

FAIR TRADING STATEMENT OF REGULATORY INTENT

Code of Conduct for the Short-term Rental Accommodation Industry - Exclusion Register

Purpose

This statement sets out the compliance and enforcement approach that NSW Fair Trading will take regarding the exclusion register set out in the Code of Conduct for the Short-term Rental Accommodation Industry (the code).

Background

The mandatory code established under the *Fair Trading Act 1987* and the *Fair Trading Regulation 2019* creates obligations on all participants in short-term rental accommodation arrangements, including booking platforms, hosts, letting agents and guests.

Under Part 4.2 of the code, NSW Fair Trading is required to keep and administer an exclusion register that is publicly available.

Recording a guest, host (or host in relation to a specified premises) on the exclusion register is a disciplinary action available to Fair Trading under the code where two strikes are recorded in a two year period. Where an industry participant is listed on the exclusion register, this means that they are excluded from the industry for five years.

The code creates obligations on hosts, guests, booking platforms, letting agents and facilitators not to facilitate or engage in short-term rental accommodation arrangements with those who have been recorded on the exclusion register. Non-compliance with these obligations can attract enforcement action from NSW Fair Trading.

NSW Fair Trading is working with the Department of Planning, Industry and Environment to establish arrangements for the exclusion register and the premises register that is expected to commence operation on 1 November 2021.

Transitional arrangements apply until registration on the premises register becomes mandatory on 1 November 2021

NSW Fair Trading recognises that participants are adapting to the new obligations under the code and that public facing elements of the exclusion register are not yet available.

To support industry participants and in recognition of the commencement timing of relevant planning laws, Fair Trading will take an educational approach to compliance and enforcement on certain obligations regarding the exclusion register. This approach will last until 1 November 2021 for most of New South Wales. The exception to this is industry participants operating in Byron local government area - where it will last until 31 January 2022.

This means that during these periods, Fair Trading will not penalise industry participants for not complying with obligations under clauses 2.2.7, 2.2.8, 2.3.7, 2.3.8, 2.3.9 and 2.4.14 of the code to not facilitate or enter into short-term rental accommodation arrangements with persons listed on the exclusion register.

Fair Trading is adopting this approach as compliance with these clauses requires public access to the exclusion register. The public-facing element of the exclusion register is not expected to become accessible until 1 November –2021.

NSW Fair Trading will enforce the exclusion register-related obligations on hosts and guests provided under clauses 2.4.12, 2.4.13 and 2.5.7. These clauses require that hosts and guests do not enter into short-term rental accommodation arrangements if they or their premises have been listed on the exclusion register. Fair Trading is enforcing these clauses because hosts and guests would be notified if they were listed on the register, even if it is not publicly available. Since the host and guest will be aware of their own listing on the exclusion register, they need to meet the requirement of not entering into any short-term rental accommodation arrangements.

The code requires hosts and guests to comply with planning laws. The enforcement of planning laws will remain with local councils. Responsibility for noise complaints also remains with local councils. The Police Assistance Line can be contacted for urgent noise complaints. An option of issuing a strike for deliberate and persistent breaches of these laws is available at the discretion of the Commissioner for Fair Trading.

NSW Fair Trading will continue to evaluate and assess appropriate enforcement action according to the regulatory compliance and enforcement approach as set out in its Compliance and Enforcement Policy.

More information

More information about the code is available on the Fair Trading website at <https://www.fairtrading.nsw.gov.au/>.



Rose Webb
Commissioner for NSW Fair Trading

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