



4 November 2015

**By email: [policy@finance.nsw.gov.au](mailto:policy@finance.nsw.gov.au)**

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

Dear Sir/Madam

### **Consumer Complaints Register**

The Consumer Action Law Centre (**Consumer Action**) and Financial Rights Legal Centre (**Financial Rights**) welcome the opportunity to comment on the Consumer Complaints Register described in the Discussion Paper.

We welcome the proposal to publish the Register, and provide some suggestions to make the data accessible and useful for consumers, advocates and researchers, as well as other regulators and policy makers in other jurisdictions. Our comments are detailed below.

#### **About Consumer Action**

Consumer Action Law Centre is an independent, not-for profit consumer organisation based in Melbourne. We work to advance fairness in consumer markets, particularly for disadvantaged and vulnerable consumers, through financial counselling, legal advice and representation, and policy work and campaigns. Delivering assistance services to Victorian consumers, we have a national reach through our deep expertise in consumer law and policy and direct knowledge of the consumer experience of modern markets.

#### **About Financial Rights Legal Centre**

Financial Rights is a community legal centre specialising in financial services, particularly in the areas of consumer credit, banking, debt recovery and insurance. It fully integrates telephone assistance and financial counselling with legal advice and representation. Financial Rights also operates the Insurance Law Service, a national specialist consumer insurance advice service.

#### **Issues for discussion**

##### *General comments*

We support the disclosure of complaints received by NSW Fair Trading, and appreciate that for the majority of consumers, basic information as described on page 14 will be sufficient.

#### **Consumer Action Law Centre**

Level 7, 459 Little Collins Street Telephone 03 9670 5088  
Melbourne Victoria 3000 Facsimile 03 9629 6898

[info@consumeraction.org.au](mailto:info@consumeraction.org.au)  
[www.consumeraction.org.au](http://www.consumeraction.org.au)

Consumer advocates are able to conduct deeper analysis, and compare this with their own data. Consumer Action and Financial Rights have a wealth of client information that informs and drives our advocacy for low income and vulnerable people. The ability to access more granularity in the data collected by a public agency is essential to strong evidence based policy. Therefore we would recommend that NSW Fair Trading make available, on application or via a searchable archive, information about outcomes where the information has been recorded. It may be helpful to conduct a trial to access the expertise of the organisations who might benefit from access to this information.

#### *Information appearing on the Complaints Register*

We support the proposal for the basic information to be made available on the register, as described on page 14 of the discussion paper. This provides the top line information that a consumer is likely to need when checking to see if there are any issues with a trader before engaging their services or buying their products. Publishing further details about the trader is also useful, both for consumers, their advocates, and media. Easy access to information about a parent company or franchise helps pierce the veil that can hide ownership and responsibility, and can assist community services direct their clients to the appropriate channels for lodging additional complaints or requests for recompense.

#### *Complaints received vs finalised complaints*

We support the proposal to publish complaints received, minus duplicated records as described on page 9. The value of the register, and the success of its uptake and access, will be the currency of the information. Information that is out of date, even by a month, will create the perception that current problem traders are not visible, and facilitate an unhelpful media narrative ("it's old news, we fixed it") that problem traders will use to mitigate the impact of exposure.

We do not think it is necessary to wait for complaints to be finalised before publication. If the aim is to create an incentive to avoid being named on the register, currency of information should be the primary consideration.

#### *Number of traders on the Register*

We suggest that the top 50 traders should be named, with 1-25 flagged as red (visual cue for most problematic), and 26-50 flagged as amber (visual cue for some level of concern). However this is a somewhat arbitrary approach to ranking, and does not necessarily reflect the volume of complaints received against any one trader.

#### *A threshold number of complaints*

Further to the suggestion above, it might be more prudent to maintain a top 50 list of traders, but reserve the "red" category to those who achieve the dubious distinction of breaching the threshold for that category. To avoid the situation described in the discussion paper (p15) of traders with only one or two complaints appearing on the amber list, a similar threshold could be set. The one question that remains if this were to be implemented would be the not unknown situation where there were a very small number of complaints (perhaps only one or two) but that were particularly serious. A simple numerical system does not provide for this, and we encourage NSW Fair Trading to consider a "special alert" function where this occurs. Designing this into the data collection and publication from the outset enables app developers to provide for this feature from the outset.

### *Updating the Register*

To keep the information current and alert consumers to complaint spikes, it makes sense for this information to be released monthly. Assuming the information is readily available and the data can be extracted for publication by a "set and forget" approach to the data, this should present little problem. At a minimum, the information could be published quarterly, but this does mean much of the data at the front end of the time period loses currency.

### *Time period covered*

A period of three months seems reasonable, as long as the previous data set is available for comparison.

### *Time limits for public access to the data via NSW Fair Trading website*

We think a 12 month period is reasonable, as long as the older data is able to be searched via an archive function that is free to access. It does not appear that the amount of data will be significant, therefore on-line storage costs should be minimal.

We recommend that NSW Fair Trading seek advice from research data analysts with an interest in longitudinal studies on how long the data should remain available on a searchable archive. Researchers often like to analyse trends over 5-10-15 year time frames.

It is in the interest of traders, consumer and regulators that problems are solved and good practice is the norm. Therefore concerns from traders that the issue that put them on the register has been addressed should not be a reason to hide the record, and indeed they could benefit from the publication of success stories. People looking for a product or service are more likely to trust a trader who publishes stories about how they had a problem, and solved it, than those who claim to be perfect.

### *Commencement date*

The first publication of the register should be within one month of the commencement date. NSW Fair Trading already has the information it requires to publish a three month data set, and this will be useful to the post-Christmas consumer who may find it helpful to know that they are not alone in their problems with a particular trader.

### *Business size or number of transactions*

The complaints register is intended as a tool for consumers, and their advocates. As the primary audience, consumers may care little about the business size or number of transactions. It is unlikely that providing links to external websites such as ASIC or the ATO will assist in raising the level of understanding about who is performing poorly.

Consumer advocates, on the other hand, will probably find this information useful. Presenting the information on a scale of small, medium and large might be the most practical way to convey the relative size of a business, based on a number of factors—annual turnover, number of staff, local/regional vs national/multinational.

### *Franchises, chains and corporate groups*

We support the complaint record targeting the franchise brand, not the franchisee. If the intent is to force a change in business behaviour, the brand manager will be incentivised to address the problems being reported against its franchisees but not if it is an individual trader. The recent

problems with 7-11 and its poor employment practices showed the value of targeting the brand to gain attention and action, despite attempts by the franchise owner to shift blame to the franchisee. We are also aware of some franchisors that have a reputation for blaming individual franchisees for consumer problems.<sup>1</sup>

For corporate groups, there is some value in providing information about the parent company, for the same reason described above. Where a very small number of traders own multiple brands delivering similar services, such as in the insurance sector, it can escalate the need to take action against a group member to protect overall brand integrity and reputation. The data does need to be presented slightly differently, but if all the information is collected as described on page 14 of the issues paper, the technical aspects of publication can be solved by sound communications advice.

#### *Notice to traders*

It is reasonable to notify traders if they are to appear on the register (but not for the purposes of challenging the appearance). We think one week is sufficient notice.

#### *Information accompanying the Register*

We encourage the use of graphic tools for this exercise. The Victorian Ombudsman has an excellent graphic explanation of its complaints service, available [here](#).

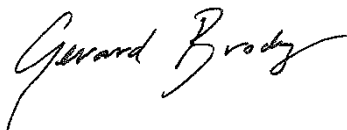
Another good example of how to explain something that is rather dry can be found [here](#) (click on "how does it work"). In this case, an insurance company is explaining that insurance is for everyone, and introduces the product they are selling. This is targeting low income people who are often under- or uninsured. The product itself was produced as a collaboration with community service workers, academics, consumer advocates and industry. Note we do not endorse this product, but it is a good example of clear accessible communication.

Please contact Denise Boyd on 03 9670 5088 or at [deniseb@consumeraction.org.au](mailto:deniseb@consumeraction.org.au), or Karen Cox on 02 8204 1340 or at [karen.cox@financialrights.org.au](mailto:karen.cox@financialrights.org.au) if you have any questions about this submission.

Yours sincerely

**CONSUMER ACTION LAW CENTRE**

**FINANCIAL RIGHTS LEGAL CENTRE**



Gerard Brody  
Chief Executive Officer

Karen Cox  
Coordinator

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<sup>1</sup> Footscray Community Legal Centre, Media Release: Consumers Warned! Who is "Harvey Norman"?, 26 May 2014, available at: <http://www.footscrayclc.org.au/news-category/consumers-warned-who-is-harvey-norman>