



BWL Update

There's something in the Airbnb...Part 2 Draft Code of Conduct and Regulation released

10 October 2019

Update

On 15 March 2019, we advised that NSW Government approved a state-wide reform package to regulate short-term rental accommodation (STRA). As part of the reform package, the Fair Trading Amendment (Short-term Rental Accommodation) Act 2018 (Act) was passed, providing that a new mandatory Code of Conduct would be introduced.

At the time of our article, the draft regulations and Code of Conduct were not yet available.

NSW Government has now released the following draft documents:

1. State Environmental Planning Policy (Short-term Rental Accommodation) 2019 (SEPP);
2. Environmental Planning and Assessment (Short-term Rental Accommodation) Regulation 2019 and the accompanying 'Short-term Rental Accommodation Fire Safety Standard' (EPA Regulation);
3. Code of Conduct for the Short-term Rental Accommodation Industry (CoC); and
4. Fair Trading Amendment (Code of Conduct for Short-term Rental Accommodation Industry) Regulation 2019 (Amendment Regulation).

These documents were available on NSW Government website for public feedback until 11 September 2019.

1. SEPP

The SEPP introduces new "exempt" and "complying" development pathways for STRA.

STRA will be "exempt" for 365 days per calendar year where the host is present. Where the host is not present, and the site is not on bushfire prone land or a flood control lot, STRA is "exempt" for either 180 days in Greater Sydney or 365 days in regional areas.

A concession has been granted to Byron Shire Council to reduce the day threshold to 90 days, due to a high concentration of STRA in some parts of the Byron Shire.

Where the host is not present and the booking is for 21 or more consecutive days, the booking will not count towards the day thresholds.

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2. EPA REGULATION

The EPA Regulation will require dwellings used for STRA to meet new safety standards, detailed in the 'Short-term Rental Accommodation Fire Safety Standard'. These standards include, for example, limitations on the number of people residing in the dwelling and requirements for fire safety devices to be installed.

3. COC

Compliance with the CoC will be mandatory for all short-term rental accommodation industry participants.

The CoC imposes conditions on the operation of the booking platforms and obligations of the letting agents, and regulates guest's conduct and use of the premises subject to the short-term letting.

A complaints procedure is included to manage alleged breaches of the CoC by an industry participant. The Commissioner of Fair Trading will be given various disciplinary powers from issuing a warning notice, recording a strike against a host, or recording a host or guest on the exclusion register.

The exclusion register will be publicly available and a host, premises or guest will be recorded on the exclusion register after having received two strikes in any two-year period, for a period of 5 years. The Amendment Regulation deals with appeals against the Commissioner's decision which will be reviewed and determined by the Secretary of the Department of Customer Service.

4. AMENDMENT REGULATION

The Amendment Regulation amends the Fair Trading Regulation 2012. The Amendment Regulation will:

1. Declare the Code of Conduct;
2. Prescribe "persons who provide property management services for residential premises subject to short-term rental accommodation" as a class of STRA industry participants;
3. Exclude the following classes of STRA industry participants:
 - a) proprietor or manager of tourist and visitor accommodation;
 - b) proprietor or manager of a registrable boarding house; and
 - c) the park owner or park manager of a holiday park;
4. Provide for appeals against exclusion register listings; and
5. Enable the Secretary to recover costs by imposing fees.





Next Steps

The full suite of draft documents can be accessed through the Department of Planning and Environment website:

<https://pp.planningportal.nsw.gov.au/exhibition/proposed-short-term-rental-accommodation-reforms>

The feedback and submissions received on the draft documents are now being considered and any necessary revisions will be made.

NSW Government is also considering whether to introduce a mandatory STRA registration system which would list which properties are used for STRA and hold key details of the host, the property, the number of days the property is booked and would record any breaches of the CoC or listings on the exclusion register.

It is currently unknown when the regulatory framework will commence. There are two options for its implementation, either:

1. All instruments come into force at the same time, which wouldn't occur until 2020; or
2. There is a staged implementation with the planning instruments, CoC, Amendment Regulation and strata legislation amendments potentially coming into force late 2019, and the STRA registration system commencing in 2020.

Once in force, hosts, booking platforms and letting agents will need to ensure they comply with the CoC and Amendment Regulation obligations.

If you have any questions or would like to discuss this further, please feel free to contact a member of our team.

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