familiarity with a new product** — consumers lack familiarity with app markets, handheld devices and new business models (for example freemium apps) with consumers unaware of new risks that may exist.

• **Unsupervised use, and targeted marketing towards children** — devices may be used in a manner not anticipated by the owner where in-app marketing is targeted to children (and where the owner’s billing information is saved).

• **Difficulties for consumers when seeking to make a complaint or seeking a refund** — consumers may lack practical options for redress when experiencing a problem, including difficulties finding contact information and where app stores encourage users to contact the app developer for refunds.
Each of these categories may require different actions to avoid or minimise negative consumer experiences and are further considered here.

**Inappropriate information**

A number of submissions highlighted that app markets and developers do not provide sufficient information with respect to billing information, in-app purchases, app features, data usage, and the complaints and refunds process. Issues related to inappropriate information may include:

- purchases made by users that would not have been made had they been informed about critical information such as its cost; and
- excessive data or battery usage where the app does not disclose what resources are required for the ongoing operation of the app.

The disclosure of important information when purchasing or using apps is of concern to some consumers, with 38 per cent of respondents to the Survey indicating that their perception of overall disclosure was poor or very poor (see Chart A6).

In its submission, WMC Global noted that Google Play and the Apple App Store clearly display the price of an app purchase while few disclosures are made for in-app purchases. Consumers may also be uncertain as to what information they should be aware of before and after making a purchase or download of an app.

**When should information be disclosed and what information is important?**

The Australian Communications Consumer Action Network (ACCAN) highlighted a number of instances where app developers and markets should be more forthcoming in providing relevant information to consumers before and after a download. In particular, ACCAN suggested that it is not clear to consumers as to the amount of data that apps use on handheld devices, and this has led to a number of instances of bill shock.

The Australian Mobile Telecommunications Association (AMTA) noted that it is important for consumers to be supplied with adequate information about the price and charging model for an app prior to its purchase or download. CHOICE raised concerns about the lack of disclosure about in-app costs and the lack of safeguards against unauthorised in-app purchases.

Information on app resource use, including battery as well as data use, is particularly useful where an app is resource intensive or likely to use resources that go beyond the user’s expectations. It is acknowledged that it can be difficult to provide this information in a manner that is meaningful to the user; however developers have a responsibility to ensure accurate information is provided to support user expectations about an app’s use of resources.

The Medical Technology Association of Australia (MTAA) raised concerns about the promotion of medical apps and the potential for medical advice provided through an app to be incorrect.

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16 For example see submissions by ACCAN, CALC and CHOICE.
cause harm if the advice is misleading or incorrect. In this respect warnings about possible consequences of using an app inappropriately could also be important.

**Ineffective disclosure**

While consumers are usually provided with information before the download or purchase of an app, the information displayed to consumers is not always provided in a form that is accessible and easy to read. Consumers are also concerned as to the adequacy of the information being disclosed within the app itself. The inadequate disclosure of information can make it difficult to ensure that a consumer has understood their rights and all of the terms and conditions associated with making a purchase, and can therefore increase the likelihood of unwanted purchases. Issues related to ineffective disclosure include:

- misleading information about important aspects of an app;
- difficulties finding important information where it is not easily distinguished from less important information;
- confusion about the business models used to monetise apps, including non-disclosure at the time of download that an app is not fully functional unless in-app purchases are made;
- excessive time and effort required to read through complex disclosure statements; and
- incorrect user expectations about the manner in which their personal information will be used.

The ineffective disclosure of information to consumers can be due to technological constraints. Small screen sizes may restrict the ease with which consumers can access important information — it may be presented in small text, or accessible through a series of hyperlinks to other websites. Important information may also be hard to find where it is surrounded by less important information.

A significant number of respondents to the Survey indicated that they did not think that terms and conditions were clear with respect to in-app purchases (see Table A1) and a majority of respondents did not think that descriptions of apps clearly disclosed important information at the time of purchase (see Table A2).

**Disclosure to create meaning**

A key concern is that disclosure statements are not drafted to meet the needs of users. Disclosure statements are seen by providers as important in defining or limiting the app developer or app store’s obligations; however, whether the information presented is meaningful to the reader appears to be ignored.

ACCAN considers that the current practice of providing an app’s privacy statement through ‘large chunks of legal text’ is not the best way to communicate with consumers while the Consumer Action Law Centre (CALC) drew attention to the time it would take an average user to read everything they are presented with before using an app.
Disclosure about terms and conditions

Important information for users can include the terms and conditions associated with making an app purchase. Terms and conditions statements typically disclose all of the intended contractual obligations of the parties to an agreement. Terms and conditions statements may be provided to users upon signing up to an app store, or may be provided through other means where a user has an ongoing contractual relationship with an app developer.

While it is appropriate for the terms and conditions of a contract to be wholly defined in a terms and conditions statement, it is also appropriate for users to be informed about important aspects of the contractual relationship at the time of purchase or download. In some cases, particularly those apps with in-app purchases, there is a tension between presenting information which will help sell the app — that is the marketing of the app — and clearly presenting information which is important for the consumer to know. While this is also the case in other markets, it is a particular issue for app markets as the available space for the information is limited.

In its submission, the Centre for Internet Safety (CIS) also highlighted that most app users are unaware of the content of terms and condition statements and commented that the language used in such statements is often legalistic.

Information about free and premium versions

Another issue highlighted by the submissions is the disclosure of information regarding freemium apps.17 These apps are advertised and marketed as free to download and use; however, some functions of these apps are restricted and require the user to purchase a subscription, an add-on or a number of in-app purchases to progress in a game or unlock the full version of the app. In some cases, users cannot progress through a game or use the most important features of an app without making such purchases. Descriptions of apps as being ‘free’ in some examples may be misleading.

Clearer information could also improve consumers’ understanding of the difference between free and premium versions of an app, whether the app connects to the web and how much data it will use for key tasks, as well as the availability and cost of in-app purchases.

Disclosure about the app’s use of personal information

Poor disclosure can also have consequences for a user’s expectations about the way their personal information, provided in the course of their download or use of an app, will be used. Some apps are capable of tracking information about the user’s preferences, tastes or interests. This information may then be used to determine what products or services are promoted through in-app advertisements. While disclosure statements may outline how user information will be used, the complex and detailed nature of such documents may mean that consumers are not fully aware about how such information will be used.

A related concern is where apps are able to access the location information of a user. The ACMA recently released research into consumers’ understanding of location services,

17 For example see submissions by ACCAN and Steve Craddock.
including finding that the majority of consumers did not understand the collection, storage and sharing of personal information associated with location services. Lack of awareness highlights the important role of app developers and app stores play in educating users about these features.

In its submission, the Office of the Australian Information Commissioner (OAIC) noted that it is aware that many app privacy notices may not conform to the National Privacy Principles. The National Privacy Principles impose the collection, storage, security, use, disclosure and access and correction obligations of organisations covered by the Privacy Act 1988 and are set out in schedule three to that Act. OAIC noted that in order to effectively inform users, app privacy policies should be:

• honest, accurate and specific;
• easy to understand;
• prominently positioned;
• accessible to consumers with a disability; and
• updated when necessary.

These attributes are desirable for all disclosure documents including terms and conditions statements.

**Lack of familiarity with a new product**

The popularity of handheld devices, particularly tablets and smartphones, and the rapid growth of app markets has been a relatively new phenomenon. Accordingly, consumers may not be entirely familiar with how apps and app markets work and the business models designed to monetise app popularity. This lack of familiarity can make consumers more vulnerable to risks such as:

• exposure to malicious apps that are not secure or safe;
• a rapidly changing market where reputation and the reliability of suppliers have not been fully tested; and
• exploitation by fly-by-night operators aiming to deceive unfamiliar users.

Another concern highlighted by Trend Micro’s submission is that consumers may have a false sense of security regarding the safety of apps. Consumers may not be aware of the dangers that may be presented by malicious apps. A user more familiar with the risks presented by malicious apps may be more likely to exercise caution when downloading and installing apps or may install software to protect their handheld devices, especially when downloading or purchasing from an unknown source.

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There is a history of rapid changes in technology leading to new consumer protection challenges. Parallels can be drawn between the issues being considered here and challenges that were experienced by consumers when engaging in other markets. For example, both the new video games market of the late 1970s and early 1980s and the explosion in mobile premium services from the late 1990s demonstrate some similarities in the experiences of consumers. Further explanation of these examples is provided in Box 1.

**Exploiting user inexperience**

Some industry participants may seek to exploit consumers’ lack of familiarity with app markets and handheld devices. While it appears that major app stores are proactive in eliminating this behaviour, some apps benefit from user inexperience while not necessarily breaching app store policies or guidelines.

A user’s lack of familiarity with a new product also has the potential to exacerbate informational issues. While some users may only require a limited amount of information to ensure effective use, other users may require more detailed information. For example, bill shock risks associated with bandwidth heavy apps may be more prevalent amongst users who have limited experience and who may require more information on data charges.
Box 1 — Consumer protection challenges associated with new products

Early video games market

The late 1970s and early 1980s saw an explosion in the popularity of home-based video game consoles. Responding to what became seen as a highly profitable and expanding growth industry, many existing technology companies and start-ups began offering new consoles and game titles in the market. This led to a glut of titles which saturated the market.

One issue associated with the video games market was the supply of low quality games released by third-party developers. The supply of poor quality games weakened consumer confidence in the video games market and saw a number of exits and structural adjustments to the market.

Some game console developers attempted to rebuild confidence by pursuing greater control over the third-party development of games and through use of trustmarks that allowed developers to promote a game as a quality publication endorsed by the console manufacturer.

Mobile premium services

Mobile premium services typically deliver content such as ringtones, horoscopes, news or adult content to a subscriber’s mobile phone for a fee. These services are delivered over a mobile provider’s network, and are often subscription services where fees are charged on a regular basis. This market saw exponential growth from the late 1990s, however is now in decline.

Some mobile premium services are advertised or offered as being free or low cost. However, upon accepting the offer, the consumer may be actually subscribing to an ongoing service with the user incurring premium fees.19 One challenge associated with mobile premium services is where fees are applied to a user’s phone bill. This billing arrangement can mean that users may inadvertently subscribe to services without being prompted to make a payment (such as through a credit card) and can cause confusion when attempting to request a refund or cancel a subscription service.

Consumer difficulties with mobile premium services have been, in part, exacerbated by consumers’ unfamiliarity with mobile phones, billing arrangements, and the aggressive marketing tactics used by service providers. Problems with the mobile premium services market have now largely dissipated as a result of regulatory actions taken by the ACMA and industry-driven initiatives. While consumer agencies are continuing to monitor the mobile premium services market, consumers’ increased familiarity with mobile phones as well as industry efforts has improved outcomes for consumers.

Key lessons include the potential for new and unfamiliar business models to be a source of consumer detriment where prices, terms and conditions are not transparent and where commercial incentives favour non-compliance and consumer-unfriendly business practices.

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19 For further information see ACCC’s Scamwatch, viewed 2 May 2013. [http://www.scamwatch.gov.au/content/index.phtml/tag/RingToneScams].
The reliability of reputational mechanisms

An additional concern associated with new markets is that the credibility of market participants has yet to be established. While relying on user ratings to determine the quality of an app can be an effective method of choosing a suitable app, this may leave app users vulnerable where feedback is not genuine. Some app developers may attempt to deceive consumers by providing false feedback on apps that are malicious or otherwise unsuitable for their use. While users are typically able to report problems to app stores that may then review the content of an app, there is still an opportunity for some users to be deceived before the app is removed or the feedback is corrected.

Manipulated content ratings also have the potential for apps to be promoted to wider audiences through popular app lists when searching for specific keywords.

Fly-by-night operators and scams

Fly-by-night operators trade on consumers’ unfamiliarity of the reputation of app developers. They may establish an app developer brand that sounds credible, with the intention of fleecing unsuspecting users. They may imitate other popular apps that exist in the market, or they may find other ways to scam users. These developers are not punished by the impact to their reputation as they may continue trading under a different name.

Unsupervised use, and targeted marketing towards children

Apps are becomingly increasing popular with children, particularly given the increase in games that are available as apps. Issues related to unsupervised use and targeted marketing towards children may include:

- excessive fees charged for apps or in-app features that go beyond what a reasonable consumer would pay;
- marketing strategies that are not appropriate to the age of the users; and
- the use of apps that simulate gambling.

Some parents may not recognise the need to supervise children’s use of mobile applications or be aware of the various tools available to them to control children’s use of apps. A number of recent media reports highlight situations where children have been able to use apps in a way that was unlikely to have been foreseen by the parent. For example, it has been reported that children have made significant app or in-app purchases after an account password remained active after the initial purchase was authorised by a parent.20

Targeted marketing and in-app purchases

Children may make a number of in-app purchases without the knowledge of their parents. Issues arise with apps aggressively encouraging and prompting in-app purchases, as well as confusion over whether purchases are to be made with real money or credits available within the context of the game. Another concern relates to free apps downloaded by children

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where a number of in-app purchases or subscriptions are needed, even mandatory, to make progress within the game.

Parents may also be unaware of the extent to which apps encourage children to make in-app purchases. Such targeted marketing strategies are not necessarily clear at the time of initial download or purchase. Examples of such marketing strategies are presented in Box 2.

Aggressive marketing can also be a frustration even where a parent applies account protection features or where their child’s use is supervised. For example, unauthorised in-app purchases could occur where a Personal Identification Number (PIN) or password remains active for a period of time after it has been entered, where a child obtains knowledge of that PIN or password, or where the in-app marketing encourages children to use pester power. In each of these examples, it is not always possible for a parent to avoid the pitfalls of aggressive marketing even where they are alert to it.

**Simulated gambling experiences and inappropriate content**

Through apps, children may be exposed to inappropriate content or experiences. For example, there has been an emergence of apps that simulate gambling or emulate risk. While these apps are legal, they have the potential to become addictive or lead to other forms of real world gambling. Other apps may present material that is not age-appropriate to the user, including the advertising of adult services such as online gambling. These issues are further complicated by parents lacking familiarity with content restrictions and other protection features.

In its submission, ACCAN provided an example of an app targeted towards children that has gambling-like features (Paradise Cove presented in Box 2). Recent media reports have also highlighted the use of casino-style gambling simulations by children.21

Online gambling protections are provided by the *Interactive Gambling Act 2001* (IGA) which makes it an offence to provide certain interactive gambling services to a customer physically present in Australia. The IGA prohibits certain interactive gambling services, including those that use the internet to provide games of chance (or games of mixed chance and skill), such as roulette, poker, craps, online 'pokies' and blackjack. The ACMA is the responsible enforcement and complaints agency.

Whilst many apps offer a simulated gambling experience they are not prohibited under the IGA as they are played for virtual money or credits rather than for real money, even where the virtual money is purchased with real money (and where the virtual money cannot be converted back to real money or anything else of value).

In 2013, the Department of Broadband, Communications and the Digital Economy (DBCDE) finalised its broad review of the IGA, providing a number of recommendations aimed at strengthening consumer protections and to improve harm minimisation. 22

Recommendations made at targeting and combating the increasing use of simulated gambling apps used by children include that content providers, app stores and app developers ‘closely monitor the impact of their user policies regarding the provision of online gambling services (both licensed and unlicensed) as well as gambling-style services that are popular with children to ensure the implementation of these policies aligns with Australian laws and community expectations’.

The review also recommended that DBCDE ‘should consult with gambling regulators in like-minded countries regarding potential measures to address the access and marketing of online gambling-style services to children.’

Box 2 — Examples of in-app purchase marketing

A number of submissions provided case studies of where apps allowed and marketed in-app purchases. The following examples are summarised from the submission provided by ACCAN.

**Fruit Ninja by HalfBrick**

Players can use ‘starfruit’ to purchase additional features like background or ‘powerups’ in this game. Starfruit can be purchased with real currency, as well as being earned through gameplay. Fruit Ninja also allows players to purchase physical items like plush toys or phone cases through the app, and can only be purchased with real currency. Examples of Fruit Ninja’s in-app marketing are provided below.

![Fruit Ninja starfruit packs](image1)

![Fruit Ninja phone case](image2)

Source: ACCAN submission
Box 2 — Examples of in-app purchase marketing (continued)

*Paradise Cove by PocketGems*

Paradise Cove has three in-app currencies (rubies, coins and pearls) used in the game with each currency only able to be used to obtain certain items. Paradise Cove encourages players to spend real money on in-app features, including on in-app currencies, and is designed so that players need to purchase items if they want to progress at a reasonable rate. Players are also prompted to purchase items to complete a task immediately. Examples of Paradise Cove’s in-app marketing are provided below.

Source: ACCAN submission
Box 2 — Examples of in-app purchase marketing (continued)

_SpongeBob Diner Dash by PlayFirst and Nickelodeon_

Players can purchase ‘tips’ to advance their game play by further purchasing boosts and upgrades. The game frequently encourages players to make in-app purchases, though they are not essential to game play. When players do not have enough tips to trade for a certain item, they are directed to the in-app store to purchase more. Examples of the in-app store and a prompt to make an in-app purchase are provided below.

Source: ACCAN submission
Difficulties for consumers when seeking a refund or to make a complaint

Consumers may wish to seek a refund for an app or in-app purchase for reasons such as a change of mind or no longer requiring the item purchased, an accidental purchase, a technical issue, or faults in the product (including where it does not function as described). Consumers may experience difficulties when seeking a refund or to make a complaint where:

- the contact information of the app store or app developer is not available or non-responsive;
- they are directed to the app developer for a refund;
- there are no clear processes in place to process refund requests for in-app purchases; and
- the information provided has the potential to mislead them about their rights.

Submissions highlighted that many app stores do not issue refunds where users experience technical issues, that refund policies can vary significantly between stores and that they do not issue refunds for in-app purchases. Submissions also identified where users were provided with information implying that refunds are not issued by app stores irrespective of the circumstances. ACCAN also highlighted the complexity of complaints and refund processes.

Where a consumer wishes to request a refund on the basis that the app fails to meet a consumer guarantee (for example where it does not function as described), consumers may be entitled to request (and receive) a refund from the app store. The ease of requesting such a refund will depend on the app store. For example, many app stores recommend for users to contact the developer irrespective of the reason for their refund request and it may be difficult for users to find the app store’s contact information.

Under the Australian Consumer Law (ACL), consumers are entitled to pursue a remedy against the supplier of the app or the developer, and by insisting that a consumer first seek a remedy against the developer, the supplier risks being in breach of section 29(1)(m) of the ACL. In addition, section 64(1) of the ACL provides that a term of a contract is void to the extent that it purports to exclude, restrict or modify any liability of a person for a failure to comply with a consumer guarantee. This would include a term in the contract between the consumer and the app supplier requiring the consumer to pursue a claim first against the developer of the app.

FINDINGS

Negative consumer experiences are broadly caused by inappropriate information, ineffective disclosure, lack of familiarity with a new product, unsupervised use and targeted marketing towards children, and difficulties when seeking to make a complaint or seek a refund.

23 For example, see submission by WMC Global and ACCAN.
24 For example, see submission by ACCAN.
Consumers require information to be provided in a clear manner in order to make informed decisions about their use of an app. While protection features may exist, consumers’ lack of familiarity with them and other aspects of user inexperience have led to negative consumer experiences. Aggressive marketing of in-app purchases to children has also caused concern for the community, and consumers may find it difficult to make a complaint or seek a refund.
PART IV — EXISTING PROTECTIONS

There are a number of different legal frameworks and other initiatives that are capable of addressing consumers’ concerns when purchasing and using apps, including in-app purchases. These are provided by Australian governments, industry participants and consumer organisations.

This section examines existing protection measures that support users of handheld devices, including Australia’s regulatory framework, platform settings and controls, and other initiatives.

AUSTRALIA’S REGULATORY FRAMEWORK

The Australian Consumer Law

The ACL is the principal consumer protection legislation in Australia and it applies in all states and territories and to all consumer transactions, including transactions made online or using a handheld device.25 The ACL is also capable of applying extraterritorially where conduct occurs abroad by a business incorporated or carrying on a business in Australia. The ACL includes:

• core consumer protection provisions prohibiting misleading or deceptive conduct, unconscionable conduct and unfair contract terms;

• specific prohibitions or regulation of unfair practices, including particular instances of misleading or deceptive conduct, pyramid selling, unsolicited supplies of goods and services, component pricing and the provision of bills and receipts;

• a national legal framework for unsolicited selling, including door-to-door trading and telephone sales;

• a national law for consumer product safety;

• a system of statutory consumer guarantees; and

• enforcement and consumer redress provisions.

The ACL requires an app developer’s representations about the functionality of an app to be accurate and provides for remedies in the event that they are not. For example, consumer guarantees are capable of applying to the purchase of apps and ensure that they:

• are of acceptable quality (or supplied with due care and skill for services);

• are fit for any particular purpose the consumer makes known or the supplier represents; and

25 The ACL is located in Schedule 2 to the Competition and Consumer Act 2010 (Cth).
comply with any description, sample or demonstration model.

Computer software is expressly included in the definition of ‘goods’ under the ACL, and so the consumer guarantees applicable to goods also apply to the supply of apps in trade or commerce. The term ‘guarantee’ is used in the sense of a statutory duty imposed on both the developer and supplier of the app to meet certain standards. Failure to meet that standard will entitle the consumer to a replacement or refund of the app by the supplier for a major failure to comply with the guarantee of acceptable quality, or to have the app repaired or replaced if the failure does not amount to a major failure.

Where an app fails to comply with a consumer guarantee, the consumer is entitled under the ACL to pursue a remedy against the supplier of the app or the developer of the app at the consumer’s option. In most cases it will be more convenient for the consumer to seek a remedy against the app store where it is the supplier of the app. In that case the app store must provide a remedy and cannot seek to avoid liability by referring the consumer to the developer of the app. Section 29(1)(m) of the ACL prohibits a person making a false or misleading representation concerning the existence, exclusion or effect of a consumer guarantee, breach of which may give rise to the imposition of civil pecuniary penalties.

Under the unfair contract terms provisions of the ACL, it is unlawful to include certain terms in standard form consumer contracts (for example, contracts for supply of goods or services for personal, domestic or household use or consumption). A term may be unfair if it would cause a significant imbalance in the parties’ rights and obligations, is not reasonably necessary to protect the legitimate interests of the party that would be advantaged by it and it would cause detriment to the other party if it were relied on.

The ACL also requires businesses to ensure that they do not engage in activities that are likely to mislead or deceive consumers. For example, the ACL prohibits misleading or deceptive conduct and the making of false or misleading representations in trade or commerce in connection with the supply of any good or service in Australia.

The ACL is enforced by Commonwealth, state and territory consumer agencies. A range of penalties are available for breaches of the ACL, including injunctions, declarations, damages, compensatory orders, orders for non-party consumers and non-punitive orders. Penalties of up to $1.1 million for a corporation and $220,000 for an individual can be sought where false and misleading representations have been made.

Together, these consumer protections ensure that consumers get what they pay for. They require businesses to act honestly when promoting their goods or services and require businesses to provide remedies where goods and services fail to meet a consumer guarantee. The enforcement of the ACL is supported by a range of penalties, encouraging business compliance.

**Enforcement and the ACL**

A number of submissions acknowledged Australia’s consumer laws as providing protections to app users. Other submissions commented that there may be difficulties in enforcing

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26 For example, see submissions by AIIA, AIMIA, and GDAA and iGEA.
Australian consumer laws where they are breached by a developer based overseas. The CIS also noted that the ACL is underpinned by a multi-regulator model and raised concerns in relation to whether it is clear as to which entity a consumer should complain.

There can be additional challenges for Australian consumers when enforcing their rights with respect to the conduct of a business that is primarily based outside of Australia.

There are a number of initiatives that support cross-border compliance with consumer law frameworks. For example, the Australian Competition and Consumer Commission (ACCC) works with the International Consumer Protection and Enforcement Network (ICPEN) to share information about cross-border commercial activities that may affect consumer interests and to encourage international cooperation among law enforcement agencies.

**Other protections**

The Issues Paper outlined a number of other laws, enforcement options and initiatives that may address some concerns related to the purchase and use of mobile phone apps. These included:

- the common law of contract, including in relation to the legal capacity of minors and children to enter contracts;
- the law relating to electronic transactions (*Electronic Transactions Act 1999 (Cth)*);
- state and territory sale of goods laws (for example, the *Goods Act 1958 (Vic)*);
- state and territory laws relating to minors who enter into contracts (for example, the *Minors (Property and Contracts) Act 1970 (NSW)*);
- laws relating to pre-contractual conduct and disclosure obligations which may apply when accessing payment facilities on mobile devices (*National Consumer Credit Protection Act 2009 (Cth)*);
- the law protecting personal information that is collected by companies (*Privacy Act 1988 (Cth)*)\(^{28}\);
- Government agencies and industry ombudsmen with responsibilities for ensuring appropriate industry conduct including, the ACCC, the ACMA and the Telecommunications Industry Ombudsman (TIO); and
- The *Australian Guidelines for Electronic Commerce*\(^{29}\).

The *Telecommunications Consumer Protection Code 2012* contains additional requirements and safeguards around data usage (for example price transparency and usage notification) and improvements in complaints handling processes.

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27 For example, see submissions by AMTA and CIS.
A number of additional protections were identified by the submissions, including the Telecommunications Act 1997, the Mobile Premium Services Code 2011, the Broadcasting Services Act 1992, the Classification (Publication, Films and Computer Games) Act 1995, as well as function specific regulation (for example apps that facilitate gambling may fall within the purview of the Interactive Gambling Act 2001). It is noted that not all of these protections apply to all uses of apps on mobile and handheld devices.

These laws and initiatives complement the ACL to support to Australian consumers. To ensure that each of these remain appropriate to the needs of consumers, it is appropriate for responsible portfolio agencies and organisations to continually review and update where necessary.

**PROTECTIONS MADE AVAILABLE THROUGH APP STORES AND PLATFORMS**

**Settings and controls**

A number of submissions highlighted that most platforms and app stores have inbuilt tools capable of addressing community concerns about the purchase and use of apps. However, they may not always be applied. In this regard there are clear benefits in improving consumers’ awareness about these features to encourage their use.

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<table>
<thead>
<tr>
<th>Allow apps rated for</th>
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<tbody>
<tr>
<td>Everyone</td>
</tr>
<tr>
<td>Low maturity</td>
</tr>
<tr>
<td>Medium maturity</td>
</tr>
<tr>
<td>High maturity</td>
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<tr>
<td>Show all apps</td>
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Current tools available to consumers include content filtering settings which can prevent access to apps that do not meet the accepted content rating set by the user. This setting allows the user to limit access to content which is inappropriate for children.

A PIN option, or similar, can also be set to prevent other users of a device from changing the content filtering settings or making any purchases or downloads within an app store. Generally, a PIN or password is required for all users of a device to make any purchases. Most app stores offer this protection to consumers.

While these settings may be effective at preventing some consumer concerns, they are not always effective as they are not applied as part of an app store’s default settings. A user may be required to opt-in to certain features before they are applied. For example, the submission by CHOICE noted that for some app stores, a password may not necessarily be required when making in-app purchases.

CHOICE recommended that all in-app purchases should require a password and that a double opt-in mechanism should apply so that a different password is required when a user makes in-app purchases.

It is noted that existing protection tools are promoted by app stores and platform developers as an important feature of their products. For example, Google highlighted in its submission

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30 For example, see submissions by AIMIA, AIIA, GDAA and iGEA, Google, and AMTA.
that it has increased the visibility of its PIN features and that Google Play customers are now required to enter their account information and password when making digital content purchases. The popularity of platforms and app stores, to some extent, will depend on whether they are seen as being suitable to the needs of consumers. This provides industry stakeholders with an incentive to ensure positive user experiences.

**Payments and refunds**

Most app stores offer customers several types of payment options which typically include credit and debit cards, gift cards, billing arrangements with mobile network providers, and PayPal. Consumers may be afforded some level of protection through these payment options, particularly where transactions can be shown to be fraudulent. On the other hand, consumers may be exposed to additional risks where appropriate safeguards are not developed. Users do not usually need to add payment methods to download free apps or content and adding payment methods to make purchases is optional for most app stores.

A consumer will need to activate certain functions in their account to purchase apps or make in-app purchases. For example, to enable payment methods to purchase an app on Google Play, a consumer will need to activate a Google Wallet account which is linked to the consumer’s Google Play account.

When a consumer purchases an app, or makes an in-app purchase, some app stores provide a download and payment notification which is sent to a registered email address. This allows the consumer to review their purchase and take appropriate action if the consumer wishes to dispute any unauthorised app purchases.

Many app purchases occur through app stores that have established clear policies with respect to refunds and returns. Some app stores provide its customers with a window of time, for example 15 minutes, to obtain a refund on app purchases for a change of mind. Although this is not a widespread industry practice, the period of time for a user to obtain a refund (for a change of mind) will usually depend on agreements that are made between the app store and the developer. If the time has passed, app stores may direct customers to the app developer to lodge a change of mind refund request.

For in-app purchases, consumers are generally directed by the app store to seek a refund from the developer of the app. It is suggested that this is because in-app purchases are sent directly from the developer to the user and are not typically distributed through the app store. For example, Google’s *Terms of Service and Developer Distribution Agreement* indicates that refunds for in-app purchases are the app developers’ responsibility. In some cases however, users submit their payment for in-app purchases through the app store interface. In these circumstances the app store would appear to be the supplier of the in-app purchase.

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31 See Boxes 5 and 6 for a description of how to activate protection features for the Google Play Store and the Apple App Store.
32 For example, on Android devices, if a consumer has a billing relationship with Telstra, the consumer can add their purchases to their Telstra bill.
33 See Google submission.
34 However, some app stores may be capable of actioning refunds where payments are made through the app store.
35 Available at <https://play.google.com/about/developer-distribution-agreement.html>.
Google noted in its submission that it is common practice for it to refund Google Play users who request a refund for an in-app purchase, including unintended purchases made by children, where it is responsible for processing in-app purchase transactions. It is understood that other app stores have similar policies. It is noted that while some app stores may be willing to issue refunds for in-app purchases, it is not always easy for a user to request such refunds (including where contact information is not prominent on an app store’s customer support pages).

An example of the refunds process through Google Play is provided in Appendix 3.

**App market reputation mechanisms**

App markets are exposed to the same kind of incentives that exist in physical goods markets (such as a desire to improve reputation). Consumers in other markets rely on feedback from other users when making everyday purchasing decisions, including through user reviews or the opinions of friends or families. For example, an app store that supplies apps containing viruses or malware is likely to be as successful as a restaurant that does not prepare its food in accordance with good food hygiene practices. Indeed, in many cases these incentives may be even stronger as the nature of app markets means that user feedback is more easily shared between users.

In the Survey, the respondents reported that online reviews and app store forums were popular ways to be informed about devices, apps and the app market (Table A4). Consumers are able to avoid apps that are unlikely to be suitable to their needs by using a credible app store and relying on that store’s customer ratings, content ratings (on the age suitability of an app), and user feedback. While this may not resolve all of the issues considered in this review, they remain effective for connecting users with suitable apps. A practical example of where users could rely on customer ratings is provided below in Box 3.

One issue with app store customer ratings mechanisms is where user feedback is not genuine and intended to give users a false perception of the popularity of an app. Such conduct has the potential to damage the credibility of app stores. While it is acknowledged that app stores have incentives to ensure the accuracy of their feedback mechanisms, including through the ACL, it is not clear how successful they are or can be in ensuring feedback accuracy.
In this example, users relying only on the app’s description may have cause to believe that the app is capable of using a phone’s built-in standard camera to take an X-Ray of their hand. However, upon reading the app’s user feedback, it becomes clear that the app may not be all that it seems.

**Platform and app market innovation**

Both platforms and app markets are changing rapidly. Over recent years there have been significant advancements in both the hardware and software elements of handheld devices. Many consumers are keen to regularly upgrade to keep up with technology. For example, in 2012, shipments of smartphones stood at more than 700 million worldwide which is approximately a 44 per cent increase from the 2011 figure. In Australia it is estimated that take-up of smartphones stands at approximately 8.67 million units, as earlier noted.

The market for handheld devices is subject to ongoing innovation. Technology companies must continually improve their products to ensure they remain competitive. Similarly, platform developers and app stores must ensure that they adapt to suit the needs of their users. For devices, platforms and app stores to remain attractive to customers, they must minimise negative consumer experiences.

Google regards the provision of quality apps through its app store as an important part of the value proposition for its Android platform. Other submissions highlighted good reputation, consumer confidence and positive ratings as important to an app store’s

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success. Industry initiatives such as app trustmarks or accreditation are likely to play an increasingly important role; however, it is noted that the success of these projects will depend on their adoption by the industry.

CCAAC also acknowledges the considerable efforts taken by app stores in detecting malicious and undesirable apps. This includes the use and application of checks intended to detect malicious content as well as quality control measures that monitor and investigate reports of negative consumer experiences.

OTHER INITIATIVES

App developer guidance

It is common for app stores to provide app developers with instructions on specific development requirements that must be met for an app to be promoted within an app store. These requirements include minimum standards with respect to content, in-app advertising or the accuracy of information provided by an app. App stores have an interest in ensuring that apps are developed in accordance with minimum standards as part of a commitment to ensuring that only high quality apps are made available. However, some submissions pointed out that some app stores are more open than others (that is, developers must meet a higher threshold of requirements in order to be distributed by some app stores).

In the United States, the recently launched ‘Act 4 Apps | Kids’ initiative aims to promote the growth of educational apps, as well as best practices and standards to ensure the suitability of these apps for their target audience. The initiative is targeted towards app developers to support them on issues including privacy and data security.

Consumer education on existing protection features

It is common for app stores to provide users with guidance on how to activate settings and controls. This information may be presented as an online user manual and may provide the user with a range of other useful information including contact details.

The Google Play app store includes a link to a help webpage outlining how users can activate a range of security features including a PIN code for purchasing. Users can navigate the help page through a series of common problems experienced by users, or by performing a free text search on a topic of interest. The help page also includes information on how to contact Google Play.

Apple provides user support information at the device level. Users can access information on settings and controls for Apple devices alongside other device-based support information. This includes information about the use of a passcode for the purposes of restricting access to certain apps and features. In addition, Apple maintains support information relating to account information for Apple ID which supports app purchases. Apple has recently

38 For example, see submission by AIMIA.
39 For example, see <http://apptrustproject.com/>.
40 For example, see <http://support.google.com/googleplay/android-developer/>.
41 For example, see submissions by TrendMicro and CIS.
included an information page titled ‘Learn More About In-App Purchases’ on the Apple App Store homepage. It provides users with additional information on how in-app purchases work and parental controls.

Examples of the Google Play and Apple support pages can be found in Box 4.

There are also a number of third party sources of useful information on enabling existing protection features. For example, ACCAN has prepared a tip sheet that provides simple instructions, across multiple app stores, on how to enable security or account restrictions to modify how in-app purchases can be made.43 The tip sheet also provides an overview on how to request refunds.

Box 4 — Google Play help interface and Apple support page

Box 4 — Google Play help interface and Apple support page (continued)

**What Are In-App Purchases?**

Many free and paid apps offer In-App Purchases—optional transactions designed to augment an app’s functionality. You can only make In-App Purchases from an app that you’ve already downloaded. To find out if an app offers In-App Purchases, refer to the app’s product page, near the Buy or Free button.

**Types of In-App Purchases**

There are three types of In-App Purchases: Permanent enhancements like unlocking game levels, removing advertising or expanding an app's feature set; expendable purchases, such as extra lives for a game character, and auto-renewing subscriptions (such as a monthly magazine that charges every 30 days).

**How In-App Purchases Work**

On devices running iOS 4.3 or later, you must enter your password to make an In-App Purchase. Once you enter your password to make that purchase, additional In-App Purchases can be made without re-entering your password for 15 minutes. To change your settings to require a password entry with every purchase, open Settings, tap General, then tap Restrictions and change Require Password.

Auto-renewing subscriptions and permanent In-App Purchases may be transferred to different iOS devices that are authorized with your Apple ID. Expendable items, however, cannot be transferred to other devices. For example, let’s say you download a game and pay to remove advertising (permanent) and buy extra food for your character (expendable). If you then download the game on another one of your devices, it would still be without ads, but it would not include the virtual food.

**Parental Controls**

It's easy to restrict your child’s ability to make In-App Purchases on an iOS device. Just open Settings, tap General, then tap Restrictions. Tap Enable Restrictions to find various parental control options, including the ability to turn off In-App Purchases. For more detailed instructions, see Understanding Restrictions.

For more information on how to manage your children’s overall iTunes experience, see our Parents’ Guide.

Source: iTunes / Apple Store ‘Learn More About In-App Purchases’

**Cyber-safety, scam prevention and security initiatives**

The ACMA website publishes smartphone user guidance encouraging users to be security conscious and wary of safety and privacy risks. This includes the suggestion that users turn on security features such as a handset PIN as well as account passwords. This guidance provides users with a useful overview of some basic steps that can be taken to avoid many risks associated with the use of handheld and mobile devices.

The ACMA is also active in providing information and educational materials aimed at supporting young people when they go online, including through the use of handheld and mobile devices.

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mobile devices. This includes Cybersmart, a national cyber-safety and cyber-security education program. The Cybersmart website contains graded content aimed at young kids through to teenagers and includes resources for families, schools and libraries. Cybersmart Outreach comprises a number of programs for students, teachers and parents delivered in schools and communities throughout Australia.

The Cybersmart website also includes the game Zippep’s Astro Circus which provides an interactive way for children to learn about cyber-safety. The game is also available as an app through a range of app stores on a number of platforms.

Figure 2 — The Cybersmart website

The Stay Smart Online website and social media channels provide easy to understand information on secure online practices and behaviours for home users and small businesses. The Stay Smart Online website is administered by DBCDE and provides information about cyber-security and safety risks, as well as simple steps that can be taken to protect against cyber risks (such as installing anti-virus software and regularly changing important passwords).

The Stay Smart Online website also hosts a free subscriber-based Alert Service, providing information on the latest online risks, scams, data breaches and other threats and advice on how to address those risks.

45 See &lt;http://www.cybersmart.gov.au&gt;.
The Budd:e interactive cyber-security and safety self-learning education package (targeted to primary and secondary school students), is also available from the Stay Smart Online website.

**Figure 3 — The Stay Smart Online website**

In addition, DBCDE holds an annual National Cyber Security Awareness Week to support the community’s understanding of the importance of cyber-safety and security. The 2013 Awareness Week, from 20 to 24 May, partnered with over 1000 industry, community, consumer and government organisations aims to promote better cyber-safety and security practices among home and small business users.

DBCDE also administers the Cybersafety Help Button which provides internet users, particularly children and young people, with easy online access to cyber-safety information and assistance such as counselling, reporting and educational resources.

The Cybersafety Help Button is a free downloadable resource providing a one-stop-shop for cyber-safety information. It is easy to install and use and is available 24 hours a day. Once installed on a mobile device or a computer, it serves as a constant online companion to assist users as they are encounter cyber risks.

The Australian Government is active in preventing scam activity. The Australasian Consumer Fraud Taskforce (the Taskforce) was launched in 2005 to enhance the Australian and New Zealand Governments’ enforcement activity against fraud and scams, and to create a coordinated information campaign for consumers.
Part IV – Existing projections

The Taskforce has contributed to the Scamwatch website. Scamwatch is operated by the ACCC and provides information to consumers and small businesses about how to recognise, avoid and report scams. Scamwatch is capable of supporting consumers who encounter scams when interacting within app markets; however, CCAAC notes that Scamwatch does not investigate scams or pursue redress on behalf of individuals who have been the target of a scam.

**Figure 4 — the Scamwatch website**

![Scamwatch website screenshot](http://www.scamwatch.gov.au)

CCAAC understands that work is being progressed by the National Cybercrime Working Group to develop the proposed Australian Cybercrime Online Reporting Network (ACORN) which would provide a centralised portal to allow victims to report instances of cybercrime and refer complaints to the most appropriate agency. ACORN would also allow for the collection of data to inform improved responses to cybercrime by law enforcement and other government agencies.

**App-based consumer rights initiatives**

There are a number of app-based initiatives that provide information to consumers on their rights. These apps conveniently provide users with information that can support them when attempting to resolve a problem. They may be beneficial to users who require this information when they encounter difficulties with an app. For example, ACCAN has developed an app, *Phone Rights*, which provides users with tips and advice on hidden costs that exist in free apps as well as instructions on how to enable restrictions on various platforms. The ACCC *Shopper App* provides information in relation to refunds and returns including what to do if there is a problem with a product.

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INTERNATIONAL EXPERIENCES

As app markets are global in nature, many of the protections afforded through app stores and platforms are available internationally.

Most of the issues considered in this report are reflected in the experiences of consumers internationally. For example, the issue of children incurring significant costs through in-app purchases has been controversial in the United States. A class action was filed by parents in April 2011 against Apple for actively promoting and marketing certain gaming apps as free with the intent to induce minors to purchase in-app game currency.48

As noted in the Issues Paper, in February 2012, the US Federal Trade Commission (FTC) released a report Mobile Apps for Kids: Current Privacy Disclosures are Disappointing about the information displayed to consumers prior to downloading an app intended to be used by children. The US FTC report highlighted the lack of information available to parents prior to downloading mobile apps for their children, and has called on industry to provide greater transparency about their data practices.49

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In April 2013, the UK Office of Fair Trading (OFT) announced that it was investigating free children’s web and app-based games.\textsuperscript{50} The investigation focuses on whether games are misleading, commercially aggressive with respect to in-app purchases or otherwise unfair. The investigation will also examine whether the information provided to users about the cost of the app is clear. The UK OFT indicated that it would take enforcement action if necessary.

While CCAAC is unaware of any new regulatory frameworks that have been developed to specifically address the issues considered here, consumers abroad have access to a range of consumer laws and other protections. In addition, CCAAC is aware of where existing frameworks have been tailored to meet new challenges posed by app markets and where app stores have worked with government agencies to ensure compliance with existing laws or obligations. For example, some app stores work with foreign agencies to ensure that apps containing a particular type of banned content are not sold or distributed.

As earlier noted, ICPEN provides partner economies with capabilities to share information about cross-border commercial activities that may affect consumer interests and to encourage international cooperation among law enforcement agencies. ICPEN is an informal network of national fair trading law enforcement agencies from more than 30 countries. The members share a database on fair trading laws in member jurisdictions and can access complaints from around the world.

The Organisation for Economic Co-operation and Development (OECD) is an important forum for Australia to engage with key partner economies on common matters such as m-commerce. CCAAC understand that the OECD’s Committee on Consumer Policy (the Committee) is currently in the process of updating its 1999 Guidelines for Consumer Protection in the Context of Electronic Commerce. As part of this, the Committee is currently examining issues with online and mobile payment systems and the market for digital content. CCAAC expects that the work of the Committee will be particularly useful in highlighting how this matter is being treated by policy-makers in partner economies.

**FINDINGS**

The existing regulatory framework provides ongoing protection to Australian users of handheld devices, including in the deterrence of conduct that has the potential to cause consumer harm. While there are some challenges associated with enforcing consumer rights, these challenges relate to the international nature of apps markets rather than the policy settings of themselves.

Overall, CCAAC is satisfied that a consumer who is familiar with existing protection features and app store reputation mechanisms is able to avoid negative experiences by exercising appropriate care and due diligence. Although 90 per cent of respondents to the Survey indicated that they had a very good, good or adequate overall experience when making app purchases (see Chart A5); there may be some scope for improved understanding about the existence of protection features.

In addition, CCAAC has identified that platform developers and app stores face market-based incentives encouraging them to maximise positive user experiences. While

rogue app developers may attempt to take advantage of users, their ability to thrive is limited and they are therefore unlikely to cause widespread and systemic consumer harm.
PART V — ACTIONS TO IMPROVE CONSUMER EXPERIENCES

Industry, governments and consumers have a collective responsibility in ensuring positive consumer experiences when using apps. App and platform developers as well as app stores have a duty of care to their customers. They must ensure that their products are offered in accordance with applicable laws, and are suitable to the customer’s needs more broadly.

Governments have a role to play in ensuring that policy settings, education and enforcement activities are appropriate to the community’s needs.

Consumers, as users of technology, must exercise caution when interacting with platforms that they are unfamiliar with or could be used inadvertently by children or other users. For example, upon entering credit card details, users should consider whether the associated billing settings are appropriate to their needs.

POSSIBLE ACTIONS TO ADDRESS CONSUMER CONCERNS

CCAAC has identified that negative consumer experiences can be categorised as being due to inappropriate information, ineffective disclosure, lack of familiarity with a new product, unsupervised use and targeted marketing towards children, as well as difficulties for consumers when seeking to make a complaint or request a refund. To address these underlying causes, CCAAC has considered a number of possible actions that should be taken by key stakeholders.

Consumer stakeholders commented that mandatory pop-up warnings and a double opt-in mechanism (which would require a user to enter in different PINs for app and in-app purchases) could support consumers.51

A number of submissions52 proposed that consumer education and awareness campaigns be initiated to raise consumer awareness about their rights as well as the availability of tools or features that are capable of improving consumer experiences. It was proposed that such campaigns should support consumers who are not already aware of and know how to use protection features, particularly those users who have children, and to provide them with skills that will help them find and use the resources and information available on app stores. Peak industry organisations were identified as being the appropriate bodies to develop resources and guidelines.53

Another submission54 suggested that policy responses need to be targeted towards platforms to ensure consistent and efficient implementation. Submissions also55 commented that industry-led responses, at the first instance, are favourable to government intervention.

51 See submissions by CHOICE and CALC.
52 See submissions by AIIA, AIMIA and AMTA.
53 See submission by AIMIA.
54 See submission by GDAA and iGEO.
55 See submissions by AIMIA, and GDAA and iGEO.
There were also calls for greater scrutiny of the app store complaints mechanisms. This included that app stores should be required to have plain-text procedures and guidelines made available for consumers for resolution of disputes between the app developer and consumers.\(^{56}\) It was also suggested that app stores should be compelled to have an Australian presence for regulatory purposes and to handle complaints and dispute resolution processes.\(^{57}\)

Submissions also encouraged the industry to adopt ‘plain English’ explanations about their use of user information and that the disclosure of information should be designed on the basis that many consumers do not read the terms and conditions.\(^{58}\) Further, it was suggested that consumer information for app and in-app purchases could be made more user-friendly for children and young people, to enable them to fully understand their rights and obligations in an appropriate format.\(^{59}\) It was proposed that the ACCC monitor app terms and conditions and publish a regular consolidated report.\(^{60}\) It was also suggested that app stores should be examined to see if current industry practices comply with the ACL.\(^{61}\)

A need for further research into consumer experiences with in-app purchases, as well as how Australians generally use apps, was identified by some stakeholders.\(^{62}\) Other suggestions included that in-app purchases should be required to disclose their costs prominently at the point of sale and that further measures to protect consumers’ personal information and other security features should be implemented.\(^{63}\)

**Is there a need for a regulatory response?**

CCAAC favours actions that address the underlying cause of the problem, are likely to be achievable and do not impose excessive burdens on market participants that engage positively with consumers. At this time, CCAAC does not identify additional regulation as an appropriate response to the issues. CCAAC considers that the protections afforded under generic consumer laws (and other regulatory frameworks) have the potential to provide the right balance between the needs of consumers and industry participants where industry participants continue to engage with reported consumer problems in an effective way.

A number of actions that should be taken by industry are identified by CCAAC; however, there remains an opportunity for the industry to adopt some of the other useful suggestions provided through the stakeholder submissions. Many of these suggestions, particularly those relating to the clarity of information, are useful improvements that could improve consumer experiences. CCAAC would be supportive of any industry-based or unilateral efforts to improve consumer experiences, including through industry self-regulation.

CCAAC considers that this inquiry should be seen as the start of the conversation rather than its end. App markets remain subject to considerable change and it is important for consumer agencies and governments to keep abreast of new developments and emerging issues in the

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\(^{56}\) See submissions by ACCAN, CIS and WMC Global.  
\(^{57}\) See submission by CIS.  
\(^{58}\) See submissions by CIS and CALC.  
\(^{59}\) See submission by the Commissioner for Children and Young People (WA).  
\(^{60}\) See submission by CIS.  
\(^{61}\) See submission by ACCAN.  
\(^{62}\) See submissions by ACCAN and CIS.  
\(^{63}\) See submissions by CIS, CHOICE and WMC Global.
market. The industry should recognise that if additional issues emerge and they are not appropriately dealt with, further consideration may need to be given to regulatory options for improving outcomes for the community.

The international nature of app markets and the internet may make some elements of possible regulatory options difficult to implement and enforce. However, where it is capable of being enforced, carefully targeted industry specific regulation could be effective at limiting certain conduct that is not appropriately dealt with under existing regulatory frameworks.

The MTAA recommended the regulation of medical apps that are intended by the developer to cure, treat, monitor or diagnose a medical condition. Given the complex nature of these matters, CCAAC does not consider that it would be appropriate for it to make any assessment of the need for additional regulation on health and safety grounds.

**The OECD Consumer Policy Toolkit**

CCAAC supports the process of consumer policy making outlined within the OECD’s *Consumer Policy Toolkit* (the Toolkit). The Toolkit is a key project of the OECD Committee on Consumer Policy and examines how behavioural economics can be used to support consumer policy development.

The Toolkit provides a framework through which consumer problems can be assessed and where policy options can be evaluated (see Figure 6). As part of this inquiry, CCAAC has examined consumer experiences within app markets and has identified some areas of concern and proposes actions for industry, government and consumer stakeholders. CCAAC supports the application of the frameworks outlined within the Toolkit as part of any further work in response to the issues.

CCAAC would also encourage policy makers to consider the Toolkit when reviewing the findings of this report.

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64 For information on the toolkit, including a companion prepared to provide practical guidance on its application in an Australian context, please see http://www.consumerlaw.gov.au/content/Content.aspx?doc=consumer_policy/cp_policy_toolkit.htm.
An action plan for industry, governments and consumers

CCAAC proposes a number of practical measures that could be taken by industry, governments and consumers to improve consumer experiences. Table 1 proposes a list of actions that could be taken by key stakeholders. Each suggested action in some way addresses the underlying causes that have been identified.

A further explanation for each proposed action follows Table 1.
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Actions for industry and governments

Actions identified for industry and government stakeholders are intended for the appropriate businesses or agencies that are best placed to consider them. In some cases, this includes industry and government stakeholders, or multiple government agencies.

Improved and clearer processes for consumers seeking refunds

As noted above, CCAAC does not see that any new regulatory response to consumer concerns is warranted at present. However, this should not be taken to imply that app stores and app developers are unable to improve their practices when engaging with consumers. In particular, CCAAC is concerned that consumers may experience difficulties when attempting to seek refunds from app stores. In this regard, there are some basic practices that should be adopted to ensure compliance with consumer laws and improve consumer experiences when seeking refunds.

- App stores should offer consumers a sufficient window of time through which users are able to automatically obtain a refund for a change of mind, an accidental purchase or if an app is revealed to be unsuitable to the user’s needs after download.
- Policies around refunds should be determined in accordance with the ACL and it should be clear in user guidance that app stores may be obligated to issue a refund if an app or in-app purchase fails to meet a consumer guarantee.
- App stores should ensure that statements such as ‘this in-app purchase cannot be refunded’ or ‘all purchases made through this app store are ineligible for refund’ are not used so that consumers are not misled about their rights.
- Users seeking a refund for app or in-app purchases should only be referred to the app developer where the refund is requested due to a change of mind.
- The appropriate contact details or mechanism through which a user can request a refund from an app store should be easily found, and intuitively accessible through the app store.
- App stores should only process in-app purchase payments where the app developer can demonstrate that it has clear and satisfactory processes in place for users to request a refund (or if refunds can be easily processed through the app store) if a consumer guarantee has not been met.

CCAAC notes that not all of these practices have been adopted by Google Play or the Apple App Store, both of which have an important role in best practice promotion given their significance in the industry. CCAAC acknowledges that app markets are subject to ongoing change with app stores continually working to improve consumer experiences. It is in this spirit that CCAAC considers that app stores should give consideration as to how the abovementioned practices, or similar, could be adopted. CCAAC has written to key industry stakeholders to formally note its concerns (see Appendix 4).
In addition, CCAAC has encouraged Consumer Affairs Australia and New Zealand (CAANZ) to monitor industry compliance with the ACL and to take appropriate actions where refund policies are non-compliant (see Appendix 5).

**Improving the quality of information**

CCAAC recognises that there is a difference between information provided at the point of sale (or download) as part of the marketing of an app, and information provided through more formal disclosure statements. Information provided at the point of sale (or download) assists a user in making a determination on the suitability of an app for their needs, while information contained in more formal disclosure statements defines, in total, the relationship between the user and the developer or app store and any other residual matters.

In respect to the accurate provision of information, existing laws and app store incentives ensure that important information is provided accurately to users, including the misleading and deceptive conduct provisions of the ACL. Human oversight and technical error can explain some examples of where important information is provided incorrectly. Where this occurs, it is important for app stores to remedy such errors as failing to do so could harm their reputation or lead to more significant costs to the business.

While CCAAC is not currently satisfied that there is a need for additional incentives to ensure the accurate provision of important information, the submissions identified that information — including information provided at the point of sale (or download) as well as through disclosure statements — is not always provided in a manner that is clear and easy to understand, or is not provided at all. CCAAC notes that failing to provide important information, or in a prominent manner, can be misleading or deceptive under the ACL if it is important to the consumer’s decisions.

**Information at the point of sale**

For information at the point of sale, there is no one size fits all approach as to what information should be provided and how to provide it effectively. The appropriate means through which to provide information will depend on the nature of the information, the expected audience and the likely consequences of the user not having access to the information.

As a rule of thumb, app developers and app stores should aim to ensure that users have clear expectations about how the product works by drawing specific attention to features that may cause loss or harm if they are not well understood, or unusual features of the app. In this regard, CCAAC considers that:

- critical information — including about the cost of an app, its appropriateness for children, any extraordinary resource usage and other risks — should be provided to the user prior to purchase; and

- critical information must be provided with a focus on achieving user understanding so that it can be understood by the vast majority of consumers.

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65 CAANZ comprises of senior Commonwealth, state and territory officials with responsibilities for consumer policy and enforcement.
Critical information about the app’s cost could include that in-app purchases are required in order for the app to be functional. This is particularly so where in-app purchases are marketed to children, and where the app has limited function without in-app purchases and the app is marketed as being free. Improving disclosure across apps that allow in-app purchases and more information on user controls were reported by respondents to the Survey as popular actions that could be taken by industry (see Table A5).

App stores should give consideration as to how users can be better informed about the existence of in-app purchases at the time an app is downloaded or purchased. Some suggestions include:

- introducing a categorisation of apps as being ‘free with in-app purchases’ where the making of in-app purchases is an important part of a user’s experience of that app;
- indicating a typical daily spend where ongoing use of an app requires ongoing in-app purchases or a user subscription; and
- a warning message indicating that ‘in-app purchases are required for full functionality of this app’ to be provided to the user after requesting to download or purchase the app.

CCAAC notes and welcomes changes to the Apple App Store, including notification where a free apps ‘Offers In-App Purchases’ (see Figure 7).

**Figure 7 — Notification of in-app purchases at the point of sale**

There is also an opportunity for app stores to improve the provision of billing information after a purchase is made. Some app stores provide emails once a purchase has been made and allow a user to review past purchases, but there may be other ways in which account information can be provided to a user. For example, interested users could opt into having a regular invoice sent to their email. This would provide users with a prompt to examine whether unexpected purchases have been made.

**Information through disclosure statements**

The complexity of disclosure statements can present challenges to the reader, with these challenges being common to the disclosure practices used across a range of products. Terms and conditions as well as privacy statements are complex documents that are often difficult to simplify to easily accessible statements. However, this information is often not prepared with the end user in mind, and many users will simply continue without reading. A key implication of this is that app developers and app stores need to ensure that critical information is provided to consumers in a variety of ways, and in a manner that is
sufficiently prominent (that is, not only as part of a disclosure statement). More broadly, CCAAC agrees, with OAIC, that disclosure statements should be:

- honest, accurate and specific;
- easy to understand;
- prominently positioned;
- accessible to consumers with a disability; and
- updated when necessary.

Clearer complaints handling processes

CCAAC has considered and suggested best practices for app stores with respect to refunds. There is however, additional ambiguity for consumers looking to make complaints in relation to other matters.

Complexities in the supply chain for apps can lead to confusion for consumers as to who is ultimately responsible when an app fails to meet the consumer’s needs. Respondents to the Survey indicated that when attempting to resolve an issue, they were equally likely to look to the app developer as they were to look to the app store (see Table A3). While most consumers are likely to initially seek redress through the app store, there may be ambiguity as to who is responsible in the event that a complaint is unable to be resolved through this mechanism.

Responsibilities may be shared between app stores and developers depending on the nature of the complaint and the applicable laws and contractual arrangements. Under the ACL, it is the supplier that is responsible for remedying a failure to satisfy a consumer guarantee. This means that for example, an app store may be responsible where an app fails to meet a description of its functionality, while the app developer may be responsible for all ongoing security and privacy matters relating to the app.

Furthermore, CCAAC notes there may be a variety of different government agencies that are capable of receiving complaints, yet each agency may only have limited jurisdiction with respect to their regulatory responsibilities. Accordingly, CCAAC is of the view that consumer and other government agencies should partner in order to develop simple and clear guidance on the complaints handling responsibilities of app stores, app developers as well as government agencies (including through agencies’ websites). CCAAC considers that options for the development of this guidance should be identified and considered by the Education and Information Advisory Committee of CAANZ.

Promotion of industry best practices

CCAAC considers that it would be beneficial for industry stakeholders to develop and promote industry best practices. While consumer laws and other regulatory frameworks

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provide a minimum standard of conduct to ensure that community expectations are met, industry best practices should go above what these minimum standards require and should ensure that consumers are provided with the best user experiences within the context of the industry.

CCAAC has raised concerns about the difficulties that consumers may experience when attempting to seek refunds from app stores as well as the nature of the information provided to consumers at the time of purchase (or download) and through disclosure statements. Industry stakeholders may wish to consider how these issues could be addressed through the promotion of industry best practices, including by adopting the practices and principles proposed by CCAAC.

It is proposed that the ACCC and other relevant Commonwealth government agencies work with industry stakeholders to ensure compliance with existing laws and to improve consumer experiences, including through the development and promotion of industry best practices.

Industry stakeholders should consider the ACCC’s Guidelines for developing effective voluntary industry codes of conduct which provides a range of practical steps that can be taken when developing and promoting an industry-led response to consumer issues. It has the potential to act as a model that could effectively guide industry stakeholders to develop and implement its own set of voluntary best practice guidelines.

It is noted that the Australian Guidelines for Electronic Commerce, which were prepared in consultation with CCAAC, outline a range of appropriate practices for businesses engaging in e-commerce. They were released at a time before the emergence of app markets. In this regard, it may be beneficial for these guidelines to be updated in the light of this review and other developments including work in progress on updating the OECD’s Guidelines for Consumer Protection in the Context of Electronic Commerce.

**Stronger industry engagement with consumers**

A range of stakeholders recommended that consumer education and awareness campaigns be implemented to improve consumer understanding about app markets. It is implicit in such recommendations that government agencies have a primary role in this regard. Government agencies are capable of playing a role in educating consumers; however in CCAAC’s view the main responsibilities for ensuring appropriate use of any product rests with the product’s supplier.

In CCAAC’s view there are a number of areas where stronger industry engagement with consumers could be beneficial. Although the success of a business is dependent on its responsiveness to the needs of its customers, there may be occasions where a business does not adequately meet the needs of all customers who use its products or services. As with any rapidly developing market, there is a risk that the needs of some customers may be overlooked.

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Closer engagement with consumer advocacy organisations could provide industry with a deeper understanding of the issues faced by consumers, including those experiencing disadvantage or vulnerability. It is noted that some Australian consumer advocacy organisations have made submissions which provide detailed and comprehensive accounts of issues that should be of interest to industry stakeholders.

The Coalition to make the Internet a better place for kids (the Coalition) has been highlighted as an example of industry stakeholders in the European market working together to improve user experiences. The Coalition involves a commitment from global and local organisations operating in the European market to take positive action to make the internet a better place for children. While the effectiveness of this initiative and others may be yet to be determined, they may provide some insight as to how industry initiatives could be developed in collaboration with consumer advocacy organisations.

Further research and continued monitoring of consumer experiences

In CCAAC’s view industry and governments should continue to improve their understanding of m-commerce related issues and to monitor consumer experiences. Industry has an interest in improving consumer experiences overall and has an obligation to ensure that its products comply with all existing laws. Government agencies, including consumer agencies, need to ensure that they remain alert to and capable of addressing issues that arise in new and complex markets. It is evident that app markets are subject to considerable change, and it is likely that issues, beyond those which can be foreseen here, are likely to arise into the future.

It is noted that many of the issues considered as part of this inquiry have been examined in the context of a market that is dominated by a handful of key players. While there are many different app stores available across a multitude of platforms, it would appear as though the majority of apps are downloaded through app stores that are preinstalled by a device’s manufacturer or platform developer (for example the Apple App Store or Google Play). Consumers are afforded many protections by relying on these app stores as they have generally adopted industry best practices with respect to the supply of apps. Additional problems may arise as consumers look beyond manufacturer or platform endorsed app stores that may offer differing levels of protection. While consumers’ access to other app stores is important for competition and choice, outcomes for consumers may deteriorate in other areas warranting additional action such as a regulatory response.

The need for additional action, including regulatory intervention, should be identified by Commonwealth, state and territory consumer agencies as part of their continued monitoring of consumer experiences in app markets. CCAAC encourages consideration to be given to the need for additional action two years after the release of this report.

Appropriate enforcement of existing consumer protection frameworks

There may be some scope for consumer agencies to consider whether the practices of app stores are consistent with consumer protection frameworks. For example, some app store policies with respect to refunds may not be consistent with the consumer guarantees.

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68 For example, see submission by AMTA.
69 For more information see <http://ec.europa.eu/information_society/activities/sip/docs/ceo_coalition/ceo_coalition_statement.pdf>.
framework of the ACL. CCAAC supports the consideration of consumer complaints in accordance with relevant compliance and enforcement policies. However, CCAAC considers that many consumers may experience frustration, including where consumer laws have been breached, without making a complaint to consumer agencies. This may be due to the relatively low value of purchases or a perception that making a complaint will not give the desired outcome.

Consumer agencies should work with industry stakeholders to support compliance with consumer laws, even in the absence of significant consumer complaints. CCAAC encourages CAANZ to give consideration to what compliance initiatives could improve consumer outcomes, with particular regards to requests for refunds, as previously foreshadowed.

The ACMA should also continue investigating formal complaints made under the *Interactive Gambling Act 2001* about the provision of prohibited internet gambling content.

**Supporting an international approach to the issues raised**

CCAAC has identified a number of actions that could be taken by industry and government stakeholders that it considers to be appropriate within the context of the Australian market. App markets operate across national boundaries with consumers encountering similar experiences internationally. It would be a lost opportunity if any improvements to support consumers were limited to the Australian market.

CCAAC has proposed that the ACCC and other government agencies work with industry stakeholders to improve consumer experiences, including through the development and promotion of industry best practices. Any outcomes of this work could be used as the basis for an international approach to improving outcomes within app markets. This could be presented to international forums such as the OECD Committee on Consumer Policy and ICPEN for further consideration and action as appropriate.

**Actions for consumers**

Actions identified for consumers are intended as practical and proactive measures that can be taken to reduce their exposure to some of the risks associated with their participation in app markets. While these actions must ultimately be taken by consumers, industry and government stakeholders also have a responsibility for improving consumer awareness and encouraging their effective participation in app markets.

**Making greater use of existing settings and controls**

There are a number of actions that consumers can take in order to avoid negative experiences. CCAAC has found that a consumer who is familiar with existing protection features and app store reputation mechanisms is able to avoid negative experiences by exercising appropriate care and due diligence. Those users who are familiar with existing settings and controls have a responsibility to ensure that they are applied in accordance with their needs.

On the other hand, many consumers are not familiar with the range of settings and controls that can be enabled. Industry has an important role in supporting users by promoting the existence and benefits of these features. Industry stakeholders may also consider whether it
is appropriate for some of these features to be applied as opt-out (rather than opt-in) mechanisms.

CCAAC has identified a range of different settings and controls that are available to users of handheld devices who wish to limit certain functions of their device or enable other security features. While specific information on activating these features depends on the platforms used, most platforms and app stores have a range of similar tools that can be intuitively accessed through the appropriate settings menus. Step-by-step guides for activating useful settings and controls for both Google and Apple platforms are provided in Boxes 5 and 6.

Industry and government stakeholders should support consumers by promoting the use of existing settings and controls where appropriate.

**Box 5 — Activating Google settings and controls**

In its submission, Google provided a four step guide to activating user PIN and content settings:

**Step 1** — open Google Play and tap the three vertical dots to access ‘settings’.

**Step 2** — scroll down in ‘settings’ to ‘user controls’.
Box 5 — Activating Google settings and controls (continued)

**Step 3** — type in a PIN, which must be then entered to change settings and make purchases.

**Step 4** — select content settings for apps the device is permitted to download.

Source: Submission by Google
Box 6 — Activating Apple settings and controls

Apple offers similar protections for its mobile and handheld devices.

**Step 1** — Tap settings menu and then tap the ‘General’ menu item.

**Step 2** — In the ‘General’ menu, tap ‘Restrictions’. When you tap Restrictions you’ll be asked to set a passcode. The Passcode is a password that locks certain functions of the iOS device.
Box 6 — Activating Apple settings and controls (continued)

Step 3 — Amend settings for installing apps as appropriate.

Step 4 — Amend ratings, in-app purchases, and password period as appropriate. Slide the ‘In-App Purchases slider’ to ‘Off’. This will prevent anyone who does not know your passcode from making in-app purchases.

Critical engagement

One of the challenges associated with the open nature of m-commerce and the internet more broadly is that users may be exposed to unscrupulous or unsavoury behaviour by businesses or other users. Even where such behaviour is in breach of the law, it is not always possible to prevent. Even where it can be established that an app has been purchased, downloaded or used in circumstances where a law has been breached, it may be obstructively onerous for that consumer to obtain redress if the supplier is unwilling to provide it.

The relatively low cost of apps and in-app purchases may mean that many consumers are willing to make a purchase without testing the claims made by the app developer against the feedback of other users. Furthermore, if an app or in-app purchase fails to meet a consumer’s expectations they may be less likely to pursue a refund given the effort required to do so. Also, consumers may be less likely to actively seek out important information (including on
how personal information will be used) given that it may require significant effort to consider privacy statements and other disclosures.

While the primary responsibility is to ensure that users are properly informed about the nature and capabilities of an app lies with the app store and the app developer, it is always beneficial for consumers to think critically when engaging with app markets. It is always easier for consumers to try to avoid a problem than to resolve the problem as it arises.

As many of these risks are not unique to users of handheld devices, a number of submissions noted that these challenges are best dealt with in a technology neutral manner. CCAAC notes that the Australian Government is active in educating Australians on broader cyber-security awareness, including through some of the initiatives referred to in this paper such as the work of the ACMA. CCAAC would also encourage app stores, app and platform developers to consider how they can contribute towards raising awareness about the risks faced by consumers when using these technologies.

CCAAC encourages consumers to be cautious when engaging within app markets and considers that it would be beneficial for this message to be promoted by industry and government stakeholders.

**Ensuring appropriate use by children**

Approximately 15 per cent of respondents to the Survey indicated that their child has downloaded an app (see Chart A8). App use by children is likely to increase as mobile and handheld device use increases and as app stores offer an increasing range of apps that appeal to children.

Children have very specific needs when engaging within app markets. Some apps may be appropriate for adult users while being inappropriate for children. Where an adult user installs an app that is inappropriate for children, it is the adult user that is responsible for securing their handheld devices if they do not want others, including their children, to use it. Users are also responsible for monitoring use and ensuring that security features and other settings — as appropriate — are activated when devices are used by children.

While parents are generally responsible for their children’s use of apps, it is not always possible to predict where inappropriate use will occur. For example, CCAAC has been made aware of circumstances where inappropriate user messages were sent to young children using an app that would otherwise be suitable for children. Other examples provided to CCAAC include where security and account features do not work as expected such as where child-users of the *Smurf Village* app were able to make in-app purchases — sometimes amounting to hundreds of dollars — by relying on a 15 minute window when an account password remained active.\(^{70}\) App developers and app stores have a responsibility to ensure that billing features (such as entering a password or PIN) work effectively and as a user would expect.

Notwithstanding the above, CCAAC acknowledges that the common law of contract, including the legal capacity for minors and children to enter into contracts, and other laws,

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will determine the validity of a contract arising from inappropriate and unauthorised use by a child.

**FINDINGS AND PROPOSED ACTIONS**

CCAAC acknowledges that existing regulatory arrangements, user settings and controls, and reputational mechanisms are capable of providing protection for most users of mobile and handheld devices. CCAAC is not satisfied that there is a need for additional regulation at this time. However, regulatory options could play a role in improving outcomes for the community if issues worsen or are not appropriately dealt with.

**Existing settings, controls and consumer protections**

Consumers should be encouraged to take advantage of existing settings and controls. Industry and government are capable of playing a role in promoting their use; however, the primary responsibility rests with app and platform developers as well as app stores. Consumers are also encouraged to engage critically with app markets and to be mindful of the risks associated with unmonitored use by children.

App developers and app stores have a responsibility to ensure that they act in accordance with the law, particularly consumer guarantees and laws which prohibit misleading conduct. They must also ensure that all terms and conditions in standard form consumer contracts are not unfair. A term that causes a significant imbalance in the rights and obligations of the parties, that is not reasonably necessary to protect the legitimate interests of the supplier, is void where it causes detriment to the consumer. For example, a term that permits the app developer or app store to unilaterally change the characteristics of the app (or any associated services) as part of the contract may be void.

**Refunds and compliance with existing laws**

CCAAC is concerned that consumers may experience difficulties when attempting to seek refunds from app stores and has proposed some basic practices to ensure compliance with consumer laws and to improve consumer experiences. CCAAC encourages the industry to adopt these (or similar) practices, and proposes that CAANZ (and its appropriate subcommittees) monitor industry compliance with the ACL.

CCAAC proposes that the ACCC and other relevant Commonwealth government agencies work with industry stakeholders to ensure compliance with existing laws and to improve consumer experiences, including through the development and promotion of industry best practices. CCAAC notes the work being undertaken by partner economies including through the OECD. Where appropriate, CCAAC encourages consumer agencies to keep abreast of any developments abroad when considering developments and trends within Australian (and international) app markets. CCAAC considers that it may be beneficial for the *Australian Guidelines for Electronic Commerce* to be updated to consider developments relating to handheld devices, apps markets and m-commerce more broadly. This work should be commenced when the OECD has updated its guidelines.

**Improved information and guidance**

CCAAC is of the view that app developers and app stores should consider how important information could be provided more effectively to users. However, CCAAC acknowledges
that the most appropriate means to provide information will mostly need to be determined on a case by case basis. App stores should ensure that critical information, including about in-app purchases, should be provided to users before they purchase or download an app in a manner that achieves user understanding. App stores should also consider how account and purchase information can be more meaningfully provided to users after the time of purchase.

There is significant confusion around processes relating to making complaints. It is not wholly clear to consumers whether to make a complaint to the app store or the app developer. Consumer and other government agencies should partner in order to develop simple and clear guidance on the respective complaints handling responsibilities of industry and government stakeholders.

**Industry engagement and further review**

CCAAC encourages the industry to engage more closely with consumer organisations. There is a mutual interest for app and platform developers as well as app stores, and the consumer movement to more closely engage with each other on the issues considered as part of this inquiry. CCAAC anticipates that the industry will work to ensure that consumers, including those experiencing disadvantage or vulnerability, are appropriately informed about its products both now and into the future.

Consumer agencies should ensure that their understanding of m-commerce related issues remains up to date. Industry stakeholders, collectively and individually, have a responsibility to ensure compliance with existing laws and to enable consumers’ continued confidence in app markets. CCAAC encourages the Compliance and Dispute Resolution Advisory Committee of CAANZ to continue to monitor consumer experiences, and identify whether there is a need for any additional action two years after the release of this report. If there is a need for further work, CCAAC considers that it would be appropriate for the Policy and Research Advisory Committee of CAANZ to consider what actions are appropriate.

**Enforcement and international approaches**

Consumer agencies should continue to consider consumer complaints in accordance with relevant compliance and enforcement policies while recognising that many consumers may be reluctant to make a complaint due to low purchase values. The ACMA should also continue investigating formal complaints made under the *Interactive Gambling Act 2001* about the provision of prohibited internet gambling content.

CCAAC encourages the Australian Government, through the Treasury, to report to the OECD Committee on Consumer Policy on work being undertaken in Australia with a view to supporting an international approach to the issues raised. CCAAC also encourages the ACCC to give consideration as to whether and how these issues could be explored through ICPEN.
PART VI — CONCLUSION

It is clear that apps, made available on mobile and handheld devices, are a popular product for Australian consumers. They offer many benefits, including by increasing the functionality of a user’s device. CCAAC acknowledges that the availability of apps and their ease of use is an important part of the value proposition for app stores, platform developers and device manufacturers. It is also recognised that app markets are developing and that industry participants strive to continually improve consumer experiences.

While app markets offer many benefits to consumers, CCAAC is concerned that consumers may experience difficulties when using apps. Of particular concern are difficulties that consumers experience when seeking refunds, the nature of information provided to users and the manner in which in-app purchases are promoted to children.

In relation to consumer experiences with refunds, CCAAC has identified some basic practices that it considers should be adopted to ensure compliance with consumer laws and to improve consumer experiences.

- App stores should offer consumers a sufficient window of time through which users are able to automatically obtain a refund for a change of mind, an accidental purchase or if an app is revealed to be unsuitable to the user’s needs after download.
- Policies around refunds should be determined in accordance with the ACL and it should be clear in user guidance that app stores may be obligated to issue a refund if an app fails to meet a consumer guarantee.
- App stores should ensure that statements such as ‘this in-app purchase cannot be refunded’ or ‘all purchases made through this app store are ineligible for refund’ are not used so that consumers are not misled about their rights.
- Users seeking a refund should only be referred to the app developer where the refund is requested due to a change of mind.
- The appropriate contact details or mechanism through which a user can request a refund from an app store should be easily found, and intuitively accessible through the app store.
- App stores should only process in-app purchase payments where the app developer can demonstrate that it has clear and satisfactory processes in place for users to request a refund (or if refunds can be easily processed through the app store) if a consumer guarantee has not been met.

On improving the quality of information provided to users, CCAAC encourages industry stakeholders to ensure that critical information, including about in-app purchases, should be provided to users before they purchase or download an app in a manner that achieves user understanding.

While CCAAC has not identified a need for additional regulation at this time, it would be supportive of any industry-based or unilateral efforts to improve consumer experiences, including through self-regulation. It should be recognised that if additional issues arise and
they are not appropriately dealt with by the industry, there may be cause to consider what role regulatory options could play in improving outcomes for the community. In this regard, CCAAC has encouraged consumer agencies to examine the need for additional action two years after the release of this report.

CCAAC has encouraged Treasury and the ACCC to report on the outcomes of this work to international forums including the OECD Committee on Consumer Policy and ICPEN.
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APPENDIX 1 — SUMMARY OF SURVEY RESULTS

As part of the review, consumers were invited to respond to a survey (the Survey) to share their views and experiences with downloading and using apps.

The Survey’s respondents do not represent a random sample of the Australian population. An invitation to respond to the Survey was made available to users that visited the consultation page for the CCAAC inquiry into App purchases by Australian consumers on mobile and handheld devices (located on the CCAAC website). Ninety-six respondents participated in the Survey. CCAAC notes that the Survey’s results should be interpreted with caution.

CONSUMERS’ IMPRESSION OF APP MARKETS

Of the consumers who responded to the Survey, smartphone devices were the most popular handheld devices used to access the internet. Specifically, Android phones and Apple’s iPhone were the most popular. Tablets were also popular with consumers, with Apple’s iPad/iPad Mini and Android tablets also commonly used.

The vast majority of respondents to the Survey had either an adequate, good or very good overall impression of the app market (see Chart A1). However, 8 per cent of respondents had a poor overall impression. This impression was based on convenience, simplicity, price and other factors.

Chart A1 — Consumers overall impression of the app market (n=96)

Almost all of the respondents to the Survey were aware of what an app or in-app purchase was, and almost all have downloaded an app before. Of those who have downloaded an app, around 47 per cent frequently download apps. Around 31 per cent of consumers download apps often (see Chart A2).
Chart A2 — How often do consumers download apps? (n=93)

Almost every respondent has come across an in-app purchase whilst using an app on a mobile or handheld device. Of those who have encountered in-app purchases, around 40 per cent of consumers occasionally come across them; with a further 32 per cent coming across in-app purchases often (see Chart A3). Only 1 per cent of respondents had rarely come across in-app purchases.

Chart A3 — How often do consumers come across in-app purchases? (n=90)

Approximately half of survey respondents have made at least one in-app purchase. Of those who have made an in-app purchase, only 4 per cent of respondents have made frequent in-app purchases (see Chart A4). Around 85 per cent of consumers make in-app purchases either on a rare or occasional basis.
Chart A4 — How often do consumers make in-app purchases? (n=47)

The categories of ‘games’, ‘tools and widgets’ and ‘books, reference and education’ were identified by respondents as the most common genres for which in-app purchases are made. The Survey also asked how much on average do they spend on a single in-app purchase. Some consumers responded that they could spend up to $100 on a single in-app purchase. However, on average (and removing outliers) the respondents identified that they typically spent around $2.50 on in-app purchases.

Consumers were also asked whether they thought that the terms and conditions were clear when making an in-app purchase. The Survey asked two questions on this issue, with the results presented in Table A1 below.

Table A1 — Clarity of terms and conditions, and in-app purchases (n=96)

| When making an in-app purchase, were the terms and conditions clear: |  
| --- | --- | --- | --- |
| ...that they were making an in-app purchase? | ...about the actual cost associated with making the in-app purchase? |  
| Did think so | 46.88% | Did think so | 56.25% |
| Did not think so | 50.00% | Did not think so | 40.63% |
| No response | 3.13% | No response | 3.13% |

Consumers were mixed in their responses to whether they considered that the terms and conditions were clear when they were making an in-app purchase. Half of respondents did not believe that the terms and conditions were clear enough about whether they were making an in-app purchase. Just over 40 per cent also believed the terms and conditions were not clear about the actual cost associated with making an in-app purchase.
APP PURCHASES

Around 45 per cent of consumers ranked their overall experience with making app purchases as good, with a further 22 per cent as very good. Only 8 per cent of respondents ranked their experience as poor (see Chart A5).

Chart A5 — Consumers’ overall experience with making app purchases (n=96)

In the Survey, consumers were questioned on whether they have purchased an app accidently. Of the respondents, around 9 per cent had said that they had accidently purchased an app in the past. Most respondents attribute this to the lack of warnings and notifications, or did not read or skipped warnings and notifications.

Consumers were also asked a number of questions related to whether they thought an app clearly discloses adequate information as to the features of an app before they purchase it. The results are presented in Table A2 below.

Table A2 — Disclosure of important information before purchase (n=96)

<table>
<thead>
<tr>
<th>Did the description of the app clearly disclose:</th>
<th>...that the app allows in-app purchases?</th>
<th>...the content that can be purchased within the app?</th>
<th>...the actual costs associated with making in-app purchases, or that further costs are associated with the making of in-app purchases?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Did think so</td>
<td>41.67%</td>
<td>43.75%</td>
<td>25.00%</td>
</tr>
<tr>
<td>Did not think so</td>
<td>56.25%</td>
<td>54.17%</td>
<td>72.92%</td>
</tr>
<tr>
<td>No response</td>
<td>3.13%</td>
<td>2.08%</td>
<td>2.08%</td>
</tr>
</tbody>
</table>
A majority of consumers who responded to the Survey did not believe that the description of the app (provided to the user before purchasing) clearly disclosed that the app contains in-app purchases, the content that can be purchased within the app, or the actual costs associated with making in-app purchases.

Consumers were also asked to rate the overall level of disclosure provided about the costs associated with purchasing apps and in-app content. Around 35 per cent of respondents, the most for a category, rated the level of disclosure as poor. Just over 29 per cent of respondents rated the level of disclosure regarding cost as adequate (see Chart A6).

**Chart A6 — Consumers’ perception of overall disclosure (n=96)**

<table>
<thead>
<tr>
<th>Perception</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very Poor</td>
<td>3%</td>
</tr>
<tr>
<td>Poor</td>
<td>35%</td>
</tr>
<tr>
<td>Adequate</td>
<td>29%</td>
</tr>
<tr>
<td>Good</td>
<td>27%</td>
</tr>
<tr>
<td>Very Good</td>
<td>3%</td>
</tr>
<tr>
<td>No response</td>
<td>3%</td>
</tr>
</tbody>
</table>

**CONSUMER PROTECTIONS AND ACTIONS**

Consumers were also asked whether they were aware of the restrictions or controls available to protect them from unwanted content or purchases. Of those who responded to the Survey, just over half were aware of the available restrictions and controls available to them. Of those consumers who were aware of the available restrictions available, only around 3 out of every 10 used them. The restrictions and controls used most by consumers were the purchasing PIN code, the disabling of in-app purchases, and the device PIN code or password.

Consumers were also asked whether they shared their purchasing PIN with others. Only around 4 per cent of respondents said that they did.

When consumers do have a problem or issue regarding an app or in-app purchase, there are a number of actions available for them to take. In response to the Survey, most consumers contact or seek support through online forums of the app developer, or through the app market distributor. The full results of the Survey can be found in Table A3.
Table A3 — Actions taken when a consumer has had an issue regarding their purchase (n=96, more than one option could be chosen by survey participant)

<table>
<thead>
<tr>
<th>Action Available</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Call, email or seek support on the online forums of the app producer or designer</td>
<td>55</td>
</tr>
<tr>
<td>Call, email or seek support on the online forums of the app market distributor</td>
<td>53</td>
</tr>
<tr>
<td>(Apple, Google, Microsoft, BlackBerry)</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>17</td>
</tr>
<tr>
<td>Call, email or visit the online forums of the device telecommunications company (Telstra, Optus, Vodafone etc)</td>
<td>7</td>
</tr>
<tr>
<td>Contact the Australian Competition and Consumer Commission (ACCC)</td>
<td>3</td>
</tr>
<tr>
<td>Contact my state or territory fair trading agency</td>
<td>1</td>
</tr>
<tr>
<td>Contact the Telecommunications Industry Ombudsman (TIO)</td>
<td>0</td>
</tr>
</tbody>
</table>

With regards to the consumers experience in using the methods of assistance, most felt that it was adequate, though around 9 per cent considered it to be poor or very poor. Chart A7 details the results.

Chart A7 — Ratings of the user experience in using the methods of assistance

The Survey also asked consumers what actions they took to inform themselves about their device, apps and the app market. Table A4 details consumer responses.
Table A4 — Actions taken by consumer to inform themselves about their device, apps and the app market (n=96, more than one option can be chosen by survey participant)

<table>
<thead>
<tr>
<th>Action Available</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Read online reviews</td>
<td>68</td>
</tr>
<tr>
<td>Google search</td>
<td>65</td>
</tr>
<tr>
<td>Seek support on popular online forums (Anandtech, Toms Hardware, Whirlpool etc), Read online reviews</td>
<td>47</td>
</tr>
<tr>
<td>Call, email or visit the online forums of the company responsible for the market (Apple, Google, Microsoft, BlackBerry)</td>
<td>40</td>
</tr>
<tr>
<td>Call, email or visit the online forums of the app producer/designer company</td>
<td>36</td>
</tr>
<tr>
<td>Consult the users' manual</td>
<td>20</td>
</tr>
<tr>
<td>Other</td>
<td>12</td>
</tr>
<tr>
<td>Read relevant magazines</td>
<td>9</td>
</tr>
<tr>
<td>Call, email or visit the online forums of the device telecommunications company (Telstra, Optus, Vodafone etc)</td>
<td>6</td>
</tr>
<tr>
<td>Seek information from the Telecommunications Industry Ombudsman (TIO)</td>
<td>1</td>
</tr>
</tbody>
</table>

Consumers were also asked if there were any actions that could be taken by industry to help improve consumers' experiences when making app and in-app purchases. Of the available responses, popular actions were for industry to:

- provide better disclosure requirements across apps that allow in-app purchases;
- provide more information on the restrictions/controls available;
- include an opt-in clause to make in-app purchases; and
- impose spending caps.

Table A5 presents these results.
**Table A5 — Actions that could be taken by industry to help improve consumer’s experience when making app and in-app purchases (n=96, more than one option can be chosen by survey participants)**

<table>
<thead>
<tr>
<th>Action Available</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>better disclosure requirements across apps that allow in-app purchases, that clearly disclose the ability to make in-app purchases, and the cost of making in-app purchases</td>
<td>64</td>
</tr>
<tr>
<td>provide more information on the restrictions/controls available to limit/restrict app purchases and in-app purchases</td>
<td>60</td>
</tr>
<tr>
<td>apps to include an opt-in clause to make in-app purchases</td>
<td>53</td>
</tr>
<tr>
<td>spending caps to be imposed on the amount that can be spent on an in-app purchase (particularly for apps targeted at children)</td>
<td>52</td>
</tr>
<tr>
<td>other</td>
<td>12</td>
</tr>
</tbody>
</table>

Consumers were also given the opportunity to present other actions they believe could improve their experience in the app market. For instance, one suggested that they would like to see app store operators create a relationship between accounts so that a parent can see and control what their child/children are doing with respect to purchases, app installations and other activity. Another example is for app developers to provide more information about what they are purchasing, rather than 'seeing after buying', and provide better methods for addressing problems.

Lastly, consumers were also asked if they knew their rights under the ACL, or if they are aware of the role of consumer agencies in enforcing the ACL. Around 58 per cent of respondents indicated that they did not know their rights under the ACL, and around 45 per cent of respondents were not aware of the role of the ACCC or their local state or territory fair trading agency.

**CHILDREN’S EXPERIENCES IN THE APP MARKET**

The Survey also asked questions about the experiences of children when using apps and their content. Consumers were asked whether their child/children use a mobile or handheld device. Of those who responded, 18 said their child uses a mobile or handheld device.

The types of devices the respondent’s child/children use to access the internet are listed in Table A6. The most popular devices used by respondent’s child/children include the Apple iPhone and the Apple iPad/iPad Mini.
Table A6- The types of devices children use to access the internet (n=19, more than one option can be chosen by survey participant)

<table>
<thead>
<tr>
<th>Device</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apple iPhone</td>
<td>13</td>
</tr>
<tr>
<td>Apple iPad/iPad Mini</td>
<td>10</td>
</tr>
<tr>
<td>Android Phone</td>
<td>5</td>
</tr>
<tr>
<td>Other iOS device</td>
<td>5</td>
</tr>
<tr>
<td>Android Tablet</td>
<td>4</td>
</tr>
<tr>
<td>BlackBerry Phone</td>
<td>1</td>
</tr>
<tr>
<td>Other device</td>
<td>1</td>
</tr>
</tbody>
</table>

**APP DOWNLOADS**

Of the 18 respondents that indicated that their child/children used a mobile or handheld device to access the internet, 15 indicated that their child/children had downloaded an app. Of those, just over half the parents rarely or never knew beforehand that their child downloaded an app (Chart A8 refers).

**Chart A8 — Did the parent know beforehand that their child downloaded an app? (n=15)**

The Survey also asked parents how frequently their child/children engage in the app market. These results can be found below in Chart A9.
Appendix 1 – Summary of survey results

Chart A9 — Frequency of downloading (n=15)

IN-APP PURCHASES

Of those parents surveyed, 8 responded that their child had made an in-app purchase using a mobile or handheld device. Of those respondents, 5 indicated that their child/children occasionally make an in-app purchase, and 3 rarely.

Only 2 of those parents always knew beforehand that their child made an in-app purchase. Of the other parents, 5 rarely or never knew beforehand that their child made an in-app purchase, while 1 occasionally does. The results can be found in Table A7.

Table A7 — Did the parent know beforehand when their child made an in-app purchase? (n=8)

<table>
<thead>
<tr>
<th>Frequency</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Always</td>
<td>2</td>
</tr>
<tr>
<td>Occasionally</td>
<td>1</td>
</tr>
<tr>
<td>Rarely</td>
<td>3</td>
</tr>
<tr>
<td>Never</td>
<td>2</td>
</tr>
</tbody>
</table>

The types of apps where in-app purchases were made were predominantly games. The Survey also asked how much on average their child spends on a single in-app purchase. Some parents responded that their child could spend up to $100 on average on a single in-app purchase. However, on average, and removing outliers, respondents indicated that around $3-4 could be spent by a child on a single in-app purchase.
APPENDIX 2 — THE CONSULTATION PROCESS

In addition to the Survey, CCAAC received 17 non-confidential submissions to this inquiry:

- Australian Communications Consumer Action Network (ACCAN);
- Australian Information Industry Association (AIIA);
- Australian Interactive Media Industry Association (AIMIA);
- Australian Mobile Telecommunications Association (AMTA);
- Centre for Internet Safety (CIS);
- CHOICE;
- Commissioner for Children and Young People Western Australia;
- Consumer Action Law Centre (CALC);
- Craddock, Steve;
- Game Developers’ Association of Australia and Interactive Games & Entertainment Association (GDAA and iGEA);
- Google;
- Horton, David;
- Medical Technology Association of Australia (MTAA);
- Office of the Australian Information Commissioner (OAIC);
- Telecommunications Industry Ombudsman (TIO);
- Trend Micro; and
- WMC Global.

CCAAC members held additional consultation meetings with consumer and industry stakeholders including Google, Apple and ACCAN.
APPENDIX 3 — AN EXAMPLE REFUND PROCESS

GOOGLE PLAY’S 15 MINUTE REFUND WINDOW

**Step 1** — Open app through Google Play

**Step 2** — Confirm refund request
Appendix 3 – An example refund process

**OBTAINING REFUND INFORMATION THROUGH GOOGLE PLAY**

**Step 1** – Open menu → Help

**Step 2** – Select Android Apps

**Step 3** – Select Refund

**Step 4** – Select In-app Purchase Policy
Step 5 — Refund policy

From the web (play.google.com)
1. Visit play.google.com from a computer browser.
2. Select **My Orders & Settings** by clicking either the gear in the upper righthand corner or by scrolling to the bottom of the page.
3. Next to the app you’d like to refund, select **Report a problem**, and follow the on-screen instructions.

After the 15 minute return period:
If you’re unsatisfied with an application after the 15 minute return period has expired, we recommend contacting the developer directly.

You may find developers’ contact information here:
1. Visit Google Play and select the app in question.
2. On the app’s description page, scroll down to the “Developer” section.
3. One of the following contact options will be provided: an email address, a phone number, or a website.

Step 6 — Contact the developer (users are instructed to contact the developer)
APPENDIX 4 — OPEN LETTER TO INDUSTRY STAKEHOLDERS
To whom it may concern

As you may be aware, on 5 November 2012, the Hon David Bradbury MP released Terms of Reference for a Commonwealth Consumer Affairs Advisory Council (CCAAC) inquiry into the experiences of Australian consumers with downloading apps on mobile phone and handheld devices. CCAAC has had the opportunity to consider and review a range of issues relating to consumers’ use of these products.

It is clear that apps, made available on mobile and handheld devices, are a popular product for Australian consumers. They offer many benefits, including by increasing the functionality of a user’s device. CCAAC acknowledges that the availability of apps and their ease of use is an important part of the value proposition for app stores, platform developers and device manufacturers. It is also recognised that app markets are developing and that industry participants strive to continually improve consumer experiences.

While app markets offer many benefits to consumers, CCAAC is concerned that consumers may experience difficulties when attempting to seek refunds from app stores. In this regard, CCAAC has identified some basic practices that it considers should be adopted to ensure compliance with consumer laws and to improve consumer experiences.

- App stores should offer consumers a sufficient window of time through which users are able to automatically obtain a refund for a change of mind, an accidental purchase or if an app is revealed to be unsuitable to the user’s needs after download.

- Policies around refunds should be determined in accordance with the Australian Consumer Law (ACL) and it should be clear in user guidance that app stores may be obligated to issue a refund if an app fails to meet a consumer guarantee.

- App stores should ensure that statements such as ‘this in-app purchase cannot be refunded’ or ‘all purchases made through this app store are ineligible for refund’ are not used so that consumers are not misled about their rights.

- Users seeking a refund should only be referred to the app developer where the refund is requested due to a change of mind.

- The appropriate contact details or mechanism through which a user can request a refund from an app store should be easily found, and intuitively accessible through the app store.

- App stores should only process in-app purchase payments where the app developer can demonstrate that it has clear and satisfactory processes in place for users to request a refund (or if refunds can be easily processed through the app store) if a consumer guarantee has not been met.

As an important industry participant, CCAAC would like to encourage for your organisation to give consideration as to how these practices (or similar) could be adopted. CCAAC
understands that not all of these practices will be appropriate for all industry participants; however, some of these identified practices may be necessary in order to comply with obligations under the ACL.

CCAAC has encouraged Consumer Affairs Australia and New Zealand to monitor industry compliance with the ACL and to take appropriate actions where refund policies are non-compliant.

CCAAC has also proposed a number of other actions that should be taken by industry stakeholders to improve consumer experiences. These include:

- improving the quality of information provided to users;
- clearer complaints handling processes;
- stronger industry engagement with consumers; and
- further research and monitoring of consumer experiences.

On improving the quality of information provided to users, CCAAC encourages industry stakeholders to ensure that critical information, including about in-app purchases, should be provided to users before they purchase or download an app in a manner that achieves user understanding.

While CCAAC has not identified a need for additional regulation at this time, it would be supportive of any industry-based or unilateral efforts to improve consumer experiences, including through self-regulation. It should be recognised that if additional issues arise and they are not appropriately dealt with by the industry, there may be cause to consider what role regulatory options could play in improving outcomes for the community. In this regard, CCAAC has encouraged consumer agencies to examine the need for additional action two years after the release of this report.

CCAAC has encouraged Treasury and the Australian Competition and Consumer Commission to report on the outcomes of this work to international forums including the Organisation for Economic Co-operation and Development Committee on Consumer Policy and the International Consumer Protection and Enforcement Network.

I would encourage your organisation to examine in greater detail the findings of the CCAAC report. It is hoped that this inquiry can be a positive first step in improving outcomes for consumers and ensuring the ongoing benefits associated with this new and dynamic market.

Please find enclosed a copy of CCAAC’s inquiry report.

Yours sincerely

Colin Neave
Chairman, Commonwealth Consumer Affairs Advisory Council
APPENDIX 5 — LETTER TO CAANZ
To the Chair of Consumer Affairs Australia and New Zealand (CAANZ)

As you may be aware, on 5 November 2012, the Hon David Bradbury MP released Terms of Reference for a Commonwealth Consumer Affairs Advisory Council (CCAAC) inquiry into the experiences of Australian consumers with downloading apps on mobile phone and handheld devices. CCAAC has had the opportunity to consider and review a range of issues relating to consumers’ use of these products.

While app markets offer many benefits to consumers, CCAAC is concerned that consumers may experience difficulties when attempting to seek refunds from app stores. In this regard, CCAAC has identified some basic practices that it considers should be adopted by the industry to ensure compliance with consumer laws and to improve consumer experiences.

• App stores should offer consumers a sufficient window of time through which users are able to automatically obtain a refund for a change of mind, an accidental purchase or if an app is revealed to be unsuitable to the user’s needs after download.

• Policies around refunds should be determined in accordance with the Australian Consumer Law (ACL) and it should be clear in user guidance that app stores may be obligated to issue a refund if an app fails to meet a consumer guarantee.

• App stores should ensure that statements such as ‘this in-app purchase cannot be refunded’ or ‘all purchases made through this app store are ineligible for refund’ are not used so that consumers are not misled about their rights.

• Users seeking a refund should only be referred to the app developer where the refund is requested due to a change of mind.

• The appropriate contact details or mechanism through which a user can request a refund from an app store should be easily found, and intuitively accessible through the app store.

• App stores should only process in-app purchase payments where the app developer can demonstrate that it has clear and satisfactory processes in place for users to request a refund (or if refunds can be easily processed through the app store) if a consumer guarantee has not been met.

CCAAC has encouraged industry stakeholders to ensure that refund policies are compliant with the ACL. CCAAC would also like to encourage CAANZ, and its appropriate subcommittees, to monitor industry compliance with the ACL and to take appropriate actions where refund policies are non-compliant.

CCAAC supports the consideration of consumer complaints in accordance with relevant compliance and enforcement policies. However, CCAAC considers that many consumers may experience frustration, including where consumer laws have been breached, without
making a complaint. This may be due to the relatively low value of purchases or a perception that making a complaint will not give the desired outcome.

CCAAC has also proposed a number of other actions that could be taken by consumer agencies to improve consumer experiences. These include:

- clearer complaints handling processes (including guidance on the complaints handling responsibilities of app stores, app developers as well as government agencies);
- further research and monitoring of consumer experiences; and
- appropriate enforcement of existing consumer protection frameworks.

On clearer complaints handling processes, CCAAC considers that the Education and Information Advisory Committee of CAANZ may be able to develop and consider options for the development of guidance on the complaints handling responsibilities of app stores, app developers as well as government agencies.

CCAAC encourages CAANZ to examine the need for additional action to ensure that appropriate information is provided to consumers two years after the release of this report.

Further details can be found in CCAAC’s inquiry report which I am pleased to enclose.

Yours sincerely

Colin Neave
Chairman, Commonwealth Consumer Affairs Advisory Council