

EXPOSURE DRAFT

EXPOSURE DRAFT (06/12/2023)

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Inserts for
**Treasury Laws Amendment (Measures
for Consultation) Bill 2023: ACCC
designated complaints function**

Commencement information

| Column 1 | Column 2 | Column 3 |
|-------------------|---------------------|---------------------|
| Provisions | Commencement | Date/Details |
| 1. Schedule X | 1 May 2024. | 1 May 2024 |

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Schedule X—Designated complaints

Competition and Consumer Act 2010

1 Subsection 4(1)

Insert:

designated complaint: see section 154ZF.

2 After Part XID

Insert:

Part XIE—Designated complaints

Division 1—Preliminary

154ZD Simplified outline of this Part

This Part sets out a scheme under which designated complainants may make designated complaints to the Commission.

The Commission must respond to a designated complaint within 90 days. If the complaint meets certain criteria, the Commission must give the designated complainant a notice that sets out the actions the Commission proposes to take in response to the complaint.

A designated complainant is an entity that the Minister is satisfied (among other things) represents the interests of consumers or small businesses in Australia in relation to a range of market issues that affect them.

A complaint is treated as a designated complaint if the Commission is satisfied (among other things) that it:

- (a) relates to a significant or systemic market issue that affects consumers or small businesses in Australia; and
- (b) relates to a potential breach of this Act or to one or more of the Commission's powers or functions under this Act.

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154ZE Definitions

In this Part:

approval means approval as a designated complainant granted under subsection 154ZQ(1).

designated complainant means an entity that has an approval that is in force.

entity means any of the following:

- (a) a corporation;
- (b) an individual;
- (c) a body corporate;
- (d) a corporation sole;
- (e) a body politic;
- (f) a partnership;
- (g) any other unincorporated association or body of entities;
- (h) a trust.

Division 2—Commission handling of designated complaints

154ZF Designated complaints

- (1) A designated complainant may make a complaint under this section to the Commission.
- (2) The complaint must:
 - (a) be in writing; and
 - (b) if the Commission has approved a manner for making the complaint—be made in that manner; and
 - (c) if the Commission has approved a form for making the complaint:
 - (i) be made in the approved form; and
 - (ii) include the information required by the form; and
 - (iii) be accompanied by any documents required by the form; and
 - (d) meet the requirements (if any) determined under subsection (3).

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1 (3) For the purposes of paragraph (2)(d), the Minister may, by
2 legislative instrument, determine requirements relating to the
3 number and types of designated complaints that a designated
4 complainant may make during a specified period.

5 (4) The complaint is a *designated complaint* starting from the day it
6 meets the requirements mentioned in subsection (2).

7 **154ZG Commission to respond by giving notices**

8 (1) If the Commission receives a designated complaint from a
9 designated complainant, the Commission must, within 90 days,
10 assess the complaint and give the complainant one of the
11 following:

12 (a) a notice under section 154ZH (no further action on
13 complaint);

14 (b) a notice under section 154ZK (further action to deal with
15 complaint).

16 (2) If, before the Commission gives a notice under subsection (1) to
17 the complainant, it ceases to be a designated complainant, for the
18 purposes of subsection (1), the complaint is taken never to have
19 been made.

20 **154ZH Notices—no further action on complaints**

21 (1) The Commission:

22 (a) must give the designated complainant a notice under this
23 section if subsection (2) applies in relation to the complaint;
24 and

25 (b) may give the designated complainant a notice under this
26 section if subsection (3), (4) or (5) applies in relation to the
27 complaint.

28 *Complaint does not meet mandatory content requirements*

29 (2) This subsection applies if the Commission is not satisfied that the
30 complaint:

31 (a) relates to a significant or systemic market issue that affects
32 consumers or small businesses in Australia (or both); and

33 (b) either:

34 (i) relates to a potential breach of this Act; or

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(ii) relates to one or more of the Commission's powers or functions under this Act.

Complaint does not meet other content requirements

- (3) This subsection applies if the Commission is not satisfied that the complaint meets any requirements determined for the purposes of this subsection in a legislative instrument made under subsection (6).

Subject matter of complaint is subject of other inquiry

- (4) This subsection applies if the Commission 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 within the past 2 years inquired.

Appropriate to take no further action on complaint

- (5) This section applies if:
- (a) the Commission has assessed the complaint; and
 - (b) the Commission is satisfied that it is appropriate to take no further action in relation to the complaint; and
 - (c) any further requirements determined for the purposes of this paragraph under subsection (6) are met.

Further requirements

- (6) The Minister may, by legislative instrument, determine:
- (a) further requirements for subsection (3); and
 - (b) further requirements for paragraph (5)(c).

154ZJ Notices—no further action on complaints—content

A notice given under section 154ZH must set out the following:

- (a) a summary of the complaint;
- (b) which of subsections 154ZH(2), (3), (4) and (5) apply in relation to the complaint;
- (c) the reasons for the Commission's decision.

154ZK Notices—further action to deal with complaints

- (1) The Commission may give the designated complainant a notice under this section if the Commission is satisfied that the complaint:

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- 1 (a) relates to a significant or systemic market issue that affects
2 consumers or small businesses in Australia (or both); and
3 (b) either:
4 (i) relates to a potential breach of this Act; or
5 (ii) relates to one or more of the Commission's powers or
6 functions under this Act.
- 7 (2) The notice must set out the actions the Commission proposes to
8 take in response to the complaint.
- 9 (3) The Commission must:
10 (a) use its best endeavours to commence the actions set out in
11 the notice as soon as practicable after giving the notice; and
12 (b) in any case, commence the actions set out in the notice within
13 the period of 6 months after giving the notice; and
14 (c) when the actions set out in the notice have been completed,
15 use its best endeavours to notify this to the entity that made
16 the complaint (even if the entity has ceased to be a designated
17 complainant).
- 18 *Circumstances in which Commission not required to take further*
19 *action*
- 20 (4) However, subsection (3) does not apply if the Commission is
21 satisfied that circumstances determined under subsection (5) apply.
- 22 (5) For the purposes of subsection (4), the Minister may, by legislative
23 instrument, determine circumstances in which subsection (3) does
24 not apply.
- 25 (6) If subsection (4) applies, the Commission must use its best
26 endeavours to notify this to the entity that made the complaint
27 (even if the entity has ceased to be a designated complainant).

28 **154ZL Replacement notices**

- 29 (1) If the Commission has given the designated complainant a notice
30 under section 154ZK, the Commission may replace that notice with
31 either of the following:
32 (a) if the Commission considers it appropriate—a replacement
33 notice under section 154ZK;
34 (b) if subsection 154ZH(4) applies (subject matter of complaint
35 is subject of other inquiry)—a notice under subsection
36 154ZH(1).

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- 1 (2) If paragraph (1)(a) applies:
2 (a) the Commission must give the designated complainant the
3 replacement notice; and
4 (b) the replacement notice must set out the matters specified in
5 subsection 154ZK(2); and
6 (c) the replacement notice is taken to be the notice given to the
7 designated complainant under section 154ZK from the day
8 the replacement notice is given; and
9 (d) treat paragraphs 154ZK(3)(a) and (b) as requiring the
10 Commission to commence the actions set out in the
11 replacement notice as soon as practicable after it is given.

12 Note: If circumstances determined under subsection 154ZK(5) apply,
13 subsection 154ZK(3) (including as modified by paragraph (d) of
14 this subsection) does not apply: see subsection 154ZK(4).

- 15 (3) If paragraph (1)(b) applies:
16 (a) the Commission must give the designated complainant the
17 notice mentioned in that paragraph; and
18 (b) subsection 154ZK(3) ceases to apply in relation to the
19 complaint.

20 **154ZM Withdrawal of complaints**

- 21 (1) If:
22 (a) an entity has made a designated complaint to the
23 Commission; and
24 (b) the Commission has not, in relation to the complaint, given
25 the entity any of the following:
26 (i) a notice under section 154ZH (no further action);
27 (ii) a notification under paragraph 154ZK(3)(c) (further
28 action completed);
29 the entity may, in writing, withdraw the complaint (even if the
30 entity has ceased to be a designated complainant).
- 31 (2) The Commission must notify the entity in writing that the
32 complaint has been withdrawn.
- 33 (3) From the time the notification in subsection (2) is given:
34 (a) if the Commission has not yet given the entity a notice under
35 section 154ZH or 154ZK in relation to the withdrawn
36 complaint—sections 154ZG and 154ZH cease to apply in
37 relation to the withdrawn complaint; and

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- 1 (b) if the Commission has given the entity a notice under section
2 154ZK in relation to the withdrawn complaint—subsection
3 154ZK(3) ceases to apply in relation to the withdrawn
4 complaint.
- 5 (4) The withdrawn complaint continues to be a designated complaint
6 for the purposes of this Act (including subsection 154ZF(3) and
7 paragraph 171(3)(dd)).

8 **154ZN Publication requirements**

- 9 (1) If the Commission gives:
- 10 (a) a notice under subsection 154ZH(1) (no further action on
11 complaint); or
- 12 (b) a notice under subsection 154ZK(1) (further action to deal
13 with complaint); or
- 14 (c) a notification under paragraph 154ZK(3)(c) (actions have
15 been completed); or
- 16 (d) a notification under subsection 154ZK(6) (Commission not
17 required to take further action); or
- 18 (e) a notice under paragraph 154ZL(2)(a) (replacement notice
19 with further action to deal with complaint); or
- 20 (f) a notice under paragraph 154ZL(3)(a) (replacement notice
21 where subject matter of complaint is subject of other
22 inquiry); or
- 23 (g) if the Commission has given a notice under section 154ZK in
24 relation to a designated complaint—a notification under
25 subsection 154ZM(2) that the complaint has been withdrawn;
26 the Commission must, as soon as practicable, publish the notice,
27 notification or replacement notice on its website.
- 28 (2) However, subsection (1) does not require the Commission to
29 publish information if:
- 30 (a) the Commission is satisfied that it is appropriate not to
31 publish the information because of its confidential nature; or
- 32 (b) the Commission is satisfied that a circumstance determined
33 under subsection (3) applies to the publication of the
34 information.
- 35 (3) For the purposes of paragraph (2)(b), the Minister may, by
36 legislative instrument, determine circumstances in which specified
37 information does not need to be published.

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1 Division 3—Designated complainants

2 154ZP Application for approvals as designated complainants

- 3 (1) An entity may apply to the Minister for approval as a designated
4 complainant:
- 5 (2) However, a State or Territory may not apply under subsection (1).
- 6 (3) The application must:
- 7 (a) be in writing; and
- 8 (b) if the Minister has approved a manner for making the
9 application—be made in that manner; and
- 10 (c) be made during a period determined under subsection (4);
11 and
- 12 (d) if the Minister has approved a form:
- 13 (i) be made in the approved form; and
- 14 (ii) include the information required by the form; and
- 15 (iii) be accompanied by any documents required by the
16 form.
- 17 (4) For the purposes of paragraph (3)(c), the Minister may, by
18 legislative instrument, determine periods during which applications
19 may be made.

20 *Withdrawal of application*

- 21 (5) The applicant may, in writing, withdraw the application before the
22 Minister makes a decision.
- 23 (6) If the application is withdrawn, it is taken never to have been
24 made.

25 154ZQ Minister may grant approvals

- 26 (1) The Minister may, in writing, grant the approval if:
- 27 (a) where the approval is to be subject to conditions:
- 28 (i) the Minister has given the entity a notice under
29 subsection 154ZR(3) setting out those conditions; and
- 30 (ii) 14 business days have passed since that notice was
31 given; and
- 32 (b) the Minister is satisfied that it is appropriate to grant the
33 approval.

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Considerations

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- 2 (2) For the purposes of being satisfied that it is appropriate to grant the
- 3 approval, the Minister must have regard to the following matters:
- 4 (a) the experience and ability of the applicant in representing the
- 5 interests of consumers or small businesses (or both) in
- 6 Australia in relation to a range of market issues that affect
- 7 them;
- 8 (b) the extent to which the Minister is satisfied that the applicant
- 9 will, if approved as a designated complainant, act with
- 10 integrity in connection with being a designated complainant;
- 11 (c) any other matter set out in a determination under
- 12 paragraph (4)(a).
- 13 (3) The Minister may also have regard to the following matters:
- 14 (a) any matter set out in a determination under paragraph (4)(b);
- 15 (b) any other matter the Minister considers relevant.
- 16 (4) For the purposes of paragraphs (2)(c) and (3)(a), the Minister may,
- 17 by legislative instrument, determine matters to which the Minister:
- 18 (a) must have regard; or
- 19 (b) may have regard.

Maximum number of designated complainants

- 20
- 21 (5) However, the Minister must not grant the approval if doing so
- 22 would result in the number of designated complainants being
- 23 above the limit determined under subsection (6).
- 24 (6) For the purposes of subsection (5), the Minister may, by legislative
- 25 instrument, determine a limit on the number of designated
- 26 complainants.

154ZR Conditions in approvals

- 27
- 28 (1) The approval may specify that it is subject to conditions if the
- 29 Minister is satisfied that the conditions are appropriate.

Considerations

- 30
- 31 (2) For the purposes of being satisfied that the conditions are
- 32 appropriate, the Minister:
- 33 (a) must have regard to the matters mentioned in subsection
- 34 154ZQ(2); and

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1 (b) may have regard to the matters mentioned in subsection
2 154ZQ(3).

3 *Conditions notices*

4 (3) If the Minister is considering:

5 (a) granting the approval; and

6 (b) specifying that it is subject to conditions;

7 the Minister may give the applicant a notice in writing setting out
8 those conditions.

9 (4) If the Minister gives the applicant a notice under subsection (3), the
10 Minister must give the Commission a copy of the notice as soon as
11 practicable.

12 **154ZS Contents of approvals**

13 The approval must set out the following:

14 (a) the name of the designated complainant;

15 (b) the date (if any) on which the approval ceases to be in force;

16 (c) the conditions (if any) to which the approval is subject.

17 **154ZT Notices of decision on applications for approvals**

18 (1) If the Minister:

19 (a) decides to grant the approval; or

20 (b) decides not to grant the approval;

21 the Minister must give the applicant, as soon as practicable:

22 (c) notice of the decision; and

23 (d) if the decision is to grant the approval—a copy of the
24 approval.

25 (2) As soon as practicable after granting the approval, the Minister
26 must:

27 (a) give a copy of the notice of the decision to the Commission;
28 and

29 (b) publish the name of the entity on the Department's website.

30 **154ZU Variations or revocations of approvals**

31 (1) A designated complainant may apply to the Minister for a variation
32 or revocation of its approval.

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- 1 (2) The application must be:
2 (a) in writing; and
3 (b) in the approved form.

4 *Withdrawal of application*

- 5 (3) The designated complainant may, in writing, withdraw the
6 application if the Minister has not decided it.
- 7 (4) If the designated complainant withdraws the application, it is taken
8 never to have been made.

9 **154ZV Minister may vary or revoke approvals**

- 10 (1) The Minister may, in writing, vary or revoke the approval if:
11 (a) the Minister has given the designated complainant a notice
12 under subsection (5) in relation to the variation or revocation;
13 and
14 (b) 14 business days have passed since that notice was given;
15 and
16 (c) the Minister is satisfied that it is appropriate to make the
17 variation or revocation.
- 18 (2) Paragraphs (1)(a) and (b) do not apply if:
19 (a) the variation or revocation is in accordance with an
20 application under subsection 154ZU(1); or
21 (b) in the case of a variation—the Minister is satisfied that the
22 variation is of a minor or technical nature.

23 *Considerations*

- 24 (3) For the purposes of being satisfied that it is appropriate to make the
25 variation or revocation, the Minister may have regard to the
26 following matters:
27 (a) any matter mentioned in subsection 154ZQ(2) or (3);
28 (b) whether the designated complainant has contravened, or is
29 contravening, a condition to which the approval is subject;
30 (c) any matter specified under subsection (4);
31 (d) any other matter the Minister considers relevant.
- 32 (4) For the purposes of paragraph (3)(c), the Minister may, by
33 legislative instrument, make a determination specifying matters.

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Notice of proposed variation or revocation

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- 2 (5) The Minister may give a designated complainant a notice in
3 writing stating that the Minister is proposing to vary or revoke the
4 designated complainant's approval.
- 5 (6) The notice must set out the following:
6 (a) the proposed variation or revocation;
7 (b) the reasons for the proposed variation or revocation;
8 (c) the day on which the proposed variation or revocation is to
9 take effect (which must be at least 14 business days after the
10 notice is given).

11 **154ZW Contents of variations or revocations of approvals**

12 A variation or revocation made under section 154ZV must specify
13 the details of the variation or revocation, including:

- 14 (a) the day on which the decision to make the variation or
15 revocation was made; and
16 (b) the day on which the variation or revocation takes effect; and
17 (c) in the case of a variation that changes or removes the date on
18 which the approval ceases to be in force—that change or
19 removal; and
20 (d) in the case of a variation that changes or removes conditions
21 to which the approval is subject—that change or removal.

22 **154ZX Notices of decisions on applications for variations or 23 revocations of approvals**

- 24 (1) If the Minister:
25 (a) decides to vary or revoke a designated complainant's
26 approval; or
27 (b) in a case where a designated complainant has applied for a
28 variation or revocation of its approval—decides not to vary
29 or revoke the approval;
30 the Minister must give the designated complainant, as soon as
31 practicable:
32 (c) notice of the decision; and
33 (d) if the decision is to vary or revoke the approval—a copy of
34 the variation or revocation.
- 35 (2) As soon as practicable after varying or revoking the approval, the
36 Minister must:
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- 1 (a) give a copy of the notice of the decision to the Commission;
2 and
3 (b) in the case of a revocation—publish that fact on the
4 Department’s website.

5 **Division 4—Miscellaneous**

6 **154ZY Delegation**

- 7 (1) The Minister may, in writing, delegate all or any of the Minister’s
8 powers or functions under this Part to the Secretary, or a SES
9 employee or acting SES employee in the Department.
- 10 (2) However, the Minister must not delegate a power to make a
11 legislative instrument.
- 12 (3) In exercising a power under a delegation under this section, the
13 delegate must comply with any written directions of the Minister.

14 **3 After paragraph 171(3)(dc)**

15 Insert:

- 16 (dd) the number of designated complaints received by the
17 Commission; and
18 (de) the number of designated complaints in respect of which the
19 Commission did not comply with each of the following:
20 (i) section 154ZG;
21 (ii) paragraph 154ZK(3)(b); and

22 **4 Paragraph 171(3)(e)**

23 After “complaints”, insert “(other than designated complaints)”.

24 **5 Subparagraph 171(3)(f)**

25 After “complaints”, insert “(including designated complaints)”.