

4 January 2024

The Director
Consumer Policy Unit
Market Conduct and Digital Division
The Treasury

By email: consumerlaw@treasury.gov.au

Re: Treasury Laws Amendment (Measures for Consultation) Bill 2023: ACCC Designated Complaints Function

Dear Sir or Madam

Introduction

The Australian Toy Association (ATA) is an industry association representing and servicing suppliers of products for children and family leisure, learning and entertainment. We have approximately 300 members that together represent 90% of the industry and \$2.4b in annual retail sales.

The ATA is a strong proponent of the safety of toys and other products. It is a key function of our association to provide members with information to facilitate the supply of product that is both safe and compliant with any applicable regulations. We also work both locally and nationally on the development of safety standards for products sold by members.

Feedback

1. Consultation Generally

While we understand that the implementation of a 'Super Complaint' function was an election commitment of the current Federal Government, we submit that the implementation of actual legislation should follow due process, including a review of the issue to be resolved, the existing mechanisms and the potential impacts of the proposal. It should also give the opportunity for reasonable consultation.

We don't see any of this evaluation in the explanatory document and we submit that a consultation over the holiday period does not provide an appropriate opportunity for industry associations to consult with their members and provide considered feedback.

2. Exposure Draft

As mentioned, we haven't had the opportunity to properly get the views of our membership, so the concerns expressed below are 'in principle'.

We are concerned that the proposed legislation gives substantial power and authority to a set of parties, (Designated Complainant's), without any mitigating or balancing controls such as for example, a legislated right of response (depending on the issue being complained about).

We are concerned that the proposed legislation does not take into account the existing mechanisms that the ACCC has in place to manage the situations that may have been anticipated in the proposing of the legislation. These mechanisms include the Consumer Consultative Committee and the Product Safety Consultative Committee, among others. It is hard to be certain on this as no examples are given of failures that would create the need for such Designated Complainants. However, we believe that the bodies that are likely to be named as Designated Complainants are already represented on one or more of these committees and already have ready access to directly discuss issues with the relevant ACCC Departments.

We are concerned that the proposed legislation creates additional burden for the ACCC and that this will cause other more beneficial work to be delayed or cancelled. The ACCC have already

identified a lack of resource as the reason for not participating in the development of certain standards that are referenced in legislation. There is also outstanding work for Treasury to simplify the process for the creation and updating of mandatory standards. We believe that either of these would have more benefits for competition and consumer wellbeing than the proposed legislation.

We are concerned that the proposed legislation will cause the ACCC to pay less attention to complaints made by actual consumers, whether due to reduced resource availability or due to the relative importance ascribed by the legislation to Designated Complaints. In our experience, the bodies that may be nominated as Designated Complainants are often businesses with their own agendas and are likely to be biased in what they see as a problem and how they present issues. They may therefore not truly represent consumers actual concerns or interests.

3. Further Engagement

The ATA would welcome further engagement with Treasury to better understand the intended outcomes of the proposal and how it might be implemented if it makes sense to do so.

Yours sincerely

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ATA Compliance

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