



Competition and Consumer Amendment (Fair Go for Consumers and Small Business) Bill 2024 [Provisions]

Submission to the Senate Economics Legislation Committee
March 2024

Introduction

The Australian Chamber of Commerce and Industry (ACCI) appreciates the opportunity to comment on the Competition and Consumer Amendment (Fair Go for Consumers and Small Business) Bill 2024 (the Bill). ACCI also provided a submission to the Government's exposure draft of the legislation.

The designated complaints function will enable designated consumer and small business advocates to submit a complaint to the Australian Competition and Consumer Commission (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. This timeframe exists in the United Kingdom (UK) under their 'super complaints' framework which has been a feature of the UK's competition and consumer regulator since 2003.

We note that a designated complaints pathway was a recommendation of the Productivity Commission in 2021.¹

ACCI is supportive of the proposed pathway and the Bill, noting that there is currently no formal or specific mechanism for consumer or small business advocacy groups to lodge complaints, to which the ACCC is obligated to respond.

However, we have concerns about the ability of the Minister to cap the number of complainants, as this may limit the effectiveness of the pathway.

We would also welcome the provision of publicly available operational guidance to enable designated complainants, as well as those wishing to have an issue pursued

¹ Productivity Commission (2021), [Right to Repair](#), Inquiry Report No. 97, 29 October 2023, pgs.30, 101.

through the pathway, to do so effectively and without hindering the resourcing of the ACCC.

While the pathway proposed through the Bill is largely aligned to that of the successful UK model, a review of the pathway should take place within 18 months to ensure it is operating effectively.

Maximum number of designated complainants

Under the legislation, the Minister would have the ability to limit the number of designated complainants through legislative instrument.² This may result in a ‘first in, best dressed’ approach which would not lead to effective outcomes under the pathway.

For example, a limit on the number of designated complainants could mean that only consumer advocacy groups are approved in the first year if the prescribed limit is met before applications from small business advocacy groups are considered.

It is likely that a number of small business advocacy groups will seek to become designated complainants, including ACCI. However, if there are limits on the number of designated complainants this may not be possible, and may result in intent of the pathway being diminished.

Accordingly, the ability for the Minister to limit the number of approved designated complainants should be removed.

To alleviate concerns set out in the Explanatory Memorandum,³ additional resourcing should be allocated to the ACCC to enable complaints to be assessed within the proposed timeframe and to ensure existing regulatory priorities can still be met.

Operational guidance should be made publicly available

Guidance which expressly outlines what is required to become a designated complainant and how to make a complaint will be crucial to ensuring only relevant complaints are made.

We note that the UK has issued guidance for organisations designated under their super complaints pathway and would welcome similar supports being made available in Australia. This was also recommended by the Productivity Commission.⁴

² Competition and Consumer Amendment (Fair Go for Consumers and Small Business) Bill 2024 s154ZQ(5).

³ Competition and Consumer Amendment (Fair Go for Consumers and Small Business) Bill 2024: Explanatory Memorandum, para.1.29.

⁴ Productivity Commission (2021), [Right to Repair](#), Inquiry Report No. 97, 29 October 2023, pg.9.

Guidance should be made publicly available which outlines the requirements for applications to become a designated complainant.

There should also be publicly available guidance that covers the mandatory requirements for a complaint, such as what form the application should be in and what substance would be required.

Further, 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*, so as to avoid designated complaints being made in relation to non-ACL related matters.

The provision of such guidance would serve to alleviate any need for further requests for information, or tedious back and forth before a complaint can be progressed and may also mean the ACCC requires fewer resources than would otherwise be needed to process designated complaints.

Review

While this reform has been modelled on 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 become a designated complainant, the 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 irrelevant, 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 (ASIC).

Next steps

Should you require any additional information or clarification of any points contained within, please contact Natalie Heazlewood, Director – Skills, Employment and Small Business, [REDACTED]

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