

EXPOSURE DRAFT



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Competition and Consumer (Designated Complaints) Determination 2024

I, Andrew Leigh, Assistant Minister for Competition, Charities and Treasury, make the following determination.

Dated 2024

Dr Andrew Leigh **[DRAFT ONLY—NOT FOR SIGNATURE]**
Assistant Minister for Competition, Charities and Treasury
Parliamentary Secretary to the Treasurer

EXPOSURE DRAFT

EXPOSURE DRAFT

Contents

Part 1—Preliminary	1
1 Name	1
2 Commencement	1
3 Authority.....	1
4 Definitions	1
Part 2—Designated complaints	2
5 Maximum number of designated complaints in a 12-month period.....	2
6 No further action on complaint—subject of other inquiry or action	2
7 No further action on complaint—matters to be considered in deciding whether it is appropriate to take no further action	2
8 Circumstances in which Commission is not required to take further action after a further action notice has been issued.....	3
9 Commission not required to publish information.....	3
Part 3—Designated complainants	4
10 Period during which designated complainant applications may be made	4
11 Approval of designated complainants—matters to be considered.....	4
12 Maximum number of designated complainants	4

EXPOSURE DRAFT

Preliminary **Part 1**

Section 1

Part 1—Preliminary

1 Name

This instrument is the *Competition and Consumer (Designated Complaints) Determination 2024*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	At the same time as Schedule 1 to the <i>Competition and Consumer Amendment (Fair Go for Consumers and Small Business) Act 2024</i> commences.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Competition and Consumer Act 2010*.

Note: Section 154ZZ of the Act provides that the Minister may, by legislative instrument, make a determination (the *designated complaints determination*) prescribing matters required or permitted by Part XIE of the Act to be prescribed by the designated complaints determination.

4 Definitions

Note: Expressions have the same meaning in this instrument as in the *Competition and Consumer Act 2010* as in force from time to time—see paragraph 13(1)(b) of the *Legislation Act 2003*.

In this instrument:

the Act means the *Competition and Consumer Act 2010*.

EXPOSURE DRAFT

Part 2 Designated complaints

Section 5

Part 2—Designated complaints

5 Maximum number of designated complaints in a 12-month period

For the purposes of paragraph 154ZF(2)(d) of the Act, a complaint made by a designated complainant must meet the requirement that the complainant has not, in the 12-month period ending on the day the complaint is made to the Commission, made another designated complaint.

6 No further action on complaint—subject of other inquiry or action

For the purposes of paragraph 154ZH(4)(b) of the Act, the following kinds of proceedings, inquiries, investigations or reviews, referred to in paragraph 154ZH(4)(b), are prescribed:

- (a) any legal proceedings to which ASIC or the Commission are a party, and that have not come to an end; and
- (b) any ongoing inquiry, investigation or review being conducted by ASIC or the Productivity Commission.

7 No further action on complaint—matters to be considered in deciding whether it is appropriate to take no further action

- (1) For the purposes of paragraph 154ZH(6)(a) of the Act, the Commission *must* have regard to all of the following in considering whether it is satisfied that it is appropriate to take no further action in relation to a complaint:
 - (a) the nature of the market issue to which the complaint relates, including the significance of the issue affecting consumers or small business (or both) in Australia, and the extent to which the issue is systemic;
 - (b) the nature and extent of any actual or potential harm to consumers or small businesses (or both) in Australia caused by the market issue to which the complaint relates (if any), and whether that assessment of the potential harm changes if no action is taken in relation to the complaint;
 - (c) the cost to the Commission of taking action on the complaint;
 - (d) whether action by the Commission on the complaint is likely to have a broad public benefit.
- (2) For the purposes of paragraph 154ZH(6)(b) of the Act, the Commission *may* have regard to any of the following in considering whether it is satisfied that it is appropriate to take no further action in relation to a complaint:
 - (a) whether the subject matter of the complaint is substantially similar to the subject matter of any designated complaint for which the Commission has made a notification under paragraph 154ZK(3)(c) of the Act (actions have been completed) in the 2-year period ending on the day the complaint is made to the Commission;
 - (b) whether the subject matter of the complaint is, or is part of, a matter which is the subject of legal proceedings (other than proceedings covered by section 6) that have not come to an end;
 - (c) whether the subject matter of the complaint is, or is part of, a matter which is the subject of an ongoing inquiry, investigation or review conducted by

the Commonwealth, a State or Territory (other than an inquiry, investigation or review covered by section 6);

- (d) any other relevant matter.

8 Circumstances in which Commission is not required to take further action after a further action notice has been issued

For the purposes of subsection 154ZK(4) of the Act, all circumstances that meet all of the following are prescribed:

- (a) are exceptional;
- (b) have significantly constrained the Commission's ability to take the actions set out in a notice under subsection 154ZK(1) of the Act;
- (c) have prevented, or will prevent, the Commission from taking the actions for more than 6 months after the giving of the notice.

9 Commission not required to publish information

For the purposes of paragraph 154ZN(2)(b) of the Act, all of the following circumstances are prescribed in relation to the publication of information:

- (a) the publication of the information would contravene a law of the Commonwealth, a State or a Territory;
- (b) the publication of the information would harm an ongoing investigation being conducted by the Commission that has not been made public;
- (c) the publication of the information would contravene an order of a court or tribunal of the Commonwealth, a State or a Territory.

EXPOSURE DRAFT

Part 3 Designated complainants

Section 10

Part 3—Designated complainants

10 Period during which designated complainant applications may be made

For the purposes of paragraph 154ZP(3)(c) of the Act, the periods in which an application may be made for approval as a designated complainant, that meet the following are prescribed:

- (a) a recurring period of at least 3 weeks every 3 years; and
- (b) the start and end date of each recurring period is as, or as will be, set out on the Department's website.

11 Approval of designated complainants—matters to be considered

- (1) For the purposes of paragraph 154ZQ(2)(c) of the Act, the Minister *must* have regard to all of the following in considering whether it is appropriate to grant approval of an entity (the *applicant*) as a designated complainant:
 - (a) the applicant's ability to make designated complaints in relation to which the Commission may take action under subsection 154ZK(1) of the Act, including the applicant's ability to research, prepare and make designated complaints based on information of a high quality;
 - (b) if the applicant has commercial activities—any conflicts of interest the applicant has or may have if approved as a designated complainant, as well as any arrangements the applicant has, or proposes to have, in place in relation to managing or mitigating those conflicts of interest.
- (2) For the purposes of paragraph 154ZQ(3)(a) of the Act, the Minister *may* have regard to any of the following in considering whether it is appropriate to grant approval of the applicant as a designated complainant:
 - (a) the applicant's willingness to cooperate with the Commission, as well as the applicant's capability to respond to requests from the Commission;
 - (b) whether the applicant has previously been a designated complainant, and if so:
 - (i) any previously submitted designated complaints including the extent to which the complaints were actionable by the Commission; and
 - (ii) their conduct as a designated complainant;
 - (c) whether the applicant has an ongoing relationship with consumers or small businesses (or both) in Australia, including through regular contact and communication;
 - (d) the applicant's access to, or ability to obtain, timely, high quality and relevant data about the concerns, preferences and issues of consumers or small businesses (or both) in Australia.

12 Maximum number of designated complainants

For the purposes of subsection 154ZQ(5) of the Act, a limit of 3 designated complainants is prescribed.