
TREASURY LAWS AMENDMENT (MEASURES FOR FUTURE BILLS) BILL
2023: ACCC DESIGNATED COMPLAINTS FUNCTION

EXPOSURE DRAFT EXPLANATORY MATERIALS

Table of Contents

Glossary.....	1
Chapter 1: Designated Complaints.....	3



Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

Abbreviation	Definition
ACCC	Australian Competition and Consumer Commission
ACL	Australian Consumer Law, as set out in Schedule 2 of the <i>Competition and Consumer Act 2010</i>
Bill	Treasury Laws Amendment (Measures for Future Bills) Bill 2023: ACCC Designated Complaints Function
Act	<i>Competition and Consumer Act 2010</i>

Chapter 1: Designated Complaints

Table of Contents:

Outline of chapter	3
Context of amendments.....	4
Detailed explanation of new law	5
Designated complainants.....	5
Designated complaints.....	12
Transparency	22
Delegation.....	24
Commencement provisions	24

Outline of chapter

- 1.1 Schedule [x] to the Bill amends the Act to introduce a new designated complaints function that requires the ACCC to assess, and respond to, designated complaints submitted by designated complainants.
- 1.2 Designated complainants, approved by the Minister, are empowered to submit designated complaints to the ACCC. In deciding whether to approve an applicant as a designated complainant, the Minister must have regard to:
 - the applicant’s experience and ability in representing the interests of consumers or small businesses (or both) in Australia in relation to a range of market issues that affect them; and
 - the extent to which the applicant will act with integrity as a complainant.
- 1.3 The ACCC is required to assess a designated complaint and notify the designated complainant that submitted the complaint of the action they intend to take (if any) in relation to the complaint, within 90 days. The ACCC may notify a designated complainant that they will act if they are satisfied that a designated complaint:
 - relates to a significant or systemic market issue that affects consumers or small businesses in Australia (or both); and

- either relates to a potential breach of the Act or to one or more of the ACCC's powers or functions under the Act.
- 1.4 If the ACCC proposes to act on a designated complaint, the ACCC must use best endeavours to commence that action as soon as practicable and within a maximum of 6 months. Any response by the ACCC will be based on their existing powers and functions under the Act and may include education, research, and compliance and enforcement functions. The Minister and the ACCC must publish certain information on the Department's website or the ACCC's website respectively to ensure transparency in relation to the designated complaints function.
- 1.5 All references in this Chapter are to the Act unless otherwise stated.

Context of amendments

- 1.6 Schedule [x] to the Bill implements one part of the Government's Better Competition election commitment to establish a 'super complaints' function (now referred to as 'designated complaints' function) within the ACCC.
- 1.7 The ACCC administers and enforces the Act to protect consumers and promote competition in markets and fair trading by businesses.
- 1.8 Anyone can submit a complaint in a report to the ACCC. The ACCC receives a large number of reports each year and must be selective in the matters it investigates. When deciding whether to pursue a matter, the ACCC will prioritise issues which fall within its current enforcement and compliance priority areas, which are reviewed each year. Priorities are determined following external consultation and an assessment of existing or emerging issues and their impact on consumer welfare and the competitive process.
- 1.9 Small business and consumer groups have also expressed the need for a complaints framework that would allow certain designated organisations to bring evidence of significant or systemic market issues to the ACCC, and require it to publicly respond to the complaints in a timely way. The designated complaints function in Schedule [x] to the Bill is designed to address this by:
- providing the framework to empower designated complainants (such as consumer and small business advocate organisations) to submit designated complaints to the ACCC. These complaints must relate to a significant or systemic market issue that affects consumers or small businesses in Australia, and either a potential breach of the Act or the ACCC's powers or functions under the Act;
 - requiring the ACCC to prioritise and assess such complaints, respond in a timely manner, and act where appropriate; and

- requiring the ACCC to publish certain information on such complaints on their website to ensure transparency.
- 1.10 The Minister may cap both the number of designated complainants and the number of designated complaints that may be submitted in a given period. This will ensure that the ACCC has adequate resources to progress designated complaints alongside their identified enforcement priorities, while also encouraging designated complainants to consider the type and quality of proposed designated complaints ahead of lodgement.
- 1.11 The designated complaints function draws on the United Kingdom’s ‘super complaints’ framework, which has been a feature of the United Kingdom’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’.

Detailed explanation of new law

- 1.12 Schedule [x] to the Bill amends the Act to insert new Part XIE. Part XIE introduces a new designated complaints function that requires the ACCC to assess, and respond to, designated complaints submitted by designated complainants.

[Schedule [x], item 2, Part XIE]

Designated complainants

- 1.13 Certain entities may apply to the Minister to be approved as designated complainants. Designated complainant are empowered to make designated complaints to the ACCC.

[Schedule [x], item 2, Division 3]

Application

- 1.14 A designated complainant is an entity that has an approval in force under new Part XIE. A range of entities may apply to the Minister to be approved as a designated complainant, including a corporation, an individual or an unincorporated association. This provides an opportunity for entities that represent the interests of consumers or small businesses in Australia to become

designated complainants, despite corporate structure. This includes consumer and small business advocacy organisations.

- 1.15 A State or a Territory cannot apply to become a designated complainant because pathways already exist for a State or a Territory to raise systemic or significant market issues of concern.

[Schedule [x], item 2, section 154ZE definition of ‘designated complainant’ and ‘entity’, and subsections 154ZP(1) and (2)]

- 1.16 An application to be approved as a designated complainant must comply with certain requirements. This is to ensure the Minister can process applications efficiently, and with sufficient information to make an informed decision. An application to be a designated complainant must:

- be in writing;
- if the Minister has approved a manner for making an application—be made in the approved manner (such as via a website);
- if the Minister has approved a form for making the application—be made in the approved form, include the information required by the form and be accompanied by any documents required by the form;
- be made in the appropriate time period, if the Minister has determined a time period in which applications may be made by legislative instrument.

[Schedule [x], item 2, subsection 154ZP(3)]

- 1.17 The Minister may determine, by legislative instrument, the period of time in which an application to become a designated complainant may be made. This will allow the Minister to seek applications by a specific date, and select the most suitable and qualified applicants. The ability for the Minister to determine the period of time in which an application is made is appropriate as it may need to change quickly to accommodate the operational requirements of the designated complaints function.

Example 1.1

The Minister determines that entities can only apply to become a designated complainant between April and June each calendar year. If an entity submits an application in July, the Minister is not required to assess it.

[Schedule [x], item 2, subsection 154ZP(4)]

- 1.18 Applicants can withdraw an application to become a designated complainant for any reason before the Minister makes a decision. If an application is withdrawn, it is taken to have never been made and the Minister is not required to take further action.

[Schedule [x], item 2, subsections 154ZP(5) and (6)]

Approvals

- 1.19 The Minister may approve an entity as a designated complainant, in writing, if the Minister is satisfied that it is appropriate to grant the approval.

[Schedule [x], item 2, paragraph 154ZQ(1)(b)]

Compulsory approval criteria

- 1.20 For the purposes of being satisfied that it is appropriate to grant an approval, the Minister must have regard to certain compulsory criteria. The compulsory criteria are:

- the experience and ability of the applicant in representing the interests of consumers or small business (or both) in Australia in relation to a range of market issues that affect them;
- the likely integrity of the applicant in their role as a designated complainant, if approved; and
- any matter specified in a determination.

- 1.21 The compulsory approval criteria are intended to ensure that entities are only approved as designated complainants if they will act with integrity and are capable of genuinely representing the interests of consumers or small businesses (or both) in Australia. Experience and ability representing the interests of consumers or small businesses in relation to a range of market issues may be indicated by:

- ongoing connection with consumers or small businesses (or both) (including regular contact or communication with the consumers and/or small businesses the applicant represents);
- advocacy on behalf of consumers or small businesses (or both), particularly where the applicant has ongoing experience speaking or advocating on behalf of that group;
- access to or the ability to obtain timely, good quality, relevant data about the interests of Australian consumers or small businesses (or both) from the group it represents; and
- ability to research, prepare, and submit complaints about market issues based on good quality intelligence that convey the interests of consumers and small businesses in Australia.

- 1.22 The likely integrity of the applicant in their role as a designated complainant may be indicated by:

- independence from other interests (such as commercial interests) that may negatively impact the applicant's ability to genuinely represent the interests of consumers or small businesses (or both); and

- any governance and accountability arrangements that are (or would be) in place to ensure that the entity can be relied on to act independently and with integrity.

1.23 The Minister may determine, by legislative instrument, additional compulsory criteria. It is appropriate for the Minister to have the power to determine additional compulsory criteria as such criteria may need to change quickly to ensure high standards are maintained for designated complainants and the continued integrity of the designated complaints function.

[Schedule [x], item 2, subsections 154ZQ(1) and (2) and paragraph 154ZQ(4)(a)]

Discretionary approval criteria

1.24 For the purposes of being satisfied that it is appropriate to grant an approval, in addition to the mandatory approval criteria, the Minister may also have regard to any other matter the Minister considers relevant, and any matter specified in a determination. These matters are discretionary approval criteria.

[Schedule [x], item 2, subsections 154ZQ(3)]

1.25 The Minister may determine, by legislative instrument, additional discretionary approval criteria. It is appropriate for the Minister to have the power to determine additional discretionary criteria as such criteria may need to change quickly to ensure high standards are maintained for designated complainants and the continued integrity of the designated complaints function.

[Schedule [x], item 2, paragraph 154ZQ(4)(b)]

Limit on number of designated complainants

1.26 The Minister may determine, by legislative instrument, the maximum number of designated complainants that may be approved. The Minister must not approve an otherwise meritorious applicant if granting approval would exceed the limit on the number of designated complainants.

1.27 Limiting the number of designated complaints ensures that there are appropriate resources for the ACCC to respond to designated complaints submitted by a designated complainant alongside their identified enforcement priorities.

1.28 It is appropriate for the maximum number of designated complainants to be prescribed in a legislative instrument as it may need to change quickly in response to ACCC resourcing constraints or priorities.

[Schedule [x], item 2, subsections 154ZQ(5) and 154ZQ(6)]

Example 1.2

The Minister determines that a maximum of five designated complainants will be approved in 2024. Five designated complainants had already been approved in 2024. If another entity submits an application to become a designated complainant in 2024, it must not be approved by the Minister.

Conditional approvals

1.29 Approval of a designated complainant may be conditional or unconditional. The Minister may only grant a conditional approval if:

- the Minister has given the entity a notice setting out the proposed conditions; and
- 14 business days have passed since the notice was given.

1.30 This ensures the applicant is afforded procedural fairness and has the opportunity to respond to proposed conditions prior to the Minister deciding whether to grant conditional approval as a designated complainant.

1.31 The Minister must also provide a copy of the notice setting out the proposed conditions to the ACCC as soon as practicable.

[Schedule [x], item 2, subsections 154ZQ(1) and 154ZR(3) and (4)]

1.32 An approval can only be subject to conditions if the Minister is satisfied that the conditions are appropriate. For the purposes of being satisfied that conditions are appropriate, the Minister must have regard to the compulsory approval criteria and may have regard to the discretionary approval criteria described above (see paragraphs 1.20 to 1.25 of this document).

[Schedule [x], item 2, subsections 154ZQ(1) and (2) and 154ZR(1) and (2)]

1.33 Imposing conditions on approval provides the opportunity for the Minister to mitigate any potential or actual risk associated with the approval of an applicant as a designated complainant. Conditions may, for example, be used to ensure a designated complainant meets the standards required of a designated complainant on an ongoing basis. This will ensure the designated complaint function operates with integrity.

Example 1.3

An approval to become a designated complainant may be subject to a condition that the approved entity remain solvent while a designated complainant and advise the Minister in writing if it is likely to become insolvent. Conditions relating to the solvency of a designated complainant are relevant to the designated complainant being able to pay wages or to otherwise undertake activity associated with:

- representing the interests of consumers or small businesses; and
- preparing and submitting designated complaints.

Notice of decision

1.34 The Minister is required to give an applicant notice of the outcome of an application to become a designated complainant. This applies whether or not the approval is granted, to ensure transparency in the decision-making process. If the Minister approves an application, the Minister must give a copy of the approval to the applicant. The approval must set out:

- the name of the designated complainant;
- the date (if any) on which the approval ceases to be in force; and
- the conditions (if any) to which the approval is subject.

1.35 The Minister must also give a copy of the approval to the ACCC and publish the name of the approved entity (the designated complainant) on the Department's website as soon as practicable after providing the approval. This creates public transparency and ensures the designated complaints function operates smoothly.

[Schedule [x], item 2, sections 154ZS and 154ZT]

Variation and revocation of approval

1.36 The Minister may vary or revoke the approval of a designated complainant on application by a designated complainant or on the Minister's own initiative.

Variation or revocation on application

1.37 A designated complainant may apply to the Minister to have their approval varied or revoked. The application must be in writing and in the approved form. An applicant can withdraw their application to vary or revoke approval for any reason before the Minister makes a decision. If an application is withdrawn, it is taken to have never been made and the Minister is not required to take further action.

[Schedule [x], item 2, section 154ZU]

Variation or revocation initiated by Minister

1.38 The Minister may vary or revoke an approval on the Minister's own initiative. However, the Minister must first give the designated complainant notice of the proposed variation or revocation, and 14-business days must pass between the

notice being given and the variation or revocation taking effect. This offers the designated complainant an appropriate opportunity to respond to a proposed variation or revocation prior to the Minister's final decision and ensures procedural fairness. The notice must set out:

- the proposed variation or revocation;
- the reasons for the proposed variation or revocation;
- the day on which the proposed variation or revocation is to take effect.

1.39 Minor and technical variations do not require notice or a 14-business day opportunity to respond before the variation takes effect.

[Schedule [x], item 2, subsections 154ZV(2), (5) and (6)] and paragraphs 154ZV(1)(a) and (b)]

Criteria for variation or revocation

1.40 The Minister may vary or revoke an approval, in writing, (irrespective of whether initiated by the Minister or on application from a designated complainant) if the Minister is satisfied it is appropriate to grant the variation or revocation. For the purposes of being satisfied that it is appropriate to grant the exemption, the Minister may have regard to:

- the compulsory approval criteria (see paragraphs 1.20 to 1.23 of this document);
- the discretionary approval criteria (see paragraphs 1.24 to 1.25 of this document);
- whether the designated complainant has contravened, or is contravening, a condition to which the approval is subject;
- any matter specified in a determination; and
- any other matter the Minister considers relevant.

1.41 The Minister may, by legislative instrument, determine additional matters to which the Minister may have regard for the purposes outlined in the paragraph 1.40 above. It is appropriate for the Minister to have the power to determine additional matters as such matters may need to change quickly to ensure high standards are maintained for designated complainants and the continued integrity of the designated complaints function.

[Schedule [x], item 2, subsections 154ZV(3) and (4) and paragraph 154ZV(1)(c)]

Notice of decision

- 1.42 If the Minister decides to vary or revoke an approval on application from the relevant designated complainant or on the Minister’s own initiative, the Minister must give the complainant notice of the decision and a copy of the variation or revocation. The variation or revocation must specify the details of the variation or revocation, including:
- the day on which the decision to make the revocation or variation was made;
 - the day on which the variation or revocation takes effect;
 - in the case of a variation that changes or removes the date on which the approval ceases to be in force—that change or removal; and
 - in the case of a variation that changes or removes conditions to which the approval is subject—that change or removal.
- 1.43 If the Minister decides not to vary or revoke an approval on application from the designated complainant, the Minister must provide notice of that decision.
- 1.44 In circumstances where the Minister decides to vary or revoke an application, the Minister must also give a copy of the notice of the decision to the ACCC and in the case of revocation, publish that fact on the Department’s website as soon as practicable after the varying or revoking the approval. This creates public transparency and ensures published information is kept up to date.

[Schedule [x], item 2, sections 154ZW and 154ZX]

Designated complaints

- 1.45 Designated Complaints are complaints submitted by a designated complainant to the ACCC under section 154ZF of the Act.
- [Schedule [x], item 1, definition of ‘designated complaint’ in section 4(1) and item 2, subsection 154ZF(1)]*
- 1.46 Designated complaints have a different status to general complaints detailed in reports submitted to the ACCC. While anyone in Australia may submit a complaint in a report to the ACCC, only a designated complainant approved by the Minister may submit a designated complaint.
- 1.47 The ACCC may assess a report and decide whether to publish details of any actions it has taken in response to a general complaint. By contrast, the ACCC must assess a designated complaint and publish certain information on their website in relation to the complaint. A report will generally detail an individual consumer’s or business’s concern, whereas a designated complaint is intended to be representative in nature and concern a systemic or significant market

issue affecting consumers or small businesses in Australia, in relation to which the ACCC may take action.

Submission of designated complaint

- 1.48 For a complaint to be considered a designated complaint it must be submitted by a designated complainant to the ACCC in accordance with certain requirements to ensure the ACCC can process complaints efficiently. The complaint must:
- be in writing;
 - if the ACCC has approved a manner for making an application—be made in the approved manner; and
 - if the ACCC has approved a form for making the application—be made in the approved form, include the information required by the form and be accompanied by any documents required by the form. In accordance with section 25C of the *Acts Interpretation Act 1901*, substantial compliance with the form is sufficient.
- 1.49 A complaint must also comply with any requirements determined by the Minister in a legislative instrument relating to the number and type of complaints that may be submitted to the ACCC within a certain time period. This ensures the number of designated complaints that the ACCC must assess can be adjusted in light of ACCC resources.

Example 1.4

The Minister determines, by legislative instrument, a maximum of two complaints may be made per designated complainant within a 12-month period. If a designated complainant submitted a third complaint to the ACCC during that time, it would not comply with this requirement as it would exceed the maximum number specified in the determination.

- 1.50 A complaint is a ‘designated complaint’ from the day it meets the above requirements.

[Schedule [x], item 2, section 154ZF]

Assessment of designated complaint

- 1.51 The ACCC must assess a designated complaint (that is, a complaint that meets submission requirements described in paragraph 1.48 to paragraph 1.49 above). The ACCC must then provide the designated complainant that submitted the complaint with a notice stating the outcome of that assessment within 90 days

of receiving the complaint. This 90 day period ensures a timely response to the designated complainant.

- 1.52 There are two possible outcomes of the assessment. The ACCC must provide the relevant designated complainant with either:
- a notice that they will take no further action to deal with the designated complaint (a ‘no further action notice’); or
 - a notice that they will take further action to deal with the complaint (a ‘further action notice’).
- 1.53 The requirement to provide a notice ensures the designated complainant receives a timely response following their submission of a designated complaint. The ACCC must publish the notice on the ACCC website to ensure public transparency in relation to the designated complaints function (see paragraphs 1.100 to 1.103 of this document).

[Schedule [x], item 2, subsection 154ZG(1)]

- 1.54 If a designated complainant submits a designated complaint and ceases to be approved as a designated complainant before the ACCC provides a further action notice or no further action notice, the complaint is taken never to have been made. This means that the ACCC is not required to provide any notice in relation to that designated complaint. A designated complainant may cease to be approved if the Minister revokes a designated complainant’s approval on the Minister’s own initiative, or on application from the complainant (see paragraphs 1.36 to 1.41 of this document).

[Schedule [x], item 2, subsection 154ZG(2)]

No further action on designated complaint

- 1.55 The ACCC must give the designated complainant that submitted a designated complaint a no further action notice in relation to the complaint, if they are not satisfied that the complaint relates to a significant or systemic market issue that affects consumers or small businesses in Australia (or both), and either:
- relates to a potential breach of the Act; or
 - relates to one or more of the ACCC’s powers or functions under the Act
- 1.56 These are the mandatory content requirements for a designated complaint (also see paragraph 1.67 to 1.72 of this document). The ACCC must also consider the mandatory content requirements when deciding whether to issue a further action notice (see paragraphs 1.65 to 1.72 of this document).

[Schedule [x], item 2, subsections 154ZH(1) and (2)]

- 1.57 A no further action notice is only mandatory if a designated complaint does not meet the mandatory content requirements. This is because in such circumstances the subject-matter of the complaint will not relate to a

significant or systemic market issue or will not fall within the ACCC's remit under the Act.

1.58 The ACCC also has the discretion to give a designated complainant a no further action notice in three circumstances.

1.59 First, the ACCC may give a no further action notice if the ACCC is not satisfied that the complaint meets any additional content requirements (beyond the mandatory content requirements) prescribed by legislative instrument made by the Minister.

[Schedule [x], item 2, subsections 154ZH(1) and (3)]

1.60 Second, the ACCC may give a no further action notice if:

- the ACCC has assessed the complaint; and
- the ACCC is satisfied that it is appropriate to take no further action in relation to the complaint; and
- the complaint meets any further requirements prescribed by a legislative instrument made by the Minister for the issue of this notice.

[Schedule [x], item 2, subsections 154ZH(1) and (5)]

1.61 The Minister may determine, by legislative instrument, further requirements for a designated complaint for the purposes mentioned in paragraphs 1.59 and 1.60 above. This is appropriate to ensure the designated complaints function can be responsive to changes in circumstances, such as changes in operational requirements, market conditions and ACCC regulatory procedures.

[Schedule [x], item 2, subsection 154ZH(6)]

1.62 Third, the ACCC may give a no further action notice if the ACCC is satisfied that the subject matter of the complaint is, or is part of, a matter into which a Royal Commission, coronial inquiry, coronial investigation or coronial inquest is inquiring or has inquired within the past 2 years.

1.63 It is appropriate for the ACCC to have the discretion to take no action on a subject that is before a Royal Commission, coronial inquiry, coronial investigation, or coronial inquest to avoid unnecessary duplication of efforts.

[Schedule [x], item 2, paragraph 154ZH(4)]

1.64 Independent merits review is not available in respect of a decision made by the ACCC about whether or not to give a no further action notice. A decision about whether to issue a no further action notice is preliminary or procedural in nature and is part of a required administrative assessment of the designated complaint. This decision is an administrative step assisting the ACCC to progress its action in response to the designated complaint.

Further action on designated complaint

- 1.65 The ACCC may give a designated complainant a further action notice in relation to a designated complaint if the ACCC is satisfied that the complaint relates to a significant or systemic market issue that affects consumers or small businesses in Australia (or both) and either:
- relates to a potential breach of the Act; or
 - relates to one or more of the ACCC's powers or functions under the Act. (see paragraphs 1.71 to 1.72 of this document).

Schedule [x], item 2, subsection 154ZK(1)

- 1.66 These are the mandatory content requirements for a designated complaint (also see paragraph 1.67 to 1.72 of this document) . The Minister must issue a no further action notice if the mandatory content requirements are not met (see paragraphs 1.55 to 1.57 of this document).

Mandatory content requirements

- 1.67 In considering the kind of notice to issue (that is, a no-further action notice or a further action notice) in relation to a designated complaint, the ACCC must consider whether the complaint deals with a systemic market issue or a significant market issue that affects either consumers or small businesses in Australia (or both) and whether the subject-matter of a designated complaint either relates to a potential breach of the Act or relates to one or more of the ACCC's powers or functions under the Act.

Significant market issue

- 1.68 A significant market issue affecting consumers or small businesses is intended to capture market issues that are important or serious in their impact on consumers or small businesses or require urgent attention to avoid harm to Australian consumers or small businesses. For example, conduct by a supplier that is likely to substantially, negatively impact a sizeable group of consumers or small businesses.
- 1.69 Market has the same meaning as is set out in section 4E of the Act.

Systemic market issue

- 1.70 A systemic market issue affecting consumers or small businesses is intended to capture market issues reaching and affecting a large group of Australian consumers or small businesses (or both). A systemic market issue may cause significant disruption or cost to Australian consumers or small businesses and may include the following features:

- one or more large entities, where the large size of the entity or entities may make it more likely that the issues will have a widespread impact on Australian consumers or small businesses;
- interconnection between one entity or a part of the market and others, such that if there are adverse outcomes, further negative consequences may flow from that connection;
- where the market issue has the potential to adversely impact the Australian economy.

[Schedule [x], item 2, paragraphs 154ZH(2)(a) and 154ZK(1)(a)]

Breach of Act or within ACCC powers and functions under Act

- 1.71 In addition to considering whether a designated complaint relates to a significant or systemic issue, the ACCC is required to consider whether the subject-matter of a complaint relates to either a potential breach of the Act or to one or more of the ACCC's powers or functions under the Act.
- 1.72 This is intended to ensure that the ACCC only propose action in response to a designated complaint in circumstances where the ACCC has appropriate powers and functions under the Act to adequately respond to the complaint. The ACCC has various compliance and enforcement powers that may be exercised in relation to a potential breach of the Act. The ACCC also has powers and functions that may be exercised irrespective of whether a complaint relates to a breach, such as the ACCC's powers and function in relation to the dissemination of information, law reform and research.

Example 1.5

If the ACCC is satisfied that a designated complaint relates to a false or misleading representation about goods or services, the complaint would relate to a potential breach of section 29 of the ACL. The requirement that a designated complaint relate to a potential breach of the Act is met.

Example 1.6

If the ACCC is satisfied that a designated complaint relates to consumers' rights when traders engage in certain types of conduct, the ACCC would have the discretion to undertake research into the issue and produce guidance for consumers on rights and obligations under section 28 of the Act. The requirement that a designated complaint relate to one of the functions or powers of the ACCC under the Act is met.

[Schedule [x], item 2, paragraphs 154ZH(2)(b) and 154ZK(1)(b)]

Contents of notice

No further action notice

- 1.73 If the ACCC issues a no further action notice to a designated complainant (under section 154ZH), it must include:
- a summary of the complaint;
 - the subsection that applies (that is, whether the ACCC is relying on:
 - subsection 154ZH(2) (designated complaint does not meet mandatory content requirements);
 - subsection 154ZH(3) (complaint does not meet other content requirements);
 - subsection 154ZH(4) (subject matter of complaint is subject of other inquiry); or
 - subsection 154ZH(5) (appropriate to take no further action on complaint); and
 - the reasons for the ACCC’s decision.
- 1.74 This ensures the designated complainant is aware of the outcome of the ACCC’s assessment of their designated complaint, ensures the complaint is correctly identified, clarifies the basis upon which the no further notice has been given and informs the complainant why the ACCC has decided not to take action.
- 1.75 The ACCC must publish the notice on their website to promote transparency and accountability in relation to the designated complaints function (see paragraphs 1.100 to 1.103 of this document).

[Schedule [x], item 2, section 154ZJ]

Further action notice

- 1.76 If the ACCC issues a further action notice to a designated complainant (under section 154ZK), it must include the actions the ACCC proposes to take in response to the complaint.
- 1.77 This ensures the designated complainant is aware of the outcome of the ACCC’s initial assessment of their designated complaint and provides the complainant with information about the ACCC’s proposed response to the complaint.
- 1.78 The ACCC retains existing powers and functions under the Act in relation to designated complaints. The ACCC’s powers and functions, and therefore the action the ACCC proposes to take, will depend on the nature and subject matter of the designated complaint. For example, if a designated complaint relates to a matter affecting the interests of consumers that is within the power

of the Commonwealth Parliament to make laws, the ACCC will have the power to conduct research in accordance with section 28 of the Act.

- 1.79 The ACCC must publish a further action notice on their website to promote transparency and accountability in relation to the designated complaints function (see paragraphs 1.100 to 1.103 of this document).

[Schedule [x], item 2, subsection 154ZK(2)]

Timeframe for action by the ACCC

- 1.80 If the ACCC issues a further action notice to a designated complainant in relation to a designated complaint, the ACCC must use its best endeavours to commence those actions as soon as practicable after giving the notice, and within a maximum of 6 months after giving the notice.
- 1.81 The mandatory time frame for commencement of the proposed action will ensure that designated complaints are given appropriate priority by the ACCC and progressed within a reasonable timeframe.
- 1.82 Once the ACCC has completed the actions stated in a further action notice, the ACCC must use its best endeavours to notify the entity that submitted the complaint of completion. This is the case even if the approval of that entity as a designated complainant is no longer in force. The ACCC must publish the notice on their website to promote transparency and accountability in relation to the designated complaints function (see paragraphs 1.100 to 1.103 of this document).

[Schedule [x], item 2, subsection 154ZK(3)]

- 1.83 The ACCC is not required to:
- use its best endeavours to commence the actions stated in a further action notice as soon as practicable after giving the notice to the designated complainant;
 - start the actions within 6 months of giving the notice to the complainant; or
 - inform the complainant that actions have been completed;
- if the ACCC is satisfied that circumstances determined by the Minister in a legislative instrument exist.
- 1.84 The Minister may determine, by legislative instrument, circumstances for this purpose. This may include circumstances that relate to the nature or scope of the designated complaint or to an administrative circumstance affecting the capability or resourcing of the ACCC. It is necessary to allow the Minister to determine circumstances in a legislative instrument to ensure updates can be made quickly to account for market changes and ensure the integrity of the designated complaints function.

- 1.85 If the ACCC is satisfied that circumstances determined by the Minister exist, the ACCC must use its best endeavours to notify the entity that made the designated complaint that it is not taking further action on the complaint. The ACCC must also publish this notice on their website to ensure transparency in relation to the designated complaints function (see paragraphs 1.100 to 1.103 of this document).

[Schedule [x], item 2 subsections 154ZK(4), 154ZK(5) and (6)]

Replacement notice

- 1.86 If the ACCC issues a further action notice in relation to a designated complaint (under subsection 154ZK(1)), the ACCC may give the designated complainant that made the complaint a replacement notice.
- 1.87 A replacement notice may be issued in two circumstances.
- 1.88 First, the ACCC may issue a replacement notice, replacing the initial further action notice and any actions proposed in that notice, if the ACCC considers it appropriate. This may occur where one or more of the proposed actions set out in the further action notice are no longer appropriate due to a material change in circumstances.

Example 1.7

The ACCC initially propose to research the subject matter of a designated complaint in a further action notice. Research reveals that there has actually been a breach of the Act. The ACCC issues a replacement notice (that is, a replacement further action notice) detailing specific compliance and enforcement actions that the ACCC intends to take.

- 1.89 Such a replacement notice must set out the actions the ACCC proposes to take in response to the complaint.
- 1.90 The replacement notice is taken to be the further action notice from the day it is given and will stand in the place of the earlier further action notice given under section 154ZK.
- 1.91 After a replacement notice is given to a designated complainant, the ACCC is required to start taking the action stated in that document as soon as practicable, and within 6 months of the initial further action notice being issued.
- 1.92 Second, the ACCC may issue a replacement notice that is, in effect, a no further action notice replacing the initial further action notice, if the subject matter of the complaint is the subject of a Royal Commission, coronial inquiry, coronial investigation or coronial inquest. Such a replacement notice must set out:

- a summary of the complaint;
- the subsection that applies (that is, subsection 154ZH(4)); and
- the reasons for the ACCC's decision.

1.93 It is appropriate for the ACCC to have the discretion to take no further action on a designated complaint where the subject of the complaint is the subject of another inquiry, to avoid unnecessary duplication of efforts. The replacement notice is intended to ensure that the ACCC is not obliged to take further action in relation to a designated complaint from the day the replacement notice is given.

Example 1.8

The ACCC receive a designated complaint and the ACCC's assessment of the complaint resulted in the issue of a further action notice to the designated complainant. Subsequently, a Royal Commission is announced. The subject-matter of the designated complaint forms part of the subject-matter to be considered by that Royal Commission. The ACCC learn of the new Royal Commission and reconsiders the actions it proposed to take in response to the designated complaint. It decides further or different action is now appropriate in the new circumstances. The ACCC issues a replacement notice, giving updated information about the actions the ACCC proposes to take.

1.94 The replacement notice must also be published on the ACCC's website to ensure transparency in relation to the designated complaints function (see paragraphs 1.100 to 1.103 of this document).

[Schedule [x], item 2, sections 154ZL, 154ZK, 154ZH]

Withdrawal of complaint

1.95 If an entity has made a designated complaint to the ACCC the entity may withdraw the complaint in writing at any time before the ACCC issues a no further action notice, or notice that the proposed action is complete. This applies even if the entity has ceased to be a designated complainant.

1.96 Following receipt of the written withdrawal from the entity that submitted the designated complaint, the ACCC must notify the entity that their designated complaint has been withdrawn in writing. The ACCC must also publish the withdrawal on their website (see paragraphs 1.100 to 1.103 of this document). This is intended to ensure transparency and accountability in relation to the designated complaints function.

1.97 From the time the ACCC issues the withdrawal notice:

- if the ACCC has not yet given the entity a no further action notice or a further action notice in relation to the withdrawn complaint—the ACCC is not required to give such a notice, or take further action in relation to the complaint; and
- if the ACCC has given the entity a further action notice in relation to the withdrawn complaint—the ACCC is not required to:
 - use its best endeavours to commence the actions stated in a further action notice as soon as practicable after giving the notice to the designated complainant;
 - commence the actions within 6 months of giving the further action notice to the complainant; or
 - inform the complainant that actions have been completed;

1.98 A withdrawn designated complaint continues to be a designated complaint for the purposes of the Act. This means that the withdrawn designated complaint will still count as a complaint for the purposes of any limit on the number of complaints that may be made during a time period pursuant to subsection 154ZF, and relevant annual reporting requirements.

1.99 The ACCC is not required to take further action on the designated complaint that has been withdrawn. The ACCC is still permitted to investigate the complaint under the Act, but it is not subject to the designated complaints function under new Part XIE.

[Schedule [x], item 2, section 154ZM]

Transparency

Publication

1.100 The ACCC is required to publish certain information given to a designated complainant to ensure transparency and accountability in relation to the designated complaints function. The location of publication must be the ACCC's website. The information required to be published is as follows:

- no further action notices, which detail the reasons why the ACCC will not take further action in relation to a designated complaint;
- further action notices, which detail the ACCC's proposed action in relation to a complaint;
- a notification that action in relation to a complaint is complete;

- a notification that the ACCC is not taking further action, after an initial further action notice is issued;
- a notification that the subject-matter of a complaint is the subject of a Royal commission, coronial inquest, coronial investigation or coronial inquiry;
- a replacement notice, which updates information about a proposed action in an initial further action notice; and
- a notification that a complaint has been withdrawn after an initial further action notice is issued.

[Schedule [x], item 2, subsection 154ZN(1)]

1.101 There are two exceptions to these publication requirements.

1.102 The first exception applies if the ACCC is satisfied that it is not appropriate to publish the information because it is confidential in nature.

1.103 The second exception applies if circumstances prescribed by legislative instrument exist. The Minister may determine, by legislative instrument, circumstances in which specified information does not need to be published for this purpose.

[Schedule [x], item 2, subsections 154ZN(2) and(3)]

ACCC Annual Report

1.104 Section 171 of the Act specifies certain information that must be included in the ACCC's annual report. The amendments will require the ACCC to include additional information in the annual report relating to designated complaints. The annual report must include:

- the number of designated complaints received by the ACCC; and
- the number of designated complaints in respect of which the ACCC did not comply with the requirement to:
 - give a further action notice or no further action notice within 90 days of receiving a complaint (see paragraphs 1.51 of this document); or
 - commence action stated in a further action notice within 6 months.

1.105 As the ACCC's annual report must already include certain information relating to general complaints (that is, complaints that are not designated complaints), the amendments will also clarify that:

- the existing requirement to report on complaints does not include designated complaints; and

- the existing requirement to provide a general summary of the kinds of complaints received by the ACCC and how it dealt with them includes designated complaints.

1.106 The amendments to reporting requirements are intended to ensure transparency and accountability in relation to the designated complaints function.

[Schedule [x], item 3 to 5, section 171]

Delegation

1.107 The Minister may delegate any powers under new Part XIE to the Secretary or an SES employee (including acting SES employees) in the Department, except for the power to make a legislative instrument. The Minister may provide written directions as to how the Secretary and SES employees should exercise that power.

[Schedule [x], item 2, section 154ZY]

Commencement provisions

1.108 The amendments in Schedule [x] commence on 1 May 2024.

[Section [x]]