

Article Information

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ACCC takes Amazon AU to the Federal Court of Australia alleging its annual Amazon Prime Video subscription contract contains unfair contract terms

The ACCC continues to demonstrate its determination to protect consumers from potentially unlawful subscription services by filing proceedings against Amazon AU alleging various breaches of ACL relating to unfair contract terms.

The Australian Competition and Consumer Commission (ACCC) has brought proceedings in the Federal Court of Australia against Amazon Commercial Services Pty Ltd (**Amazon AU**) alleging that contracts entered into by consumers for a subscription to the streaming service Amazon Prime contain unfair contract terms that allow Amazon AU to make significant changes to its services without affording the subscriber the opportunity to receive a refund or reasonable redress.

Unfair Contract Terms

The Australian Consumer Law (the **ACL**) is found in Schedule 2 of the *Competition and Consumer Law Act 2010* (Cth). The unfair contract terms provisions are set out at Part 2-3 of Schedule 2. For context, below we set out the sections of Part 2-3 relevant to the ACCC's proceedings against Amazon AU that are discussed in this insight.

Pursuant to section 24(1), a term is considered 'unfair' if:

- it would cause a significant imbalance in the parties' rights and obligations arising under the contract; and
- it is not reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term; and
- it would cause detriment (whether financial or otherwise) to a party if it were to be applied or relied on.

If a term in a standard form contract is found to be unfair within the meaning of section 24(1), the term will be void pursuant to section 23(1). Further, pursuant to section 23(2A) a person is in contravention of the ACL if:

- the person makes a contract; and
- the contract is a consumer contract or small business contract; and
- the contract is a standard form contract; and
- a term of the contract is unfair; and
- the person proposed the unfair term.

It is also noted that section 23(2B) provides that a person who contravenes subsection (2A) commits a separate contravention of that subsection in respect of each term that is unfair and that the person proposed. Section 23(2C) provides that a person will also be in contravention of the ACL if:

- the person applies or relies on, or purports to apply or rely on, a term of a contract; and
- the contract is a consumer contract or small business contract; and
- the contract is a standard form contract; and
- the term is unfair.

Section 25 sets out examples of the kinds of terms of a consumer contract or small business contract that may be considered unfair. Particularly relevant here is section 25(d) which gives an example of 'a term that permits, or has the

effect of permitting, one party (but not another party) to vary the terms of the contract.’

Amazon AU’s Conduct

Amazon Prime is a very well-known subscription service offered by Amazon AU and available in Australia. This service provides a variety of services including, the streaming service Prime Video (**Amazon Prime**) which up until 2 July 2024, offered advertisement free streaming of all its content. Subscribers to Amazon Prime could enter into monthly or annual subscriptions and according to the Concise Statement filed by the ACCC, Amazon AU had more than a million annual subscribers enter into consumer contracts for Amazon Prime between 1 November 2023 and 18 August 2025 (**the contracts**).

The ACCC alleges that the contracts contain terms that allow Amazon AU to make significant changes to the services it would provide under the contracts and further to be able to make changes to the terms governing Amazon AU’s services. The ACCC’s Concise Statement provides that Amazon AU can make these changes without the subscriber’s knowledge, nor will the subscriber be entitled to a refund or any other meaningful redress (**the relevant contract terms**).

Unfortunately for Amazon Prime subscribers who enjoyed uninterrupted ad-free streaming of Amazon AU content, a notification was received on 21 May 2024 advising that from 2 July 2024 advertisements would be introduced to Amazon Prime streaming content in Australia. If subscribers wanted to continue to enjoy streaming ad-free, they would be required to pay an additional monthly fee on top of the current subscription fee.

According to the Concise Statement, on 2 July 2024 more than 850,000 subscribers who had paid for an annual subscription were “degraded” to a service providing streaming with ads. When this occurred the subscribers with annual subscriptions were offered the option of:

- continuing their current subscription however streaming would be with ads; or
- paying an additional amount to continue streaming without ads.

No refund or other redress was available if the subscriber chose to cancel the subscription in light of the introduction of ads.

Alleged Breaches

The ACCC alleges that the relevant contract terms fall within the meaning of “unfair” pursuant to section 24(1) of the ACL. Particular emphasis is placed on the fact that the term only benefits Amazon AU and therefore causes a significant imbalance in the parties’ rights and obligations. While there was a requirement that Amazon AU was to give the subscribers notice of the material change in their contract, which did occur, the ACCC submits that this does not address the imbalance. The ACCC considers that relying on the relevant contract terms would cause ‘obvious detriment to consumers’ and that this type of clause is seen in the example set out at section 25(d) of the ACL as it is a term that permits, or has the effect of permitting, one party (but not another party) to vary the terms of the contract.

It is noted that Amazon AU later amended the relevant contract terms to introduce a right to a pro rata refund for annual Amazon Prime subscribers if they cancel their subscription in response to materially adverse changes to the terms. The ACCC submits that by making this amendment, Amazon AU has demonstrated that the relevant contract terms were not reasonably necessary to protect Amazon AU’s legitimate interests in accordance with section 24(1)(b).

In light of the above, it is the ACCC’s submission that on each occasion that Amazon AU proposed the inclusion of the relevant contract terms between 9 November 2023 and 18 August 2025 it was in breach of section 23(2A). Further, the ACCC submits that Amazon AU contravened s 23(2C) on each occasion that it relied, or purported to rely, on the relevant contract terms in respect of each annual Amazon Prime subscriber who subscribed or renewed their subscription from 9 November 2023.

We note that the proceedings have also been brought against Amazon.com Services LLC (**Amazon US**) as the ACCC alleges Amazon US was directly or indirectly knowingly concerned in or party to the contraventions of Amazon AU and is therefore vicariously liable pursuant to section s 224(1)(e) of the ACL.

Conclusion

This is the second alleged ACL breach that the ACCC has brought against Amazon AU in 2026 with Federal Court proceedings announced in May alleging Amazon AU was selling kids backpacks that did not comply with mandatory button battery warning requirements. The ACCC continues to monitor the conduct of global technology giants with proceedings also brought against Microsoft Australia late last year alleging misleading conduct attributed to communicating subscription options and price increases for Microsoft 365 plans when it introduced its AI Copilot. This was also followed

by Google Asia Pacific being ordered to pay \$55 million in penalties for anti-competitive conduct involving reaching understandings with Telstra and Optus about pre-installing the Google Search app on Android mobiles in December 2025.

The matter **VID702/2026** has been listed in the Victoria Registry for its first Case Management Hearing on 31 July 2026. If you wish to read more about the ACCC's case, you can find a copy of the Concise Statement [here](#).

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