

## **ARA SUBMISSION**

### **DESIGNATED COMPLAINTS FUNCTION WITHIN THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION (ACCC)**

JANUARY 2024

The Australian Retailers Association (ARA) welcomes the opportunity to provide comments with respect to the implementation of a designated complaints function within the Australian Competition and Consumer Commission (ACCC).

The ARA is the oldest, largest, and most diverse national retail body, representing a \$420 billion sector that employs 1.4 million Australians – making retail the largest private sector employer in the country. As Australia's peak retail body, representing more than 120,000 retail shop fronts and online stores, the ARA informs, advocates, educates, protects, and unifies our independent, national, and international retail community.

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

#### **EXECUTIVE SUMMARY**

The ARA welcomes Treasury's consultation regarding the creation of a formal mechanism to enable designated consumer and small business advocates to submit complaints to the ACCC for a response, where there is evidence of significant or systemic market issues.

Most Australian retailers work diligently to ensure their customers receive the highest level of service. ARA members are particularly aware of the current pressures faced by consumers and small businesses, and they consistently use their best endeavours to resolve complaints in a timely manner to ensure the continued success of their businesses and hence, the retail industry.

The ARA anticipates the creation of a designated complaints function for consumer and small business advocates will create increased access to fair and timely dispute resolution processes. The creation of faster pathways to resolution will benefit all parties and the retail industry.

The ACCC plays a valuable role in educating consumers, small businesses, and franchisees on the dispute resolution mechanisms available to them, including directing them to the conciliation and dispute resolution services made available under industry schemes or operated by State, Territory and Commonwealth regulators. Dispute resolution services provided by State Small Business Commissioners and the Office of the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) are essential as they support parties to resolve commercial disputes in a cost-effective and non-adversarial way.

We are therefore in favour of the ACCC implementing a designated complaints function to assess and streamline complaint-handling. We also seek further clarity with respect to issues of concern to our members.

## **BETTER ENGAGEMENT**

The ARA understands the introduction of a designated complaints function will provide an opportunity for the ACCC to better engage with consumer and small business advocacy groups as designated complainants.

Drawing on the United Kingdom's 'super complaints' framework, which allows certain organisations to make complaints to government bodies and requires those bodies to consider and respond to the complaints within specified timeframes, the proposed new function will reform and streamline the ACCC's complaint-handling process. It will require the ACCC to assess, and respond to, complaints submitted by designated complainants, with experience and ability in representing the interests of consumers or small business, or both, in Australia across a range of market issues.

The ARA believes the new function will assist the ACCC to become more aware of concerns about emerging small business and consumer policy issues due to the specialised knowledge and experience of designated complainants.

## **TIMEFRAMES**

We note the ACCC must assess a designated complaint and provide the designated complainant with a notice stating the outcome of that assessment within 90 days of receiving the complaint. In our view, the specified 90-day period will ensure a timely response. The notice will provide the designated complainant with certainty regarding the outcome of the assessment - either that the ACCC will take no further action to deal with the designated complaint, or that the ACCC will take further action to deal with the complaint.

While we appreciate efforts to ensure a timely response, it must also be noted that the reforms will create an additional burden for the ACCC and for retailers as they need to work within the 90-day timeframe. The ACCC needs to ensure that the administration is not onerous for both parties to ensure a swift resolution.

## **TRANSPARENCY**

We note the ACCC will be required to publish certain information given to a designated complainant to ensure transparency and accountability in relation to the designated complaints function. The information published will include no further action notices which detail why the ACCC will not take further action in relation to a designated complaint, and further action notices which detail the ACCC's proposed action in relation to a complaint. We also note there is an exception which applies if the ACCC is satisfied that it is not appropriate to publish the information because it is confidential in nature.

We support the concepts of transparency and accountability, and we seek greater information with respect to designated complainants. For example, who will assess the capability of designated complainants? How will their expertise, credibility, and effectiveness be assessed initially and over time? Will there be any mitigating or balancing controls such as a legislated right of response, depending on the nature of the complaint? How will designated complainants manage vexatious complaints?

## EDUCATION AND TRANSITION

The ARA envisages the new designated complaints function will provide an opportunity for the ACCC to better engage with consumers and small businesses, including retailers, and we trust this engagement will assist the ACCC in understanding and addressing gaps in knowledge. We encourage the ACCC to develop targeted education campaigns to provide information and advice for consumers and businesses. An educative approach is in alignment with the ACCC's position that prevention is always preferable to taking action after a breach has occurred.

The ARA supports practical measures to assist all retail businesses with streamlined and targeted support, including the development and provision of clear guidance materials with respect to the Australian Consumer Law and industry codes. We would appreciate the opportunity to review draft public guidance materials and provide feedback to ensure they are relevant and appropriate for the retail industry.

We support an educative approach which will allow the ACCC to draw issues to the relevant parties' attention and provide information to help them gain a better understanding of their obligations, encouraging rectification and future compliance. We also strongly recommend the reforms are implemented with a transition period which will give all parties sufficient time to understand their updated obligations.

We note the ACCC has the discretion to deal with matters informally if businesses, including retailers, have promptly and effectively corrected a possible contravention and implemented measures to prevent recurrence, or accept an administrative resolution such as a commitment by the retailer setting out the terms and conditions of the resolution.

## EXISTING MECHANISMS

We seek further clarity regarding the role of the ACCC's existing mechanisms including the Consumer Consultative Committee and the Product Safety Consultative Committee, of which the ARA is a member. We are concerned the reforms do not take into account the existing mechanisms currently in place. We would appreciate clarity with respect to how the committees will work with the designated complaints function.

We encourage the ACCC to continue working collaboratively with industry associations such as the ARA. Industry associations provide members with known and trusted pathways for advice and assistance. Industry associations are in a unique position to provide the Government with valuable feedback, distribute information, develop resources, and encourage engagement with cost-effective dispute resolution pathways.

The majority of small retail businesses do not have large departments with teams of experts at their disposal to navigate legal issues as they arise, nor the ability to engage costly legal representatives. Small businesses should therefore be encouraged to engage with existing small business advocacy groups and industry associations who are able to represent their interests and provide information and assistance.

## DESIGNATED COMPLAINANTS

We welcome the appointment of the State Small Business Commissioners, ASBBFEO, and other existing credible advocates and dispute-resolution bodies as designated complainants. Their assistance in facilitating the escalation of small business complaints to the ACCC and other regulators for timely resolution will be invaluable.

We also seek further information about how the credibility, expertise, and effectiveness of all designated complainants will be measured.

## **DISPUTE RESOLUTION**

The ARA appreciates the valuable role the ACCC plays in educating consumers, small businesses, and franchisees on the dispute resolution mechanisms available to them. This includes directing them to the conciliation and dispute resolution services made available under industry schemes or operated by State, Territory, and Commonwealth regulators.

We wish to highlight the excellent dispute resolution services provided by the State Small Business Commissioners and ASBFEO. We call for increased resourcing and referral to these dispute resolution services.

We also note ASBFEO has previously proposed the introduction of a Federal Small Business Codes List in the Federal Family and Circuit Court of Australia, as a means of providing a low-cost alternative for small businesses and regulators to seek redress and timely resolutions.

Disputes heard in the list would be capped at \$1 million (award or fine) and delivered via online hearings, significantly reducing the time and cost burden on a small business. The list would operate as a 'no costs' jurisdiction, include compulsory pre-hearing ADR and Court-appointed experts, and exercise discretion in dismissing frivolous or vexatious claims. Such a reform would reduce barriers to accessing affordable and timely justice.

We express our support for tech-enabled, confidential dispute resolution initiatives which allow parties to be heard and to reach an acceptable resolution in a timely manner.

We encourage the ACCC to ensure the designated complaints function allows parties to be referred to appropriate cost-effective dispute resolution pathways utilising a combination of online, hybrid and face-to-face conciliation, mediation, and arbitration.

## **CONCLUSION**

In conclusion, the ARA welcomes the creation of a formal mechanism to enable designated consumer and small business advocates to submit complaints to the ACCC for a response, where there is evidence of significant or systemic market issues.

Australian retailers welcome feedback to ensure continuous improvement and seek to resolve issues in a timely manner. Retailers have limited time and financial resources and welcome increased referrals to timely, cost-effective dispute resolution pathways, along with additional guidance materials.

We are therefore in favour of a designated complaints function to streamline complaint-handling; however we seek further clarity with respect to issues of concern to our members.

We seek more detailed information about how the designated complaints function will operate in practical terms, as well as notification of the approved designated complainants and the measures used to assess their credibility and effectiveness. We also seek confirmation that a transition period will occur.

We believe the complaints function will provide an opportunity for the ACCC to better engage with consumers and small businesses, including retailers. We trust it will provide an opportunity for the ACCC to engage meaningfully and respectfully with all retailers to ensure ongoing education, updating of compliance processes, increased customer satisfaction, and better outcomes for the Australian retail industry.

We trust the ACCC's Consumer Consultative Committee and Product Safety Consultative Committee will continue. We seek clarity with respect to how these committees will work with the designated complaints function.

We look forward to the preparation of further guidance materials by the ACCC to address emerging competition and consumer issues after the implementation of the new complaints function. We seek the opportunity to review draft guidance materials and provide feedback to ensure they are appropriate for the retail industry.

We note the consultation period was insufficient as it covered the Christmas holiday period with many members away. We therefore wish to be involved in further consultations with respect to the implementation and impact of the complaints function. We seek the opportunity to attend an in person or online meeting to discuss the reforms on behalf of our members.

Thank you again for the opportunity to provide comments with respect to this consultation. Any queries in relation to this submission can be directed to our policy team at [policy@retail.org.au](mailto:policy@retail.org.au).