



28 May 2018

Complaints Register Guidelines Review
NSW Fair Trading
PO Box 972
PARRAMATTA NSW 2124

Dear Sir / Madam,

RE: Airbnb Submission - NSW Fair Trading Complaints Register Guidelines review

Airbnb welcomes the opportunity to provide a submission in response to NSW Fair Trading's review of the Complaints Register Guidelines (the **Guidelines**).

Airbnb supports the NSW Government's open data policy, and understands the importance of the Consumer Complaints Register (the **Register**) both in helping consumers make informed decisions about which businesses to transact with, and in providing an incentive for businesses, like Airbnb, to deliver better customer service.

NSW Fair Trading's Issues Paper identifies as a key issue for feedback the Guidelines treatment of franchises, chains and corporate groups as a topic for consultation. Airbnb submits that, as part of this, consideration should be given to the treatment of platform operators as their position is quite different to that of franchises, chains and corporate groups.

Airbnb is concerned that the Register, in its current form, does not adequately reflect the complexities of sharing economy transactions and the role of digital platforms such as Airbnb. In particular, Airbnb submits the Guidelines should be amended so that the Register distinguishes complaints made against online platforms from complaints made against traders operating on those platforms.

Airbnb and sharing economy platforms

Airbnb is a platform operator facilitating peer-to-peer transactions between consumers (known on Airbnb as "**Guests**") and traders (known on Airbnb as "**Hosts**"). Hosts offer services to Guests that include short term accommodation, as well as "experiences" (for example, tours or classes). While Airbnb provides the platform for these services, Airbnb does not supply the actual short-term accommodation or experiences to Guests. These are provided by Hosts who are independent of Airbnb.

As the ACCC explained in their paper [The Sharing Economy: A guide for private traders](#), in the sharing economy the platform operator is "the business that operates the platform that manages the connection" between the trader and the consumer, while the trader is the relevant party who supplies the primary good or service to the consumer, and has the relationship with the consumer (pp 3-4).

Guests still have a relationship with Airbnb, using its services for example to search for Hosts' services, communicate directly with Hosts or submit payment requests through the Resolution Centre. Similarly, Hosts interact with Airbnb by using the platform's technology to offer their own services.

However, as made clear in Airbnb's [Terms of Service](#), in the peer-to-peer transaction space, Airbnb is independent of the services exchanged between Hosts and Guests. Airbnb "does not become a party to or other participant in any contractual relationship" between a consumer and a Host (clause 1.2), has "no



control over and does not guarantee" the quality of the Host or the Hosts' services (clause 1.3), and classifies Hosts as "independent, third party contractors" (clause 1.4).

This multi-layered relationship distinguishes sharing economy platforms from traditional businesses that transact directly (or via a franchise, chain or corporate group members) with consumers. Airbnb submits the Register and accompanying Guidelines do not capture this distinction. In not doing so, the Register potentially misleads consumers as to the nature of the complaint that has been made, rather than assisting consumers in deciding what businesses to transact with in the online marketplace.

Proposed improvements

Airbnb proposes the Register be amended to distinguish complaints against traders on online platforms (such as Hosts on Airbnb) from complaints against the online platform.

Option 1: The Register should only record complaints against the online platform

Airbnb submits NSW Fair Trading should only count complaints made directly against the online platform when determining whether the platform should appear on the Register. Similarly, traders operating on online platforms should be separately listed, with their trading name disclosed, where they are the subject of 10 or more complaints.

This change would mean the Register would accurately reflect the independence of online platforms and traders in peer-to-peer transactions, where the services being exchanged are solely between the trader and the consumer.

Through this change, the Register would serve its purpose of providing meaningful information to consumers/traders looking to use online platforms to engage in peer-to-peer transactions, and incentivise online platforms and traders to deliver better customer service.

Option 2: The Register should separately record the number of complaints against the online platform, and the number of complaints against traders using that platform

As an alternative, Airbnb submits the Register should, at the very least, make clear where complaints have been lodged with NSW Fair Trading against traders on online platforms, and where the complaints have been lodged against the online platform itself.

Airbnb believes the Register is equipped to make these improvements. For franchises and chains, the Register currently provides a breakdown of complaints received against each business location, as well as the subject of the complaint. For example, for March 2018:

- the Register lists 29 complaints received against Harvey Norman in March 2018, then sets out the locations and product types for which each specific complaint has been made;
- in contrast, for eBay the Register lists 10 complaints received for March 2018 but does not break those complaints down further. The complaints and product type are simply described as "online auction platforms". This does not inform consumers whether the complaint is against a particular seller on the eBay platform or whether the complaint is against the platform service provided by eBay.

This lack of transparency as to the nature of the complaint made against an online platform is unsatisfactory and does not provide consumers with information such as to assist them in making better, more informed choices.



Airbnb submits the Register would be improved if complaints against online platforms were broken down into complaints against traders using the platform, and complaints against the platform itself. If traders were the subject of 10 or more complaints, their trading name could be disclosed. If traders were the subject of less than 10 complaints, those traders could be grouped together as "Trader Complaints" (or in the case of Airbnb, "Airbnb Host Complaints").

This information would provide consumers with a clearer understanding of where issues with online platforms lie, and incentivise both traders and online platforms to improve their customer service.

Conclusion

In summary, Airbnb submits the Register and Guidelines would be greatly improved by delineating complaints against traders using online platforms from complaints against the platform itself. This delineation, whether done through excluding complaints against traders using online platforms, or through making clear whether the complaint is against the trader or the platform, will serve to promote a fair marketplace, in the interests of all consumers and business in NSW.

Airbnb appreciates the opportunity to provide a submission in relation to the review of the Guidelines and we would be happy to have further discussions in relation to this matter.

Yours sincerely,

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Natalie Goh
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For and on behalf of Airbnb Australia Pty Ltd