



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

11 April 2024

Via email: [consumerlaw@treasury.gov.au](mailto:consumerlaw@treasury.gov.au)

Dear Sir/ Madam

**Competition and Consumer (Designated Complaints) Determination 2024**

The Institute of Public Accountants (IPA) welcomes the opportunity to provide comments on the *Competition and Consumer (Designated Complaints) determination 2024* Exposure Draft.

Approximately three-quarters of IPA's members work in or advise the small business and small to medium enterprises sectors. Our submission is taken from this perspective.

Overall, we are broadly supportive and welcome the Designated Complaints framework, especially as a means of prioritising consumer and small business complaints and systemic issues which might otherwise be delayed in the numerous complaints to the ACCC. However, for the framework and implementation to be effective, we believe that regular evaluation is needed, as well as transparency and fairness in approving designated complainants.

Our comments are contained in the Attachment.

For any questions, please contact Vicki Stylianou, Group Executive Advocacy and Professional Standards, Institute of Public Accountants at [vicki.stylianou@publicaccountants.org.au](mailto:vicki.stylianou@publicaccountants.org.au).

Yours faithfully

[signed]

Vicki Stylianou  
Group Executive, Advocacy and Professional Standards  
Institute of Public Accountants

## ATTACHMENT

### **The maximum number of designated complainants**

Part 3, section 12 limiting the maximum number of complainants that can be approved by the Minister, to three in a calendar year, is in our view insufficient. We appreciate that the number of complainants (and complaints) must be balanced against the ACCC's resources and other work and functions. Alternatively, we suggest that this number be evaluated on a regular basis against the ACCC's entire workload, and a reallocation made accordingly.

The success of the super complaints system relies heavily on the choice of designated complainants as this will determine which sectors and which issues are prioritized for attention by the ACCC. Therefore, IPA urges transparency and fairness around the process of assessing and approving designated complainants, including how the mandatory and discretionary criteria are applied by the Minister. We believe that public disclosure is needed of the reasons and results to ensure a fair and transparent process with an overarching requirement of the approvals being in the public interest.

### **The maximum number of designated complaints a designated complainant may make during a specified period of time**

We suggest that this requirement needs clarity in terms of the maximum number of designated complaints. If it's one complaint then we consider this to be too low. In any event, since the number of designated complainants is also limited, then a reasonable degree of flexibility can be built into the system by way of the number of complaints. While we appreciate that limiting the number of designated complaints will ensure that there are appropriate resources to enable the ACCC to respond, we suggest (as above) that regular evaluation should be undertaken across all of the ACCC's functions and resources. We believe that flexibility is required in the current dynamic environment with numerous evolving global challenges and opportunities, including in the areas of sustainability and technology (such as Generative Artificial Intelligence). These have the potential to significantly impact consumer welfare and competitive processes which in turn may lead to imminent and/ or systemic issues.

### **When the ACCC is not required to take further action after issuing a further action notice**

Section 7 prescribes certain *mandatory* and *discretionary* matters. Under the mandatory matters for consideration 'the cost of the ACCC of acting on the complaint' is listed. We suggest parameters be described in relation to this criterion. Again, we contend that transparency is paramount to the success of the system.

Also, we would suggest a narrowing from 2 years to 12 months for the *discretionary* criteria as to ‘whether the subject matter of the complaint is substantially similar to the subject matter of a designated complaint for which the ACCC has made a notification under paragraph 154ZK(3) (c) of the Act (that is, an ‘action complete’ notice)’. Given the current dynamic environment, we are of the view that a 2-year period may be too long. Alternatively, this should be part of the regular evaluation process.

### **Matters for the Minister to consider when approving a designated complainant**

We suggest further clarity to these provisions through the use of scenarios of the requirements of the mandatory and discretionary criteria in section 11. In particular, independence and conflicts of interest and how they are identified, managed, and mitigated, are significant matters where full disclosure and transparency are needed. Guidance on how these criteria are to be applied and assessed would instill more confidence in the system.

In addition, there should be a positive duty on designated complainants to provide continuous disclosure in the event that the initial circumstances on which the application was made, have changed or are likely to change during the relevant period. This would be particularly relevant for complainants with commercial activities (which includes many not-for-profit entities) and moreso in the current dynamic environment.