

Consumer Law Enforcement and Administration

Submission to the Draft Report

January 2017

Introduction and overview

The NSW Business Chamber (the Chamber) welcomes the opportunity to respond to the Draft Report: *Consumer Law Enforcement and Administration*.

The Chamber is one of Australia's largest business support groups, with a direct membership of more than 19,000 businesses and providing services to over 30,000 businesses each year. The Chamber works with businesses spanning all industry sectors including small, medium and large enterprises. Operating throughout a network in metropolitan and regional NSW, the Chamber represents the needs of business at a local, State and Federal level.

The Chamber has engaged with Consumer Affairs Australia and New Zealand (CAANZ) on its review of the Australian Consumer Law (ACL).

The Chamber has also collaborated with the Australian Chamber of Commerce and Industry (ACCI) in developing its submission to this inquiry. The Chamber supports and endorses the recommendations contained within ACCI's submission. However, the Chamber wishes to make a supplementary submission to provide additional feedback on the NSW complaints register in the light of the Productivity Commission's (PC) Draft Finding (4.2) that CAANZ should consider what information from a new national database should be made available to the public.

The Chamber remains concerned that the NSW complaints register is not a desirable model for other jurisdictions to follow, and nor that it is appropriate for complaints data to be made available publicly as part of a new national database.

This submission will set out some of the Chamber's key concerns with the design of the NSW complaints register and identify a number of additional considerations to complement *Draft Finding 4.2* of the Draft Report.

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Problems with making consumer complaints public

The objective behind making consumer complaints public appears to be driven by a desire to provide consumers with information so that they can avoid discredited suppliers. The Chamber supports this objective as it encourages firms to compete on their merits with a level playing field while the availability of high-quality information is also essential to businesses' decision-making.

At face value it appears perfectly reasonable for complaints data to be made available so that consumers can be alerted to traders that are more likely to leave them unsatisfied. However, the NSW experience is clear: a ranking of businesses based on complaints received has questionable utility for consumers and can provide a highly unreasonable representation of the businesses listed.

In November 2016, 21 different traders were listed on the NSW complaints register. While a number of smaller online retailers were included, more than three quarters of the businesses listed were major national brands which likely service many thousands of customers every day. Furthermore, the most complained about business had a mere 28 complaints (which may represent a relatively low rate of complaints for a business of considerable size) to warrant inclusion at the top of the list. A similar pattern is evident in the other months for which complaints data has been released.

A complaints register in this form is not particularly useful for consumers as many of the businesses that have been listed generally excel at customer satisfaction, as evidenced by their growth to become leading businesses within their industry sectors. For these businesses, the likelihood of inclusion is a result of their size (and the many thousands of customers served) rather than high levels of customer dissatisfaction in a relative sense. This leads to the highly plausible scenario where businesses with higher rates of dissatisfaction appear favourably because they served fewer customers than some of larger businesses listed.¹ This is particularly concerning given that businesses cannot dispute the circumstances around a complaint and because the register does not identify which requirement under the ACL is alleged to have been breached (or even if the complaint relates to an obligation under the ACL at all).

The NSW complaints register does not provide any new information that consumers cannot already obtain through other channels. For example, consumers seeking to exercise their due diligence on lesser-known online retailers (noting that a number have appeared on the NSW register) are more likely to do so by performing an internet search on the performance of the retailer than to verify whether they have been listed on the complaints register. When searching "[online retailer] review" consumers are given ample information of far higher quality than what is provided through the complaints register.

Very few consumers are likely to be alerted to the potential risks of a trader directly from the complaints register, instead gaining exposure through media reporting which in the NSW experience has tended to focus on more commonly known national brands (which do not necessarily have high rates of complaints).

A more comprehensive complaints register could potentially address these issues by also providing contextualising information such as number of customers served, the egregiousness of the complaint², whether the complaint is disputed and specifics of the allegation. However the NSW experience highlights that there are significant practical challenges in doing so — for this reason the Chamber considers that significant advances in database infrastructure (beyond which appears likely in the foreseeable future) would be a precondition to the launch of a useful consumer complaints register.

¹ For example, 5 complaints per 1,000 customers is an inferior result to 10 complaints per 10,000 customers.

² For example, a complaint relating to a delay in promised delivery times for a new phone is trivial compared to a complaint about the phone being faulty yet both are recorded equally.

Draft Finding 4.2

Draft Finding 4.2 sets out that (emphasis added):

*"A national database of complaints and product safety incidents has merit. It would enable better identification and analysis of consumer hazards and risks, and help focus ACL regulators' compliance and enforcement activity. CAANZ should examine the impediments to establishing such a database, its likely benefits and costs, and, subject to the findings of that analysis, develop a plan to implement such a system. **CAANZ should also consider what information from the database should be publicly available.**"*

The Chamber contends that the issue for CAANZ to consider is not *what* information should be made publicly available, but rather:

- what is the underlying policy objective that needs to be achieved;
- whether making complaints data available is the most effective policy tool for achieving this objective; and
- if complaints data is an effective policy tool, then in what form should complaints data be released to maximise utility for consumers.

Even if a theoretical case can be made for making complaints data available, such a case must surely be conditional on it achieving the objective that it sets out to achieve. Given the issues noted in this submission (and others), the Chamber considers that the practical challenges associated with releasing consumer complaints data render it a poor solution to the policy objective of improving consumer decision-making.

This is not to suggest that complaints data should not be used to develop insights to support consumers and regulators. The Chamber sees merit in strategic reporting on the types of issues that consumers are experiencing and identification of the industry sectors that account for high rates of consumer dissatisfaction. A more nuanced approach to reporting businesses that repeatedly account for high rates³ of consumer complaints could also be useful to consumers without some of consequences of releasing unprocessed data. In this respect it may be that alternative approaches, such as enhanced use of public warning notices, offer a better solution.

The Chamber would welcome further assessment from the PC on the possible pitfalls to inform CAANZ consideration of these issues. In particular, the PC should clarify what conditions ought to be met prior to making complaints data publicly available. This could include clear articulation of policy objectives, consideration of potential negative impacts on business and contextualising information to improve usefulness for consumers.

The Chamber provided a submission to NSW Fair Trading which outlines concerns about the NSW complaints register in more detail. This is included at [Attachment A](#) to this submission.

Recommendation 1

To inform CAANZ, the PC should further explore the possible pitfalls of making complaints data publicly available. If suggesting consideration of the merits of releasing complaints data, Finding 4.2 should clarify that policy objectives must be clearly articulated and that complaints data should only be released if it is an effective response to those objectives. In that regard, the potential for complaints data to be misleading if based on a set of factors that is too narrow (such as the number of complaints alone) should also be noted.

³ In relative rather than absolute terms.

