



# **Competition and Consumer Amendment (Fair Go for Consumers and Small Business) Act 2024**

**No. 16, 2024**

**An Act to amend the *Competition and Consumer Act 2010* to expand the functions of the Australian Competition and Consumer Commission, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)



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**An Act to amend the *Competition and Consumer Act 2010* to expand the functions of the Australian Competition and Consumer Commission, and for related purposes**

[Assented to 8 April 2024]

The Parliament of Australia enacts:

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No. 16, 2024      *Competition and Consumer Amendment (Fair Go for Consumers and Small Business) Act 2024*      1

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## 1 Short title

This Act is the *Competition and Consumer Amendment (Fair Go for Consumers and Small Business) Act 2024*.

## 2 Commencement

- (1) Each provision of this Act 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.

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Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The later of: (a) 1 May 2024; and (b) the day after this Act receives the Royal Assent.	1 May 2024 (paragraph (a) applies)

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Note: This table relates only to the provisions of this Act as originally enacted.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

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

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## 4 Review of operation of amendments

- (1) The Minister must cause an independent review to be undertaken of the operation of the amendments made by Schedule 1 to this Act.

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- (2) The review must commence as soon as practicable after the end of the period of 24 months after the commencement of this Act.
  - (3) The persons who undertake the review must give the Minister a written report of the review within 6 months of the commencement of the review.
  - (4) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

## Schedule 1—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.



## 154ZE Definitions

In this Part:

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

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

**designated complaints determination** means the determination made by the Minister under section 154ZZ.

**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) prescribed in the designated complaints determination relating to the number and types of designated complaints that a designated complainant may make during a specified period.
- (3) The complaint is a *designated complaint* starting from the day it meets the requirements mentioned in subsection (2).

### **154ZG Commission to respond by giving notice**

- (1) If the Commission receives a designated complaint from a designated complainant, the Commission must, within 90 days, assess the complaint and give the complainant one of the following:
- (a) a notice under subsection 154ZH(1) (no further action on complaint);
  - (b) a notice under subsection 154ZK(1) (further action to deal with complaint).
- (2) If, before the Commission gives a notice mentioned in subsection (1) to the complainant, it ceases to be a designated complainant, for the purposes of subsection (1), the complaint is taken never to have been made.

### **154ZH Notice—no further action on complaint**

- (1) The Commission:
- (a) must give the designated complainant a notice under this subsection if subsection (2) applies in relation to the complaint; and
  - (b) may give the designated complainant a notice under this subsection if subsection (3), (4) or (5) applies in relation to the complaint.

#### *Complaint does not meet mandatory content requirements*

- (2) This subsection applies if the Commission is not satisfied that the complaint:
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- (a) relates to a significant or systemic market issue that affects consumers or small businesses in Australia (or both); and
- (b) either:
  - (i) relates to a potential breach of this Act; or
  - (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 prescribed in the designated complaints determination.

*Subject matter of complaint is subject of other inquiry or action*

- (4) This subsection applies if the Commission is satisfied that the subject matter of the complaint is, or is part of, a matter:
  - (a) into which any of the following is inquiring or has within the past 2 years inquired:
    - (i) a committee of the Parliament or of either House of the Parliament;
    - (ii) a Royal Commission;
    - (iii) a coronial inquiry, coronial investigation or coronial inquest; or
  - (b) which is the subject of:
    - (i) legal proceedings; or
    - (ii) an inquiry, investigation or review conducted by the Commonwealth, a State or Territory, an industry organisation, a consumer organisation or another person;that is, or is of a kind, prescribed in the designated complaints determination.

*Appropriate to take no further action on complaint*

- (5) This subsection 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.

- (6) For the purposes of paragraph (5)(b), in considering whether the Commission is satisfied that it is appropriate, the Commission:
- (a) must have regard to any matter prescribed for the purposes of this paragraph in the designated complaints determination; and
  - (b) may have regard to any matter prescribed for the purposes of this paragraph in the designated complaints determination.

**154ZJ Notice—no further action on complaint—contents**

A notice given under subsection 154ZH(1) 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 Notice—further action to deal with complaint**

- (1) The Commission may give the designated complainant a notice under this subsection if the Commission is satisfied that the complaint:
- (a) relates to a significant or systemic market issue that affects consumers or small businesses in Australia (or both); and
  - (b) either:
    - (i) relates to a potential breach of this Act; or
    - (ii) relates to one or more of the Commission's powers or functions under this Act.
- (2) The notice must set out:
- (a) a summary of the complaint; and
  - (b) the actions the Commission proposes to take in response to the complaint.
- (3) The Commission must:
- (a) use its best endeavours to commence the actions set out in the notice as soon as practicable after giving the notice; and
  - (b) in any case, commence the actions set out in the notice within the period of 6 months after giving the notice; and

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- (c) when the actions set out in the notice have been completed, use its best endeavours to notify this to the entity that made the complaint (even if the entity has ceased to be a designated complainant).

*Circumstances in which Commission not required to take further action*

- (4) However, subsection (3) does not apply if the Commission is satisfied that circumstances prescribed in the designated complaints determination apply.
- (5) If subsection (4) applies, the Commission must use its best endeavours to notify this to the entity that made the complaint (even if the entity has ceased to be a designated complainant).

### **154ZL Replacement notices**

- (1) If the Commission has given the designated complainant a notice under subsection 154ZK(1), the Commission may replace that notice with either of the following:
  - (a) if the Commission considers it appropriate—a replacement notice under subsection 154ZK(1);
  - (b) if subsection 154ZH(4) (other inquiry or action) or (5) (appropriate to take no further action) applies—a notice under subsection 154ZH(1).
- (2) If paragraph (1)(a) applies:
  - (a) the Commission must give the designated complainant the replacement notice; and
  - (b) the replacement notice must set out the matters specified in subsection 154ZK(2); and
  - (c) the replacement notice is taken to be the notice given to the designated complainant under subsection 154ZK(1) from the day the replacement notice is given; and
  - (d) treat paragraphs 154ZK(3)(a) and (b) as requiring the Commission to commence the actions set out in the replacement notice as soon as practicable after it is given.
- (3) If paragraph (1)(b) applies:

- (a) the Commission must give the designated complainant the notice mentioned in that paragraph; and
- (b) subsection 154ZK(3) ceases to apply in relation to the complaint.

### **154ZM Withdrawal of complaint**

- (1) If:
  - (a) an entity has made a designated complaint to the Commission; and
  - (b) the Commission has not, in relation to the complaint, given the entity either of the following:
    - (i) a notice under subsection 154ZH(1) (no further action);
    - (ii) a notification under paragraph 154ZK(3)(c) (further action completed);the entity may, in writing, withdraw the complaint (even if the entity has ceased to be a designated complainant).
- (2) The Commission must notify the entity in writing that the complaint has been withdrawn.
- (3) From the time the notification in subsection (2) is given:
  - (a) if the Commission has not yet given the entity a notice under subsection 154ZH(1) or 154ZK(1) in relation to the withdrawn complaint—sections 154ZG and 154ZH cease to apply in relation to the withdrawn complaint; and
  - (b) if the Commission has given the entity a notice under subsection 154ZK(1) in relation to the withdrawn complaint—subsection 154ZK(3) ceases to apply in relation to the withdrawn complaint.
- (4) The withdrawn complaint continues to be a designated complaint for the purposes of this Act (including subsection 154ZF(3) and paragraph 171(3)(dd)).

### **154ZN Publication requirements**

- (1) If the Commission gives:
    - (a) a notice under subsection 154ZH(1) (no further action on complaint); or
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- (b) a notice under subsection 154ZK(1) (further action to deal with complaint); or
  - (c) a notification under paragraph 154ZK(3)(c) (actions have been completed); or
  - (d) a notification under subsection 154ZK(5) (Commission not required to take further action); or
  - (e) a notice under paragraph 154ZL(2)(a) (replacement notice with further action to deal with complaint); or
  - (f) a notice under paragraph 154ZL(3)(a) (replacement notice where other inquiry or action, or appropriate to take no further action); or
  - (g) if the Commission has given a notice under subsection 154ZK(1) in relation to a designated complaint—a notification under subsection 154ZM(2) that the complaint has been withdrawn;
- the Commission must, as soon as practicable, publish the notice, notification or replacement notice on its website.
- (2) However, subsection (1) does not require the Commission to publish information if:
    - (a) the Commission is satisfied that it is appropriate not to publish the information because of its confidential nature; or
    - (b) the Commission is satisfied that a circumstance prescribed in the designated complaints determination applies to the publication of the information.

### **Division 3—Designated complainants**

#### **154ZP Application for approval as designated complainant**

- (1) An entity may apply to the Minister for approval as a designated complainant.
- (2) However, a State or Territory may not apply under subsection (1).
- (3) The application must:
  - (a) be in writing; and
  - (b) if the Minister has approved a manner for making the application—be made in that manner; and

- (c) be made during a period prescribed under subsection (4); and
  - (d) if the Minister has approved a form:
    - (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.
- (4) For the purposes of paragraph (3)(c), the designated complaints determination may:
- (a) prescribe a period, which may be a single period or a recurring period; and
  - (b) provide for the start or end date of the period or each period (as the case may be) to be as is or will be set out on the Department's website.

*Withdrawal of application*

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

**154ZQ Minister may grant approval**

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

*Considerations*

- (2) For the purposes of being satisfied that it is appropriate to grant the approval, the Minister must have regard to the following matters:
  - (a) the experience and ability of the applicant in representing the interests of consumers or small businesses (or both) in



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- Australia in relation to a range of market issues that affect them;
- (b) the extent to which the Minister is satisfied that the applicant will, if approved as a designated complainant, act with integrity in connection with being a designated complainant;
  - (c) any other matter prescribed under paragraph (4)(a).
- (3) The Minister may also have regard to the following matters:
- (a) any matter prescribed under paragraph (4)(b);
  - (b) any other matter the Minister considers relevant.
- (4) For the purposes of paragraphs (2)(c) and (3)(a), the designated complaints determination may prescribe matters to which the Minister:
- (a) must have regard; or
  - (b) may have regard.

*Maximum number of designated complainants*

- (5) However, the Minister must not grant the approval if doing so would result in the number of designated complainants being above the limit prescribed in the designated complaints determination.

### **154ZR Conditions in approval**

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

*Considerations*

- (2) For the purposes of being satisfied that the conditions are appropriate, the Minister:
- (a) must have regard to the matters mentioned in subsection 154ZQ(2); and
  - (b) may have regard to the matters mentioned in subsection 154ZQ(3).

*Conditions notices*

- (3) If the Minister is considering:
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- (a) granting the approval; and
  - (b) specifying that it is subject to conditions;
- the Minister may give the applicant a notice in writing setting out those conditions.
- (4) If the Minister gives the applicant a notice under subsection (3), the Minister must give the Commission a copy of the notice as soon as practicable.

#### **154ZS Contents of approval**

The approval must set out the following:

- (a) the name of the designated complainant;
- (b) the date (if any) on which the approval ceases to be in force;
- (c) the conditions (if any) to which the approval is subject.

#### **154ZT Notice of decision on application for approval**

- (1) If the Minister:
- (a) decides to grant the approval; or
  - (b) decides not to grant the approval;
- the Minister must give the applicant, as soon as practicable:
- (c) notice of the decision; and
  - (d) if the decision is to grant the approval—a copy of the approval.
- (2) If the Minister decides to grant the approval, as soon as practicable after granting the approval, the Minister:
- (a) must give a copy of the notice of the decision to the Commission; and
  - (b) must publish the name of the entity on the Department's website; and
  - (c) may publish all or parts of the conditions (if any) to which the approval is subject on the Department's website.

#### **154ZU Variation or revocation of approval**

- (1) A designated complainant may apply to the Minister for a variation or revocation of its approval.
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- (2) The application must be:
    - (a) in writing; and
    - (b) in the approved form.

*Withdrawal of application*

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

**154ZV Minister may vary or revoke approval**

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

*Considerations*

- (3) For the purposes of being satisfied that it is appropriate to make the variation or revocation, the Minister may have regard to the following matters:
  - (a) any matter mentioned in subsection 154ZQ(2) or (3);
  - (b) whether the designated complainant has contravened, or is contravening, a condition to which the approval is subject;
  - (c) any matter prescribed in the designated complaints determination;
  - (d) any other matter the Minister considers relevant.

*Notice of proposed variation or revocation*

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

**154ZW Contents of variation or revocation of approval**

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

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

**154ZX Notice of decision on application for variation or revocation of approval**

- (1) If the Minister:
  - (a) decides to vary or revoke a designated complainant's approval; or
  - (b) in a case where a designated complainant has applied for a variation or revocation of its approval—decides not to vary or revoke the approval;the Minister must give the designated complainant, as soon as practicable:
  - (c) notice of the decision; and

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- (d) if the decision is to vary or revoke the approval—a copy of the variation or revocation.
- (2) As soon as practicable after varying or revoking the approval, the Minister:
- (a) must give a copy of the notice of the decision to the Commission; and
  - (b) in the case of a revocation—must publish that fact on the Department’s website; and
  - (c) in the case of a variation that changes or removes conditions to which the approval is subject—may publish details of that change or removal on the Department’s website.

## **Division 4—Miscellaneous**

### **154ZY Delegation**

- (1) The Minister may, in writing, delegate all or any of the Minister’s powers or functions under this Part (other than under section 154ZZ) to the Secretary, or a SES employee or acting SES employee in the Department.
- (2) In exercising a power under a delegation under this section, the delegate must comply with any written directions of the Minister.

### **154ZZ Designated complaints determination**

The Minister may, by legislative instrument, make a determination (the *designated complaints determination*) prescribing matters required or permitted by this Part to be prescribed by the designated complaints determination.

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

Insert:

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

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

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

**5 Paragraph 171(3)(f)**

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

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*[Minister’s second reading speech made in—  
House of Representatives on 15 February 2024  
Senate on 29 February 2024]*

(18/24)

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