

NSW Fair Trading Complaints Register Guidelines Review

Companion document: Data collection

Date: 30 June 2018

NSW Fair Trading
Department of **Finance, Services and Innovation**

Table of Contents

1.	Consultation with other Australian consumer protection agencies	3
1.1	CDRAC questionnaire	3
1.2	Analysis of returned questionnaires	6
2.	Internal consultation	10
2.1	Interview guides	10
2.2	Detailed analysis	18

1. Consultation with other Australian consumer protection agencies

1.1 CDRAC questionnaire

Questionnaire type	Questionnaire for other ACL regulators		
Date		Jurisdiction/Agency	
Contact Person		Phone/email	

Introduction

NSW Fair Trading is currently conducting a review of the NSW Fair Trading Complaints Register Guidelines. The Guidelines provide information about how NSW Fair Trading's Complaints Register is designed and administered, including the data that is made publicly available. The Complaints Register started operating in August 2016 with publication of the July 2016 data. The review will rely on a range of methods including some stakeholder consultation with industry and consumers organisations. We are also interested in collecting views from other ACL regulators about their potential experience or interest in the publication of complaints data.

This questionnaire should take around 30 minutes to complete.

Experience with reporting and publication of complaints data

1. How are **you collecting and reporting** on complaints data in your own jurisdiction?

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2. Are you **publishing** complaints data?

☐ Yes

☐ No, but considering it

☐ No

3. [If yes at Q2] How are you publishing complaints data?

At what frequency?

How is it presented? i.e. Aggregated, by industry, by business

What type of data? Number of complaints, Business size, Number of transactions, Severity of the complaints, Outcomes, etc.

4. [If yes at Q2] Did you draw any learning from this experience?

5. [If No, but considering it OR No at Q2] What prevented you from publishing data so far?

6. [If No, but considering it at Q2] What made you consider this option?

7. If you have any documentation capturing learnings from any experience with publishing complaints data (from your own experience or reviewing others), we would highly appreciate if you could share it with us.

Please list the documentation below and attach any such documentation to your completed questionnaire.

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Foreseen benefits and risks associated with the publication of complaints data

8. What kinds of benefits do you foresee with the publication of complaints data?

For businesses	
For the consumers	
For the government	

9. What kinds of risks do you foresee with the publication of complaints data?

For businesses	
For the consumers	
For the government	

Particular interest in NSW Fair Trading Complaints Register experience

10. To what extent did the NSW Fair Trading Complaints Register have an impact on your agency?

- ☐ Large positive impact
- ☐ Small positive impact
- ☐ No impact
- ☐ Small negative impact
- ☐ Large negative impact

Please specify:

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11. If any, what changes would you recommend to the Complaints Register Guidelines?

12. What would you be interested to learn from NSW Fair Trading's experience with the Complaints Register?

The next steps for the review are to conduct the formal consultation with industry and consumers as well as other evidence to assess its effectiveness. The review will be presented to the NSW Minister for Innovation and Better Regulation in July 2018, and consequential changes may follow.

1.2 Analysis of returned questionnaires

1.2.1 Experience with reporting and publication of complaints data

Most agencies who provided a response indicated that they record complaints data on their internal complaint management system.

In terms of reporting, five of the eight agencies indicated that they were already publishing complaints data and another two were considering it. Most of them report complaints data in their annual report; a couple of agencies indicated that they were also reporting complaints data in response to parliamentary or media enquiries. Published complaints data is generally number of complaints in a deidentified and aggregated format.

Table 1. Overview of CDRAC agencies complaints data publication policy

Published where?	<ul style="list-style-type: none">• Annual report for most agencies• Parliamentary estimates and enquiries (n=2)• Media enquiries (n=2)
Type of data published	<ul style="list-style-type: none">• Number of complaints for most agencies• Outcomes (n=2)• Most common issues (n=1)
Structure of the data	<ul style="list-style-type: none">• De-identified• By industry
Frequency of publication	<ul style="list-style-type: none">• Annual report for most agencies• 6-monthly (n=1)• Ad hoc (n=1)

Main learnings identified by those agencies publishing complaints data are that publication of complaints data

- helps improving consistency of complaints typologies and procedures
- is resource intensive
- is popular among the public
- helps identifying trends.

One of the agencies indicated that

Of the data sets uploaded by [jurisdiction], the complaint data is the most popular.

For those agencies that are not publishing complaints data, reasons preventing from doing it are related to challenges of identifying traders, official position from the State government, and potential impact on resourcing. For those considering it, interest is around the deterrent effect towards businesses or incentive to improve their complaints management processes, and helping consumers make more informed purchasing decisions.

1.2.2 Foreseen benefits and risks associated with the publication of complaints data

When asked about benefits and risks associated with the publication of complaints data, most agencies identified a key benefit for consumers in terms of increased caution in dealing with specific businesses, and the risk most frequently mentioned was around the impact on government resources. Table 1 provides an overview of benefits and risks identified by CDRAC agencies; identified in bold are comments that came up more frequently.

Table 2. Overview of Benefits and Risks associated with the publication of complaints data as reported by CDRAC agencies

	Benefits	Risks
For businesses	<ul style="list-style-type: none">• Incentive to reduce complaints, comply with legislation and provide better quality service• New information about competitors, and competitor advantage for those with lower level of complaints	<ul style="list-style-type: none">• Reputational damage which may bring down businesses
For the consumers	<ul style="list-style-type: none">• Better informed purchasing decision through increased caution with particular businesses and products	<ul style="list-style-type: none">• Lack of understanding of the context for complaints data (e.g. volume of sales) could lead to misinformed decisions

	<ul style="list-style-type: none"> • Increased awareness of consumer rights • Quicker resolution of complaints • Reduced consumer detriment 	<ul style="list-style-type: none"> • False sense of security if business is not listed • Unjustified sense of alarm when complaints may be trivial or have been resolved
For the government	<ul style="list-style-type: none"> • Reduced number of complaints to manage • Increased government accountability for how complaints are handled • Improved reputation with consumers • Cost-effective means of changing traders' behaviour • Open data supporting improved services 	<ul style="list-style-type: none"> • Additional resources required to ensure procedural fairness • Errors in data could expose to legal risk • Backlash from businesses, damage to relationship with the industry

1.2.3 Particular interest in NSW Fair Trading Complaints Register experience

When asked whether the introduction of the NSW Fair Trading Complaints Register had had any impact on their respective jurisdiction, most of them reported no impact; only one jurisdiction identified a small positive impact. Some of them indicated that there was some interest in the lead up to the introduction of the Register, and some noted that stakeholders were surprised with the number of real estate businesses being listed.

Only one agency recommended a change to the current Complaints Register guidelines, in relation to whether it included complaints about stores in other jurisdictions:

The data published online includes complaints received by NSWFT about stores in both NSW and other states (but received from a consumer from NSW). This could be removed to ensure the register is regarding NSW stores only. Otherwise it could be clarified in the guidelines that stores in other states will appear on the register and contribute to the overall number of complaints published.

The agencies were also asked about what they would be interested to learn from the NSW Fair Trading experience with the Complaints Register. Main areas of interest were around:

- Impact on the number of complaints received, including where it was more effective (industry, business size)

- Evidence and data against whether the Register has achieved its objectives
- Reaction from the industry and impact on the relationship with the regulator
- Impact on consumers' behaviours
- Impact on internal resources
- Whether it had contributed to improve Fair Trading complaint management processes
- Visit statistics.

2. Internal consultation

2.1 Interview guides

2.1.1 Individual interviews

Method	Individual interview with key internal stakeholders		
Date		Time	
Team		Interviewee	

Introduction

Fair Trading NSW is currently conducting a review of the Complaints Register Guidelines which started operating in August 2016. The existence of the Register itself is not questioned, and the review focuses on the Register Guidelines, i.e. how they governed the operation of the Register.

The review relies on a range of methods including a formal stakeholder consultation based on an issue paper, a user survey, analysis of web stats and complaints data, a desktop review of lessons learnt from publication of complaints data in Australia and overseas. As part of this review, we are also collecting feedback from key internal stakeholders through focus groups and individual interviews.

The objectives of the individual interviews with key internal stakeholders are to:

- Gain a better understanding of the initial rationale that informed the design of the Register
- Collect feedback on the implementation of the Register: what worked well, what could be improved
- Explore areas for possible changes and potential implications, in particular other types of information Fair Trading could have access to and decide to publish

This interview should take around an hour. I will take notes while we speak, and may record it to make sure I've captured everything appropriately if you're happy with that [gain formal consent].

The feedback provided here will remain confidential and analysed in an aggregated way together with feedback from other stakeholders and other evidence.

13. Before we start, can you briefly describe your involvement in the Fair Trading Complaints register since it started?

Design of the Fair Trading Complaints Register

14. From what you can remember, what triggered the Fair Trading Complaints Register in the first place?
15. What is your understanding of the objectives of the Fair Trading Complaints Register?
16. How was the design of the register itself initially informed? What are your views about this process?
17. What changes were made to the design of the register along the way? What were the reasons behind those changes?

Implementation

18. What are your views in general about how the Register has been implemented?
19. What has worked well?
20. What could be improved?

Benefits and risks

21. What kinds of benefits did you identify being generated from the Register? Do you have any evidence of those, including anecdotal evidence?
 - For businesses
 - For the consumers
 - For the government
22. What kinds of risks did you identify with the Complaints Register?
 - For businesses
 - For the consumers
 - For the government

Possible changes and implications

The current review is an opportunity to consider changes to the way the Register operates as framed by the Guidelines. We will explore potential changes, their feasibility and implications.

23. **Additional data to include.** The Register currently include information about the name and the location of the business, the number of complaints received in a month against that

business, and the product or service complained about. There have been calls to include additional information. What are your views about those in terms of potential benefits and feasibility/ implications for Fair Trading and DFSI or the NSW Government more broadly?

Additional data considered	Potential benefits (for businesses, consumers, and the Government)	Feasibility and implications
Practice or problem the complaints is related to		
Severity of a complaint, e.g. poor customer service VS breach of the law		
Complaint outcomes, e.g. went to NCAT, notices, prosecutions		
Contracting parties VS interaction with businesses		
Business size		
Number of transactions		

24. **Threshold number of complaints.** The Guidelines currently state that Fair Trading will publish the names of businesses that are the subject of 10 or more complaints to Fair Trading in any one calendar month. What are your views on whether this threshold should be changed or whether it works at is?
- To provide a comparison using the same 12 month period, reducing the threshold so that businesses with seven or more complaints in a month would mean that an extra 1,973 complaints were represented on the Register. Those 1,973 complaints were made against 178 separate businesses.

- 25. Frequency of updates.** The Register is currently updated every month. What are your views on whether the Register should be updated more or less often, or whether the current frequency works?
- 26. Length of time data remain publicly accessible (before being archived).** The Guidelines currently state that Register data will remain on the website for a period of 24 months. What are your views on whether this is appropriate or should be made longer or shorter?
- 27. Policy on the grouping of franchises, chains and corporate groups.** Currently the Guidelines state that Fair Trading publishes information about businesses according to their publicly recognisable trading name or brand, because the ultimate individual or corporate owner of the business may not be commonly known to consumers. What are your views on this policy, how it is working and whether it should be changed?
- 28. Notice to businesses.** Fair Trading currently provides at least three working days' notice in writing to all businesses that are set to appear on the Register in any given month. What are your views on how well this process is working, and whether it should be changed?
- 29. Online layout of the Register.** What are your views about the online layout of the Register?
- How user-friendly and easy to it is?
 - What areas for improvement do you identify in the current design of the Register web page?

Wrapping up

30. If you had one thing to change in the way the Complaints Register is operating today, what would it be?
31. And what is the one thing you would not change?
32. Other comments

We're getting to the end of the interview. Thank you for your time and your contribution to the review. Feel free to send me any additional comment you may think of afterwards.

2.1.2 Focus groups

Interview type	Focus groups with key internal stakeholders		
Date		Time	
Team		Participants	

Introduction

As you know, Fair Trading NSW is currently conducting a review of the Complaints Register Guidelines which started operating in August 2016. The existence of the Register itself is not questioned, and the review focuses on the Register Guidelines, i.e. how they governed the operation of the register.

In addition to listen to what the industry and consumers have to say about the Register, we think it is also critical to capture the collective knowledge we're progressively developed of the benefits of the Register, what is working, what is not working, how it could be improved, what is achievable and how that would work. The Review will also consider evidence from complaints data, web stats, and a desktop review of lessons learnt from publication of complaints data in Australia and overseas.

The objectives of the focus groups with internal stakeholders are to:

- Collect feedback from an internal perspective on the implementation of the Register project: what worked well, what could be improved
- Explore areas for possible changes and potential implications, in particular other types of information Fair Trading could have access to and decide to publish

The focus group will take 1.5 hour.

We will be taking notes during the focus group. The feedback provided here will remain confidential and analysed in an aggregated way together with feedback from other stakeholders and other evidence.

We will structure the discussion in two parts:

1. We will first go through what you feel worked well and what could be improved in the way the Register has been implemented.
2. Then we explore possible changes to some of the policies and processes outlined in the Register guidelines, in particular as framed in the consultation Issues paper.

Before we start, I would just like to establish a few group rules:

- There are no right or wrong answers.

- We want to hear everyone's opinion, so please let everyone have a say
- One at a time, please
- Please respect the confidentiality of other group participants and not repeat their views to others outside of the group

1. Can we go around the table?

- Please introduce yourself where you sit in the organisation
- What has been your involvement in the Register since it started

Lessons learnt

2. What are your views in general about how the Register has been implemented?

- What has worked well?
- What could be improved? [broadly first, then prompt different aspects]

	What works	What could be improved	Potential recommendations and implications
Initial design of the Register			
Process leading to the publication of complaints data			
Systems/ IT e.g. CAS, Tableau			
Online layout of the Register			
Engagement with businesses			
Engagement with consumers			

Possible changes and implications

The current review is an opportunity to consider changes to the way the Register operates as framed by the guidelines. We will explore potential changes, their feasibility and implications.

[When exploring potential changes, explore how that would work in practice]

33. **Additional data to include.** The Register currently include information about the name and the location of the business, the number of complaints received in a month against that business, and the product or service complained about. There have been calls to include

additional information. What are your views about those in terms of potential benefits and feasibility/ implications for Fair Trading and DFSI or the NSW Government more broadly?

Additional data considered	Potential benefits (for businesses, consumers, and the Government)	Feasibility and implications
Practice or problem the complaints is related to		
Severity of a complaint, e.g. poor customer service VS breach of the law		
Complaint outcomes, e.g. went to NCAT, notices, prosecutions		
Contracting parties VS interaction with businesses		
Business size		
Number of transactions		

34. **Threshold number of complaints.** The Guidelines currently state that Fair Trading will publish the names of businesses that are the subject of 10 or more complaints to Fair Trading in any one calendar month. What are your views on whether this threshold should be changed or whether it works at is?
- To provide a comparison using the same 12 month period, reducing the threshold so that businesses with seven or more complaints in a month would mean that an extra 1,973 complaints were represented on the Register. Those 1,973 complaints were made against 178 separate businesses.

How the current policy is working	Possible changes	Feasibility and implications

- 35. Frequency of updates.** The Register is currently updated every month. What are your views on whether the Register should be updated more or less often, or whether the current frequency works?

How the current policy is working	Possible changes	Feasibility and implications

- 36. Length of time data remain publicly accessible (before being archived).** The Guidelines currently state that Register data will remain on the website for a period of 24 months. What are your views on whether this is appropriate or should be made longer or shorter?

How the current policy is working	Possible changes	Feasibility and implications

- 37. Policy on the grouping of franchises, chains and corporate groups.** Currently the Guidelines state that Fair Trading publishes information about businesses according to their publicly recognisable trading name or brand, because the ultimate individual or corporate owner of the business may not be commonly known to consumers. What are your views on this policy, how it is working and whether it should be changed?

How the current policy is working	Possible changes	Feasibility and implications

- 38. Notice to businesses.** Fair Trading currently provides at least three working days' notice in writing to all businesses that are set to appear on the Register in any given month. What are your views on how well this process is working, and whether it should be changed?

How the current policy is working	Possible changes	Feasibility and implications

- 39. Online layout of the Register.** What are your views about the online layout of the Register?

- How user-friendly and easy to it is?
- What areas for improvement do you identify in the current design of the Register web page?

How the current layout is working	Possible changes	Feasibility and implications

We're getting to the end of the focus group. Thank you for your time and your contribution to the review. Feel free to send us any additional comment you may think of afterwards.

2.2 Detailed analysis

2.2.1 Initial rationale for the Register

Fair Trading was the first consumer protection jurisdiction in Australia to publish complaints data where traders were identified. As pointed out by one internal stakeholder, the Register is a transparency measure out of the regulator's toolkit which provides a lever to promote better complaints management processes among businesses.

Internal stakeholders identified two major reasons that triggered the introduction of the Complaints register:

- A push from the NSW Government and Minister for Innovation at the time for open data
- The realisation that Fair Trading staff had access to useful information about traders via complaints data, which could be made accessible to the general public.

2.2.2 Lessons learnt about the initial design and implementation of the Register

Internal staff were asked to provide feedback about how the Register had been initially designed, i.e. the initial phase, and implemented, with a view to identify learnings for future similar projects: if we had to design and implement such a project tomorrow, what should we retain, what should we do differently?

Overall, feedback from internal stakeholders about how the Register has been designed and implemented is positive. Key factors of success in the design include the fact that the legislation giving Fair Trading power to publish complaints data had been passed first; a sufficient lead time to develop new processes, a broad buy-in across the organisation and some early engagement with traders likely to appear on the Register. Internal stakeholders also identified that the Register offered the opportunity to review and improve internal processes around handling complaints. The implementation of the Register then benefitted from flexible governance arrangement, and in turn contributed to improved collaboration between the teams involved.

Table 3 provides a more detailed overview of what worked and what could have been done better as identified by internal stakeholders. Key feedback mentioned by several stakeholders is identified in bold.

Table 3. Overview of Lessons learnt from the Fair Trading Complaints register, internal consultation, May 2018

	What worked	What could have been done better
Initial design phase	<ul style="list-style-type: none">• Legislation first• Sufficient leading time• Broad buy-in across Fair Trading• Early engagement with traders with high levels of complaints, i.e. likely to appear on the Register	<ul style="list-style-type: none">• Internal consultation about the design of the Guidelines initially• Broader consultation with the industry (missed a key industry stakeholder: Australian Industry Group)• More consultation with consumers to test assumptions• Lack of clarity of the intent sometimes
Implementation	<ul style="list-style-type: none">• Opportunity to review and improve internal complaint handling processes	<ul style="list-style-type: none">• Dedicated resources, i.e. funding and staff, instead of on top of BAU activities

	What worked	What could have been done better
	<ul style="list-style-type: none"> ○ Improved definition of what a complaint means ○ Establishment of processes to check business names and vexatious complaints ○ Development of internal audit and quality improvement processes ○ Refined changes on processes and systems along the way, e.g. location data ● Responsive governance with right balance of formality and informality ● Improved collaboration across teams ● Clear timelines ● Good communication to industry 	<ul style="list-style-type: none"> ● Improved marketing to promote the Register to the general public ● More preparation time before publication ● More engagement with traders to explain the approach, not only the 'big offenders' ● Challenge of the ECU / REP split ● Limited in what can be published by the current system (CAS) ● Still a lot of manual processing

2.2.3 Perceived benefits and risks of the Register

Key stakeholders were asked about the kinds of benefits and risks identified with the introduction of the Register. The main benefits were identified for consumers who are now able to identify businesses most complained about. One key stakeholder also reported that engagement activities with traders, in particular in the lead up to the Register, contributed to a reduction in the number of complaints. Since the introduction of the Register, businesses seem to have improved their practices, some of them not being listed anymore. Prior to the Register, some businesses were more likely to refer complaining consumer straight to Fair Trading. Businesses may have also benefitted from having access to more information about the complaints against them, but also about their competitors.

The main risks identified are for businesses, particularly the reputational risk, where being listed on the Register could harm businesses. This could be perceived as unfair by businesses if complaints are ultimately found unsubstantiated.

One stakeholder also pointed out the risk for the Register to be “watered down” and become less useful to consumers, and less effective in being an incentive for businesses to improve their complaints handling processes.

2.2.4 Possible changes and implications

a) Additional data

Feedback from internal stakeholders about additional data to publish on the Register is that it's mainly constrained by the information available to Fair Trading.

The main information that most stakeholders agree could be added is about the **practice or problem the complaints are related to**. This could be done with the information already available, but would require some preliminary work in cleaning the typology used (recorded under 'practice code' in CAS) and ensuring consistency in data entry. Some of the codes are also quite broad, e.g. 'residential tenancy'. The other limitation raised is the fact that complaints may be related to multiple practices or problems, and the system only captures one – which would actually make it easier for publication, i.e. main practice or problem the complaint is related to.

Internal stakeholders felt that it was not possible to publish reliable information about the **severity of a complaint**, e.g. poor customer service or breach of the law, at the point where it was recorded where it counts against potential publication. It was felt that the information recorded under breach/offence code was not reliable for publication, and that qualifying it appropriately requires time. Otherwise the information published would only be potential severity, based on staff making a judgement call.

Publication of information about **complaints outcomes** faces two challenges:

- Firstly, that would delay the publication of data substantially (e.g. 30 days guarantee to finalise a complaint, and up to 3 years for prosecutions) which would go against the objective of providing the consumer with timely information
- Secondly, Fair Trading doesn't have access to this information: NCAT, the complainant or the business don't have to communicate the outcome back to Fair Trading.

Even if it may not be possible to include this information on the Register, it is still very useful information to report on, for instance at an aggregated level in an annual report. Fair Trading could require traders or NCAT to advise about such outcomes, so that it can report at the end of the year about the proportion of complaints resolved in the favour of the consumer.

Other additional information internal stakeholders suggested for inclusion include:

- Product type, e.g. vehicle
- Legal entity
- Links to public warnings and notices registers.

One staff member also suggested to include information about the monetary value of the product or service complained about, however others felt that could be misleading as the complaint may be in relation to the customer service rather than the actual product or service. Estimating damages or potential compensation is also challenging.

Normalising the data against the volume of transactions or customer base was discussed. However, Fair Trading doesn't have access to this information currently. This would require a new mandate, i.e. power to request this information from businesses, decide which metric would be appropriate across the various industries, and have the ability to check the information provided.

b) Threshold number of complaints for publication

Most internal stakeholders felt that the current threshold of 10 complaints for publication was reasonable. Raising the threshold would reduce the benefit of the Register to consumers. Lowering the threshold, to 7 for instance, would require additional resources to ensure appropriate auditing before publication, resources that Fair Trading currently doesn't have. Regarding the potential consumer detriment, a threshold as low as 2 complaints would be required for industries like the home building or motor vehicle industry, but consideration should be given to the implication for internal resources.

The only possible alternative considered is to remove the threshold and publish any complaint received. To make this possible, that would require removing any auditing currently in place, particularly around vexatious complaints, which would generate a high reputational risk to Fair Trading.

c) Notice to businesses

Most stakeholders felt that providing three full business days (current policy) notice to businesses prior to being listed on the Register was appropriate. This notification is mainly by courtesy to businesses as they are notified of each individual complaint, so are able to monitor when they get close to being listed. For each individual complaint, traders are given five working days to respond to the customer complaint.

d) Data update and record policy

Most stakeholders felt that the monthly update was working. Weekly or daily updates would require much more internal resources. A quarterly update would provide less timely information to consumers. One internal stakeholder also suggested to add any new monthly update to an overall Register instead of splitting it by month.

Most stakeholder also felt that keeping the data on the Register for 24 months as it is currently the case was appropriate. The data could potentially be kept for ever, but that may be of less use. It could also damage businesses reputation over a long period of time, particularly if the content of the Register becomes searchable and indexed via Google.

e) Grouping policy

Internal stakeholders felt that the current grouping policy was appropriate, particularly since the location had been added. Complaints are reported against publicly recognised names, including from franchise groups. Franchise groups may have different levels of controls over their franchises depending on the industry, e.g. retail versus real estate, but franchise head offices should be aware of complaints counting against them as they arise disregarding the industry.

f) Online layout of the Register

The main area for improvement identified by internal stakeholder in the way the Register appears online is to add a search function. The Register would also benefit from a refresh to make it more user-friendly. Other suggestions included:

- Indexing the content via Google (Search Engine Optimisation)
- Adding graphs, charts and heat maps.

NSW Fair Trading

PO Box 972, PARRAMATTA NSW 2124

Phone: 13 32 20 | TTY: 1300 301 181

Department of Finance, Services and Innovation

www.fairtrading.nsw.gov.au

