



30 October 2015

Consumer Complaints Register
Fair Trading Policy
PO Box 972
PARRAMATTA NSW 2124

Via email: policy@finance.nsw.gov.au

Dear Sir / Madam,

Submission on proposed consumer complaints register

NSW Business Chamber (the Chamber) welcomes the opportunity to comment on the NSW Fair Trading discussion paper on the proposed consumer complaints register.

As you may be aware, the Chamber is one of Australia's largest business support groups, with a direct membership of more than 19,000 businesses, providing services to over 30,000 businesses each year.

Tracing its heritage back to the Sydney Chamber of Commerce established in 1825, and the Chamber of Manufactures of NSW established in 1885, the Chamber works with thousands of businesses ranging in size from owner operators to large corporations, and spanning all industry sectors from product-based manufacturers to service provider enterprises.

The Chamber is NSW's leading business solutions provider and advocacy group with strengths in workplace management, workplace health and safety, industrial relations, human resources, international trade and business performance consulting. Operating throughout a network of offices in metropolitan and regional NSW, the Chamber represents the needs of business at a local, regional, State and Federal level, advocating on behalf of their members to create a better environment for industry.

Consumer complaints register

For a prosperous and vibrant economy, consumers need to have confidence that traders are striving to deliver positive consumer experiences. Businesses that systematically breach their obligations are given an unfair advantage over businesses that do the right thing. That is why the Chamber supports initiatives that empower consumers and sensibly promote compliance with the law.

Information such as the reputation of alternative suppliers is a vital ingredient in a consumer's decision making process. The proposed complaints register seeks to add to the information available to consumers by publishing information relating to complaints received by NSW Fair Trading.

NSW Business Chamber
incorporates

- Sydney Business Chamber
- Australian Business Lawyers & Advisors
- Australian Business Recruitment Solutions
- Australian Business Consulting & Solutions
- Australian Business Apprenticeships Centre
- Australian Business Training Solutions
- Australian Business Defence Industry Unit
- Australian Business Industrial

NSW Business Chamber Limited
140 Arthur Street
North Sydney NSW 2060
ABN 63 000 014 504
Locked Bag 938
North Sydney NSW 2059
DX 10541 North Sydney
t 13 26 96
f 1300 655 277
e navigation@nswbusinesschamber.com.au

Regional Offices ACT, Central Coast, Central West Orana, Hunter, Illawarra, Mid North Coast, Murray-Riverina, New England North West, Northern Rivers, North East Sydney, North West Sydney, South East Sydney, South West Sydney

Invigorating business

nswbusinesschamber.com.au

The Chamber is however concerned that the proposal does not fully consider how consumers will interact with and use information obtained from the register. For example, any ranking based on the number of complaints alone could invite consumers to misinterpret the data (concerns about this are considered in more detail on subsequent pages).

Furthermore, Open Government should not be driven, as this proposal appears to be, by a “publish or perish” mentality. The fact that government holds certain information does not necessarily mean that that information should be publicised. Where the release of data could potentially impact on the reputational or commercial interests of private individuals or businesses the precautionary principle should be applied.

It is understood that there is no proposal at this stage for the proposed complaints register to publish information on the outcome of a complaint – this is despite the fact, as the discussion paper points out, that there are often circumstances where a *“complaint is outside NSW Fair Trading’s jurisdiction, the complaint is determined to be unjustified or unreasonable or there is a lack of documentation to show that the transaction occurred”*. This runs the real risk that a business operator could be placed on a public complaints register as a result of complaints from a person or persons who have never actually transacted with their business. Even if only “finalised” complaints are publicised, without advice on the outcome of the complaint the inference that customers are unhappy with the customer service performance of a business will remain.

Apart from complaints made against a business there may also be an opportunity to report on NSW Fair Trading’s handling of complaints as part of the register. This would ensure the community’s confidence that complaints have been dealt with through the proper process and that complaints are credible and are not vexatious. For example, indicators of service standards as identified in the discussion paper vis *“staff contact the trader within 10 working days and attempt to negotiate an outcome acceptable to both parties”* and *“NSW Fair Trading aims to finalise complaints within 30 days of receipt, although most complaints are finalised earlier”* could be reported on as part of the register.

For consumers, the value of information provided by the complaints register will ultimately depend on the manner in which the data is presented. Notwithstanding the threshold concerns outlined above, this submission will detail some key design principles the Chamber considers should be incorporated into the design of the complaints register. To this end, the Chamber considers that any complaints register should:

- present complaints with reference to the number of customer transactions or indicators of business size and only rank businesses (or publish data that could enable third parties to rank) if complaints can be presented in this context;
- be clear about the business for which the complaint relates, including by indicating the trading name and location of the business as well as other identifying information;

- not list complaints where there is any ambiguity over the business that is being complained about, or where the complainant cannot prove that the transaction occurred (particularly in circumstances where this is disputed);
- be specific about what laws or regulations are alleged to have been breached and for it to be noted if the business disputes that a breach has occurred;
- only list finalised complaints with businesses provided an opportunity to resolve issues that led to a complaint prior to being listed on the register;
- only list businesses that have met a minimum threshold of complaints, with the threshold factoring in indicators of business size or the number of customer transactions;
- present complaints data over a 12 month period to enable consumers to give consideration to the longer term performance of a business;
- identify complaints made against franchise businesses in a manner such that it is clear that the complaint relates to a specific franchise rather than the entire franchise group;
- include indicators relating to NSW Fair Trading's handling of the complaint to provide community confidence in the credibility of complaints; and
- be accompanied with clear information that identifies how complaints data should be interpreted, including any limitations in relying on the register when making purchasing decisions.

This submission will explore the arguments behind these design principles as well as providing specific answers to questions raised in the discussion paper.

Ranking businesses based on the number of complaints

The proposed complaints register would add to the information available to consumers by indicating the negative experiences of other consumers that have made a complaint to NSW Fair Trading. It would also incentivise good trader practice by, in effect, imposing a reputational penalty on traders listed on the register.

In practice, it is likely that only a narrow subset of consumers will regularly rely on the complaints register dataset to check whether a supplier has recorded a significant number of complaints. However, many consumers may become aware of suppliers that have attracted complaints via media reporting or word of mouth. Therefore, the manner in which businesses are ranked (or could be ranked by third parties) is important as consumers are most likely to become aware of the most poorly ranked businesses.

The Chamber has concerns with any complaints register that would rank businesses (or allow third parties to do so) based solely on the number of complaints received. This is because the number of complaints received is not the most appropriate basis for comparing the performance of different suppliers that have been the subject of consumer complaints.

Why would consumers be interested in complaints data and how should it be presented?

Consumers are likely to be interested in complaints data to the extent that it provides an indication of the probability that they will encounter problems when transacting with a trader and the severity of those problems should they occur.

Knowledge of the number of complaints received does not inform consumers about the seriousness of those complaints or the number of complaints as a proportion of total customer transactions (which is a better indicator of the relative performance of the trader). For example, depending on the number of complaints, businesses that have engaged in minor breaches could appear worse than businesses that have engaged in serious breaches, while those with a low rate of complaints (as a proportion of total customers) could appear worse than those with a high rate of complaints.

The discussion paper notes that a business that receives 5 complaints could be ranked on an internal list of the 50 most complained-about businesses. For a small or medium sized business 5 complaints may be significant; however for a larger business it may only represent a relatively small proportion of its total customer base. Equally, to many consumers, 5 complaints about relatively innocuous issues may be less concerning than 4 complaints in response to problems that have caused significant consumer harm. The number of complaints may also spike in a given period due to a one-off error that is not a true reflection of a business' commitment towards its customers. With media reporting, a high ranking on the complaints register could harm a business' reputation in a manner that is not commensurate with the seriousness of the offense.

It is for these reasons that a ranking by the number of complaints alone is likely to invite consumers to misinterpret complaints data. Therefore, for any ranking of businesses to be useful, the ranking should have some regard to the number of customer transactions and possibly the seriousness of the complaint. This approach is consistent with the approach taken by the industry-based regulators cited in the discussion paper including:

- the Telecommunications Industry Ombudsman which expresses complaints per 10,000 services in operation;
- the Financial Ombudsman Service which presents complaints in “chance of dispute” terms; and
- the Energy & Water Ombudsman NSW which uses a colour code to identify the number of customers of each trader listed.

In a perfect world the optimal design for a complaints register would be a quantification of the total consumer detriment encountered by complainants expressed per dollar spent at that trader. Unsurprisingly the discussion paper highlights that information about the number of transactions is difficult to obtain. While understanding of the data challenges, the Chamber does not support a second-best approach that could potentially be misleading to consumers and unfair to businesses that have not been ranked according to their true performance. The

Chamber therefore welcomes the discussion paper's consideration of using substitute measures such as business revenue.

Ranking by third parties

Even if the complaints register refrains from ranking businesses based on the number of complaints received, the potential for third parties to do so is of equal concern. Third parties such as media organisations will inevitably seek to rank businesses based on the available information. In the absence of more comprehensive data, the number of complaints may appear to be the most obvious basis for third parties seeking to do so, despite the limitations outlined in this submission. This is of particular concern given that subsequent media reporting will exacerbate the consequences of any misinterpretation of the data.

The Chamber considers that if data challenges ultimately mean that the complaints register cannot contextualise complaints data based on business size or the seriousness of a complaint, then it should not present data in a manner that would easily enable third parties to rank traders based on the number of complaints. For example, the complaints register could allow consumers to search the complaints profile of a business rather than providing an exhaustive list of all businesses that have received complaints.

Recommendation 1.1

Presenting the number of complaints in isolation could invite consumers to misinterpret the data. The complaints register should not rank (or provide information that could allow third parties to rank) businesses based on the number of complaints received without contextualising information such as business size or the number of customer transactions.

Design of the complaints register should be grounded in the needs of consumers

There is alignment in the interests of consumers and businesses in ensuring that appropriate and contextualised information is available as part of any resource that publishes complaints data. This ensures that consumers have the information that is most relevant to their decision making needs, while businesses can be confident that they will only appear on the register if they do not act responsibly to their customers.

The discussion paper appears to highlight principles of open data and open government as key motivators for the register. While these are worthwhile objectives, they are not ends in themselves and do not eliminate the need to give proper consideration as to the manner in which complaints data is presented, including for the reasons outlined in this submission.

The discussion paper does not canvass considerations of design methodology to ensure that the register meets the needs of consumers. For example, insights from behavioural economics could be applied to ensure that the register has the intended effect of improving consumer decision making. To this end NSW Fair Trading could

explore opportunities for collaboration with Premier & Cabinet’s Behavioural Insights Community of Practice or University of South Australia’s Institute for Choice¹. Similarly, NSW Fair Trading could consult the Federal Government’s “Design Thinking” Compendium² to consider how the register can be improved by placing its users at the centre of the development process.

NSW Fair Trading should also consider how the complaints register interacts with other platforms that report on the reputation of traders. As the discussion paper notes, there are a number of online platforms (such as Whirlpool, Trip Advisor, and Product Review) that currently provide this information. In this regard any need for a complaints register is fulfilled by other platforms which report on both positive as well as negative consumer experiences and are arguably more responsive to the needs of consumers.

More broadly the Chamber accepts that there are questions surrounding whether a complaints register that does not rank businesses would be useful to consumers, or worth pursuing altogether. For example, if a broad list of businesses that had received a complaint was released then there would be no way for consumers to identify the worst performers.³ To improve its potential usefulness, there could be merit in NSW Fair Trading giving further consideration as to whether its data sets can be supplemented and enhanced to ensure that any publicly released information can be seen in the proper context. This includes further work on obtaining data from ASIC or the ATO for inclusion in the register, as foreshadowed in the discussion paper.

Recommendation 1.2

Consideration should be given to design methodology as well as insights from behavioural economics. Proper consideration should be given to ensuring that the register meets the needs of consumers.

Recommendation 1.3

To better contextualise complaints data, NSW Fair Trading should consider how data collection processes could be improved to ensure the complaints register can be designed according to the needs of consumers.

¹ <http://www.unisa.edu.au/research/institute-for-choice/>

² <http://design.gov.au/designing/>

³ On the other hand, if the complaints register were to only list a small number of the most complained about businesses (based on the number of complaints) then this would, in effect, be a ranking of sorts which raises similar concerns as if the businesses were ranked outright.

Responses to specific questions raised in the discussion paper

This section will address specific questions raised in the discussion paper and make recommendations where appropriate.

Information appearing on the complaints register

The discussion paper gives consideration to the type of information that should appear as part of the complaints register. The discussion paper invites respondents to give consideration to what information should the register publish about a complaint (**question 1**) and what information should be published about a trader (**question 2**).

The Chamber is concerned about any complaints register that would release information about specific complaints made against a trader without contextualising information. However, in the event that a complaint register were to reveal complaints made against a trader, the register should aim to be clear about a) which business is the subject of the complaint and b) what laws or regulation the trader is alleged to have breached.

The most useful information for a consumer would likely be the trading name of the business and its geographic location (or website address). Other business identifiers such as ABN and legal entity name should also be provided to ensure full clarity around the business that has been subject to the complaint. The complaints register should not list complaints where there is any ambiguity over the business that is being complained about, or where the complainant cannot prove that the transaction occurred (particularly in circumstances where this is disputed). The discussion paper suggests other information such as licenses held could be included. This (and other) information should not be included unless it is of specific relevance to the complaint.

The complaints register should not include complaints that do not relate to clear breaches of the law. For example, examples of poor customer service should not warrant inclusion if they do not involve an alleged breach of the law. If details of a complaint against a trader are listed on a register, the specific breach that the complainant is alleging to have occurred should be clear. In addition, traders should be given the opportunity to note if they dispute that the breach has occurred given that a complaint is merely an allegation of a breach. Where no specific breach can be identified, the complaint should not be included on the register.

Recommendation 2.1

If publishing information about individual complaints, the register should aim to be clear about a) which business is the subject of the complaint and b) what laws and regulations the trader is alleged to have breached. If the trader disputes that the breach has occurred, this should be noted against the complaint.

The complaints register should not list complaints where there is any ambiguity over the business that is being complained about, or where the complainant cannot prove that the transaction occurred (in circumstances where this is disputed).

When to include a trader on the complaints register?

The discussion paper asks whether complaints should be included as they are received or as they are finalised (**question 3**), and how many businesses should be included on the complaints register (**question 4**).

Complaints should only be included when they are finalised. As the discussion paper notes, this would ensure that the trader has been contacted and that vexatious complaints can be excluded. It is further noted that the complaints register does not propose to publish information about complaint outcomes. This potentially misses an opportunity for the complaints register to incentivise the resolution of complaints in the consumer's favour. A more balanced approach would include providing traders the opportunity to resolve a complaint before it is included as part of the complaints register. Where there is ambiguity over whether a complaint has been satisfactorily resolved (for example where there is a remedy but the consumer remains unsatisfied), a set of guidelines could be established to determine the circumstances in which a complaint can be included in the register.

Recommendation 2.2

Complaints should not be included until they have been finalised. If the trader has made a reasonable attempt to resolve the complaint then it should not be included on the complaints register to incentivise positive outcomes for consumers.

For the reasons discussed in the previous section, the Chamber has concerns with a complaints register that ranks businesses on the number of complaints received. As per recommendation 1.3, the Chamber suggests that NSW Fair Trading consider whether it can collect information allow a ranking of businesses that more accurately reflects the needs of consumers. Any "cut-off" in terms of the number of businesses listed should be determined on this basis rather than a ranking based on the number of complaints in isolation.

A threshold number of complaints and reporting periods

The discussion paper asks whether a minimum number of complaints should be required to be listed (**question 5**), how often the register should be updated (**question 6**), and the time period that should be covered in the data (**question 7**).

The complaints register should not list traders that are subject to a relatively small number of complaints given that this is unlikely to be useful to consumers (as these businesses could be relatively good performers). The threshold of complaints required should ideally be expressed as a proportion of customers served or business size. The threshold will also need to reflect the length of the reporting period. For example, some would argue that a business that received a single complaint per month (12 per year) would not have had enough complaints to be listed on the register.⁴

⁴ Ultimately this would depend on the size of the business and the nature of those complaints, as outlined in the discussion in the previous section.

Recommendation 2.3

There should be a threshold number of complaints that must be received before listing a business on the complaints register. This threshold should be expressed with reference to indicators of business size or the number of customer transactions.

The Chamber considers it preferable to consider complaints over a longer period, for example 12 months, so that a business' long term performance is reflected in the data. This will identify and focus more attention on businesses that are consistently poor performers. The dataset itself could be updated more frequently depending on the extent to which this is beneficial to consumers.

Recommendation 2.4

Data collated as part of any complaints registered should be based on data over a longer period of time, for example 12 months, so that the long term performance of a business is reflected in the data.

Length of availability and time from which complaints should be recorded

The discussion paper asks for how long data on the register should remain on the NSW Fair Trading website (**question 8**), whether the data should be available to be searched (**question 9**) and from when complaints should be counted and included in the register (**question 10**).

Once data has been made publicly available it could be collected and republished by a range of parties. The Chamber does not have a strong view as to whether this data should continue to be available to consumers so long as it remains an accurate reflection of what occurred at the time. In this regard if any complaints are found to be vexatious or inaccurate, they should be removed from any historical data made available to consumers.

In accordance with recommendation 2.4, it would be appropriate for data to be collected over a 12 month period before being released to the public. A clear start date should be articulated prior to the collection of data as part of any complaints register. The register should not publish data collected prior to this date.

Information about business size or number of transactions

As discussed in the previous section, the Chamber considers that the number of complaints is not a good basis for comparing traders. The Chamber welcomes the discussion paper's efforts at exploring whether information about business size or the number of transactions can be incorporated into the complaints register. In particular, the discussion paper asks whether the register should show information about the size of the business (**question 11**) as well as whether there is a practical way of doing so (**question 12**).

The Chamber considers this information to be essential to the usefulness of any complaints register. In accordance with recommendation 1.1, this information is vital to ensuring the appropriate ranking of businesses as part of the register. This information is especially vital given that any complaints register that is unable to provide some indication of businesses' relative performance is unlikely to be useful.

The Chamber is unaware of any easy solutions in this regard, notwithstanding the ability to obtain suitable data from either ASIC or the ATO. In accordance with recommendation 1.3, the Chamber supports further consideration of whether NSW Fair Trading is able to collect proxy indicators (such as revenue or turnover) and how these could be used to better contextualise complaints. This information should be integrated into the complaints register rather than simply a link to another website.

Franchises, chains and corporate groups

The discussion paper foreshadows issues that could emerge where a business belongs to a franchise or corporate group. It asks how complaints about a franchise business should be recorded (**question 13**) as well as how units within a corporate group should be recorded (**question 14**).

The issues flagged within the discussion paper are issues that stem from the need to view complaints data within the context of the size of the business. If complaints data can be viewed in this context, then the level at which complaints are considered (i.e. at the business unit level or group level) becomes less important.

That said, the Chamber considers that franchise businesses should be treated differently to corporate groups. Any data on franchise businesses should be considered at the franchise level rather than as a chain. Reporting at the franchise level would incentivise good trader practice at the level at which there is operational control over the business. As a general principle any complaints register should ensure that the reputation of other franchisees are not affected by the performance of a rogue business (for example by noting that the complaints related to a specific franchise rather than as a chain).

Recommendation 2.5

Any complaints register should list complaints made against a franchise business in a manner such that it is clear that the complaint relates to a specific franchise rather than the entire franchise group.

Notice to traders and information accompanying the register

The discussion paper asks whether traders should be notified in advance (**question 15**) and what other information should accompany the register to explain it to the public (**question 16**).

As earlier noted, the Chamber considers that traders should be given the opportunity to resolve a complaint prior to being listed on the complaints register.

This maximises the incentive benefits of the register which could be argued to be far greater than any costs associated with any delays that doing so may cause.

The release of any complaints data should be accompanied by clear information which guides consumers and third parties when interpreting the data. It should note its limitations, including by indicating that consumer complaints may be made to other agencies meaning that it cannot be taken as an exhaustive list of consumer complaints.

It should also contain information relating to NSW Fair Trading's handling of the complaint to ensure community confidence that complaints have been dealt with through the proper process and that complaints are credible and are not vexatious. This could include timeframes in terms of contacting traders as well as other steps required prior to finalising a complaint.

Recommendation 2.6

Any publication of consumer complaints should be accompanied by clear information which supports consumers' interpretation of the data as well as any limitations of the complaints register. The complaints register should also publish information relating to NSW Fair Trading's handling of the complaint to ensure community confidence.

Concluding remarks

Releasing complaints data to consumers is not a "no regrets" measure. If it is not released in a manner that is consistent with consumer interests, then it may hinder rather than help consumer decision making. Consumers relying on the register may be given a false sense of security around traders not listed on the register while they may be dissuaded from businesses that would otherwise represent the best choice for the consumer.

The discussion paper does not articulate a strong consumer need for a complaints register and it would appear that more work is required to ensure that it is designed according to the needs of consumers. It is arguable that consumers are more interested in knowing about the best rather than the worst traders. In this regard consumers are more likely to continue to rely on other platforms that are more suitable to this purpose. Nonetheless there is a real danger that the complaints register may lead to suboptimal consumer decision making for the reasons outlined in this submission.

The Chamber has recommended a number of design principles that attempt to ensure that any complaints register is designed to meet the needs of consumers. The Chamber considers that it is essential for these to be met in order for the complaints register to be useful tool for consumers. The Chamber accepts the practical challenges associated with collecting the information required for a more comprehensive complaints register, however is not supportive of a "second best" complaints register that may invite consumers to misinterpret the data. In this regard the interests of consumers and business are aligned — the register should

reflect the true performance of businesses rather than factors that are a poor reflection of relative performance.

The Chamber wishes to thank NSW Fair Trading for the opportunity to provide a submission on this important matter. The Chamber's policy contact for this matter is Mark Frost

Yours Sincerely

Paul Orton
Director, Policy & Advocacy
NSW Business Chamber

