



NSW Fair Trading Complaints Register Guidelines



Fair
Trading

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Introduction

Ensuring a fair marketplace

NSW Fair Trading works to ensure that the marketplace is ethical, fair and efficient, in the interests of all consumers and businesses in NSW.

The laws we administer and the services we provide set guidelines for fairness in the countless daily transactions between consumers and businesses. We safeguard consumer rights, regulate specific industries and occupations, and advise businesses on fair and ethical operational practices.

We believe that information plays a critical role in promoting effective competition between businesses to ensure a healthy and vibrant marketplace.

About these Guidelines

These Guidelines provide information to consumers, businesses and other interested parties about how the NSW Fair Trading Complaints Register will be designed and administered.

The Guidelines may be updated from time to time as refinements are made to our policies, processes and systems.

What is the NSW Fair Trading Complaints Register?

The NSW Fair Trading Complaints Register provides information about businesses that are the subject of the most complaints received by NSW Fair Trading each calendar month.

Why have a public Complaints Register?

NSW Fair Trading currently receives over 45,000 complaints each year and holds a wealth of information about businesses (also known as traders) operating in the marketplace. Section 9 of the *Fair Trading Act 1987* gives the Commissioner for Fair Trading power to provide information and advice to consumers, enforce fair trading laws, and receive and deal with complaints relating to the supply of goods or services.

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 Complaints Register is also part of the NSW Government's commitment to open data, which recognises that information is crucial for the economy and community to function efficiently. In the digital economy, open data is a driver of economic growth and innovation.

Data in the Complaints Register can be used to:

- improve services
- inform the community about trends in the market
- create new business models; and
- devise innovative ways to help consumers gain better value in the marketplace.

The Complaints Register is established under Section 86AA of the Fair Trading Act (as recently introduced by the *Fair Trading Amendment (Information About Complaints) Act 2015*).

What is a complaint?

NSW Fair Trading uses the Australian Standards and New Zealand Standards (AS/NZS) definition of a complaint from the 'Guidelines for complaint management in organisations':

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."
(AS/NZS 10002-2014)

The types of problems or practices that are commonly complained about to NSW Fair Trading include the following:

- defective goods and/or failure to repair under warranty
- refunds
- fees and charges
- misleading or deceptive conduct; and
- alleged breaches of laws.

How do we deal with complaints?

The process for registering a complaint with NSW Fair Trading is a multi-layered process with a number of quality assurance checkpoints. When a consumer contacts NSW Fair Trading, this contact may be classed as an enquiry or a complaint. Enquiries are contacts where the person does not expect NSW Fair Trading to intervene on the consumer's behalf - they may instead be seeking information or other assistance.

NSW Fair Trading generally encourages consumers to attempt to resolve disputes directly with the business in the first instance. If this fails and where Fair Trading intervenes by making contact with the trader, an enquiry will be elevated to the status of a complaint.

After receiving a complaint, NSW Fair Trading staff ensure that the same complaint has not been previously lodged and confirm the identity of the business. Further information may then be requested from the complainant to help NSW Fair Trading gain a better understanding of the issue. This may include copies of receipts or examples of the complainant's previous contact with the business (eg. emails, letters).

Once NSW Fair Trading staff have sufficient information they contact the business within 12 working days of the complaint being received to discuss the complaint. Staff will attempt to negotiate an outcome that is acceptable to both parties within 30 days of the complaint being received.¹

If an outcome acceptable to both parties cannot be negotiated, the complainant is advised of their options. One option may be to take action against the business in the NSW Civil and Administrative Tribunal.

¹This is set out in our guarantee of service, refer to http://www.fairtrading.nsw.gov.au/ftw/About_us/Our_services/Customer_service_standards.page?

If the conduct complained about appears to be a breach of the law, the complaint may be referred to specialist staff within NSW Fair Trading to assess whether any enforcement or disciplinary action should be taken.

A business that is subject to multiple complaints is allocated a Case Manager. The Case Manager maintains an overview of the complaints against that business and can identify duplicate or repeated complaints from the same person.

Managing vexatious complaints

NSW Fair Trading takes reasonable steps to ensure that all complaints included on the Register are from a real person, who had a real interaction with the business being complained about. These checks reduce the potential of false or fictitious complaints being included in the Register.

To be listed on the Register, a complaint must include sufficient information for NSW Fair Trading staff to be able to contact the consumer. There must be a name and at least one form of contact provided (phone number or email address). If either of these details are incomplete, the complaint will not be included in the Register.

NSW Fair Trading will also seek to determine whether a complaint was likely to be related to a real interaction with a business. NSW Fair Trading may request that the consumer provide a receipt for the transaction or other supporting information (eg. the date, time and location of the incident or name of the business's employee). This reduces the potential for false claims about fictitious transactions being made for the purpose of damaging a business's reputation. If the consumer is not able to provide sufficient information about their interaction with the business being complained about, the complaint will not be included in the Register.

The limitations of our data

In considering the Complaints Register data, consumers and businesses should be aware of its limitations:

- The Complaints Register only reports on complaints that have been made to NSW Fair Trading. Other complaints may have been reported either directly to the business or to other entities (eg. another regulator or an industry Ombudsman). As such, the Complaints Register data may only provide a partial picture of complaints relating to any business. The Complaints Register does not provide information about the severity or seriousness of a complaint, or the level of harm experienced.
- A complaint to NSW 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 to be not responding adequately to an existing concern.
- 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 nature of the products or services offered.
- Businesses operate under a variety of legal structures (eg. franchise, independently-owned subsidiary, etc.) which can impact how much influence a particular store or staff member has over policies or decisions.
- Media attention and publicity about a matter can generate additional complaints. Alternatively, where the public is aware that NSW Fair Trading is unable to act on an issue (such as when it is outside of its jurisdiction), this may discourage complaints.

How the Complaints Register operates

Published complaints

The Complaints Register will only include complaints where NSW Fair Trading considers that they have been made by a real person and relate to a real interaction with a business.

Minimum number of complaints

The Complaints Register only displays the names of businesses that were the subject of 10 or more complaints in a calendar month.

The number of businesses listed each month may vary. Based on current NSW Fair Trading data, there are around 25 to 35 businesses each month that receive more than 10 complaints.

Data collection period

The collection of data for the purposes of the Complaints Register will commence on 1 July 2016.

The Complaints Register reports on complaints that NSW Fair Trading receives during a calendar month.

Over time, a total of 24 months' worth of data will be maintained and published on the NSW Fair Trading website.

Publication schedule

The Complaints Register will be published on the NSW Fair Trading website in the second half of each month for the previous calendar month.

Having a short delay between the close of reporting and publication will mean the data is more complete as NSW Fair Trading will usually have contacted the complainant to obtain any further necessary details.

Format

The Register will be published in an online dashboard that allows readers to search the businesses and products. The raw data will also be made available so that readers can use it for further analysis.

The data will be released under the NSW Government's open data copyright policy (<http://data.nsw.gov.au/copyright>). This sets out how the data can be used and what attribution is required.

Notice to businesses

All businesses that are to appear on the Complaints Register in a given month will be provided with notice of this by email at least 3 working days prior to the Complaints Register's publication. It is important that businesses provide NSW Fair Trading with their preferred contact email for Complaints Register notification purposes.

Further, as part of the complaints management process, NSW Fair Trading Case Managers contact businesses as complaints are received during the month. Businesses will therefore be aware that they are nearing (or over) the 10 complaint per month threshold.

Business and complaint information for publication

If a business has been the subject of 10 or more complaints in a month, the Complaints Register will list the following information:

- the name of the business
- the number of complaints NSW Fair Trading has received about that business in the last month; and
- the product groups complained about.

The Register will not disclose detailed information on a specific complaint, nor name any person who has made a complaint.

Information about the practice or problem complained about

The Complaints Register will not provide information on the practice or problem that a complaint relates to. However, it is anticipated that this data will be incorporated in the future.

Information about the outcome of complaints

The Complaints Register will not include information relating to the outcome of complaints. NSW Fair Trading often does not have useful information about complaints outcomes. For example, it is not always known whether an agreed redress was actually provided or whether the complainant considered such redress to be adequate.

Business size

The Complaints Register will not include information about each business's size or number of transactions as this information is not publically available for all businesses.

Business names, franchises and chains

The Complaints Register will list businesses according to their public and recognisable 'trading' or 'brand' name. In many instances this name will be a simplified version of the official corporate or business name. Where a business is part of a larger group (eg. different branches, franchises or stores in a chains) they will be grouped under the same name.

The public recognise these brand names and they are a means of attracting customers. Further, as business policies applied by individual entities are likely to be set by the brand's head office, it is appropriate that complaints be recorded against the brand as a whole.

Businesses operating under different brands will not be listed together, even if they are part of a larger corporate group.

NSW Fair Trading will contact the businesses that are to be grouped together under the same brand to ensure that the grouping is in accordance with this policy.



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