



**FEDERAL CHAMBER
OF AUTOMOTIVE
INDUSTRIES**

ABN 53 008 550 347

Consumer Complaints Register

Fair Trading Policy

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Dear Sir/Mam,

CONSUMER COMPLAINTS REGISTER – DISCUSSION PAPER COMMENTS

The Federal Chamber of Automotive Industries (FCAI) is the peak industry group for Australia's manufacturers and importers of passenger motor vehicles, motor cycles and light commercial vehicles. With over 1.1 million new vehicles sold each year our members are key contributors to the significant economic activity in each state and territory of Australia.

The FCAI have noted the recently released Discussion Paper on the proposed Consumer Complaints Register. We are also aware that the Parliament has recently passed legislation to support the introduction of the Register.

As the new motor vehicle industry is considered a franchise operation under the terms of the national Franchise Code there are particular circumstances that render publication of the details of a company about which a complaint/s is made that require deeper consideration than is evident to date. Many, if not all, franchisees operate under trading names that draw an association with the brand and as such the inclusion of their trading name on the public Register has the potential to impugn all franchisees and the brand itself rather than confine the impact to the particular trader. A further issue is that many motor vehicle franchises are now multi-brand sites, with more than one distributor represented by the trader. Where a trader is found to be subject to complaints in respect of one particular brand the coincidence of a major component of the trading name combined with another brand will have an unintended negative impact across other independent brands.

The FCAI is of the view that prior to the publishing of any details of complaints against a franchisee the national distributor of the brand, i.e. the franchisor, must be given notice prior to the inclusion of the details of any franchisee on the Register. Secondly, the FCAI is of the view that the number of complaints is not necessarily a good indication of the status of the brand or the dealer in the light of the consumer law requirements. While the discussion paper suggests there is a proposal to ensure vexatious complaints are not recorded, the fact is that consumer expectations over and above the

norm will, if things stay as currently planned, drive an incorrect assessment of the situation. Surely the real test of whether or not a particular trader is worthy of inclusion on a list of non-performers is the findings from the complaint, not the complaint itself.

In terms of responses to the specific questions within the discussion paper the FCAI offers the following comments.

Question 2. What information should the register publish about a trader and why?

The FCAI holds that there should not be publication of any details unless the impact of any publication can be confined to the particular trader. Further, in respect of complaints regarding the sales and service of new motor vehicles the Register should not publish any details until investigations have been completed and the complaint has not been resolved to the consumer's satisfaction.

Question 3. Should the Register publish data about complaints received or about finalised complaints? Why?

As per our comments above the Register should not publish information about complaints received. In fact our view is that the Register should only publish information where a complaint has been found justified and the trader has been required to respond in a particular manner.

Question 5. Should there be a minimum threshold for number of complaints before appearing on the Register? If so, what should it be?

FCAI is of the view that there must be at least 5 complaints within a one month period and that the complaints must relate to the same type of concern.

Question 6. How often should the Register be updated (e.g. monthly, quarterly, six monthly)?

The Register should be updated each month.

Question 7. What time period should the Register data cover (e.g. previous 12 months, previous 3 months) and why?

It would be preferable that the Register is kept current so it would be necessary to ensure that the data covered the most recent 3 month period. There must also be a system whereby the Register can be amended immediately to remove any reference to a particular business where the franchised operator changes hands.

Question 8. How long should the Register data remain on the NSW Fair Trading website before being archived?

Each 3 months the data should be archived.

Question 9. Should the Register data be available to be searched after being archived and for how long?

No.

Question 10. From what date should complaint data be counted and included in the public Register?

From 1 July 2016.

Question 11. Should the Register show information about the size of the businesses being complained about?

No. This would add an enormous layer of complexity for example in the case of multi-franchised new motor vehicle dealerships.

Question 12. Is there a practical and simple way of providing information about the size of the business being complained about?

FCAI is not aware of any meaningful and fair comparative data set that is readily available to achieve the outcome that this question is suggesting. The tendency to use high level data such as from ATO databases has the potential to provide quite misleading comparative data. To have a consistent and meaningful comparative data set would be an exercise in detail of itself and require a deeper analysis than simply comparing turnover. One companies turnover may be significantly higher than the next however their value add may be significantly lower. This is just one example of the complexity suggested by this question.

13. Should complaints about a particular franchise be recorded as complaints about the franchise brand as a whole?

Clearly the prominence of the brand name in a new motor vehicle franchise means that the behaviour of the particular franchisee will wash across the brand to some extent. While there are certain requirements that a franchisee agrees to abide by in operating the franchise there is no doubt that the independence involved in running a multi-million dollar automotive dealership will result in a variety of different approaches to customer relations. Likewise, the varying expectations of particular customers that can be focused on one local supplier would if recorded on a public register, without appropriate checks and balances, be unfairly impinging on the behaviour of all franchisees.

Should the situation evolve to the extent that a large number of customers are complaining with valid complaints against a range of franchisees for a particular brand then there may, in those circumstances alone, be justification to have complaints slated against the brand. These complaints would also need to be focused on the same behaviour or issue.

Other than in the above circumstances complaints should not be referenced to the brand in any way.

14. Should the same approach be taken with chains and related companies/corporate groups?

Any complaint must be specifically referenced to a particular outlet only. The potential for complaints that are recorded in a general rather than specific sense to impact the wider brand is not justifiable. This is particularly so in the case of the new automotive industry sales and service where there are many multi-brand outlets.

15. Should traders be notified in advance if they are going to appear on the Register for the first time? If so, what period of notice should they be given?

Yes. Notice should be 14 days to enable finalisation of any outstanding correspondence with the complainant.

16. What other supporting information should accompany the Register to explain it to the public?

FCAI remains of the view that in the case of new motor dealerships there should not be any publication of the dealership names on the Register except in the most extreme cases. FCAI also notes that suggestions for supporting information may include strategies to raise awareness of the fact that publication of the name of one franchisee on the Register, with a reference to the brand in the company name, does not mean to reflect across other franchisees. FCAI holds that this approach would have little if any impact and would not be a satisfactory solution to the issues publication will cause.

If you have any questions on the above please feel free to contact me on 02 6229 8217.

Yours faithfully,



Tony McDonald

Director

Industry Operations

29 Oct. 15