



**Australian
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Director
Consumer Policy Unit
Market Conduct and Digital Division
Treasury
Langton Cres
Parkes ACT 2600

Via email: consumerlaw@treasury.gov.au

Dear Director

RE: Designated complaints

The Australian Chamber of Commerce and Industry (ACCI) appreciates this opportunity to provide a response to the Treasury on the exposure draft legislation on designated complaints.

ACCI is Australia's largest and most representative business network. ACCI represents hundreds of thousands of businesses in every state and territory and across all industries. Ranging from small and medium enterprises to the largest companies, our network employs millions of people. ACCI strives to make Australia the best place in the world to do business – so that Australians have the jobs, living standards and opportunities to which they aspire.

ACCI is supportive of the establishment of a designated complaints function as it will provide an additional avenue for consumer and small business advocates to elevate concerns to the Australian Competition and Consumer Commission (ACCC) for more urgent consideration and action as necessary.

Currently there is no formal mechanism for consumer or small business advocacy groups to lodge complaints, to which the ACCC is obligated to respond.

The designated complaints function will enable designated consumer and small business advocates to submit a complaint to the ACCC where they have evidence of a significant or systemic market issue that affects consumers or small businesses in Australia, and represents a potential breach of Australian Consumer Law (ACL).

Once a complaint is lodged, the ACCC would be required to publicly respond within 90 days, making clear what further action, if any, it intends to take. ACCI welcomes the commitment to considering relevant complaints within this timeframe and believes it is suitable, noting the same timeframe exists in the United Kingdom (UK).

Canberra
Commerce House
24 Brisbane Avenue
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The designated complaints function draws on the UK's 'super complaints' framework, which has been a feature of the UK's competition and consumer regulator since 2003. The super complaints framework allows certain organisations to make complaints to government bodies and requires those bodies to consider and respond to those complaints within specified timeframes. For example, the *Enterprise Act 2002* (UK) allows complaints from designated consumer organisations to the Competition and Markets Authority in relation to 'any feature, or combination of features, of a market in the UK for goods or services is or appears to be significantly harming the interests of consumers'. Complaints under the pathway can also be made to the Financial Conduct Authority.

ACCI notes that a designated complaints pathway was a recommendation of the Productivity Commission in 2021. In its report, the Productivity Commission dismissed concerns that a super complaints pathway would divert resources away from the ACCC and obstruct it from its other priorities.¹ Noting that there is a proposed process for how a consumer or small business advocate group becomes a designated complainant and the UK's scheme which has been operating for 20 years, it is unlikely that a designated complainant would abuse the process or attempt to undermine regulatory priorities of the ACCC. However, it will be important to ensure that mechanisms are in place to prevent vexatious or incorrect complaints and to support appropriate use of the pathway.

Operational guidance and principles should be made available

It will be important to make operational guidance and principles available for super complainants, as the Productivity Commission recommended.² We note that the UK have issued guidance for those organisations designated under their super complaints pathway and would welcome similar supports being made available in Australia.

As complaints must be made:

- In an approved manner and form;³
- With the information required by the form;⁴
- Accompanied by any documents required by the form;⁵ and
- Comply with any additional requirements as set out by the Minister,⁶

we encourage the ACCC to issue guidance which addresses these mandatory requirements and to make it publicly available.

Noting the requirement for the ACCC to issue a notice where a complaint does not meet content requirements,⁷ guidance would assist designated complainants to provide all relevant and necessary information. This will hopefully alleviate any need for further requests for information, or tedious back and forth before a complaint can be progressed,

¹ Productivity Commission (2021), [Right to Repair](#), Inquiry Report No. 97, 29 October 2023, pg.9.

² Ibid.

³ Treasury Laws Amendment (Measures for Consultation) Bill 2023: ACCC designated complaints function s154ZF(2)(b), (c)(i).

⁴ Ibid s154ZF(2)(c)(ii).

⁵ Ibid s154ZF(2)(c)(iii).

⁶ Ibid s154ZF(2)(d), (3).

⁷ Ibid s154ZH(2), (3).



and may also mean the ACCC requires fewer resources than would otherwise be needed to process designated complaints.

Guidance would also assist designated complainants as it would provide relevant small businesses and consumers wishing to make such a complaint with an outline of what would be required to meet the threshold for the ACCC.

It will be important for designated complainants to fully understand the distinctions between the ACL and other legislation, such as the *Australian Securities and Investments Commission Act 2001* (the ASIC Act), so as to avoid designated complaints being made in relation to non-ACL related matters.

Noting that similar requirements regarding form and content are proposed for bodies seeking to become a designated complainant,⁸ guidance which outlines what form the application should be in as well as the information and documentation required should also be made available.

Number of designated complainants and ACCC resourcing

We note that the Minister would have the capacity to limit the number of designated complainants through legislative instrument.⁹

This may result in a 'first in, best dressed' approach which would not lead to effective outcomes under the pathway. A limit on designated complainants could mean that only consumer advocacy groups are approved as a designated complainant in the first 12 months, undermining the intent of the framework.

It is likely that a number of small business advocacy groups will seek to become a designated complainant, including ACCI, however if there are limits on the number of designated complainants this may not be possible.

Accordingly, we believe that there should not be a limit imposed on the number of approved designated complainants.

To alleviate concerns raised in the Explanatory Memorandum,¹⁰ resourcing for the ACCC should be increased to allow complaints to be assessed effectively within the proposed timeframe and to ensure the ACCC's existing regulatory priorities can still be met.

Review

While this reform has been modelled off the existing super complaints pathway in the UK, it would be appropriate to conduct a review 18 months after it comes into effect. The review should consider the process by which a consumer or small business advocacy group can

⁸ Treasury Laws Amendment (Measures for Consultation) Bill 2023: ACCC designated complaints function s154ZP(3).

⁹ Ibid s154ZQ(5), (6).

¹⁰ Treasury Laws Amendment (Measures for Consultation) Bill 2023: ACCC designated complaints function Exposure Draft Explanatory Materials, para.1.26-1.28.



become a designated complainant, effectiveness of the pathway for raising complaints, any cap placed on the number of designated complaints and complainants, and any other related matters.

A review would also be able to identify whether resourcing for the ACCC is appropriate and whether it is being diverted away from dealing with its regulatory priorities, and whether the pathway has given rise to vexatious or frivolous complaints.

Depending on the success of the pathway, the review may also be able to advise whether it be expanded to allow complaints to be made to other bodies, such as the Australian Securities and Investments Commission.

Next steps

We thank you for your consideration of our feedback. Should you require any additional information or clarification of any points contained within, please contact Natalie Heazlewood, Director, Skills, Employment and Small Business,

Yours sincerely,

Natalie Heazlewood
Director of Skills, Employment and Small Business