

30 October 2015

## CONSUMER COMPLAINTS REGISTER DISCUSSION PAPER

Submission to NSW Fair Trading

### ABOUT US

Set up by consumers for consumers, CHOICE is the consumer advocate that provides Australians with information and advice, free from commercial bias. By mobilising Australia's largest and loudest consumer movement, CHOICE fights to hold industry and government accountable and achieve real change on the issues that matter most.

To find out more about CHOICE's campaign work visit [www.choice.com.au/campaigns](http://www.choice.com.au/campaigns)

## Consumer Complaints Register

CHOICE appreciates the opportunity to provide feedback to NSW Fair Trading on the Consumer Complaints Register Discussion Paper. CHOICE strongly supports the proposal to develop a new Consumer Complaints Register (the Register) that will publish information about individual traders who are the subject of a high number of complaints and encourages other States and Territories, and the Federal regulators such as the ACCC and ASIC, to follow suit.

We agree with Fair Trading's view that sharing this data will improve consumer welfare by empowering consumers to make informed decisions about where to buy goods and services. Providing consumers with relevant, accessible information about the products they consume and the ways in which they do so will improve both the individual consumer experience and the overall competitiveness of the marketplace by encouraging traders to improve their practices.

Establishing the register will assist in implementing the Competition Policy Review recommendation governments work with stakeholders to allow consumers to access information in an efficient format to improve informed consumer choice.<sup>1</sup>

Developing a register that provides consumers with information on the traders that have had high levels of complaints made against them will address existing asymmetries of information, where businesses are aware of the volume of complaints made against them but consumers are not. Addressing this will empower consumers to make more informed purchasing decisions. Making this information public will incentivise businesses to improve their complaints handling and other practices.

## Recommendations

CHOICE supports the release of consumer complaints data as proposed by NSW Fair Trading. CHOICE recommends that:

- NSW Fair Trading should endeavour to release as much information as possible, particularly in the spreadsheet intended to be used by third parties and app developers;
- The Register should include information about the trader, the product or service complained about, the problem or practice complained about, and the purchase method used;
- The Register include information about the outcomes of complaints where available;
- The Register include complaints received rather than just finalised complaints;

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<sup>1</sup> Competition Review Final Report, recommendation 21, <http://competitionpolicyreview.gov.au/final-report/>

- Only data held directly by NSW Fair Trading should be included in the Register;
- Complaints made about particular franchisees should be made available in detail in the spreadsheet, but the dashboard should categorise these complaints as complaints against the franchise brand as a whole;
- As many traders as possible should be published on the Register, provided they meet a threshold level of complaints;
- The threshold should be as low as possible so as not to exclude traders that are the subject of multiple complaints per quarterly reporting period;
- Data about past complaints should be provided as far back as feasibly possible and should remain available indefinitely;
- Traders should be provided with advance notice that they are appearing on the Register for the first time; and
- NSW Fair Trading should ensure that consumers accessing the Register are provided with information about the complaints and publication process.

## Information to be included on the Register

In order to facilitate innovation by third parties and app developers, NSW Fair Trading should endeavour to release as much information as possible. CHOICE agrees that at a minimum the Register should include information about the trader, the product or service complained about, the problem or practice complained about and the purchase method used.

The information released should vary according to the format and purpose of the release. As noted in the Discussion Paper, the intention of the project is to provide the data in two formats – a spreadsheet that can be used by third parties and app developers, and an interactive dashboard that can be used by consumers. Given this, CHOICE suggests that more detailed information is available in the spreadsheet to allow third parties as much scope as possible to use the data for innovative purposes. The information provided in the dashboard can aggregate some information to provide a clear, informative experience for consumers.

While recognising that NSW Fair Trading does not always have information about complaint outcomes, CHOICE strongly supports the Register including outcomes where available. Without knowledge of how complaints are resolved, consumers are presented with an incomplete picture. The United States Consumer Financial Protection Bureau provides a model for publishing complaints data with outcome summaries in a searchable database.<sup>2</sup>

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<sup>2</sup> See <http://www.consumerfinance.gov/complaintdatabase/>.

Regardless of whether outcomes are published, the Register must include all complaints received. There is a risk that delaying release of complaints until they are finalised will prevent consumers and third parties from identifying emerging systemic problems. The optimal model is that the data is released in a format that clearly indicates the status of the complaint (received or finalised) and the outcome, where available. At a minimum this should be available in the spreadsheet but could also be included in the dashboard.

The Consumer Complaints Register should not, in CHOICE's view, incorporate data that is not held directly by NSW Fair Trading. Rather, the goal should be to release information already held. While the dashboard should be as user-friendly and easy to navigate as possible, CHOICE does not believe that NSW Fair Trading needs to incorporate external data into this dashboard. Given that third parties and app developers will have access to the data spreadsheet, if there is value in combining different sets of data, this is where it will best be realised. CHOICE is confident that third parties are best placed to incorporate different data sets, and to contextualise the data found in the Consumer Complaints Register if it becomes clear that there would be a benefit in doing so.

Complaints made about franchisees should be made available in detail in the spreadsheet to allow third parties, including other franchisees who have a stake in the reputation of their brand, to identify problem traders. However, CHOICE would support complaints about the franchise brand as a whole being provided as an aggregate number for the dashboard. Consumers, when engaging with a particular franchisee, tend to perceive themselves as dealing with the overall brand. Reporting complaints in this way will limit consumer confusion, and may also encourage franchisors to investigate systemic issues in their franchisee stores and provide support for underperforming stores.

## Number of traders to be included on the Register and complaints threshold

As many traders as possible should be published on the Register, provided they meet a threshold level of complaints. CHOICE sees no practical reason to limit the number of traders, especially for information provided in the spreadsheet.

The complaints threshold for a trader to qualify to be on the register should be as low as possible so as not to exclude traders that are the subject of multiple complaints per quarterly reporting period. It will be incredibly important for consumers in regional areas or who are patrons of niche or specialty stores with smaller customer bases that traders with a small number of significant complaints are included on the Register. CHOICE suggests the Register be updated quarterly, to align with the reporting period for disciplinary and enforcement action as discussed in the Discussion Paper.

## Commencement and communication with traders

CHOICE believes that data about past complaints should be provided as far back as feasibly possible but recognises that this data may be unavailable in a format consistent with reporting from 1 January 2016.

It would be reasonable to publish the data in a consistent format from 1 January 2016, including complaints received from that date and into the future. NSW Fair Trading should start communicating with traders that will be included on the Register immediately, if this process has not begun yet, to allow for the publication of the Register as soon as possible in 2016.

Register data should remain available indefinitely. This is consistent with the approach of other complaints gathering organisations, including ombudsmen organisations, and provides a long-term data set to identify systemic issues as well as areas where companies have improved.

CHOICE supports providing traders with advance notice that they will appear on the public Register for the first time. This may provide traders with an incentive to resolve problematic practices rapidly, to the benefit of consumers. Notification should not, however, provide traders with the opportunity to change the Register or remove the record of complaints received against them. Notification should not be required in order to list a trader, as this may prevent the listing of particularly egregious traders that can be difficult to contact. Instead, notification is a courtesy and signal to traders to improve practices.

## Information for consumers

NSW Fair Trading should also ensure that consumers accessing the Register are provided with information about the complaints and publication process. For example, the distinction between ‘complaints’ and ‘enquiries’, and how NSW Fair Trading categorises and records these, should be clearly explained to consumers accessing the Register. The website portal for the Register should also explain how traders are added to the Register, including information about the threshold level of complaints. Without these explanations, consumers may feel that information is being withheld from the register unreasonably, leading to a lack of confidence in the complaints information that has been published.