

Director
Consumer Policy Unit
Market Conduct and Digital Division, Treasury
Langton Cres, Parkes ACT 2600

Date: 5 January 2024

Submitted via email: consumerlaw@treasury.gov.au

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

The Australian Automotive Dealer Association (AADA) welcomes the opportunity to make a submission in response to the ACCC designated complaints function, Exposure Draft.

The AADA is the peak automotive industry body representing Australia's franchised new car Dealers. There are more than 3,100 new vehicle dealerships in Australia employing more than 56,000 people directly and generating \$68 billion in turnover and sales with a total economic contribution of over \$17 billion.

The AADA notes the establishment of the complaints function and considers that if implemented effectively, this mechanism could help to improve consumer outcomes through a formal mechanism for consumer or small business advocacy groups to lodge complaints.

The establishment of this new designated complaints mechanism to fast-track complaints and ensure effective investigation of these complaints, must be underpinned by robust principles which define the function's operating principles, criteria for determining which bodies are to be designated complainants, evidentiary requirements and timings. In its development it is critical that industry be closely involved in this process, to ensure that designated complainants and industry are acutely aware of their obligations.

There are a range of issues that could arise if the mechanism is not implemented in consultation with industry. This could relate to claims being brought against industries whereby the complainant has no industry expertise on the matter and the time limit imposed for the ACCC to respond to the complaint may not allow for comprehensive investigations. Industries such as the automotive industry are complex, with a number of stakeholders, each with their own obligations related to consumer outcomes and responsibilities under the ACL. The designated complaints process would need to allow for effective consultation with all the key stakeholders related to the complaint and allow for industry input into the process.

Several pathways to bring a consumer complaint already exist and consumers enjoy extensive protection under Australian Consumer Law, as such, the formal implementation of a system for super complaints must be supported by comprehensive evidence of its ability to go above and beyond what is currently in place to support better consumer outcomes.

The AADA understands that the Minister will have discretion to limit the number of designated complainants and acknowledges that the ACCC's resourcing will help determine the number of complaints able to be brought to ensure sufficient investigation. However, the AADA considers that it



is important that the designated complainants are not limited to consumer bodies and industry also has the opportunity to bring complaints on behalf of their small business members.

The AADA represents many small businesses across the franchised new car Dealer industry, and as such is well placed to provide feedback as part of the ACCC's complaints function on insights into Australia's automotive sector through regular engagement with the small business dealer network.

There are currently a number of areas affecting small business franchised new car Dealers, for which the AADA has continued to advocate on behalf of the industry, for example, the strengthening of supplier indemnification.

As suppliers of vehicles, Dealers are often caught between consumer guarantee obligations covered by Australian Consumer Law and manufacturer directions as part of ongoing franchise agreements. This is something that was extensively covered in the ACCC's retail market study into the new car retailing industry. Dealers are legally obligated to comply with the requirements of the ACL's consumer guarantees and in turn, manufacturers are required to indemnify Dealers. Unfortunately, in practice Dealers often struggle to enforce their indemnification rights. The comparative size difference between the manufacturer and the Dealer creates a power imbalance when entering into a franchise agreement. The AADA considers that due to this power imbalance, car Dealers are often subject to ACL consumer guarantee arrangements that can lead to harmful consumer and Dealer outcomes.

As a systemic issue that affects both small businesses and consumers, the AADA would highlight the issue of supplier indemnification as one which would warrant a designated complaint. This further demonstrates that industry must also have access to the ability to make designated complaints to ensure effective investigation of issues which in the first instance have a significant effect on small businesses and flow on effects for consumers. These types of complaints may not be captured if designated complaints are limited to consumer bodies.

The AADA would welcome the opportunity to participate in further consultations or discussions related to the development of the designated complaints mechanism.

If you have any questions related to this submission, please do not hesitate to contact me.

Yours sincerely

James Voortman
Chief Executive Officer