



Complaints Register Guidelines Review

Issues Paper

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Fair
Trading

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Disclaimer

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Executive summary

What is this review about?

The review of the NSW Fair Trading Complaints Register Guidelines (the Guidelines) aims to find out how well the Guidelines have governed the operation of the NSW Complaints Register (the Register) since its launch in August 2016.

Fair Trading's findings from the review will inform changes to the Guidelines. The review is expected to be completed by 30 June 2018.

Neither the publication of the Register itself, nor the section of the *Fair Trading Act 1987* that underpins it are being reviewed.

We want to hear from you!

The public consultation phase of the review will be during April and May 2018. We want to hear from you! How to have your say is explained on page 4.

The review will be informed by:

- written submissions from any member of the public
- an online survey
- stakeholder roundtables
- meetings with individuals and organisations with an interest in the Register
- internal research and analysis.

What we want to find out

This paper asks respondents to focus their feedback on several key issues, including:

- threshold number of complaints for a business to appear on the Register
- how often the Register should be published
- information that appears on the Register
- treatment of different business structures such as franchises
- notification and review processes for businesses
- whether the outcome of a complaint is relevant to the Register
- how long should complaints information remain publicly available.

NSW Government open data policy

The Register accords with the NSW Government's [open data policy](#). Open data provides the intelligence for insight, invention and exploration that translate into better products and services that improve everyday life and encourage business growth.

The Register helps consumers make informed decisions about which businesses to transact with and provides an incentive for businesses to deliver better customer service.

Fair Trading receives around 45,000 complaints from consumers each year about businesses across a large range of industries. NSW became the first Australian jurisdiction to publish information about some of those complaints in August 2016, following passage by NSW Parliament of section 86AA of the Fair Trading Act in 2015.

Have your say

We invite you to read this paper and provide comments.

You may wish to comment on only one or two matters of particular interest or all of the issues raised in this issues paper.

We have developed an online form to simplify the feedback process. The form gives you the opportunity to provide answers to one or all of the questions raised in this paper.

You can complete it on our website at www.fairtrading.nsw.gov.au by following the link to 'Complaints Register Guidelines Review' under 'Have your say' on the home page.

You can also submit feedback in written format, which can be either emailed to complaintsregister@finance.nsw.gov.au or posted to:

Complaints Register Guidelines Review
NSW Fair Trading
PO Box 972
PARRAMATTA NSW 2124

Deadline for submissions: **5pm Friday, 25 May 2018**

Important note: publication of submissions on the Fair Trading website

All submissions will be made publicly available. If you do not want your personal details or any part of your submission published, please indicate this clearly in your submission together with reasons.

Automatically generated confidentiality statements in emails are not sufficient. You should also be aware that, even if you state that you do not wish certain information to be published, there may be circumstances in which the Government is required by law to release that information — for example, in accordance with the *Government Information (Public Access) Act 2009*.

Introduction

Why we are conducting this review

Fair Trading's key objective with this review is to find out how well the Guidelines have governed the operation of the Register since its launch in August 2016.

The review will consider:

- the design and administration of the Guidelines
- what information can add value to the Guidelines and improve the operation of the Register
- changes to the structure of and information included in the Register.

The review is being conducted during April and May 2018, with the first step being the release of this issues paper. The ensuing consultation as well as Fair Trading's own research and analysis will inform any proposed changes to the Guidelines. We aim to complete the review and identify proposed changes to the Guidelines by 30 June 2018.

What is not part of this review

This review is about the Guidelines only, meaning there are several issues which are not part of the review. These include:

- the existence of the Complaints Register itself
- the legislation underpinning it
- Fair Trading's use of the Australia/New Zealand standard definition of a complaint
- Fair Trading's compliance with the Guidelines since the Register was launched in August 2016.

Existence of the Register itself:

The Complaints Register implements the NSW Government's open data policy. It has also provided an incentive for businesses to provide better customer services and as it is consumer focused, helps them make informed choices about which businesses they use.

Accordingly, the existence of the Register itself is not subject to this review.

Legislation that underpins the register

The *Fair Trading Act 1987* was amended in October 2015 to introduce section 86AA, which provides an explicit power for the Commissioner for Fair Trading to publish information about complaints.

Section 86AA allows for the publication of the identity of the persons or businesses about whom complaints have been made or about whom the greatest number of complaints have been received.

Section 86AA states Fair Trading must *not* publish the identity of the person who made a complaint. This restriction is important as it encourages consumers to lodge complaints without fear they will be publicly identified.

The above legislative provisions that underpin the Register are not part of this review.

Australia/New Zealand standard definition of a complaint:

NSW Fair Trading uses the robust Australian Standards and New Zealand Standards (AS/NZS 10002-2014) definition of a complaint from the AS/NZS *Guidelines for complaint management in organisations* which defines a complaint as 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 this definition is an Australian standard, the definition itself is not subject to this review. Also, Fair Trading’s application of the AS/NZS definition is not being reviewed.

Fair Trading’s compliance with the Guidelines since August 2016:

Fair Trading only publishes complaints that we believe to have been made by a real person, about a real interaction with a business. We have rigorous procedures in place for the management of vexatious complaints.

These processes were subject to an internal audit within the Department of Finance, Services and Innovation in 2017. The audit found Fair Trading’s current processes to be robust and appropriate. The audit also examined Fair Trading’s compliance with the Guidelines since the Register was first published in August 2016.

Accordingly, the way in which Fair Trading manages complaints and our compliance with the existing Guidelines is not subject to this review.

How the review will be conducted

The review of the Complaints Register Guidelines will be conducted during April and May 2018. Any member of the public can make a submission.

Fair Trading is particularly keen to hear feedback from individual consumers who have used the register, businesses who may be subject to complaints to Fair Trading, other organisations and individuals with an interest in consumer protection and open data.

Several methods of gathering input will be used, including

- stakeholder roundtable meetings hosted by Fair Trading
- one on one interviews with stakeholder organisations
- online user feedback surveys
- written submissions
- input from other jurisdictions
- Fair Trading’s own research and analysis, including an examination of web statistics and complaints data.

Fair Trading welcomes all suggestions made during the review. Several factors will need to be considered before any changes are implemented, such as operational impact, alignment with the purpose of the register and other legislative requirements.

Consultation will conclude on 25 May 2018.

Fair Trading expects to identify proposed changes to the Guidelines by the end of June 2018.

What is subject to review

Information appearing on the Complaints Register

Currently the Register includes the following information:

- the name of the business and its location
- the number of complaints Fair Trading received about that business in a particular calendar month
- the product or service complained about.

The Register does not currently include information about the problem complained about, for example, issues with the quality or supply of goods or services. The Guidelines note that this data could be incorporated in the future.

1. How relevant is the information published on the Register?
2. What sort of improvements to the information on the Register would you suggest?

Complaint outcomes

Currently Fair Trading publishes information about complaints received in a calendar month, after verifying that all complaints were made by a real person, relate to a real interaction with a business, and have not been lodged previously. Fair Trading also contacts the business as complaints are received.

As an open data initiative, the Register contains numbers of complaints that are received. Identifying a business as having received 10 or more complaints in a month does not necessarily mean the business has broken any laws, nor that compliance or enforcement action will be taken against that business.

On that basis, the Register does not currently provide any information about whether or how complaints were resolved.

Fair Trading's role in complaint outcomes is perhaps more limited than members of the public may realise. Fair Trading plays a mediation role only. We advise both parties on their rights and obligations under consumer laws and use our best endeavours to resolve the dispute. To date, Fair Trading has not had any power to direct traders to carry out any particular action, for example providing a refund — that is the role of the NSW Civil and Administrative Tribunal.

This means that while Fair Trading records the outcome of our mediation, we often do not know what ultimately became of the dispute. Did the trader provide the redress as agreed during mediation? Was the customer satisfied with the outcome? Did the customer pursue further action in the Tribunal and if so, what did the Tribunal find?

Despite the limitations noted above, Fair Trading does record information internally about how each complaint received was resolved or finalised. Some of this information could possibly be shared with the public on the Register. However, timeliness of the information on the Register, among other things, would be affected if any changes were to be considered to this aspect of the Guidelines.

3. Should the Complaints Register only include data about complaints received (as opposed to outcomes)?
4. Should any further information about the resolution of those complaints be included? Why?

Threshold number of complaints for appearing on the register

In the 2016-17 financial year, Fair Trading received 45,279 consumer complaints, about 22,615 different traders, across hundreds of different industries and sectors of the NSW marketplace. The Register publicly discloses the names of a tiny proportion of those traders, highlighting only the most complained about businesses at a point in time.

The Guidelines currently state that Fair Trading will publish the names of businesses that are the subject of 10 or more complaints to Fair Trading in any one calendar month. This means that the number of businesses that will be listed each month varies, depending on how many had 10 or more complaints made against them. There have typically been about 20 businesses named on the Register each month.

Some data about the first 12 months of operation of the Register may be useful when thinking about this issue.

The current threshold of 10 complaints in a month resulted in a total of 79 different businesses appearing on the Register from August 2016 to July 2017. A combined total of 4,423 complaints were recorded against those 79 businesses.

To provide a comparison using the same 12 month period, reducing the threshold so that businesses with seven or more complaints in a month would mean that an extra 1,973 complaints were represented on the Register. Those 1,973 complaints were made against 178 separate businesses.

When Fair Trading receives six complaints in six months about a trader, an internal threshold is reached and a case manager is assigned to that trader. Complaints received against case managed traders are subject to a greater degree of engagement and review than complaints against traders with fewer than six complaints in any six month period.

The current threshold of 10 complaints in a month provides strong assurance that Fair Trading manages vexatious complaints rigorously. Any lowering of the threshold would need to be considered alongside the potential impact on our ability to maintain rigorous oversight of vexatious complaints.

5. Should Fair Trading change the minimum number of complaints required before a business appears on the Register? If so, what should the number be? Why?

How often should the Register be updated?

It is important that the Register is updated regularly to be useful as a guide for consumers and to provide an incentive for behavioural change among businesses.

Since its launch in August 2016, the Register data has been collated and published once each calendar month.

6. How often should the Register be updated (e.g. monthly, quarterly, six monthly)? Why?

For how long should Complaints Register data remain publicly accessible?

The Guidelines state that Register data will remain on the website for a period of 24 months. Accordingly, each calendar month of data remains accessible via a link on the Fair Trading website for 24 months, after which it is removed. Fair Trading maintains an internal record of all historical complaints information, including the data that was published on the Register.

Open data principles would suggest that the information remain accessible online in a searchable format for as long as possible. Options include maintaining complete datasets exactly as they were published each month on the Fair Trading website, or perhaps maintaining only recent complaints data on the Fair Trading website while archiving historical datasets on the NSW Government's open data portal at www.data.nsw.gov.au.

Fair Trading acknowledges there may be a variety of views among stakeholders and the interested public on this issue, and we welcome further discussion during the review.

7. How long should each edition of the Register remain published on the NSW Fair Trading website? Is the current 24 months appropriate, or should it be longer or shorter? Why?

Franchises, chains and corporate groups

Currently the Guidelines state that Fair Trading publishes information about businesses according to their publicly recognisable trading name or brand, because the ultimate individual or corporate owner of the business may not be commonly known to consumers. Identifying businesses by their brand or trading name is intended to make the information on the Register as meaningful as possible for members of the public.

Further, many related businesses, such as branch outlets of a corporate group, or local franchise outlets, are subject to the same policies set by the brand's head office. It is therefore appropriate that complaints be recorded against the brand as a whole. This method most closely aligns with one of the aims of the Register, which is to provide an incentive for businesses to improve customer service and their handling of complaints.

Businesses operating under different brand names are not listed together, even if they are part of a larger corporate group.

The current Guidelines' approach to corporate groups, brand names and franchises has attracted some interest since the Register was launched. This resulted in a change to the format of the Register in October 2016. The Register now provides a total complaint figure for the brand name as a whole, which is subject to the 10 or more complaints threshold. There is also a breakdown of the number of complaints received against each business location (one or more). Individual business locations that were not subject to complaint in a month are not listed.

8. How well is the current policy on the grouping of franchised businesses working, including the breakdown by location? What changes would you suggest?
9. Should the same approach be taken with chains and related companies/corporate groups even if they operate under different brands? Why?

Notice to businesses

Fair Trading provides at least three working days' notice in writing to all businesses that are set to appear on the Register in any given month.

Fair Trading also contacts all businesses that are subject to a consumer complaint as part of our routine complaint handling process. Businesses should therefore be aware that they are at or near the threshold for appearing on the Register, which is currently set at 10 complaints per month.

The notification process is a courtesy to businesses to alert them to their imminent appearance on the Register. It also provides an opportunity for the business to contact Fair Trading to discuss the Register if they wish to do so.

10. How well has the process of notification to businesses about their imminent appearance on the Register been working? What changes would you suggest?
11. Is three working days a suitable period of notice? Should it be shorter or longer?

Format

The Register is published in accordance with the [NSW Government's open data policy](#) and appears as an dashboard on the Fair Trading website, which allows readers to view and search businesses and product categories.

12. What changes, if any, do you think should be made to the published format of the Register?

Other issues

Fair Trading acknowledges stakeholders may have other issues they wish to raise about the Guidelines which are not picked up by the specific questions asked in this paper.

Fair Trading welcomes your comments on any other aspect of the processes involved in publication of the Register, including proposed solutions where possible.

Appendix 1

Current Complaints Register Guidelines

View or download the [Complaints Register Guidelines in PDF \(size 240kb\)](#) from the Fair Trading website.