



NSW Fair Trading Complaints Register Guidelines

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Contents

Introduction 4

Ensuring a fair marketplace	4
About these Guidelines	4

What is the NSW Fair Trading Complaints Register? 5

Why have a public Complaints Register?	5
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What is a complaint? 6

How do we deal with complaints?	6
Managing vexatious complaints	7
The limitations of our data	7

How the Complaints Register operates 9

Published complaints	9
Minimum number of complaints	9
Data collection period	9
Publication schedule	9
Format	9
Notice to businesses	9
Business and complaint information for publication	10
Information about the outcome of complaints	10
Business size	11
Business names, franchises and chains	11

Introduction

Ensuring a fair marketplace

NSW Fair Trading works to ensure that the marketplace is ethical, fair and efficient, in the interests of all consumers and businesses in NSW.

The laws we administer and the services we provide set guidelines for fairness in the countless daily transactions between consumers and businesses. NSW Fair Trading safeguards consumer rights, regulates specific industries and occupations, and advises businesses on fair and ethical operational practices.

We believe that information plays a critical role in promoting effective competition between businesses to ensure a healthy and vibrant marketplace.

About these Guidelines

These Guidelines provide information to consumers, businesses and other interested parties about how the NSW Fair Trading Complaints Register is designed and administered.

The Guidelines may be updated from time to time as refinements are made to NSW Fair Trading's policies, processes and systems.

What is the NSW Fair Trading Complaints Register?

The NSW Fair Trading Complaints Register provides information about businesses which are the subject of the most complaints received by NSW Fair Trading each calendar month.

Why have a public Complaints Register?

NSW Fair Trading currently receives around 43,000 complaints each year and holds a wealth of information about businesses (also known as traders) operating in the marketplace.

Section 9 of the *Fair Trading Act 1987* gives the Commissioner for Fair Trading power to provide information and advice to consumers, enforce fair trading laws, and receive and deal with complaints relating to the supply of goods or services.

Making some complaints information publicly available is likely to provide an incentive for businesses to deliver better customer service, and help consumers make informed decisions about where to shop.

The Complaints Register is also part of the NSW Government's commitment to open data, which recognises that information is crucial for the economy and community to function efficiently. In the digital economy, open data is a driver of economic growth and innovation.

Data in the Complaints Register can be used to:

- improve services
- inform the community about trends in the market
- create new business models
- devise innovative ways to help consumers gain better value in the marketplace.

**The Complaints Register is established under
Section 86AA of the *Fair Trading Act 1987*.**

What is a complaint?

NSW Fair Trading uses the Australian and New Zealand Standard (AS/NZS) definition of a complaint from the 'Guidelines for complaint management in organisations':

A complaint is an "expression of dissatisfaction made to or about an organisation, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required." (AS/NZS 10002-2014)

The types of problems or practices which are commonly complained about to NSW Fair Trading include the following:

- defective goods and/or failure to repair under warranty
- refunds
- fees and charges
- misleading or deceptive conduct
- alleged breaches of laws.

How do we deal with complaints?

The process for registering a complaint with NSW Fair Trading is a multi-layered process with several quality assurance checkpoints.

NSW Fair Trading generally encourages consumers to attempt to resolve disputes directly with the business in the first instance.

When consumers write to NSW Fair Trading or lodge online through the NSW Fair Trading website, the contact may be classed as an enquiry or a potential complaint. Enquiries are contacts where the person does not expect NSW Fair Trading to intervene on their behalf - they may be seeking information or other assistance.

After receiving a potential complaint, NSW Fair Trading determines if the matter is appropriate for intervention or if the matter would be better handled by another organisation. As an Australian Consumer Law (ACL) Regulator, NSW Fair Trading is responsible for actioning all the complaints it receives which fall within the ACL regardless of where the trader is located.

NSW Fair Trading ensures the same complaint has not been previously lodged and confirms the identity of the business. Further information may then be requested from the complainant to help NSW Fair Trading gain a better understanding of the issue. This may include copies of receipts or examples of the complainant's previous contact with the business (eg. emails, letters).

Once NSW Fair Trading has sufficient information the business is contacted to discuss the complaint. At this point, the potential complaint is elevated to the status of a complaint. Staff will attempt to negotiate an outcome which is acceptable to both parties within 30 days of the complaint being received.

In dealing with franchised businesses, NSW Fair Trading will contact the franchisor's head office to identify the most appropriate person for Fair Trading to deal with in relation to complaints about the franchise.

If an outcome acceptable to both parties cannot be negotiated, the complainant is advised of their options. Options may be to lodge action against the business in the NSW Civil and Administrative Tribunal or, if the matter meets the eligibility criteria, to make an application for a consumer guarantee direction.

Managing vexatious complaints

NSW Fair Trading takes reasonable steps to ensure that all complaints included on the Register are from a real person, who had a real interaction with the business being complained about. These checks reduce the potential of false or fictitious complaints being included in the Register.

To be listed on the Register, a complaint must include sufficient information for NSW Fair Trading staff to be able to contact the consumer. There must be a name and at least one form of contact provided (phone number or email address).

NSW Fair Trading also seeks to determine whether a complaint is related to a real interaction with a business. NSW Fair Trading may request that the consumer provide a receipt for the transaction or other supporting information (eg. the date, time and location of the incident or name of the business's employee).

This reduces the potential for false claims about fictitious transactions or interactions being made for the purpose of damaging a business's reputation. If the consumer is not able to provide sufficient information about their interaction with the business being complained about, the complaint is not included in the Register.

The limitations of our data

In considering the Complaints Register data, consumers and businesses should be aware of its limitations:

- The Complaints Register only reports on complaints which were received by NSW Fair Trading within a specific calendar month. Other complaints may have been reported either directly to the business or to other entities (eg. another regulator or an industry Ombudsman). As such, the Complaints Register data may only provide a partial picture of complaints relating to any business. The Complaints Register does not provide information about the severity or seriousness of a complaint, or the level of harm experienced.
- A complaint to NSW Fair Trading does not necessarily mean that the business being complained about has breached any laws. Complaints can involve poor customer service or a business perceived to be not responding adequately to an existing concern.
- Larger businesses may attract greater numbers of complaints due to the larger number of transactions undertaken and/or services provided.

- Certain types of businesses may generate more complaints than others due to the nature of the products or services offered.
- Businesses operate under a variety of legal structures (eg. franchise, independently-owned subsidiary, etc) which can impact how much influence a particular store or staff member has over policies or decisions.
- Media attention and publicity about a matter can generate additional complaints. Alternatively, where the public is aware that NSW Fair Trading is unable to act on an issue (such as when it is outside of its jurisdiction), this may discourage complaints.

How the Complaints Register operates

NSW Fair Trading publishes complaints that meet the definition of a complaint

The Complaints Register only includes complaints where NSW Fair Trading considers they have met the definition of a complaint, have been made by a real person and relate to a real interaction with a business. As complaints are published on the Register based on received date, the resulting outcome is not relevant to publication.

Threshold for appearing on the Register is 10 complaints in any calendar month

Complaints appearing on the Complaints Register are recorded at the entry-point, that is, on the date received for the calendar month. The Complaints Register only displays the names of businesses that were the subject of 10 or more complaints to NSW Fair Trading that calendar month.

Data collection period

The collection of data for the purposes of the Complaints Register commenced on 1 July 2016.

The Complaints Register reports on complaints that NSW Fair Trading receives during a calendar month.

The most recent 24 months' worth of data is published on the NSW Fair Trading website. Historical datasets are accessible from the NSW Government Open Data Portal (data.nsw.gov.au/data/dataset).

Publication schedule

The Complaints Register is published on the NSW Fair Trading website in the second half of each month, showing data for the previous calendar month.

Format

The Register is published in an online dashboard which allows readers to examine the information contained within it. The raw data is also available so that readers can use it for further analysis.

The data is released under the NSW Government's open data copyright policy (data.nsw.gov.au/copyright). This sets out how the data can be used and what attribution is required.

Notification to businesses that are appearing on the Complaints Register

NSW Fair Trading Case Managers contact businesses about each complaint received to advise of the

issues the complainant has raised and to attempt to negotiate an outcome which is acceptable to both parties. At this point of contact, the business can raise any issues regarding the complaint, including if it meets the definition of a complaint.

As businesses are contacted about each complaint received, they are aware that they are nearing or have reached the 10 complaints per month threshold.

However, all businesses that are to appear on a Complaints Register are provided with email notification of this at least 3 working days prior to that Complaints Register's publication. The email notification to businesses appearing on the Complaints Register provides the business with confirmation of the final number of complaints and a final opportunity to raise issues with NSW Fair Trading (eg. If they believe a counting error has been made).

Business and complaint information appearing on the Complaints Register

If NSW Fair Trading has received 10 or more complaints in a month about a business, the Complaints Register lists the following information:

- the name of the business
- the number of complaints NSW Fair Trading has received about that business in the previous month (the data collection month)
- the location of the business being complained about (in NSW unless otherwise indicated or recorded as 'Online' if the business trades online, regardless of their location)
- a general description of the product, service or business transaction being complained about
- a general description of the issue the complaint relates to; that is, which aspect of the product and service provision, or business transaction, is being complained about.

Information about the outcome of complaints is not included

The Complaints Register does not include information about the outcome of complaints. NSW Fair Trading often does not have access to complete and timely information about complaint outcomes.

During the complaint handling process, NSW Fair Trading contacts each party to seek a mutual resolution to the complaint. If agreement is reached, the matter is recorded by NSW Fair Trading as finalised. However, there is no requirement for either party to notify NSW Fair Trading about whether the agreed outcome is met.

If an agreement is not reached, NSW Fair Trading provides options for the complainant to pursue the matter in other ways. These may include making an application to the NSW Civil and Administrative Tribunal (Tribunal) for an order, requesting Fair Trading issue a consumer guarantee direction to the business, referral to another government agency or that the complainant should consider obtaining independent legal advice. With the exception of consumer guarantee directions, NSW Fair Trading is generally not privy to the outcome of matters where agreement is not reached.

If NSW Fair Trading considers the law has been broken, the trader is contacted to remedy this and Fair Trading will consider if more action is needed to protect other consumers. This action does not help to get a resolution to the complaint but is aimed at preventing future problems.

Customers wishing to obtain information regarding matters where Fair Trading has taken enforcement

action can find this data publicly available on the Fair Trading website under *Data & Statistics*.

Business size

The Complaints Register does not include information about each business's size or number of market transactions as this information is not publicly available for all businesses.

Business names, franchises and chains

The Complaints Register lists businesses according to their public and recognisable 'trading' or 'brand' name.

In many instances, this name will be a simplified version of the official corporate or business name. Where a business is part of a larger group (eg. different branches, franchises or stores in a chain) they will be grouped under the same name and the relevant locations listed.

The public recognise these brand names and they are a means of attracting customers.

Further, as business policies applied by individual entities are likely to be set by the brand's head office, it is appropriate that complaints be recorded against the brand as a whole.

Businesses operating under different brands will not be listed together, even if they are part of a larger corporate group.

NSW Fair Trading will contact the businesses which are to be grouped together under the same brand to ensure that the grouping is in accordance with this policy.



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