

3 January 2023

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

Via email: Consumerlaw@treasury.gov.au

Dear Director,

Consultation response - Proposed Designated Complaints Function

The Lottery Corporation (TLC) appreciates the opportunity to provide a submission in respect of the draft *Treasury Laws Amendment (Measures for Consultation) Bill 2023: ACCC designated complaints function (Bill)* which proposes to implement a designated complaints function within the Australian Competition and Consumer Commission (ACCC).

About The Lottery Corporation

The Lottery Corporation is a top 50 ASX-listed company and one of the highest performing lotteries businesses globally. We hold long-dated licences in every state and territory (excluding Western Australia). Our trusted brands include The Lott and Keno, and national games such as Powerball and Oz Lotto which are iconic names in Australian households.

We have a lotteries and Keno retail footprint of more than 7,200 businesses across Australia. In FY23, 759 million lottery and Keno tickets were sold by TLC, with more than \$600 million in commissions paid to newsagents, licenced venues and other retail partners.

TLC's lottery retail distribution footprint (3,863 outlets) is one of Australia's largest retail franchise networks and we hold a 5 Star Rating from the independent franchise rating scale, FranDATA. Our extensive presence in newsagencies, convenience and fuel stores, post offices and other retail formats contributes 63% of lotteries turnover and is a vital part of a sustainable and regulated lotteries ecosystem.

Comment on the proposed Designated Complaints Function

TLC appreciates how a designated complaints function may benefit consumers and small businesses in addressing matters that relate to significant or systematic market issues. Having reviewed the draft Bill, we do however have some specific matters we would like to bring to your attention for consideration.

Performance of a Designated Complainant

Without regular and thorough review of the performance of designated complainants, it could potentially lead to misuse or inundate the system with frivolous or out-of-scope complaints. As a matter of public policy, the designated complaints function should remain reserved for serious and systemic market concerns and should not be used inappropriately, for example, as a means to pressure a favourable outcome for the complainant (or the stakeholders they represent) in standard commercial engagements and/or negotiations.



TLC considers that the legislation, and the ACCC's designated complaints function, should have robust and clear processes or mechanisms in place (including relevant ACCC powers) to safeguard against the system being used inappropriately or for matters extraneous to significant or systemic market issues.

To that end, we note that the Minister may vary or revoke a designated complainant's approval on the Minister's own initiative (having regard to both the compulsory and discretionary approval criteria). It may also assist the transparency and effectiveness of the system if the following information is made publicly available:

- any referrals made by the ACCC (or otherwise) to the Minister to vary or revoke a designated complainant's approval;
- the outcome of the Minister's final decision as to whether to vary or revoke an approval;
- the volume and/or percentage of complaints from a designated complainant that have resulted in a 'no further action notice' been issued; and
- whether any limits (e.g. number of complaints allowed per annum) or restrictions have been placed on a designated complainant as to the type or volume of complaints they may lodge.

Publication

TLC has reservations in respect of complaints or notices being published in circumstances where a complaint could be found to be without any real substance. The concern being that public notification of such a complaint or notice could be seen as a 'mark' against an organisation which the circumstances of the complaint did not warrant.

The explanatory materials suggest that the ACCC will publish all 'no further action notices' notwithstanding the merits of the complaint. The fact that the organisation was subjected to an inquiry from the ACCC at all, and this is made public, could potentially unfairly damage an organisation's reputation (especially if the complaint was without merit and/or there were no adverse findings against the organisation).

The explanatory materials do contemplate that any 'no further action notice' publication would be accompanied with detail of the reasons why the ACCC will not take further action in relation to a designated complaint, and this may provide an opportunity in relevant circumstances for the ACCC to clearly and fully communicate that there was no basis for the complaint and no case to be considered. However, care would be required to ensure a balanced message is publicly communicated and simply publishing general reasons such as '*not sufficient evidence to pursue*' or '*not considered systemic or significant issue*' may not suffice in circumstances where the complaint was entirely without substance in the context of the designated complaints function.

TLC considers that the ACCC should also have discretion not to publish in respect of those complaints they consider without merit in the first place.

Further Clarification

TLC considers that industry would also benefit from further clarification on the following:

1. Early engagement opportunities

Industry participants should have the opportunity for early engagement with the ACCC to provide their perspective on a complaint ahead of potentially extensive and wide requests for information which may unnecessarily overwhelm some organisations.

2. Publication

Further to draft clause 154ZN, we consider the industry participants would benefit from further detail and insight into those circumstances where the ACCC might refrain from publishing an outcome. Additionally, if such circumstances exist, it would assist to understand the reasons or principles applied by the ACCC when deciding whether to publish a decision or not.



3. **Appeal process**

It is not clear from the Bill whether a party which is the subject of a designated complaint would have access to any appeal process.

We appreciate the opportunity to engage in discussions regarding the proposed designated complaints function and thank you again for the opportunity to provide a submission.

Please feel free to contact me via email at _____ or on _____ if further information or clarification would be beneficial.

Yours sincerely,

Emma Murphy
Head of Government Relations
The Lottery Corporation Limited