



# NSW Fair Trading Complaints Register Guidelines Review Report

**Date: 30 June 2018**

NSW Fair Trading  
Department of Finance, Services and Innovation



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# Executive Summary

The NSW Fair Trading Complaints Register (the Register) started on 1 July 2016 with the first Register published 25 August 2016.

The objective of the Register is to make complaint information publicly available to provide an incentive for businesses to deliver better customer service and enable consumers to make informed decisions about where to shop.

The Register is also part of the NSW Government's principle of open data, which recognises that information is crucial for the economy and community to function efficiently.

The Complaints Register Guidelines (the Guidelines) published in March 2016, detail how the Register is designed and administered by providing information about what is classed as a complaint, how Fair Trading deals with complaints, the limitations of Fair Trading's complaints data and how the Register operates.

A commitment was made that the Guidelines would be reviewed after 12 months of operation.

The objectives of the present review were to find out how well the Guidelines have governed the operation of the Register since its launch, provide clear recommendations on how the Guidelines may be improved and deliver improved trader and consumer engagement in the work of Fair Trading.

Excluded from the review was the existence of the Register itself, the legislation underpinning it, Fair Trading's use of the Australian and New Zealand Standards definition of a complaint and Fair Trading's compliance with the Guidelines since the Register was launched.

The review of the Guidelines has been conducted between February and June 2018. It relied on several methods, including:

- Public consultation around an Issues Paper
- Online user survey
- Web statistics
- Analysis of complaints data
- Consultation with other Australian consumer protection agencies
- Desktop review of other agencies' publication of identifiable complaint data in Australia and overseas, and a literature scan about the evidence of impact from such practices.

The findings from each method informed the review's findings and recommendations.

The review found that, overall, the Guidelines have been effective in governing the operation of the Register and, with the recommended improvements, will continue to do so. The review also delivered improved trader and consumer engagement in the work of Fair Trading through the various methods of stakeholder consultation.

The review recommends the following:

1. Information on each complaint appearing on the Register will be enhanced by adding the Fair Trading practice code. Fair Trading case managers will inform traders of the intended categorisation of complaints made against them as a standard part of the complaint handling process.
2. The Register will continue to be based on all complaints received by Fair Trading rather than being a record of complaint outcomes, or a report on Fair Trading's performance in finalising complaints.
3. The data is not reported as the number of complaints compared to the size of customer base and/or industry size (normalisation of data) as consistent information about businesses is not available.
4. The threshold number of complaints for a business to appear on the Register shall remain at 10 or more complaints received by Fair Trading against that business in any calendar month.
5. The listing of businesses according to their public and recognisable 'trading' or 'brand' name will continue and the Guidelines will be updated to stipulate that whenever a complaint is made about a franchised business, Fair Trading will notify the head office as part of the standard complaint resolution process.
6. The notification period of three working days prior to publication on the Register will remain. However, the Guidelines will be updated to stipulate the following information:
  - Fair Trading contacts traders about each complaint received and this is the point where the trader can raise any issues regarding the complaint, including disputing if it meets the definition of a complaint
  - The notice to businesses appearing on the Register at least three working days prior to the publication of the Register provides the trader with confirmation of the final number of complaints and a final opportunity to raise issues with Fair Trading (for example, if they believe a counting error has been made).
7. The Register will continue to be published monthly.
8. The requirement to maintain 24 months' worth of data on the website continues. Historical datasets (those over 24 months old) will be archived and publicly accessible from the NSW Government Open Data Portal.
9. The usability and interactivity of the Register will be improved and include a search function.
10. The Guidelines will be updated with the recommended improvements and re-published after key stakeholders are given an opportunity to comment on a consultation draft.

# 1. Background

## 1.1 The NSW Fair Trading Complaints Register

The NSW Fair Trading Complaints Register (Register) is the first of its kind for a consumer protection agency in Australia. Data collection began on 1 July 2016 and the first Register was published on 25 August 2016.

The Register is established under Section 86AA of the *Fair Trading Act 1987* and it was passed by the Parliament with bipartisan support on 13 October 2015.

Fair Trading receives around 43,000 complaints each year and holds a wealth of information about businesses operating in the marketplace. The objectives of the Register are to make complaint information publicly available, provide an incentive for businesses to deliver better customer service and help consumers make informed decisions about where to shop.

The Register also contributes to NSW Government's principle of open data. This commitment involves providing public access to information held by government in a variety of formats, unless there is an overriding public interest, such as the privacy of individuals, against doing so. This commitment recognises that information is crucial to an efficiently functioning economy and community. Markets can only operate optimally when consumers have access to information about businesses and the products and services they offer.

Data in the Register can be used to:

- Improve services
- Inform the community about trends in the marketplace
- Hold businesses to account
- Devise innovative ways to help consumers gain better value in the marketplace.

## 1.2 The Complaints Register Guidelines

The Complaints Register Guidelines (the Guidelines) were published in March 2016 and inform how the Register is designed and administered.

The Guidelines advise that Fair Trading uses the Australian and New Zealand Standards (AS/NZS 10002-2014) definition of a complaint which states 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.*”

For a matter to be considered as meeting the definition of a complaint and appearing on the Register, Fair Trading takes all reasonable steps to ensure the complaint has been lodged by a real person who has had a real interaction with the businesses. This minimises the likelihood of

vexatious or fictitious complaints being included in the Register. Fair Trading also ensures the same complaint has not previously been lodged.

The Guidelines set out how Fair Trading deals with complaints including generally encouraging consumers to attempt to resolve disputes directly with the business in the first instance; confirming the identity of the trader; and intervening by contacting the trader on the consumer's behalf. The Guidelines also explain Fair Trading's approach of allocating a case manager to a trader that is the subject of multiple complaints. All traders appearing on the Register have an allocated case manager.

The limitations of Fair Trading's data are explained in the Guidelines. These include that a complaint does not necessarily mean the trader has broken the law as it may be about poor customer service; larger businesses may attract greater numbers of complaints due to the larger number of transactions undertaken; certain types of businesses may generate more complaints than others due to the type of products or services they provide and media attention can generate additional complaints.

The Guidelines explain how the Register operates:

- Displays the businesses that received 10 or more complaints in a calendar month
- A total of 24 months' worth of data is maintained and published on the Fair Trading website
- The Register is published on the Fair Trading website in the second half of each month for the previous calendar month and is an online dashboard
- All businesses appearing on the Register are provided with notice of this by email at least 3 working days prior to publication
- The name of the business, number of complaints, and the product groups are listed and, from September 2016, the location of the business
- Businesses, including those which are part of a larger group (eg different branches, franchises or stores in a chain) are listed according to their public and recognisable 'trading' or 'brand' name
- Information about outcomes of complaints is not included as it is not always known whether an agreed redress was provided or whether the complainant considered such redress to be adequate.

It was noted the Guidelines would be reviewed 12 months from its initial commencement.

## 2. The Review of the Register guidelines

### 2.1 Objectives

The review's objectives include delivering:

1. an understanding of the effectiveness of the Complaints Register Guidelines
2. clear recommendations as to how the Guidelines may be improved
3. improved trader and consumer engagement in the work of Fair Trading.

### 2.2 Scope

The review considered the following:

- the design and administration of the Guidelines, including:
  - information appearing on the Register including complaint outcomes
  - the policy of grouping businesses according to their publicly recognisable trading name or brand (e.g. franchises, chains and corporate entities)
  - threshold number of complaints for appearing on the Register
  - how often Fair Trading should publish the Register
  - how long each month's Register should be publicly assessible
  - notification timeframe to businesses and the notification process
- the format (web design) of the Register.

The review was not intended to, and did not, consider:

- the legislation underpinning the Register (the Register is established under section 86AA of the *Fair Trading Act 1987*)
- the existence of the Register
- Fair Trading's use of the Australian and New Zealand Standards definition of a complaint
- Fair Trading's compliance with the Guidelines since the Register's first publication in August 2016.

## 2.3 Methodology

The review used a mix of methods, combining the following:

- Public consultation
- User feedback
- Web statistics
- Analysis of complaints data
- Consultation with other Australian consumer protection agencies
- Internal consultation within Fair Trading and Department of Finance, Services and Innovation
- Desktop review.

Data collected from each method was analysed and synthesised to draw key findings that informed the recommendations of the review.

### 2.3.1 Public consultation

Public consultation was a core component of the review, particularly regarding meeting the third review objective around improved engagement with consumers and businesses.

#### a) Formal submissions

The formal submission process was used to collect formal written feedback from both industry and consumers.

The Complaints Register Issues Paper (Issues Paper) was released in April 2018 and provided a series of questions for consideration.

A communication campaign for the submission process commenced on 27 April 2018 and informed the public as to the commencement of the review, its objectives, what was subject to the review, what was excluded and how the review would be conducted. It included a promotional tile on the Fair Trading website, a media release on 1 May 2018 (issued to 480 media outlets and posted on the Fair Trading and DFSI's websites), and Fair Trading's Facebook page.

The Issues Paper was publicly available on the Fair Trading website on the Have Your Say page with the following methods for lodging feedback:

- Completion of an online form which mirrored the feedback requested in the Issues Paper
- Submission of written feedback via email
- Submission of written feedback by mail.

Everyone accessing the Fair Trading website, including the page with the current published Complaints Registers, could click on a link which directed them to the Have Your Say page.

Fifty-eight key external stakeholders were also contacted by email and invited to provide comment on the Issues Paper. Stakeholder submissions concluded on 25 May 2018.

Fair Trading received a total of 83 submissions (15 email submissions and 68 online).

### **b) Roundtables**

Two face-to-face consultations were hosted by Fair Trading with key external stakeholders. This was supplementary to the formal submissions and in line with the commitment made to industry and consumer groups. The roundtables enabled the exploration of key themes in a more in-depth manner.

Overall, 25 stakeholders were invited by the Commissioner for Fair Trading, with 6 attending on 15 May 2018 and 12 on 18 May 2018.

### **c) Meeting with the Commissioner for Fair Trading**

Two key external stakeholders were unable to attend the roundtables and requested a meeting with the Commissioner for Fair Trading. These took place on 22 March 2018 and 1 June 2018.

## **2.3.2 User feedback**

The objective of the online user survey was to collect feedback from users of the Complaints Register. Fair Trading wanted to better understand who the users of the Register are and how they are using it, ascertain the user's level of satisfaction with the current design of the Register and identify areas for improvement in the online layout.

The online user survey commenced on 26 March and closed on 27 April 2018, before the communication campaign for formal submissions began. The user survey was not promoted, to ensure the focus was on feedback from individual users.

A total of 106 responses were collected out of 6,220 users visiting the site during the survey period.

The results of the survey provided Fair Trading with some indicative evidence which was not available before about who uses the Register, why, how they are finding it and how its design could be improved.

Unsolicited feedback provided by users via the general Fair Trading website customer feedback page since the introduction of the Register has also been included in the analysis.

### **2.3.3 Web statistics**

Fair Trading analysed the statistics of the visits to the Register generated from Google Analytics to report on

- the number of users visiting the Register every month and how much time they are spending on it
- which industries are receiving the most clicks.

The timeframe considered for the analysis covered 20 months between August 2016 (when the first Register was published) and March 2018 with the data analysed by month.

### **2.3.4 Analysis of complaints data**

Fair Trading analysed the number of complaints received to assess the potential impact of the introduction of the Register on the number of complaints and traders complained about via a comparison with pre-register complaints data. The key hypothesis tested was that the introduction of the Register contributed to a reduction in the number of complaints, as businesses feel pressured to improve their complaint handling processes.

The timeframe considered for the analysis was determined based on the first data collection month for the Register (July 2016) to the end of February 2018, and the equivalent amount of time before (20 months) making an overall timeframe considered between November 2014 to February 2018.

Additional data was considered to reflect other factors influencing the number of complaints received by Fair Trading:

- Fair Trading proactive engagement activities with specific traders
- Major industry events, e.g. major business closures or liquidations
- Major government events or announcements, e.g. legislative reform, recalls or public warnings.

### **2.3.5 Consultation with other Australian consumer protection agencies**

Fair Trading approached Australian consumer protection agencies in other jurisdictions, identified as those involved in the application of the Australian Consumer Law, through the Compliance and Dispute Resolution Committee (CDRAC) which NSW Fair Trading is a member.

The objective was to:

- Identify current practices around publication of complaints data across Australian consumer protection agencies and explore any lessons from these
- Explore their interest in the review: what aspect and why.

CDRAC members were asked to provide their response by completing a questionnaire circulated on 3 April 2018. Out of 10 CDRAC members, eight provided a response.

### **2.3.6 Internal consultation**

The objectives of this method were to:

- Collect feedback from an internal perspective on the implementation of the Register – what worked well, what could be improved
- Explore areas for possible changes and potential implications, including other types of information Fair Trading could have access to and decide to publish.

Interviews were conducted with 16 key internal stakeholders who were involved in the Register design and/or implementation. Feedback was collected via two focus groups (12 participants) and four individual interviews that covered similar topics.

### **2.3.7 Desktop review**

Some comparative information was collected from other jurisdictions (Australian and overseas) that are publishing complaints data where the trader is identified. The objective was to:

- Identify existing practices of publishing complaints data where the business being complained about is identified
- Draw patterns in terms of how complaints data is being published and what information it includes
- Gather information about the impact of such practices.

The desktop research included three components:

- A desktop research to identify agencies publishing complaints data where traders are identified, focusing on consumer protection agencies, ombudsman schemes and other agencies receiving a high volume of consumer complaints
- Some follow-up contacts via email with identified agencies to explore in more detail the processes followed to publish data and any learnings
- A literature scan about evidence of impact from such practices.

A total of 25 agencies are included in the analysis. These are listed in Table 6 starting at page 51 of the Report.

# 3. The effectiveness of the Register as governed by the Guidelines

## 3.1 Who uses the Register?

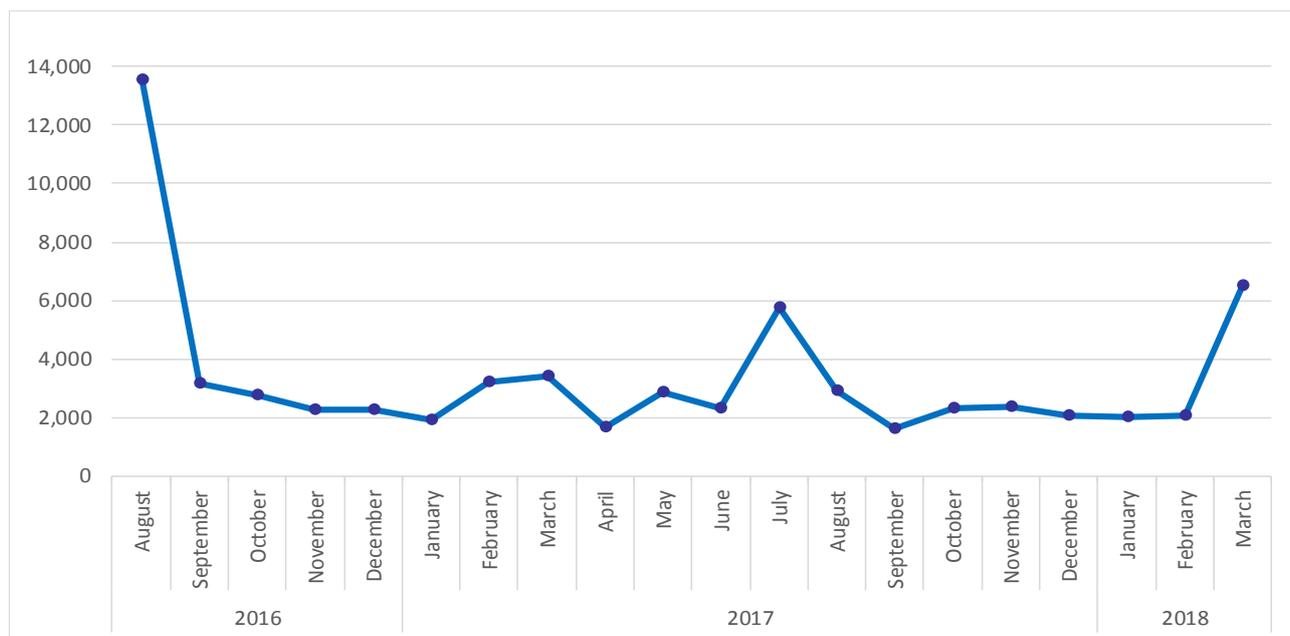
### 3.1.1 On a typical month, an average of 2,409 users are visiting the Register

The number of users visiting the Register fluctuates: between August 2016 and March 2018, the number of users recorded on the home page of the Register (Figure 1) ranged from 1,590 in September 2017 to 13,551 in August 2016 for its first month of operation. On a typical month, i.e. excluding unusual peaks, the Register attracts an average of 2,409 users. Outliers not included in the average are August 2016 when the Register commenced (13,551 users), July 2017 with a high number of complaints and media coverage about Fidget spinners and cubes (5,750 users), and March 2018 (6,508).

When looking at the daily statistics of page views, peaks generally happen on the day or following day of a Fair Trading or Ministerial announcement advising that a new monthly update of the Register has been published. Media appearances of the Commissioner for Fair Trading where the Register has been mentioned are also associated with a peak in the number of page views.

On average over the period considered, users are spending 6 minutes 44 seconds on the Register.

Figure 1. Unique users visiting the NSW Fair Trading Complaints register, August 2016 to March 2018

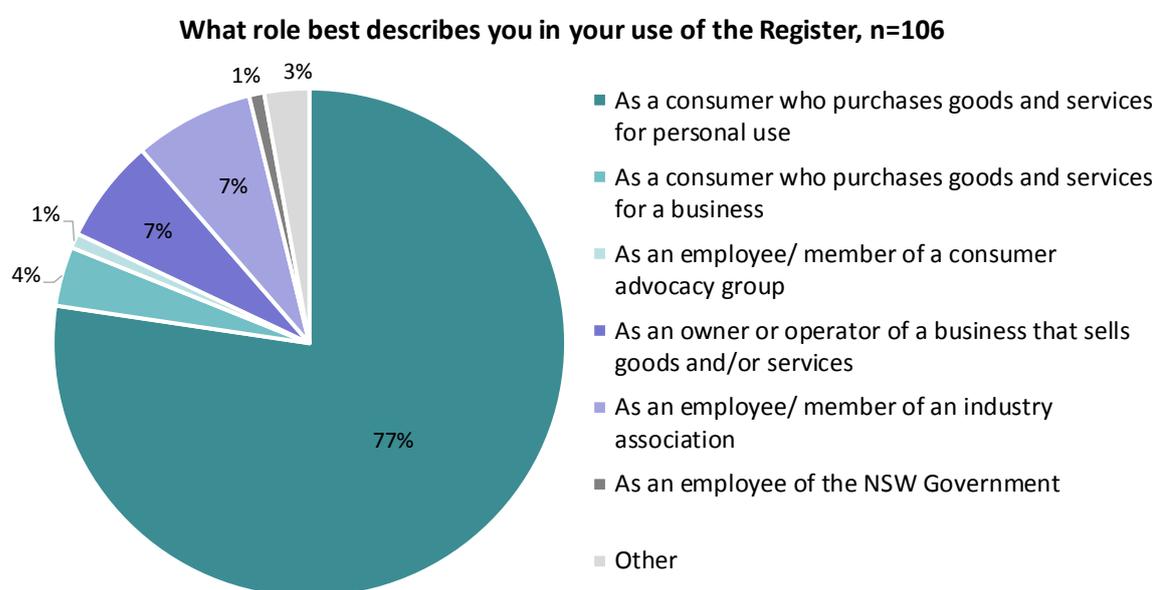


### 3.1.2 Mostly consumers are using the Register, with the most frequent reason being to check on a specific business

According to the results from the April 2018 user survey (n=106), most users are consumers (77%). Business or industry representatives made only 15% of the respondents, equally split between individual businesses and industry associations (Figure 2).

In terms of demographics, results from the user survey indicate that the Register is being used across all age groups.

Figure 2. Who are the users of the Fair Trading Complaints register? User survey, April 2018



Close to two thirds (65%) of the respondents to the user survey reported using the Register for the first time. Close to a quarter (23%) of respondents are using it once a month, in line with the monthly update of the Register. Interestingly, the pattern was different between consumers and industry users, where industry users were most likely to use the Register once a month (Table 1).

Table 1. How often do users visit the Register? User survey, April 2018

	Consumers		Businesses/ Industry		All respondents *	
	n	%	n	%	n	%
This is my first time	63	72%	4	27%	69	65%
Once a month	13	15%	9	60%	24	23%

Less than once a month	9	10%	1	7%	10	9%
More than once a month	2	2%	1	7%	3	3%
Total	87	100%	15	100%	106	100%

\* 4 users did not identify as Consumers or Business/ Industry group

Users heard about the Register primarily via the Fair Trading website (40%), followed by Facebook (27%) – which is an indication of the effectiveness of Fair Trading’s communication on social media. As a source of information, word of mouth came third (12%).

When asked about the main reason they were visiting the Register, the most frequent reason was to check on a specific company, where users already had an issue or a complaint about, or are considering engaging with. As an example, the following consumers had a particular issue with a trader and went on to the Register to ascertain if this was a recurrent issue:

*I'm actually entering into mediation with [trader name] at the moment and I wanted to look at their previous record on that as customer satisfaction. Things don't look good they seem to be in the top four quite often. [Consumer]*

The second most frequent reason was to see more generally which traders are on the Register, who to avoid in order to make a better-informed purchasing decision. One respondent indicated that looking at the Register may trigger a formal complaint:

*Interested to see who was on the list. I would definitely complain about [trader name]. My daughter was scammed \$300 which I had to pay as she is only 16. I rang my bank but I did not complain to NSW Govt. [Consumer]*

Another reason mentioned by several respondents was curiosity, with some consumers admitting having a “sneaky peak”.

Checking specific industries, like the real estate or building industry, came as the fourth most frequent reason.

### **3.1.3 Industries with franchise businesses like the real estate and retail industries tend to receive the most interest**

Once users are on the Register, they can click on the monthly update they are interested in (most likely the previous month), which then opens a new page where users can click on the different listed businesses to access more information on the complaints (Figure 3).

Figure 3. NSW Fair Trading Complaints Register, Monthly business list web page, March 2018 (example)

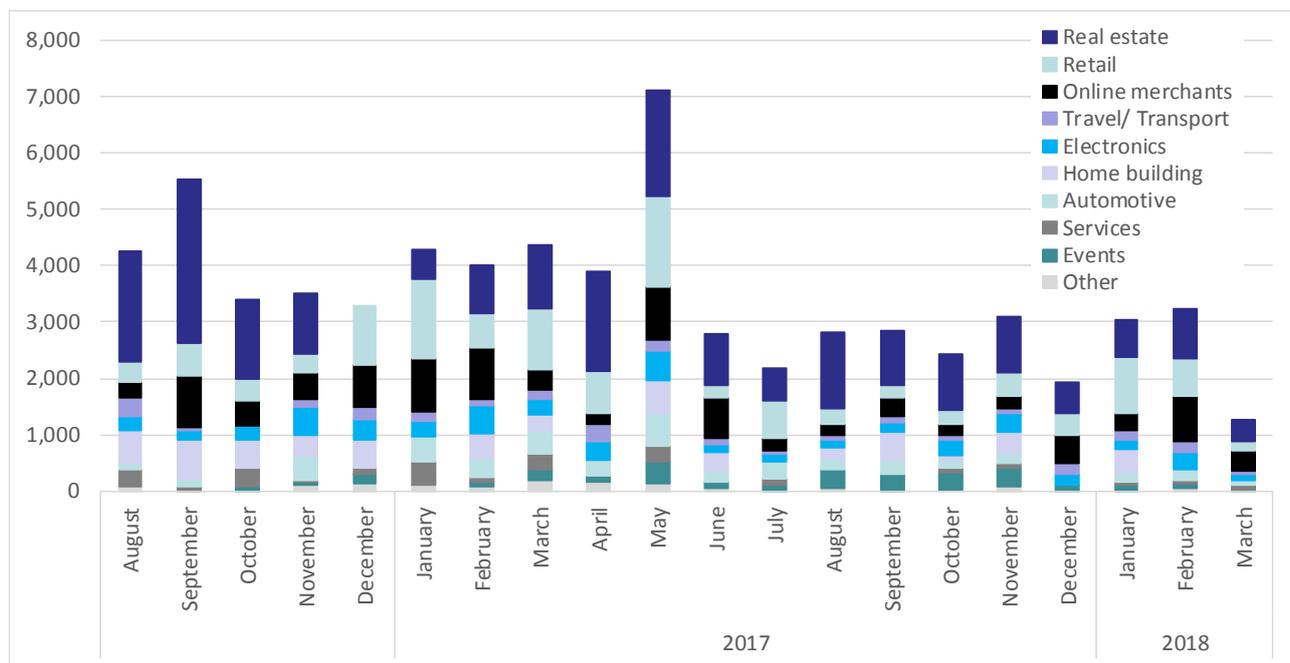


When looking at the number of clicks on the traders listed, then aggregated by industry<sup>1</sup>, the real estate industry received the most clicks most of the time compared to the other industries (Figure 4). The exception to this is when retail traders received more complaints:

- December 2016 (no real estate trader listed; the retail industry category received the most clicks)
- January 2017 (only one real estate trader listed; the retail industry received the most clicks)
- July 2017 (three real estate traders listed; second to retail industry by only 3 clicks)
- January 2018 (two real estate traders listed; the retail industry received the most clicks).

<sup>1</sup> A typology of 10 broad industry groups has been used, including the real estate, automotive and retail industries. The 'Online merchants' industry covers traders purely selling goods online, e.g. online furniture store or online fashion, with the exception of online travel agencies or online ticketing businesses that are respectively considered under the 'Travel/ Transport' and 'Event' industries. The 'Other' category covers traders from the Telco and Financial industries that only had a couple of traders listed each over the whole period.

Figure 4. Number of clicks on traders appearing on the Register, by industry, August 2016 to March 2018

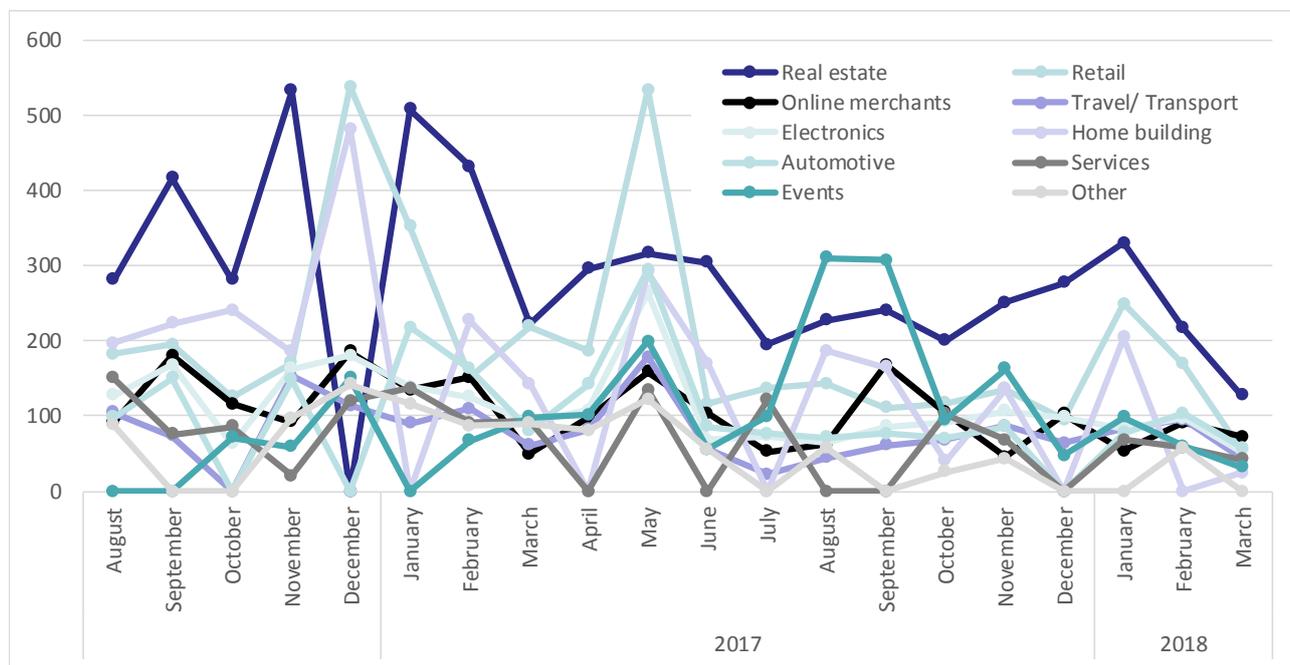


Obviously, the number of clicks received by industry is a factor of the number of traders listed by industry. However, some industries tend to consistently receive more clicks by traders than others.

This is the case for the real estate industry, with the retail industry to a lesser extent (Figure 5). One of the key reasons for that seems to be that both industries, particularly the real estate industry, often have a franchise model. Because franchisees appear under the franchise brand name, the traders are more likely to receive more clicks as users drill down to the location.

Other industries had some peak in terms of clicks received per trader listed, but in those cases, it was due to a specific trader receiving a lot of media coverage. This was the case for one trader from the home building industry in December 2016 and one trader from the events industry in August and September 2017.

Figure 5. Ratio of number of clicks per trader listed on the Register, by industry, August 2016 to March 2018



### 3.2 Users' level of satisfaction with the Register

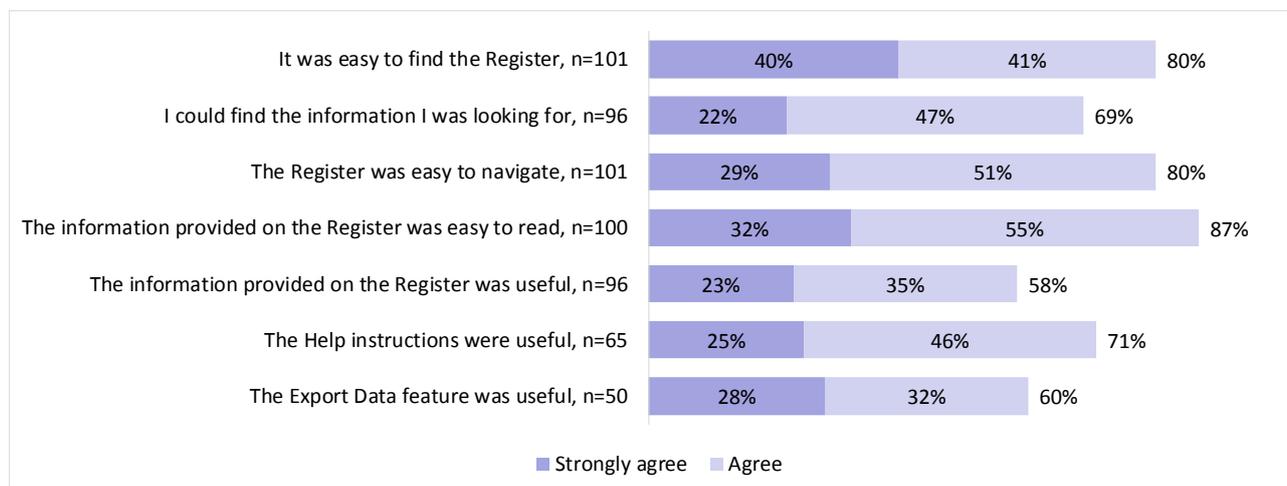
Overall, the Register seems to be quite user-friendly and most users could find the information they were looking for. Most respondents agreed that:

- The information provided on the Register was easy to read (87% agreed or strongly agreed).
- It was easy to find the Register (80%)
- The Register was easy to navigate (80%)
- They [I] could find the information I was looking for (69%)

A lower proportion of users, but still the majority, found the information provided on the Register useful (58%). A lower number of respondents could provide feedback about the Help instructions or Export data feature, which indicates that these particular features are less known or used. (Figure 6)

The user survey also offered the opportunity to collect feedback about the Complaints Register Guidelines. However, less than a third of respondents (30%) had read the document – the percentage was higher among respondents from the industry (47% had read it against 26% among consumers). Out of those who had read it, the vast majority were satisfied with the supporting explanation the Guidelines provided.

Figure 6. Users level of satisfaction with the current design of the Register, User survey, April 2018



Users of the Register have the opportunity to provide unsolicited feedback on an ongoing basis via the general Fair Trading website [feedback page](#).

Since the Register’s first publication date in August 2016 to March 2018, users have submitted 5 complaints, 14 compliments and 20 suggestions. Complaints mainly relate to the accessibility of the Register (one from a visually impaired user using a screen reader). Users complimenting the Register were mostly thankful to Fair Trading for the service provided to make businesses more accountable. A few users noted that the Register was a first in Australia and suggested other States should do the same.

*Fair Trading NSW is the only organisation publishing complaints in Australia. Congratulations – please continue. The service assists consumers in their decision making and limits how the business can attempt to unfairly treat the consumer. [Consumer]*

*I think the Complaints Register is great. [Consumer]*

*I would like to see this in Victoria too. [Consumer]*

Most frequent suggestions were about including more details about the complaints and adding a search function to the Register. A few users also asked for a longer list of businesses complained about or even to show all complaints.

In the April 2018 online survey, when asked about how to improve the Register, the most frequently mentioned area for improvement was the way the information was presented. In particular, respondents asked for more details about the complaints, which would assist consumers in making better informed purchasing decisions:

*The specifics of the complaint, why the end user complained, and what happened to the complaint, was it resolved, is it still outstanding. It would be good to know for example if a retailer who has had a complaint made has done anything to fix the complaint or has*

*refused to recognise the complaint. That way we can see if we should avoid the retailer, or continue dealing due to the issue being fixed [Consumer]*

A few respondents criticised the look and feel of the Register:

*It looks a bit like an excel sheet that has been tacked on. [Consumer]*

Ways to improve the usability of the Register which were mentioned several times were the introduction of a search function, and the ability to search across different months.

*Wish you had a search engine where viewers can insert parameters that covered specific industries and a summary of all complaints lodged over the preceding year, rather than the need to open each month individually. [Business]*

A few users also suggested to have a lower threshold and more business listed, which may be of interest for consumers dealing with small businesses:

*some small business may not generate 10 complaints in a month but do result in repeated complaints over time which ought to be known by consumers [Consumer]*

### **3.3 Exploring the impact of the Register**

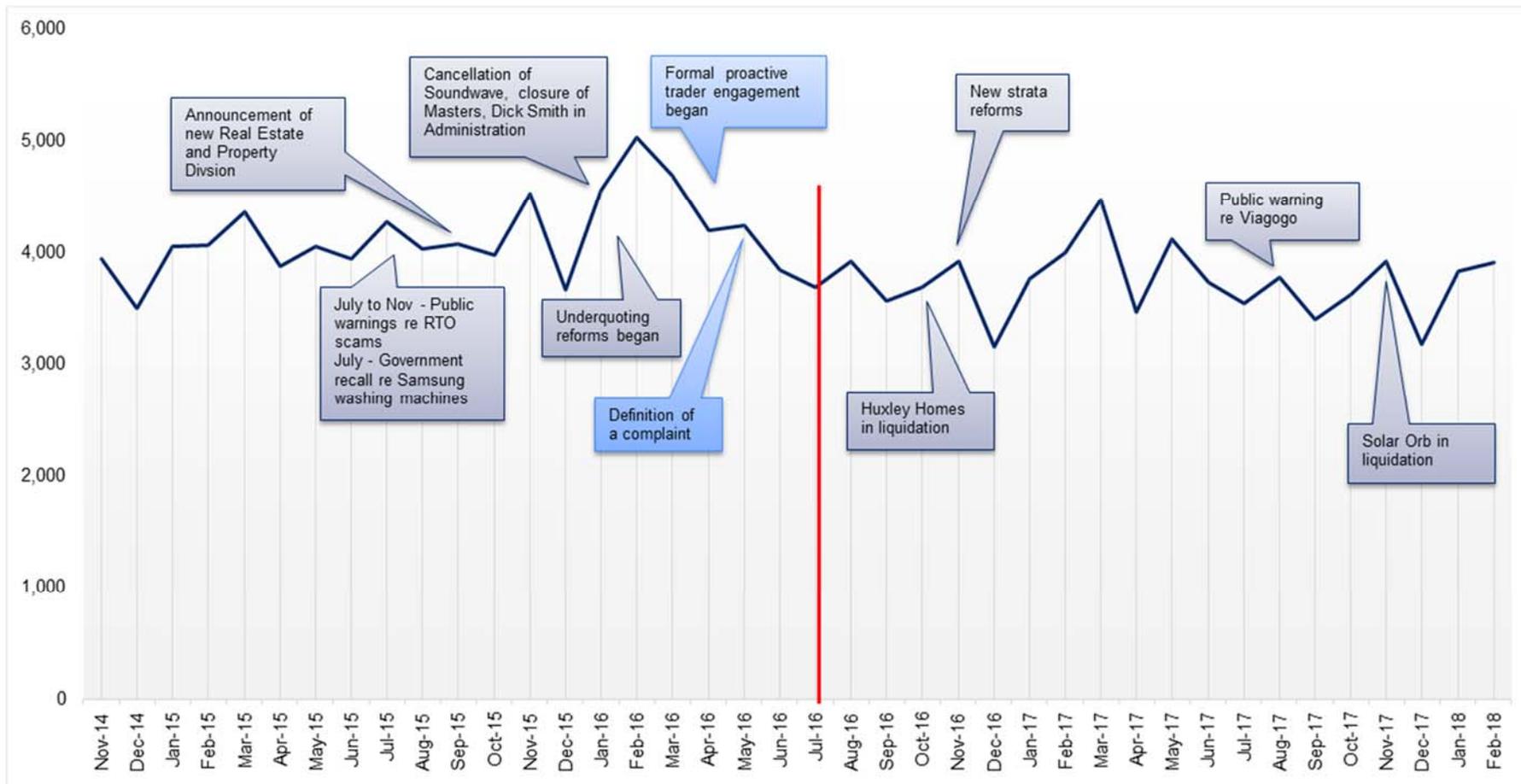
#### **3.3.1 The introduction of the Register seems to have contributed to a decrease in the overall number of complaints received by Fair Trading**

A comparison with pre-Register complaints data was undertaken.

Fair Trading found the number of complaints received is influenced by a variety of factors, including some purchasing seasonality (e.g. yearly peak around February to March which seems to be related to Christmas purchases), business closures, public warnings or government reforms (Figure 7).

It is difficult to determine with certainty the impact the introduction of the Register has had, however it seems to have *contributed* to a reduction in the overall number of complaints observed (8% between 20 months before and 20 months after the Register was launched).

Figure 7. Number of complaints received by Fair Trading by month, November 2014 to February 2018



After the introduction of the Register, the number of complaints received for each month was much more likely to be less than the same month the year before, when there was no Register.

Table 2. Number of complaints received compared to the same month the year before, November 2015 to February 2017

Month	Number of complaints received	Variation compared to the same month the year before
Nov-15	4,519	+15%
Dec-15	3,664	+5%
Jan-16	4,555	+13%
Feb-16	5,028	+24%
Mar-16	4,685	+8%
Apr-16	4,188	+8%
May-16	4,231	+5%
Jun-16	3,837	-2%
Jul-16	3,909	-3%
Aug-16	3,559	-12%
Sep-16	3,681	-7%
Oct-16	3,909	-13%
Nov-16	3,155	-14%
Dec-16	3,763	-17%
Jan-17	3,992	-21%
Feb-17	4,463	-5%

With the publication of the names of businesses with over 10 complaints against them per month, the Register was expected to have a stronger impact on the businesses most complained about, as the model followed was the one of a league table.

Fair Trading supported the introduction of the Register with some targeted engagement activities with traders most complained about. These engagement activities started in April 2016 in preparation of the complaints data being first published in July 2016. Between April 2016 and September 2017, Fair Trading conducted 61 formal engagements with 57 businesses that had a high number of complaints against them.

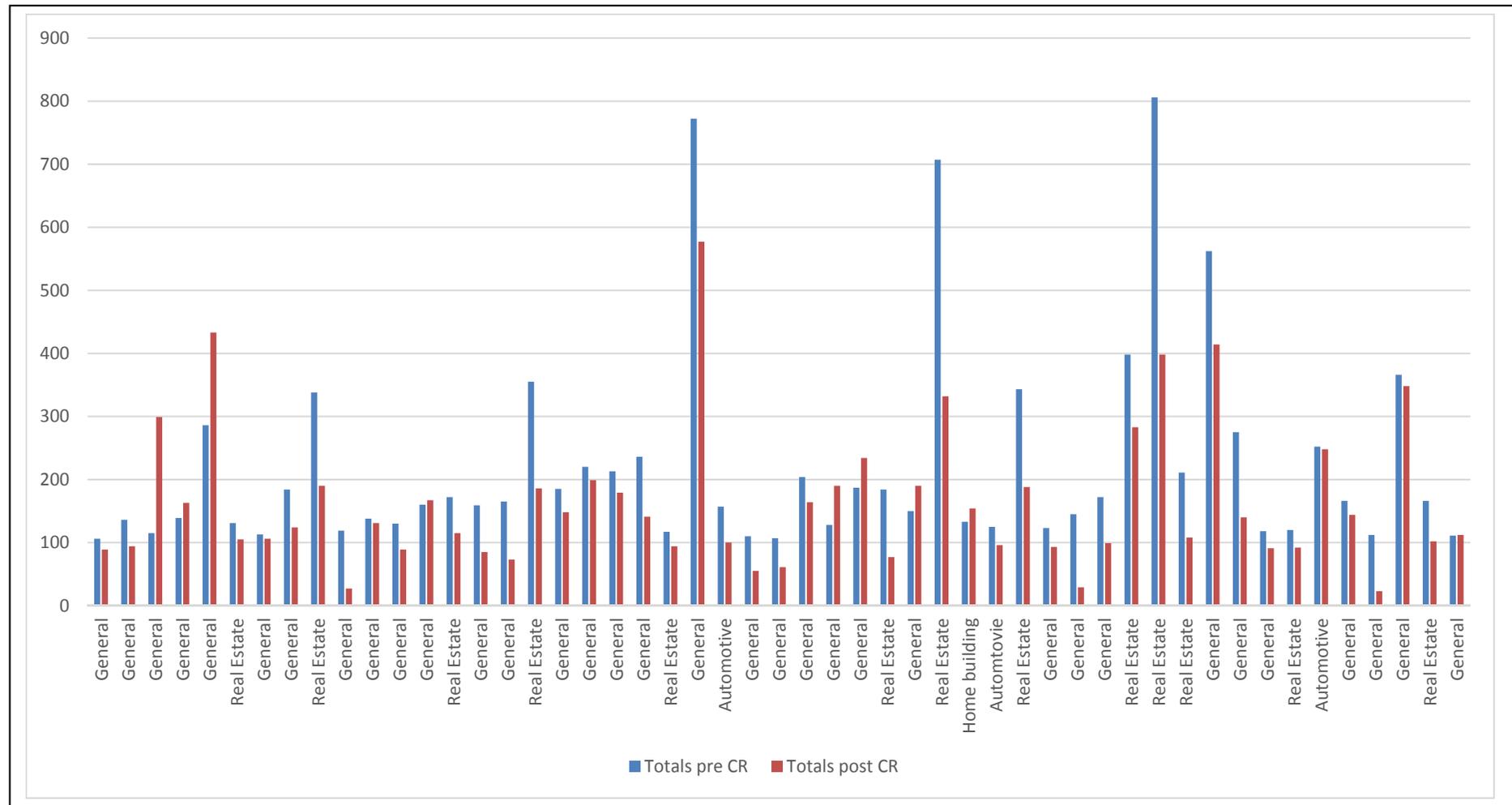
The number of complaints against grouped traders (that is, belonging to a similar brand or trading name) with 10 or more complaints per month decreased by 28% between the 20 months before the introduction of the Register and 20 months after. This stronger reduction than the overall number of complaints suggests a stronger impact of the Register and the supporting engagement activities on businesses most complained about.

Figure 8 shows the details of businesses (identified by industry only) that were the most complained about before the Register, and the number of complaints they received after.

Excluding traders that went into insolvency and one-off events (e.g. cancellation of a major festival), there were 51 grouped traders that had more than 10 complaints a month for at least one month between November 2014 to June 2016. Out of those, 42 saw a decrease in the number of complaints against them in the 20 following months. This suggests that the Register acted as an incentive for these businesses to improve their customer service and/or complaints handling processes.

The above conclusion is borne out by Fair Trading's own engagement with the traders in question, including during this review. More than one business representative has said that the advent of the Complaints Register has encouraged them to improve their complaint handling processes to either reduce their appearances on the Register, or ensure they never appear. The biggest impact in this regard appears to have been on nationally franchised businesses.

Figure 8. Number of complaints received against grouped traders with 10 or more complaints a month, 20 months before (Pre CR) and 20 months after the introduction of the Register (Post CR)



The analysis of the change in the number of complaints received by industry seems to indicate that the Register had a stronger impact on the real estate industry. Keeping in mind that other factors may have contributed to this, the number of complaints received against this industry decreased by 43% since the introduction of the Register.

The reduction is even greater among the traders who were most complained about (-61%). The home building and automotive industries saw an increase in the number of complaints against traders most complained about, however the numbers remain relatively low over a 20 months period.

Table 3. Number of complaints received by industry, 20 months before (Pre CR) and 20 months after the introduction of the Register

Industry	Number of complaints	Pre-Register (20 months)	Post Register (20 months)	Variation
Real Estate and Property	Total	11,742	6,687	-43%
	For grouped traders with 10 or more complaints	3,414	1,343	-61%
Home building	Total	14,758	14,674	-1%
	For grouped traders with 10 or more complaints	156	328	+110%
Automotive	Total	11,507	11,102	-4%
	For grouped traders with 10 or more complaints	365	480	+32%
General (all others, incl. retail)	Total	42,934	40,614	-5%
	For grouped traders with 10 or more complaints	5,310	4,803	-10%

### 3.3.2 Evidence from other agencies indicates that publishing identified complaints data helps improve businesses' complaint management processes

Fair Trading's literature scan found some robust statistical analysis completed on the USA's Consumer Financial Protection Bureau (CFPB) which demonstrated that publishing identified complaints data has a positive impact on businesses' complaints management and consumer relationships.<sup>2</sup> The analysis showed that exposed companies were more likely to close complaint files while providing explanations and relief to aggrieved consumers and in a timely manner. While businesses are often concerned about the impact of such initiatives on their reputation and sales, the evidence showed that exposed companies were not impacted negatively: on the contrary, they had slightly more accounts over time, while unexposed companies accounts remained flat over the same period.

<sup>2</sup> Opoku-Agyemang, Kweku A., Does Opening Complaints Data Change Company and Consumer Behavior? Evidence from the Consumer Financial Protection Bureau (March 10, 2017)

This aligns with anecdotal evidence provided by several agencies where businesses are using the published complaints data as a benchmarking tool against themselves and their competitors:

- The Commerce Commission New Zealand advised that some of the “most complained about traders” made public commitments to do better in the coming year and one telecommunications company embedded this in their key performance indicators.
- The UK Financial Ombudsman Service (FOS) also provided anecdotal evidence that the publication of complaints data helped the industry improve its complaints handling processing, including by providing a metric for staff performance:

*Feedback from stakeholders – both industry and consumer groups – is that the complaints data is regarded as an important benchmark for the quality of complaints handling in financial services. For example, many businesses use the complaints data as a metric for assessing performance of senior staff and teams responsible for complaint handling. [UK Financial Ombudsman Service]*

- Feedback provided by the Energy and Water Ombudsman in both South Australia and Victoria indicated that member organisations use the published complaints data as benchmarking tool internally against their own performance and compared to other market operators.
- The UK Office of Rail and Road also indicated that “*publishing complaints statistics has allowed train operators to measure how well they are doing as a business*”, while offering consumers the ability to “*compare how one operator does against another*”, and the regulator to “*help improve complaints rates and ensure that companies remain compliant*”.

## 4. Recommendations

### 4.1 Information appearing on the Register

#### 4.1.1 Details of the complaint

Some traders recommend that, in the first instance, Fair Trading direct consumers to raise their issues with the business before lodging a complaint whilst others recommend that Fair Trading should only accept complaints after consumers have attempted to resolved their dispute directly with the trader.

Consumers contacting Fair Trading about issues with a trader are provided with information about their, and the trader's, rights and responsibilities under the relevant legislation. Fair Trading encourages the consumer to resolve directly with the trader and then, if the consumer is unsuccessful, the option of lodging a complaint with Fair Trading is provided.

Fair Trading's website also provides this information in different ways and at different places, including at the online complaint lodgement and on the downloadable complaint forms.

Only accepting complaints after consumers have attempted resolution with the trader would greatly disadvantage consumers, particularly vulnerable consumers, and may even stop them from lodging complaints. There are often valid reasons why a consumer has not attempted resolution with the trader, such as that there is no advertised complaint handling process or it is difficult to locate or follow, threats or intimidation, fear or previous experience with the trader etc.

While Fair Trading encourages consumers to initially attempt to resolve their dispute with the trader, we do not and will not prevent any consumer from complaining directly to Fair Trading as the regulator. As a Government agency, Fair Trading has a duty to assist anyone who asks for help.

The Complaints Register currently includes what type of product, service or business the complaint is about (the product code).

General external stakeholder feedback, particularly from consumers, was for further information about the complaint to be included in the Register, such as detailed complaint categorisation or a short summary. Stakeholders generally felt this would add extra detail about the types of complaints attributed to the different traders, provide context and may enable more informed choice.

The study of other jurisdictions where complaints data is published found the overseas agencies which include detailed information about the nature of the complaint took that information directly from the consumer narratives. This was either with the consumer's permission or the consumer is advised on lodgment of the complaint to redact personal details (such as social security number) as the agency considers all complaints to be public information.

The Office of Consumer Protection (OCP) of the Montgomery County, Maryland, USA, provides an example of where complaints lodged are published as is. The OCP maintains a searchable consumer complaints database for complaints over the last three years. It includes the company name and complaint details and is uploaded in real time. All information lodged with the OCP is public information, so complainants are advised to redact any identifying personal information such as date of birth or social security number. However, feedback provided by the OCP indicates that “dirty data based on user input” impacts the statistics.

Overall, agencies were more likely to provide only information about the type of product or service the complaint is about, similar to the Register in its current format.

Traders are concerned the details of the complaint only represent the complainant’s point of view which may not be a fair representation of the issue and there is no public right of reply so the trader cannot provide context to the matter (their side of the story). Also, though not part of this review, some stakeholders consider the definition of a complaint used by Fair Trading is too broad and enables the lodgement of frivolous, vexatious or fabricated complaints.

Fair Trading uses the Australian and New Zealand Standards (AS/NZS 10002-2014) definition of a complaint which states 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.*” Fair Trading’s research found other agencies in Australia use the same or a similar definition: Financial Ombudsman Service, Telecommunications Industry Ombudsman (TIO), and Credit Industry Ombudsman (CIO).

Having a clearly articulated policy around defining a complaint enables Fair Trading to maintain a consistent and efficient approach in determining if a matter is a complaint or not. Along with ensuring the matter meets the definition of a complaint, Fair Trading confirms it has been lodged by a real person who has had a real interaction with the business being complained about.

Fair Trading also completes checks to verify the identity of the trader and, where multiple parties may be involved, contacts the complainant to discuss which party their primary dissatisfaction is about. This determines the party the complaint is logged against.

The final determination that a matter is recorded as a complaint is that the trader is contacted about the issues raised by the complainant. These checks reduce the potential of vexatious or fabricated complaints being counted as genuine complaints.

Adopting a broad definition (supported by the checks noted above) provides Fair Trading with a better understanding of the issues our customers have and ensures vulnerable customers can access Fair Trading’s services.

Some traders are concerned about a right of reply. It should be noted that all complaints appearing on the Register are recorded at the entry-point, that is, on the date received for that calendar month so the outcome of the complaint is not pertinent to the Register.

Also, as Fair Trading contacts the trader about each complaint received, this is the point where the trader can raise any issues regarding the complaint, including disputing if it meets the definition of

a complaint. All traders appearing on the Register have an allocated case manager with whom they can raise issues at any time.

Fair Trading's main concern about publishing additional data on the Register relates to the limits on the information available to Fair Trading. Including complaint summaries or narratives would be difficult. The information needs to be de-identified so the privacy of the consumer and possible third parties is not breached and any inflammatory or derogatory remarks removed. There are also issues around the consistency of the information which could possibly confuse the reader or have an unwarranted detrimental effect on the trader.

Internal feedback suggested the information that could be added is about the practice or problem the consumer indicates the complaint is about. This could be done with the information already available using the practice code which staff select when actioning complaints. The practice code describes which aspect of the product and service provision, or business transaction the consumer is complaining about.

For example, the following could appear on the Register:

What the complaint is about	Product appearing on Register	Practice appearing on Register
A tenant has an issue regarding their rent	Tenancy	Rent and charges
A consumer ordered baby products online and did not receive the items	Baby products	Supply of goods
A consumer has moved into his newly built home and has found issues regarding the work	House construction	Quality of work

In the situation where a complaint relates to multiple issues or problems, Fair Trading selects the practice code relating to the main practice or problem (core issue) being complained about.

The description of the complaint is from the consumer's experience with the trader. Publishing the practice codes will ensure the description of the consumer's issue is concise and reflects the consumer's perspective. The use of practice codes will also ensure consistency regarding meaning and type.

#### **4.1.2 Complaint outcomes**

Currently, the Complaints Register records a trader that has received ten or more complaints in a calendar month, that is, the complaints are recorded at the entry-point based on date received. The Register does not include any information regarding complaint outcomes.

Most consumer stakeholders support the publication of complaint outcomes stating it would further assist consumers in making informed decisions and would allow traders to demonstrate their responsiveness to customer concerns.

Those opposed are concerned that if an outcome is noted as unresolved, it will negatively reflect on the business even if a resolution has been offered but not accepted. On the other hand, matters listed as resolved may be perceived as the trader being at fault.

The study of other jurisdictions publishing identified complaints data found agencies which include outcomes do so in different ways. Some report on outcomes in an aggregated way, generally as a percentage resolved in favour of the consumer (mainly finance industry regulators). Others include minimal information such as the case status or if the matter was upheld/partly upheld. Twelve out of the 25 agencies which publish complaints data do not include outcomes.

Fair Trading's main concern about publishing complaint outcomes is that it would substantially delay the publication of data which would go against the objective of providing timely information. Fair Trading's guarantee of service for the finalisation of complaints is 30 calendar days however, complex matters may go over this timeframe.

Other considerations are:

- Internal records note how a matter is finalised however, Fair Trading does not know what ultimately became of the complaint so this information could not be considered as completely reliable – e.g. did the trader provide the promised redress or not?
- The current Register reports on the complaints **received** in a calendar month. If the Register was changed to reporting on complaints **finalised** during a specific calendar month, it would become a report on Fair Trading's performance in finalising matters
- If outcomes are included, should consideration be given to the trader for a right of reply? The USA's Consumer Financial Protection Bureau (CFPB) has provision for traders to select from a pre-populated list which ensures responses are consistent however, the CFPB does not check the responses. Going down this path could entail reputational risk for Fair Trading which then starts playing a role of reviewing businesses. This is already being done by existing customer rating websites and would impact on Fair Trading's impartiality during the complaint handling process.

Customers wishing to obtain information regarding matters where Fair Trading has taken enforcement action can find this data publicly available on the *Data & Statistics* page of Fair Trading's website.

#### **4.1.3 Normalisation of data**

Normalising data involves reporting the number of complaints compared to the size of customer base and/or industry size. The Complaints Register does not currently include the normalisation of data.

Fair Trading's study of other jurisdictions found six out of the 25 agencies normalise data. Various methods are used: complaints per 100,000 customer accounts; complaints per 1000 passengers; complaints per 10,000 telecommunications services in operation; or complaints per customer share. The agencies that normalise complaints data are generally ombudsman schemes or those

covering a specific industry. This makes it easier to identify an appropriate metric for normalisation and require the relevant information from their members.

Some traders and industry groups support the normalisation of data on the Register based on the size of the business and/or volume of transactions in comparison to complaints. This is based on their view that the way the Register is currently set up disadvantages businesses with a high volume of transactions and large market share. Other suggestions include:

Suggestion	Response
Create tiers of businesses based on their size and set the reporting threshold accordingly for each tier	Creating tiers of businesses based on their size and setting different thresholds encounters the problem of obtaining the appropriate metric that could be confirmed and would add an additional layer of complexity to the Register.
Create industry based registers	<p>Industry based registers would be difficult as the type of industry and appropriate threshold for appearing on the Register would need to be determined and it would result in several different registers.</p> <p>Example, registers for automotive, home building and real estate which, depending on the threshold, is likely to result in many more traders from these industries appearing.</p> <p>Consideration would have to be given to the breakdown of other industries such as retail (which could be broken down even further), hairdressing, travel agents, airlines, beauty, gyms, cleaning, ticket selling, casual accommodation (hotels, motels, holiday homes, holiday parks) etc.</p> <p>This would not only be complicated for Fair Trading to manage, it could also result in one or more register with only one trader appearing and the value of such a breakdown is unclear, especially considering the vast majority of complaints made to Fair Trading involve the application of the Australian Consumer Law.</p>
Separate between products and goods suppliers, from front-end service providers	Distinguishing between products / goods suppliers from front-end service providers would be a complex task as many businesses supply both products/goods and services. There is also the difficulty in determining the correct classification for a complaint which raises a product <u>and</u> service issue.

One industry group recommends complaints falling within the home building legislation be excluded from publication as the legislation contains several consumer protection provisions and there is mandatory licensing. The stakeholder claims it is the act of licensing that determines which traders are suitable to enter into home building contracts with the public so the holding of a licence

should allow the consumer to form a view as to whether the trader is a suitable person or entity to perform the work. The stakeholder notes if the licence holder has an extremely poor compliance history or engages in serious misconduct, that person's licence would be cancelled or suspended.

A complaint to 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 as not responding adequately to an existing concern.

The issue of a licence is based on qualifications and, in some cases, experience, and does not guarantee continued conduct which falls within legislative requirements or behaviour that would be deemed as professional. A licence holder, or any business, does not have to have a poor compliance history or engage in serious misconduct for consumer dissatisfaction or detriment to occur. The lodgement of complaints, and a trader's subsequent appearance on the Register, provides an indication of a certain consumer's experience of dealing with the trader in the marketplace and fulfils the objective of assisting consumers to make informed decisions.

Information about business size or number of transactions has not been included in the Register as this information is not publicly available for all businesses. Fair Trading has no mandate to request the relevant information from businesses. Some businesses disagree with normalising data as they consider the information that would be needed to be provided to achieve this is commercial-in-confidence and would not release it. Including the normalisation of data could result in a Register, or registers, where some data is normalised according to various methods and some is not.

Fair Trading's study of other jurisdictions where complaints data is published looked at 25 agencies across seven countries. It found the most common model (10 agencies) for publishing complaints data where a trader is identified is a league table like the current Register.

The league table is the optimum model in markets with large numbers of traders as only some traders are included so the data is not unwieldy. The list of traders is typically limited either by the number of traders (e.g. the top 25) or the number of contacts (e.g. every trader which is subject of at least 10 contacts).

As Fair Trading receives approximately 43,000 complaints a year and regulates almost the entire consumer marketplace, the league table is the best way to manage the release of the complaints data.

#### **4.1. Recommendation – information appearing on the Register**

1. Information on each complaint appearing on the Register will be enhanced by adding the Fair Trading practice code (ie. the issue the complaint is about). Fair Trading case managers will inform traders of the intended categorisation of complaints made against them as a standard part of the complaint handling process.
2. The Register will continue to be based on all complaints received by Fair Trading rather than being a record of complaint outcomes, or a report on Fair Trading's performance in finalising complaints.

3. The data is not reported as the number of complaints compared to the size of customer base and/or industry size (normalisation of data) because consistent information about businesses is not available.

## 4.2 Threshold number of complaints for publication

The Register currently reports on traders who receive 10 or more complaints in a calendar month.

Fair Trading's study of other jurisdictions found the agencies identified have varying practices relating to a threshold for publication. However, the most frequent practice is to not have any threshold: 12 of the 25 agencies are in this case. Other agencies have varying practices: three of them have a threshold of three complaints, others are publishing the name of the most complained businesses (e.g. top 5), only new cases or cases that resulted in disciplinary actions.

Internal stakeholders noted raising the threshold would reduce the benefit of the Register to consumers. They also noted lowering the threshold would require additional auditing to ensure the accuracy of the published data.

Some consumers suggest removing the threshold and publishing all data. Fair Trading is concerned that this would require removing the auditing which is currently in place, particularly around vexatious complaints, which would result in inappropriate complaint data being listed on the Register.

The Office of Consumer Protection (OCP) of the Montgomery County, Maryland, USA, provides a useful case study for the model where all complaints lodged are published as is. The OCP maintains a searchable consumer complaints database for complaints over the last three years. It includes the company name and complaint details and is uploaded in real time. All information lodged with the OCP is public information and uploaded in real time, so complainants are advised to redact any identifying personal information such as date of birth or social security number. However, feedback provided by the OCP indicate that "dirty data based on user input" impacts the statistics as, for instance, businesses may be identified in multiple ways.

By contrast, the Guidelines have enabled Fair Trading to go to considerable lengths to cleanse data, including ensuring matters meet the definition of a complaint (with the accompanying checks), prior to publication. This has given the Register a high level of integrity with no identified errors to date.

### 4.2. Recommendation – threshold number of complaints

4. The threshold number of complaints for a business to appear on the Register shall remain at 10 (ten) or more complaints received by Fair Trading against that business in any calendar month.

### 4.3 Grouping policy

The Register currently lists businesses “*according to their public and recognisable ‘trading’ or ‘brand’ name.*” This includes where the business is part of a larger group, different branches, franchise or chain.

The reasoning is the public recognise brand names, which are used as a means of attracting customers. The actual individual or corporate owner of the business may not be known to consumers. Furthermore, business policies are generally set by the brand’s head office or the franchisor.

This grouping policy is intended to make the information on the Register as meaningful as possible for consumers. It also places all business models which rely on a common brand/trading name on an equal footing, that is, a branded franchised group with a large market share and high volume of transactions is treated the same as a branded corporate owned group with similar market share.

The Register currently lists the total number of complaints against the brand or trading name (subject to 10 or more complaints) and breaks down the number of complaints received against each location (one or more). A location is not listed if it did not receive a complaint.

There is strong external stakeholder support for the current grouping policy, particularly from consumers who noted:

- Consumers tend to perceive themselves dealing with the overall brand
- Consumers shop by brand/trading name and not by individual franchises and may not be aware that a business is franchised
- Consumers expect to receive the same product/service and level of customer service in each store carrying the brand name
- Franchisors market heavily on the entire brand so should be accountable for the actions of the franchisees that are part of the brand
- Generally, franchises operate common policies and processes across all stores
- The grouping policy encourages responsibility to be taken by franchisors for the individual offices using their name and from whom they receive significant financial benefit.

Industry groups state it is unfair for parent companies and franchisors to face reputational damage when they are not at fault or subject to the complaint. They recommend that franchisees are treated as independent entities and the complaint made against the relevant legal entity so the franchisor is not publicly named if a complaint is made against its franchisee.

Industry groups and franchisees also argue that grouping by brand/trading name is unfair as they are penalised due to a high volume of transactions and large market share thus, more likely to appear on the Register.

When consumers lodge a complaint with Fair Trading, the consumer provides the details of the trader they dealt with and, regardless of the trader's industry or business model, this is invariably the commonly known brand or trading name of that business.

One of the stated aims of the Register is that 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 grouping policy fulfils this objective.

Fair Trading supported the introduction of the Register with targeted engagement activities with traders most complained about (likely to appear on the Register). These engagement activities started in April 2016 in preparation of the complaints data being first collected in July 2016. Between April 2016 and September 2017, Fair Trading conducted a total of 61 formal engagements with 57 businesses that had a high number of complaints against them.

During the formal engagement process, several traders that would have appeared on the Register if it existed prior to July 2016 made a commitment to introduce internal complaint handling processes to minimise the number of consumer complaints to Fair Trading. These traders have not appeared on the Register since its introduction.

Fair Trading's complaints data analysis found the number of complaints against grouped traders with 10 or more complaints per month decreased by 28% between the 20 months before the introduction of the Register and 20 months after. Fair Trading also found the change in the number of complaints received by industry seems to indicate there has been a stronger impact on the real estate industry. The number of complaints received against this industry decreased by 43% since the introduction of the Register.

During the review, some franchisors noted they do not get advised of complaints received against their franchisees so are not aware if the brand will be appearing on the Register until receiving the notification of final numbers.

Fair Trading has recognised this as a concern and will update the Guidelines to stipulate that, where it is not already standard practice, whenever a complaint is made about a franchised business, the head office is notified as part of the standard complaint resolution process. For real estate matters, it should be noted that Fair Trading will still undertake the complaint resolution / trader contact with the licensee-in-charge of the individual business which is subject to the complaint.

Currently, businesses, including those that belong to a larger corporate group, which operate under different brands are not listed together for the purposes of the Complaints Register. Stakeholders did not support changing this policy.

#### **4.3. Recommendation – trader name grouping policy**

5. The listing of businesses according to their public and recognisable 'trading' or 'brand' name will continue and the Guidelines will be updated to stipulate that whenever a complaint is made about a franchised business, Fair Trading will notify the head office as part of the standard complaint resolution process.

## 4.4 Notice to businesses

Businesses that are to appear on the Register are provided with notice of this by email at least three working days prior to publication.

Most external stakeholders found three working days notification to be suitable. Some traders acknowledge the courtesy of the notification and advise that due to their own internal processes, they were already aware that they were nearing or had reached the threshold for appearing on the Register.

One external stakeholder notes that three working days does not allow traders to engage with Fair Trading if there are issues or provide a right of reply. Another trader recommends the notification period be extended to five working days and a formal appeals process introduced.

As previously noted, Fair Trading has a clearly articulated policy about defining a complaint using the Australian and New Zealand Standards definition accompanied by several supporting checks. In addition, Fair Trading assigns a case manager to businesses that have received multiple complaints. All traders appearing on the Register have a case manager and, in most cases, the business has nominated an appropriate contact person who has the authority to make the relevant decisions regarding the resolution of complaints.

Fair Trading's case managers contact the businesses as each complaint is received during the month and each trader is provided with five working days to respond. Any issues or concerns about a complaint, including if it meets the definition of a complaint, can be raised with the case manager at this point. The business can also engage with the case manager at any other time as contact is not limited to the initial five days response window.

For the purposes of the Register, Fair Trading is only required to determine if a matter meets the definition of a complaint. As complaints are published on the Register based on received date, verification of the complaint details and/or the resulting outcome is not relevant to publication. The notification provides traders with confirmation of the final number of complaints.

### 4.4. Recommendation – notice to businesses

6. The notification period of three working days prior to publication on the Register will remain. However, the Guidelines will be updated to stipulate the following information:

- Fair Trading contacts traders about each complaint received and this is the point where the trader can raise any issues regarding the complaint, including disputing if it meets the definition of a complaint
- The notice to businesses appearing on the Register at least three working days prior to publication of the Register provides the trader with confirmation of the final number of complaints and a final opportunity to raise issues with Fair Trading (for example, if they believe a counting error has been made).

## **4.5 Data update and record policy**

### **4.5.1 Frequency of update**

The Complaints Register is published monthly.

Nearly all external stakeholders considered monthly publishing the most optimum frequency as it ensures:

- consumers are provided with current/timely information
- remedial actions or business improvements made by businesses, which result in fewer complaints, become visible to consumers more quickly
- monthly reporting encourages change in trader behaviour more quickly.

Given the audit and confirmation process Fair Trading undertakes prior to publishing the Register, more frequent updating of the Register may result in inaccurate data. On the other hand, if accuracy were to continue to be guaranteed for more frequent updating, Fair Trading would need to devote additional resources which would have to be diverted from other activities. A quarterly update would provide less timely information to consumers.

### **4.5.2 Length of time for the Register data to remain publicly available**

The Guidelines currently state that each monthly dataset currently remains on the Fair Trading website for 24 months. At the end of 24 months, the earliest dataset will be removed. That would mean that in August 2018, the first month's Complaints Register (July 2016) would be removed and no longer be accessible to the public.

Consumers, consumer groups and government agencies strongly support the information being available for periods ranging between five years and indefinitely.

Traders and some industry groups suggest the data should not remain on Fair Trading's website indefinitely as this would be detrimental to those traders who improve their complaint handling. Some suggest it should be limited to between six and 12 months before being removed.

There is strong support for historical datasets remaining accessible but possibly being moved to elsewhere on Fair Trading's website, and linked to the NSW Government Open Data Portal. The reasons given were:

- the historical data is important for tracking long term trends
- identifying systemic issues
- where companies/traders have improved, allows for the evaluation of changes in the consumer experience

- would be considered consistent with other complaint gathering organisations such as ombudsmen schemes.

Fair Trading has carefully considered the balance between the possible 'naming and shaming' of trader's subject to historical data and the Fair Trading's responsibilities under the NSW Government's open data principles. The Register accords with the NSW Government's open data policy which states that agencies must make data available without reference to its potential end use by other parties.

The current datasets on each listed business are separately downloadable and can be exported to an excel spreadsheet so the raw data can be used for further analysis by members of the public. Also, the Complaints Register data is released under the NSW Government's open data copyright policy ([data.nsw.gov.au/copyright](http://data.nsw.gov.au/copyright)). This sets out how the data can be used and what attribution is required.

Once published on Fair Trading's website, the information is in the public arena.

#### **4.5. Recommendation – data update and record policy**

7. The Register continues to be published monthly.

8. The requirement to maintain 24 months' worth of data on the website continues. Historical datasets (those over 24 months old) will be archived and publicly accessible from the NSW Government Open Data Portal.

## **4.6 Online layout and functionalities of the Register**

The Register is published as an online dashboard.

Most agencies publishing complaints data present the data by trader, often in the form of a league table or occasionally as a series of data summaries about each trader. This is the model the Register is based on.

External stakeholders raised the following issues with the current format:

- Unable to search for a specific business and have all results returned
- The current set up of year and month is unnecessarily cumbersome as the user needs to go through each month separately
- Unable to group months of interest or businesses together
- The entire dataset should be available and should be filterable, downloadable, no time or location restraints
- Needs to be more web integrated

- There is no ability to interrogate the numbers to see if the complaints are repetitive
- Is not smart-phone friendly

Fair Trading proposes to build two versions of the dashboard, one for mobile phones and one for all other devices. The dashboard that opens will depend on the type of device that opens the page, that is, a phone will only see the mobile friendly phone version.

Internal stakeholders identified adding a search function as the main area for improvement. They noted the Register would benefit from a refresh to make it more user-friendly.

#### **4.6. Recommendation – online layout and functionalities of the Register**

9. The usability and interactivity of the Register is improved and include a search function.

# Appendix 1. Methods

## Appendix 1.1. Public consultation

### Breakdown by type

Type of submission	Consumer	Consumer advocate	Trader	Industry group / association	Government	Unknown
Email = 15 responses	Nil	2	6	4	3	Nil
Online = 68 responses	16	2	11	Nil	Nil	39

### Roundtables

Total attendees = 18	Consumer	Consumer Group	Trader	Real Estate Agent	Industry group / association
16 May 2018 = 6	0	1	2	2	1
18 May 2018 = 12	1	1	4	2	4

### Meeting with the Commissioner for Fair Trading

Date	Stakeholder attendees
22 March 2018	Trader
1 June 2018	Trader

## Appendix 1.2. User feedback

An online survey was posted on the Fair Trading Complaints register website over a month between Monday 26 March and Friday 27 April. A total of 106 responses were collected out of 6,220 users visiting the register over this period of time.

No communication was organised to promote the survey. The reason was to focus on feedback from individual users, and keep it free from institutional feedback from industry and consumer organisations – that would be collected through the formal public consultation organised in May 2018.

The resulting low response rate to the survey with regard to the overall number of visits to the Register limits the ability to extrapolate the survey results to the overall population of users. However, the survey definitely provides some indicative evidence which was not available before (only anecdotal evidence) about who uses the Register, why, how they are finding it and how its design could be improved.

Unsolicited feedback provided by users via the general Fair Trading website customer feedback page since its introduction has also been included in the analysis.

### User survey questionnaire:

#### Help us help you: take our short survey to provide feedback on the Fair Trading Complaints Register

This survey is being conducted to better understand how the Fair Trading Complaints Register (the Register) is being used and identify areas for improvement. The survey should take no longer than 5 minutes to complete and your responses will remain confidential.

*[Note for the Survey design into Swift digital: make questions marked with \* mandatory]*

How did you hear about the Register? \*

*Tick all that apply*

<input type="checkbox"/>	Newspaper
<input type="checkbox"/>	Radio
<input type="checkbox"/>	Facebook
<input type="checkbox"/>	Fair Trading website
<input type="checkbox"/>	Word of mouth
<input type="checkbox"/>	Other, please specify
<input type="checkbox"/>	Don't recall

What role best describes you in your use of the Register? \*

*If you belong to more than one category, please choose the role that best describes why you used the register today.*

*Tick one option only*

<input type="checkbox"/>	As a consumer who purchases goods and services for personal use
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<input type="checkbox"/>	As a consumer who purchases goods and services for a business
<input type="checkbox"/>	As an employee/ member of a consumer advocacy group
<input type="checkbox"/>	As an owner or operator of a business that sells goods and/or services
<input type="checkbox"/>	As an employee/ member of an industry association
<input type="checkbox"/>	As an employee of the NSW Government
<input type="checkbox"/>	Other, please specify _____

How often do you use the Register? \*

*Tick one option only*

<input type="checkbox"/>	This is my first time
<input type="checkbox"/>	Once a month
<input type="checkbox"/>	Less than once a month
<input type="checkbox"/>	More than once a month

What is your main reason for using the Register today? \*

\_\_\_\_\_

How much do you agree or disagree with each statement below. \*

	Strongly agree	Agree	Disagree	Strongly disagree	N/A
It was easy to find the Complaints Register	<input type="checkbox"/>				
I could find the information I was looking for	<input type="checkbox"/>				
The Register was easy to navigate	<input type="checkbox"/>				
The information provided on the Register was easy to read	<input type="checkbox"/>				
The information provided on the Register was useful	<input type="checkbox"/>				
The Help Instructions were useful	<input type="checkbox"/>				
The Export Data feature was useful	<input type="checkbox"/>				

Have you read the Complaints Register Guidelines (the Guidelines)?

*Tick one option only*

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input type="checkbox"/>	Not sure

[If yes] How much do you agree or disagree with each statement below. \*

	Strongly agree	Agree	Disagree	Strongly disagree	Didn't use the feature
The explanation of what constitutes a complaint is clear	<input type="checkbox"/>				
The explanation of how Fair Trading deals with complaints is clear	<input type="checkbox"/>				
The explanation about the limitations of complaint information (data) is clear	<input type="checkbox"/>				
The explanation about how the Register operates is clear	<input type="checkbox"/>				

How would you like us to improve the Register?

By revising the way it looks	
By revising the way the information is presented	
By revising the functions/ features	
By revising the Complaint Register Guidelines	

Would you like to see more information made available on the Register? \*

*Tick one option only*

<input type="checkbox"/>	Yes
--------------------------	-----

<input type="checkbox"/>	No
<input type="checkbox"/>	Not sure

[If Yes] What other information would you like to see on the Register? \*

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We would love to hear more about what you think of the Register. Would you like to be contacted for a follow-up interview?

*Tick one option only*

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input type="checkbox"/>	Not sure

Name	
Email	
Phone	
Preferred time for contact by phone	

What is your residential postcode, or business/work postcode (if using the survey for business or work)?

---

How old are you?

*Tick one option only*

<input type="checkbox"/>	Under 25
<input type="checkbox"/>	26-35
<input type="checkbox"/>	36-45
<input type="checkbox"/>	46-55
<input type="checkbox"/>	Over 56

Thank you for taking our survey. Your response will remain confidential; it will be analysed in an aggregated and deidentified way.

### **Appendix 1.3. Web statistics**

Fair Trading used Google Analytics to obtain data about the number of visits to the Register. Google Analytics is a free website analytics service offered by Google that gives insights into how users use a website.

The timeframe considered for the analysis covered 20 months between August 2016, when the Register started operating, to March 2018, and the data has been analysed by month.

Metrics considered includes:

1. Users, i.e. number of unique (de-duplicated) users visiting the Register on any given month. Visits from internal staff are not included, exclusions being made on IP addresses.
2. Average time users spent per session on the Register, i.e. on any page of the Register, not only on the Register home page. Users may have several sessions as sessions if there inactive for 30 minutes and visit the page after.
3. Unique clicks on individual traders, i.e. counting only the first time a user clicked on each individual trader per session.
  - Figures include unique clicks on a trader listed for each month of publication on the Register, which means that the data reported is by month of publication and not by calendar month. As an example, a user clicking on a particular trader listed on the January 2017 Register, in March 2018 will be counted against January 2017 (month of publication) and not March 2018 (month of the click). The first month being published (July 2016) has been excluded from the analysis, as the untypically higher number of clicks with the introduction of the register would skew the results.
  - Individual traders have been allocated to the corresponding industry to allow for aggregated analysis.
  - Industries with more traders being listed on the Register being more likely to receive more clicks, the analysis considered the number of clicks against the number of traders listed.

### **Appendix 1.4. Analysis of complaints data**

Complaints data has been collated before and after the introduction of the Register. The timeframe considered for the analysis is determined based on the first data collection month for the Complaints Register, July 2016 to end of February 2018, and the equivalent amount of time before

(20 months), making an overall timeframe considered between beginning of November 2014 to end of February 2018.

Complaints data included the following metrics

- Number of complaints received by Fair Trading
- Number of traders, including as grouped traders, i.e. belonging to a similar brand or franchise.

Additional data was consider to reflect other factors influencing the number of complaints

- Engagement activities conducted by Fair Trading with specific traders
- Major industry events, e.g. major business closures or liquidations
- Major Government events or announcements, e.g. legislative reform, recalls or public warnings.

## **Appendix 1.5. Consultation with other Australian consumer protection agencies**

Fair Trading approached Australian consumer protection agencies, identified as those involved in the application of the Australian Consumer Law, through the Compliance and Dispute Resolution Committee (CDRAC) that NSW Fair Trading is part of.

CDRAC members were asked to provide their response by filling in a questionnaire circulated through an Out of session paper on 3 April 2018. Out of the 10 CDRAC members, 8 provided a response.

Questionnaires were received between 12 April and 2 May 2018 from the following jurisdictions: Australian Securities and Investments Commission (ASIC), Northern Territory, South Australia Consumer and Business Services, Queensland's Office of Fair Trading, Consumer Protection Western Australia (CPWA), Access Canberra (ACT), Consumer Affairs Victoria and Tasmania Consumer, Building and Occupational Services. Only two jurisdictions did not provide a response: New Zealand and the Australian Competition and Consumer Commission (ACCC).

## **Appendix 1.6. Internal consultation**

Fair Trading collected feedback from 16 Fair Trading staff who were involved in the Register design and/or implementation.

Feedback was collected via two focus groups (12 participants) and four individual interviews that covered similar topics, i.e. feedback on the implementation of the Register and on the feasibility of potential changes. Interview guides were adapted to the respective methods; during individual

interviews, stakeholders also provided feedback about the perceived benefits and risks of the Register.

## **Appendix 1.7. Desktop review**

The desktop review included three components:

1. A desktop research to identify agencies publishing complaints data and where traders are identified, focusing on consumer protection agencies, ombudsman schemes and other agencies collecting a high volume of consumer complaints.
2. Some follow-up contact via email with identified agencies to explore in more details the processes followed to publish data and any learning
3. A literature scan about evidence of impact from such practices.

The desktop research relied on two earlier reviews of existing consumer complaints publication practices, by

- the Australian Competition and Consumer Commission (ACCC) in 2016 to inform an internal report when considering establishing a complaint register at the national level.
- the Telecommunications Industry Ombudsman, Australia (TIO) in 2013 to inform a stakeholder consultation on the TIO's proposal to publish its complaint data in ways that provide greater context to stakeholders. The TIO's desktop review focused on agencies that normalise complaints data against to the size of the customer base and/or industry size.

Agencies identified by the ACCC's and TIO's reviews are included in the present analysis, as well as other agencies identified through some additional desktop research.

A total of 25 agencies are included in the analysis. Of 39 agencies initially identified, 14 were excluded because they didn't meet the criteria of publishing complaints data or identifying the trader.

The main limitation to this analysis is that it is not comprehensive. Agencies were identified via a purposeful sampling. Some agencies contacted via follow-up email did not reply, and in those cases the information was sought from the agency website.

### **Detailed methodology**

#### **Initial desktop research**

The initial research to identify appropriate agencies was conducted according to the following steps and keywords.

1	Conducted a Google search to identify appropriate agencies
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	<p>1. On each jurisdiction identified by the ACCC in their research conducted in 2016.</p> <p>2. Using key words such as “complaints register”, “complaints data”, “publishing complaints”, “publishing data”, “data collection”, “publication of complaints”.</p> <p>3. Using key words such as “consumer agencies”, “fair trading”, “consumer affairs”, “ombudsman”, “consumer rights”, “consumer protection”.</p>
2	Conducted a search of each website for the published complaints data.
3	Completion of the review table in a working document with the required information including website links and contact email. Includes a nil register for agencies which publish complaints data but do not identify the trader.
4	Added extra columns to the review table regarding identifying the model (as defined by the ACCC) the jurisdiction uses and if the jurisdiction defines what a complaint is.

## Follow-up contacts

The following agencies identified from the initial desktop research were excluded from the scope of the analysis because they didn't meet the criteria of publishing complaints data or identifying the trader.

Table 4. Identified consumer protection agencies excluded from the scope of the analysis

<b>5. Consumer protection agencies not publishing complaints data</b>
Consumer Association of Iceland
Department of Consumer Affairs India
Consumer Affairs Agency Japan
Consumer Rights Protection Centre of Republic of Latvia
Consumer Protection New Zealand
Consumer Awareness Organisation Nigeria
Ministry of Commerce, Industry and Labour – Samoa
The Consumer Affairs Department - Suriname
Swedish Consumer Agency - Sweden
City of New York Consumer Services, USA
Department of Consumer Affairs – California, USA
New Jersey Division of Office of Consumer Affairs - USA

6. Consumer protection agencies that publish complaints data, but do not identify the trader	
	Nova Scotia Government's Open Data Portal
	Better Business Bureau – USA and Canada

Identified agencies were contacted via follow-up email to collect additional information and learning about these practices. The information was collated according to the following steps

1	<p>Emailed a list of questions to each agency which publishes complaints data that includes identifying the trader by name. The questions were:</p> <ol style="list-style-type: none"> <li>1. <i>What complaints data do you publish?</i></li> <li>2. <i>What is the frequency of the publication?</i></li> <li>3. <i>Does this data include identifying the name of the business/provider/trader/member?</i></li> <li>4. <i>If yes to the above, what authority enables your organisation to name the business/provider/trader/member? E.g. – legislation, member agreement, terms of reference etc.</i></li> <li>5. <i>Is any notification given to the business/provider/trader/member regarding identifying it? If so, what is the timeframe?</i></li> <li>6. <i>Does the business/provider/trader/member have a right to respond/appeal any publication of complaints data where it is identified? If so, what is the process and timeframe?</i></li> <li>7. <i>Can you provide any learnings/feedback regarding publishing complaints data particularly where the business/provider/trader/member has been identified? E.g. – over time, does this process result in complaint levels dropping?</i></li> </ol>
2	Received responses noted in the working document.
3	Research copied to a final document with the addition of a column noting if and how the data has been “normalised” (that is, if the number of complaints has been put into perspective/context in some manner).
4	Further online research conducted on the jurisdictions which did not provide a response with any relevant information transposed to the final document.

## Overview of data collected

Through the desktop research, 25 relevant agencies were identified across 7 countries: Australia (n=8), the United States (n=7), the United Kingdom (n=5), Canada (n=2), South Africa (n=1), Ireland (n=1) and New Zealand (n=1). These agencies were consumer protection agencies (n=7), ombudsman scheme or other types of government agencies dealing with a high volume of consumer complaint, e.g. transport or food authority (n=5).

Each of the 25 relevant agencies identified were categorised according to the model they were following for the publication of complaints data. Four models were used: three from the typology developed through the 2016 ACCC desktop research and a fourth one added through this exercise (Table 5):

- Model 1: league table of most complained about
- Model 2: searchable database listing all complaints made
- Model 3: searchable database by trader or products
- Model 4: normalised complaints data by trader

Table 5. Models of publication of complaints data, ACCC

Model 1	The first model presents data <b>by trader, often in the form of a league table</b> or occasionally as a series of data summaries about each trader.  In markets with large numbers of traders, only some traders are included so the data is not unwieldy. The list of traders is typically limited either by the number of traders (e.g. the top 25) or the number of contacts (e.g. every trader which was the subject of at least 10 contacts).
Model 2	The second model is a <b>searchable database showing every complaint made</b> , typically updated on a very regular basis (often nightly).
Model 3	The third model is a <b>database allowing consumers to search for individual traders or products</b> , but where there is no ability to see every complaint or analyse all the data.
Model 4	The fourth model presents data by trader where the complaint data has been <b>contextualised</b> or <b>normalised</b> , so it accurately reflects provider and/or industry performance. This is generally industry based where the data is normalised according to the size of the customer base and/or industry size.

The NSW Fair Trading complaints register belongs to the first model as it publishes the list of businesses who had received 10 complaints or more in a particular calendar month. The information published includes the name of the business and its location, the number of complaints received over a particular month, and the product or service complained about. However, it doesn't include any further details about the individual complaints.

Out of the 25 agencies identified, the model 1 of a league table was the most frequent (n=10), followed by the model 4 including normalisation (n=6), model 3 of a searchable database (n=5) and model 2 where all complaints are published was the least frequent one (n=4). While model 1 was found across the 7 countries, model 3 was only found in the USA and Canada.

## a) Rationale for government intervention in this space

One of the core questions around the publication of identified complaints data is whether there is a role for the government to play in this space.

Interestingly, two agencies identified are considering stopping publishing complaints data: the Commerce Commission New Zealand (model 1 – league table) and the US Consumer Financial Protection Bureau (CFPB) (model 3 – searchable database by trader or product) which was one of the first agencies to publish identifiable complaints data since 2011. In the case of the Commerce Commission New Zealand, feedback provided indicates that two reasons would support this move: firstly, because the agency feels that media and public attention has concentrated too strongly on the numbers, to the detriment of fully exploring the issues; and secondly because of the impact on the agency in response to business requests for real-time complaints to the detriment of the agency's enforcement role.

In the case of the CFPB in the US, according to [a recent article from the New York Times](#), the acting director feels that publishing complaints data is not in the remit of the government: “*I don't see anything in here that says I have to run a Yelp for financial services sponsored by the federal government*”. This move would also echo requests from the industry to stop this public database because of the potential to mislead consumers with published unverified complaints, and that they already had internal processes to resolve customer disputes.

On the contrary, the UK Financial Ombudsman Service (FOS) indicated that publishing complaints data actually supports its core role, without going beyond its legal remit:

*There was (and is) no legal impediment to FOS publishing business-specific complaint data as it is incidental to the effectiveness of FOS role in complaint-handling and well within its powers. Publishing of the complaints data adds value to the Ombudsman role and increases the chance of a consumer using its service. [UK Financial Ombudsman Service]*

Table 6. Overview of agencies identified that publish identified complaints data

Jurisdiction	Model	Identification of trader	Threshold	Complaints details	Normalisation	Information on outcome
NSW Fair Trading	Model 1	By its publicly recognisable brand or trading name	10 complaints in a calendar month	Location, number of complaints, the product or service complained about.	No	No
<b>Consumer protection agencies</b>						
Commerce Commission New Zealand	Model 1	Yes	4 most complained about over a financial year by industry	Product/ service type	No	No
Montgomery County – Office of Consumer Protection (OCP), Maryland, USA	Model 3	As named by complainant	All complaints over last three years	Complaints detail	No	Yes
Oregon Department of Justice – Consumer Protection, Oregon, USA	Model 3	Yes	All contacts from 1 January 2008	Complaint descriptions, city, state, case status, closing description, date opened and closed.	No	Case status

Jurisdiction	Model	Identification of trader	Threshold	Complaints details	Normalisation	Information on outcome
Hawaii Office of Consumer Protection – USA	Model 3	Yes, and includes “Company or Proper Name” and “Associated or Other Names	Complaints resulting in disciplinary or legal action and complied with – 10 years  Complaints that do result in disciplinary or legal action – 5 years	No	No	No
Ministry of Government and Consumer Services, Ontario – Canada	Model 3	Legal entity and other name (if any)	Where there has been a charge, conviction or compliance notice issued regarding the business within the last 790 days (26 months)	Description of complaint	No	Outcome of the actions taken by the Ministry
Attorney General's Consumer Advocacy and Response Division,	Model 2	As recorded by the complainant	All	Brief wording	No	No

Jurisdiction	Model	Identification of trader	Threshold	Complaints details	Normalisation	Information on outcome
Massachusetts, USA						
Ohio Attorney General – Consumer Complaints, USA	Model 3	Company name	Unknown	Product/ service category, problem area (brief words)	No	Yes
<b>Ombudsman scheme</b>						
Financial Ombudsman Service (FOS) – Australia	Model 4	Yes	3 or more complaints	Service type	Some are per account or policy whilst others are by business size category	Not specific outcomes – includes % resolved in applicant’s favour, in FSPs favour etc
Credit & Investments Ombudsman (CIO) – Australia	Model 1	Yes	3 or more complaints	Service type	No	Yes
Financial Conduct Authority (FCA) – United Kingdom	Model 2	Yes	Nil	Yes – consumer narratives are also published which includes non-identifiable	No	The consumer narratives include the trader’s response

Jurisdiction	Model	Identification of trader	Threshold	Complaints details	Normalisation	Information on outcome
				details about the complaint		
Financial Services Ombudsman (FOS)- United Kingdom	Model 1	Yes - also identifies the larger group the trader belongs to	Report on 30 new cases and 30 resolved cases in a six months period	Includes complaint category	No	As percentages in favour of the consumer
Financial Services and Pensions Ombudsman – Ireland	Model 1	Yes - also identifies the business group the trader belongs to	3 or more complaints	Service type	No	If upheld or partly upheld
Consumer Financial Protection Bureau (CFPB) – USA	Model 2	Yes	No	Yes – consumer narratives are also published which includes non-identifiable details about the complaint	No	Traders can publicly respond by selecting responses from a pre-populated list

Jurisdiction	Model	Identification of trader	Threshold	Complaints details	Normalisation	Information on outcome
Energy & Water Ombudsman South Australia (EWOSA) – South Australia, Australia	Model 4	Yes	No	Service type	Complaints per 10,000 customers	No
Energy & Water Ombudsman Victoria (EWOV) – Victoria, Australia	Model 4	Yes	No	Service type	Complaints per customer share	No
Energy & Water Ombudsman NSW (EWON) – NSW, Australia	Model 4	Yes	50 or more complaints	Service type	Complaints per customer share	No
Telecommunications Industry Ombudsman (TIO) – Australia	Model 4	Yes - by company or brand depending on how the trader elects to participate	Top 5 traders published	Nil	Complaints per 10,000 telecommunications services in operation	No
Ofcom – United Kingdom	Model 4	Yes – only largest providers	Series of league tables identifying the largest providers	Service type	Per 100,000 subscribers	No

Jurisdiction	Model	Identification of trader	Threshold	Complaints details	Normalisation	Information on outcome
Ombudsman for Long-term insurance – South Africa	Model 1	Yes	No	Brief categories	No	% if wholly or partly in favour of the consumer
Ombudsman Services – United Kingdom	Model 1	Yes	No	Complaint type (e.g. billing)	Per 100,000 customer accounts	Number resolved
<b>Other agencies</b>						
Office of Rail and Road (ORR) – United Kingdom	Model 1	Yes	Unknown	Category	Complaints per 100,000 journeys	No
Commissioner for Telecom-Television Services (CCTS), Canada	Model 1	Yes	One complaint	Service type	No	No
Aviation Consumer Protection, USA	Model 1	Yes	Airline must have at least one percent of total domestic scheduled-service passenger revenues	Complaint type	Per 1000 passengers	No

Jurisdiction	Model	Identification of trader	Threshold	Complaints details	Normalisation	Information on outcome
Airline Customer Advocate, Australia	Model 1	Yes (5 airline members)	Nil	Service/ complaint type	Per 100,000 passengers carried	No
Food Authority NSW	Model 2	Yes – trading name and legal entity	If PIN issued and not disputed or offence proved	Lists each offence as per the relevant legislation	No	Yes

# Appendix 2. Issues paper

See separate document attached.

## **NSW Fair Trading**

PO Box 972, PARRAMATTA NSW 2124

Phone: 13 32 20 | TTY: 1300 301 181

**Department of Finance, Services and Innovation**

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