

Alto Group

22 May 2018

The Complaints Register Guidelines Review

NSW Fair Trading

PO Box 972

Parramatta NSW 2124

We wish to provide comment on the review of the Complaints Register Guidelines.

It is our view that the Complaints Register, as currently operated, fails in its primary purpose of helping consumers make informed decisions about which businesses to transact with, for 3 main reasons:

First, the register unfairly discriminates against some businesses due to the arbitrary grouping rules, that see some businesses in an organisation grouped, and similar businesses in other organisations not grouped;

Second, the register does not differentiate in any way the number of consumer transactions an organisation enters into on a monthly basis, so that it unfairly discriminates against organisations that have a higher number of consumer transactions than other organisations with far fewer transactions; and

Third, the register records complaints lodged, but does not record complaint outcomes, so that an organisation that deals effectively with complaints made can still appear on the register, giving consumers the incorrect impression that they are an organisation that should be avoided when the opposite is the case.

Grouping Issues

The grouping rules for the register appear to be quite arbitrary. Rather than looking at ownership structures, they seem to be based on trading names. If a common trading name is used then the businesses are grouped, whereas a similar group that uses distinctive trading names for its businesses will not be grouped. An example in the motor industry would be the Suttons Group, where the different businesses are reported on as a group, as they all use the "Suttons" name in their business name. Compare this to one of the listed automotive groups, such as AP Eagers, where each business is reported on separately because there is no common name in the business names. There is no sound reason for grouping businesses on this completely arbitrary basis.



Alto Group Pty Limited
ACN 003 316 121

734 Pacific Hwy
Chatswood NSW 2067
PO Box 1050
Chatswood NSW 2057

Telephone
(02) 9418 5533

Email
headoffice@alto.com.au

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The other reason for discontinuing the grouping of businesses is that this does not assist consumers to compare businesses. If an organisation is a group of, say, 10 businesses, and each business gives rise to 1 complaint, the group will be reported in the register. A consumer seeing this will not know that the particular business they were planning on dealing with gave rise to only 1 complaint, and may then go to deal with a competitor, not knowing that the competitor may have had 9 complaints against it, but is not on the register because it is not grouped. In this way the register is giving misleading information to consumers.

Similarly, the grouping provision can operate unfairly to different businesses within a group, where for example one or two business in a group give rise to several complaints, causing the group to be listed on the register, when the majority of the businesses in the group have no complaints at all. Again, consumers wishing to deal with one of the 'good' businesses will be misled by the register due to the grouping provision.

The only fair way to compare businesses is not to group at all. Each business should be accountable for its performance, not penalised by the actions of others over which it may have no control.

Volume of Transactions

Another major flaw in the current design of the register is that it does not recognise the volume of consumer transactions that different businesses generate. So, currently a group of 20 businesses that turns over 20,000 consumer transactions a month and which generates 10 complaints will be listed on the register, while another trader who turns over 30 transactions a month and generates 5 complaints will not. The register does not show that the first group's complaint rate is 1 in 2,000 and the second's is 1 in 6. Again, the register is providing misleading information to the public in its current format in this situation.

Complaints Made v Complaints Resolved

The register currently only records complaints made against a business. If a business is dealing effectively with complaints when they are made then those complaints should not be used to place the business on the register. A business that is effectively dealing with complaints is not a business that consumers should be advised against doing business with.

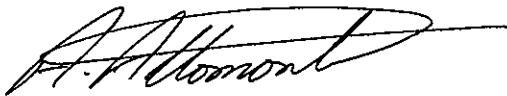
It would therefore be necessary for the complaint system to allow a reasonable time after a complaint has been received for it to be resolved, and in that case, the complaint should be removed. One measure for this may be to only record complaints that result in proceeding being commenced in NCAT, though even that is not necessarily a good measure as many such complaints are resolved by mediation or agreement on the first mention of the matter. The outcome of the complaint is quite relevant.

One final comment we would make about the complaints recording system relates to businesses such as in the motor industry, where a network of franchised dealers sell and service a product manufactured by the franchisor. The current system permits a consumer to bring a complaint about a faulty product against the dealer, or the manufacturer, or both. In cases where the complaint is about a faulty product, it is not fair, if the consumer chooses to complain against the dealer, that the complaint is recorded against the dealer, as the dealer is not responsible for the fault.

Conclusion

For the reasons we have given above it is our view that the register is failing in its basic role, to help consumers make informed decisions about which businesses to transact with, and the flaws in the current register mean at best that the register is of little help to consumers and at worst that it is misleading them.

Yours faithfully

A handwritten signature in black ink, appearing to read 'A. Altomonte', with a long horizontal flourish extending to the right.

Anthony Altomonte

Managing Director