



SHORT-TERM RENTAL ACCOMMODATION

# A new regulatory framework

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Discussion paper

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# Background

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The Short-term Rental Accommodation (STRA) industry was estimated to be worth \$31.3 billion nationally in 2016. NSW's share equalled approximately 50% of that figure, with STRA creating jobs, benefiting the economy and providing income for property owners. At the same time, the NSW Government has also heard that STRA can cause problems for communities if not adequately managed.

In June 2018, the NSW Government announced a policy for STRA in NSW including:

- A state-wide planning instrument permitting the use of dwellings for STRA under certain conditions, including limits on the days the activity can take place
- A mandatory Code of Conduct that will apply to online booking platforms, letting agents, hosts and guests
- Clarification that strata schemes can adopt a by-law that prohibits STRA where a lot is not a host's principal place of residence. Any such by-law will need to be adopted by special resolution, with 75 per cent of votes supporting the proposal at a general meeting.

The Department of Planning, Industry and Environment (DPIE) and Department of Customer Service (DCS) are responsible for implementing the announced policy.

The new policy followed a Parliamentary Inquiry into the adequacy of the regulation of short-term holiday letting in New South Wales in 2015-16 and an Options Paper in 2017. More about the policy history can be found at [planning.nsw.gov.au/STRA](http://planning.nsw.gov.au/STRA).

## Call for feedback

DPIE and DCS are now seeking feedback on the instruments which will introduce the announced state-wide planning framework and the mandatory Code of Conduct for STRA and related regulation.

Feedback is also sought about the proposed introduction of an industry-led STRA property register.

## An integrated policy framework

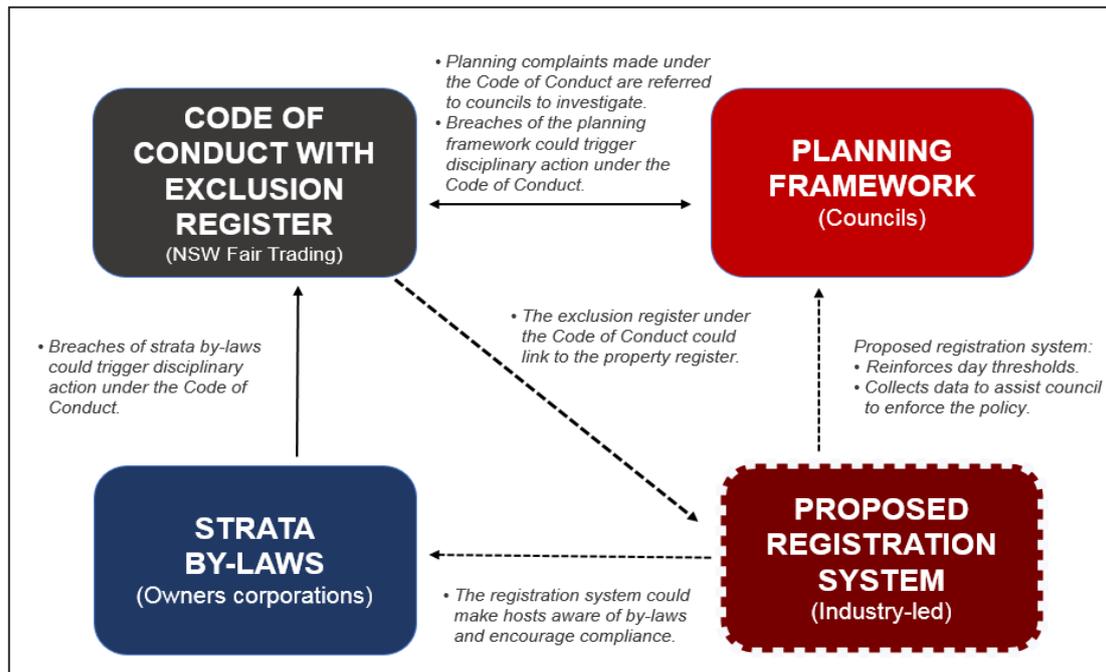
The Government policy for STRA seeks to enable local economies to continue to benefit from STRA, while protecting communities from anti-social behaviour such as increased noise for neighbours. The policy is intended to operate as a cohesive and integrated system where each component of the regulatory framework works together. This is summarised in Figure 1.

The proposed introduction of a STRA property register has the potential to strengthen the STRA regulatory framework. For example, the register could:

- provide planning authorities with data about STRA properties that can be used to enforce planning laws
- draw on the Code of Conduct's exclusion register to enforce compliance
- be used as an avenue to raise hosts' awareness of their obligations under the planning framework and relevant strata by-laws.

The NSW public now has an opportunity to review and provide feedback on the detail of the STRA policy elements, as well as how they interact as a whole.

Figure 1: Overview of integrated STRA framework



## This document

This document explains the draft planning instruments, the Code and Amendment Regulation, as well as the proposed scope of a new STRA property register. It also highlights specific aspects of the regulatory framework for feedback. A summary of questions is at Appendix 1. The document should be read in conjunction with the full draft planning instruments, Code and Amendment Regulation which have been published alongside this document.

## Planning instruments

Following consultation in 2018, DPIE is seeking further feedback on the draft:

- *State Environmental Planning Policy (Short-term Rental Accommodation) 2019*, which introduces exempt and complying development pathways for STRA, within day thresholds and other key criteria.
- *Environmental Planning and Assessment (Short-term Rental Accommodation) Regulation 2019* and the accompanying 'Short-term Rental Accommodation Fire Safety Standard', which introduces new safety standards for dwellings used for STRA.

## Code of Conduct

The NSW Parliament passed the *Fair Trading Amendment (Short-term Rental Accommodation) Act 2018* (the Act) on 14 August 2018, which provided for the introduction of a new mandatory Code of Conduct for STRA industry participants.

A draft Code of Conduct for the Short-term Rental Accommodation Industry (the Code) has now been developed with input from key government agencies and the STRA Advisory Committee. The Committee consists of industry, community and government stakeholders (see Appendix 2 for the list of members).

A draft *Fair Trading Amendment (Code of Conduct for Short-term Rental Accommodation Industry) Regulation 2019* (the Amendment Regulation) has also been developed. The Amendment Regulation will declare the Code for the purposes of s 54B(1) of the Act and support the Code's implementation.

Feedback is sought on the draft Code and the draft Amendment Regulation.

## Registration system

The NSW Government is also seeking feedback about the scope of a potential industry-led register for STRA. Feedback is sought on the:

- Role of industry in developing and managing a registration system
- Process for registering a property
- Information required to be included on the register
- Verification of the register's accuracy and completeness and the associated reporting
- Access to information on the register
- Costs associated with establishing and managing the register
- Time needed to develop a registration system.

## Other issues

Other issues that the NSW Government is seeking feedback on in this document are:

- when the regulatory framework should commence
- the proposed scope of the review of the STRA regulatory framework 12 months after it commences, which the Government has committed to completing.

## How to make a submission

**The closing date for submissions is close of business 11 September 2019.**

Interested organisations and individuals are invited to provide a submission on any matter relevant to the proposed draft planning instruments, the draft Code, the draft Amendment Regulation and the introduction of a STRA property register. You may wish to comment on only one or two matters of particular interest, or all of the issues raised. Discussion questions are posed throughout the document, which you may choose to answer or not.

We prefer to receive submissions via the online form below. We request that any documents provided to us are produced in an 'accessible' format. Accessibility is about making documents more easily available to those members of the public who have some form of impairment (visual, physical, cognitive). Further information on how you can make your submission accessible is contained at <http://webaim.org/techniques/word/>.

Additional copies of this paper and the proposed Code of Conduct and Amendment Regulation can be downloaded from [www.planning.nsw.gov.au/STRA](http://www.planning.nsw.gov.au/STRA) or at [www.planningportal.nsw.gov.au/exhibition/have-your-say-short-term-rental-accommodation-reforms](http://www.planningportal.nsw.gov.au/exhibition/have-your-say-short-term-rental-accommodation-reforms). Printed copies can be requested from NSW Fair Trading by phone on 13 32 20, or DPIE at [sthl@planning.nsw.gov.au](mailto:sthl@planning.nsw.gov.au).

Please provide your feedback by:

- Making a submission at [www.planningportal.nsw.gov.au/exhibition/have-your-say-short-term-rental-accommodation-reforms](http://www.planningportal.nsw.gov.au/exhibition/have-your-say-short-term-rental-accommodation-reforms).
- Mail to:

Director, Housing Policy

NSW Department of Planning, Industry and Environment

GPO Box 39, Sydney NSW 2001

## *Important note: Release of submissions*

All submissions will be made publicly available. If you do not want your personal details or any part of your submission published, please indicate this clearly in your submission together with reasons. Automatically generated confidentiality statements in emails are not sufficient. You should also be aware that, even if you state that you do not wish certain information to be published, there may be circumstances in which the Government is required by law to release that information (for example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*). It is also a statutory requirement that all submissions are provided to the Legislation Review Committee of Parliament.

## *Evaluation of submissions*

All submissions will be considered. The proposed planning instruments, Code of Conduct and Amendment Regulation may be amended, as considered appropriate and necessary, to address issues identified in the consultation process. If further information is required, targeted consultation may be held before the STRA regulatory framework is finalised.

# Planning Instruments

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## Summary of the planning framework

At present, STRA is regulated differently in different local government areas (LGAs) across NSW, undermining certainty for hosts and communities. The planning framework announced as part of the NSW Government policy for STRA seeks to provide much needed state-wide consistency in the definition and permissibility of STRA. The proposed planning framework includes:

- A new definition for STRA.
- New 'exempt' and 'complying' approval pathways that enable STRA within day limits:
  - Where the host is present, STRA is 'exempt development' for 365 days per calendar year.
  - Where the host is not present, and the site is not on bushfire prone land or a flood control lot, STRA is 'exempt development' for:
    - 180 days in Greater Sydney
    - 365 days in regional areas; except where a council varies this to no lower than 180 days.
- Where the host is not present, and the booking is for 21 or more consecutive days, the booking will not count towards the above day thresholds.
- Minimum safety and evacuation requirements for dwellings used for STRA.

## Previous consultation

STRA in NSW has been the subject of consultation for a number of years, including during a Parliamentary Inquiry and an Options Paper. The NSW Government is committed to ensuring that diverse views inform the policy, to strike the right balance between supporting those who wish to engage in home sharing and those who are concerned by its impacts.

Most recently, DPIE sought feedback on proposed changes to planning instruments to introduce the state-wide planning framework between 5 October and 16 November 2018. 543 submissions were received from councils, communities and hosts across NSW, expressing diverse views:

- **Councils** were generally supportive of a state-wide definition for STRA, approval pathways and safety standards, but some held mixed views regarding the number of days STRA can take place. Councils reiterated the importance of an enforceable planning framework aligned with the Code of Conduct.
- **STRA industry and hosts** were generally supportive of the proposed amendments and Government position; but noted the potential impact of additional safety standards and day limits on STRA activity.
- **Community groups, strata bodies and residents** expressed mixed support for the proposed amendments. Some welcomed the additional regulation, while others felt it should go further.
- **Traditional accommodation providers** raised concerns regarding the impact of STRA on their business and regarding existing regulation.

The submissions received during this previous exhibition, as well as exhibition materials, are available at [planspolicies.planning.nsw.gov.au](https://planspolicies.planning.nsw.gov.au). Feedback received has informed the draft SEPP and Regulation.

## Overview of draft instruments

The draft planning instruments and Regulation are available at [www.planningportal.nsw.gov.au/exhibition/have-your-say-short-term-rental-accommodation-reforms](http://www.planningportal.nsw.gov.au/exhibition/have-your-say-short-term-rental-accommodation-reforms).

### *State Environmental Planning Policy (Short-term Rental Accommodation) 2019*

The proposed *State Environmental Planning Policy (Short-term Rental Accommodation) 2019* (STRA SEPP) is a new SEPP specifically created for STRA land use planning controls. The proposed SEPP will:

- Have a delayed commencement, to provide a suitable transition period and align with the commencement of the Code of Conduct (Clause 2).
- Clarify the aims of the policy, relating to supporting STRA, managing its impacts, providing for guest safety and clarifying the types of residential accommodation where STRA can take place (Clause 3).
- Introduce a new definition for hosted and un-hosted STRA, as well as other relevant definitions including 'Greater Sydney' and clarify the types of residential accommodation in which STRA is permitted (Clause 4).
- Apply state-wide (Clause 5), repealing existing STRA provisions in local planning instruments (Schedule 1).
- Require that the draft STRA SEPP be reviewed after it commences (Clause 8).
- Introduce an exempt development pathway for STRA, including general requirements and limits on the days the activity can take place depending on location and host presence (Clauses 9, 11 and 12).
- Introduce a complying development pathway for un-hosted STRA on bushfire prone land and flood control lots including general requirements (Clauses 10, 13 and 14).
- Provide that un-hosted STRA bookings of 21 or more consecutive days do not count towards the applicable day limit (Clauses 12 and 13).
- Identify regional councils that nominated different day limits for un-hosted STRA during the October-November exhibition, within the announced thresholds (Clauses 12 and 13):
  - Ballina Shire – 180 days across the LGA.
  - Lake Macquarie – 180 days across the LGA.
  - Clarence Valley Shire – 180 days in areas shown on the Clarence Valley Short-term Rental Accommodation Area Map.
  - Muswellbrook Shire – 180 days in areas shown on the Muswellbrook Short-term Rental Accommodation Area Map.

Regional councils can continue to nominate reductions in un-hosted STRA permissibility to no lower than 180 days, by writing to DPIE. To have the reduced thresholds apply at policy commencement, requests should be included in a submission to this consultation.
- Include savings provisions for undetermined development applications and exempt development provided for under any existing planning provisions (Clause 15).

### **A note about Planning for Bush Fire Protection**

Planning for Bush Fire Protection 2006 (PBP 2006) contains provisions for 'holiday lets'. PBP 2006 is currently under review and will be updated according to the Government's policy regarding STRA. A pre-release version of Planning for Bush Fire Protection 2018 has been published.

## Key changes from what has been previously exhibited

Most of the provisions of the STRA SEPP reflect the policy that Government announced in June 2018 and that DPIE consulted on in October-November 2018. However, refinements have been made based on feedback received, where it aligns with the powers of the planning system and Government policy.

**Table 1: Key changes to previously exhibited policy**

	Current approach	Previous proposal	Reason
Structure	The state-wide policy is proposed to be introduced through a standalone SEPP and accompanying Safety Standard under the EP&A Regulation.	The 2018 Explanation of Intended Effect proposed that the state-wide policy would be introduced via amendments to the <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i> .	This approach presents the most workable solution for users of the policy.
STRA on flood control lots	STRA on flood control lots is proposed to be complying development when the host is not present, including meeting standards relating to certification the land is not high risk and access and refuge.	The 2018 Explanation of Intended Effect proposed no unique provisions for STRA on flood control lots.	This responds to feedback from councils and flooding experts that additional safety standards are required for STRA on flood control lots.
STRA on bushfire prone land	In addition to being complying development, STRA on bushfire prone land will be required to meet additional standards relating to access to roads, evacuation plans and fire hydrants.	The 2018 Explanation of Intended Effect did not propose these additional standards.	DPIE received feedback during exhibition that these standards are required.
	The STRA SEPP will not provide a development application pathway for STRA on bushfire prone land > BAL40 risk rating.	The 2018 Explanation of Intended Effect proposed to allow STRA on BAL40 properties as a development application.	DPIE received feedback during exhibition that the safety risk is too high and that STRA would be unlikely to be approved on BAL40 properties.
Un-hosted STRA bookings of 21 or more consecutive days	Un-hosted bookings of 21 or more consecutive days will not contribute to applicable day thresholds; but will still need to meet the safety standards.	The 2018 Explanation of Intended Effect did not propose this for bookings of 21 days.	The exemption reflects feedback that longer bookings tend to have fewer amenity impacts and are a key support to a mobile workforce.

	Current approach	Previous proposal	Reason
Varying days within LGA	Under the STRA SEPP, some regional councils have nominated different permissibility in different parts of their LGAs (within day thresholds announced by Government).	The 2018 Explanation of Intended Effect did not nominate day thresholds for regional councils but invited regional councils to nominate their preference.	The proposed days reflect thresholds requested by councils following exhibition of the Explanation of Intended Effect.

## Environmental Planning and Assessment (Short-term Rental Accommodation) Regulation 2019

The proposed SEPP will be supported by amendments to the *Environmental Planning and Assessment Regulation 2000* (the Regulation). The amendment will provide for visitor safety, by requiring dwellings used for STRA to meet new safety standards. These standards are detailed in the 'Short-term Rental Accommodation Fire Safety Standard' and summarised below. These are consistent with those that were exhibited in 2018.

**Table 2: Proposed safety requirements applying to dwellings used for STRA**

Dwelling type	Recommended standard
All dwellings	<ul style="list-style-type: none"> <li>No more than 2 persons/bedroom or 12 persons, whichever is the lesser.</li> <li>Installation of smoke alarms in each bedroom, and the smoke alarms are interconnected where there is more than one alarm.</li> <li>Installation of a lighting system in hallways that is activated by the smoke alarm system.</li> </ul>
Dwellings in multi-unit buildings only (Dwellings in Class 2 and 4 buildings)	<ul style="list-style-type: none"> <li>Entry doors should be openable from inside the dwelling without a key.</li> <li>Installation of a self-closing device and smoke seals to all edges of the door, if the door opens onto a shared corridor and entrance doorway.</li> <li>Installation of a fire extinguisher and fire blanket in the kitchen.</li> <li>Making an Evacuation Plan, displaying 'evacuation signage' and familiarising guests with exit system.</li> </ul>
Standalone dwellings only (Class 1a buildings)	<ul style="list-style-type: none"> <li>Installation of heat alarms in single dwellings which are located above a garage. This would be required only where the garage is not accessible to the guest/s.</li> </ul>

- 1. What is your view on the form of and provisions in the STRA SEPP, Regulation and Safety Standard?**
- 2. Are there any elements of the draft instrument that are open to misinterpretation or require further clarification?**
- 3. What are your views on new policy elements relating to days, flood control lots and bushfire prone land?**

# Code of Conduct and supporting Amendment Regulation

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The draft Code sets out the obligations of STRA industry participants and provides processes and enforcement mechanisms to manage and respond to Code breaches. The Code must be declared by Regulation to take effect. The Amendment Regulation also contains other key elements to support the operation of the Code, such as the penalty unit amounts for offences under the Code.

The following sections provide more detail and context on both the Code and Amendment Regulation and seek feedback on specific elements.

The draft Code and Amendment Regulation are available at [www.planningportal.nsw.gov.au/exhibition/have-your-say-short-term-rental-accommodation-reforms](http://www.planningportal.nsw.gov.au/exhibition/have-your-say-short-term-rental-accommodation-reforms)

## Code of Conduct

### *Objectives of the Code*

The principal objectives of the proposed Code are set out in the Code itself, which are to:

- (a) set out the rights and obligations of STRA industry participants
- (b) provide for resolution of disputes and complaints concerning the conduct of STRA industry participants
- (c) outline the compliance and enforcement approach that applies for contraventions of the Code by STRA industry participants
- (d) facilitate the oversight of the STRA industry.

### *Definitions*

The Code's definitions are generally consistent with those used in the Act and the Amendment Regulation. The terms 'booking platform', 'letting agent', 'host' and 'guest' are used to refer to the industry participants defined in s 54A of the Act. Specifically:

- booking platform means a person who, in trade or commerce, provides an online booking service that enables persons to enter into short-term rental accommodation arrangements
- letting agent means a person who carries on business as an agent to enable persons to enter into short-term rental accommodation arrangements
- host means a person who, pursuant to a short-term rental accommodation arrangement, gives another person the right to occupy the residential premises to which the arrangement relates
- guest means a person who, pursuant to a short-term rental accommodation arrangement, is given the right to occupy the residential premises to which the arrangement relates.

'Facilitator' is also used to refer to the prescribed classes of short-term rental accommodation industry participants in clause 22B of the Regulations (see page 12 for a discussion about prescribed classes of STRA industry participants).

The Code also provides that:

- *Commissioner* means the Commissioner for Fair Trading in the NSW Department of Customer Service
- *Secretary* means the Secretary of the Department of Customer Service.

## Industry participants' obligations

Section 54B(2)(a) of the Act provides the Code may 'set out the rights and obligations of short-term rental accommodation industry participants'. Part 5 of the Code imposes general obligations on all STRA industry participants to:

- act honestly and in good faith
- comply with the Commissioner's requests to produce information about the operation of the STRA industry or the Code
- comply with directions the Commissioner issues as part of compliance or enforcement action
- not knowingly misrepresent a person's identity to avoid a provision of the Code.

### **4. Are the general obligations for industry participants adequate? If not, what other general obligations should be considered? Why?**

Section 54B(2)(e) of the Act provides the Code may 'require the provision of information or reports to the Secretary relating to the short-term rental accommodation industry and the operation of the code'. This information is intended to be used to monitor, evaluate and inform the further improvement of the STRA regulatory framework.

### **5. What types of STRA information will be useful for the Secretary to collect to inform the further improvement of the Code and the STRA regulatory framework? Why?**

Part 5 of the Code also imposes specific obligations on different industry participants. Booking platforms', letting agents' and facilitators' specific obligations relate to:

- informing hosts and guests about:
  - the Code
  - that the booking platforms and letting agents are bound by the Code
  - the available complaints process
  - any complaints or disputes that arise due to a STRA arrangement
- restrictions on facilitating STRA arrangements for hosts, hosts in relation to specific premises or guests, who are listed on the exclusion register (the exclusion register is discussed below)
- keeping records of STRA arrangement transactions.

Hosts' specific obligations relate to:

- representing their STRA property accurately to guests
- holding an appropriate level of public liability insurance
- providing guests with appropriate contact information for the host or other emergency service providers
- providing neighbours, including an owners corporation where relevant, with information such as the host's contact details
- complying with any restrictions on participating in the STRA industry imposed on them due to listings on the exclusion register.

Guests' specific obligations relate to:

- their behaviour and the behaviour of any visitors, including ensuring they do not act in a way that unreasonably impacts on STRA properties' neighbours
- taking reasonable care of the STRA premises or host's property at the premises
- complying with any restrictions on participating in the STRA industry imposed on them where they are listed on the exclusion register.

### **6. Are the specific obligations on booking platforms, letting agents, hosts, guests and facilitators in the Code adequate? If not, what other obligations should be considered for each of these industry participants? Why?**

## Complaints

Section 54B(2)(f) of the Act provides the Code may 'provide for the resolution of disputes and complaints concerning the conduct of short-term rental accommodation industry participants'.

Part 6 of the Code sets out the complaints handling process. It provides that a person may lodge a complaint with the Commissioner about an alleged Code contravention. Complainants may be industry participants such as hosts and guests, or non-industry participants such as neighbours and owners corporations. The Commissioner may determine the form in which a complaint must be made and the supporting information to be submitted.

Part 6 also sets out when the Commissioner may dismiss a complaint, provides certain procedural standards to ensure fairness to the parties to the complaint, and sets out some of the considerations the Commissioner may take into account when handling a complaint.

### **7. *Is the complaints process detailed in part 6 of the Code sufficient? If not, what other matters should be considered or set out in the process? Why?***

## Compliance and Enforcement

Section 54B(2) of the Act provides that the Code may, among other things:

- (d) provide for warnings to be given to short-term rental accommodation industry participants who contravene the code
- (g) authorise the keeping of a register (the exclusion register) containing the details of short-term rental accommodation industry participants who have failed to comply with the code
- (h) regulate or restrict access to the exclusion register
- (i) prohibit or restrict persons whose details are listed on the exclusion register from entering into, or participating in, short-term rental accommodation arrangements.

The Code provides that the Commissioner for Fair Trading may take disciplinary action where an industry participant is found to have contravened the Code. Disciplinary action could include:

- issuing a warning notice to an industry participant
- issuing a direction to an industry participant requiring them to act or stop acting in certain ways
- recording a 'strike' against a host, a host in relation to specific premises or a guest
- recording a host, a host in relation to specific premises or a guest on the exclusion register.

## Strikes

Part 7 of the Code requires the Commissioner to record a host, a host in relation to specific premises or a guest on the exclusion register where they have received two strikes within a two-year period. The Code sets out the circumstances under which the Commissioner can record a strike, which include where:

- a guest fails to comply with an obligation to a neighbour and the failure is not minor. For example, where a guest is found to have acted violently towards someone in a neighbouring property
- a host misrepresented the state of STRA premises when advertising the premises for rent or in communications to guests
- a host failed to comply with their insurance obligations and the failure is not minor
- a serious contravention of the Code occurs
- the Commissioner is satisfied that it is appropriate to record a strike.

### **8. *Are the grounds for recording a strike fair and reasonable? What other matters (if any) should the Commissioner consider when deciding whether to record a strike? Why?***

## Exclusion register

The Code provides that a host, a host in relation to specific premises or a guest who is listed on the exclusion register will be listed for a period of five years. A host or guest who is listed will not be permitted to participate in the STRA industry for the duration of their listing. A host that is listed with reference to specific premises will not be permitted to rent out those specific premises for STRA for the duration of their listing.

The Code requires booking platforms and letting agents to prevent participation in the STRA industry by hosts, hosts in relation to specific premises, or guests who are listed on the exclusion register. The Code also requires hosts not to rent out STRA properties to guests who are listed on the exclusion register.

To enable booking platforms, letting agents and hosts to comply with these obligations, the information on the exclusion register could be incorporated into the proposed STRA property register. Access to exclusion register information could also be facilitated using other methods such as making the information publicly searchable online. These potential solutions could impact people's privacy adversely. The Government aims to implement a solution that balances industry participants' right to access to information to comply with their Code obligations with the privacy rights of hosts and guests.

### **9. *What are potential ways to facilitate industry participants' access to the exclusion register while limiting potential privacy impacts? What factors should be considered?***

## Secretary's review of disciplinary action

The Code provides that an industry participant may apply to the Secretary for a review of the Commissioner's decision to:

- issue a warning notice or direction against the participant
- record a strike against them as a host, host in relation to specific premises or guest.

In particular, the Code provides that:

- if an industry participant wants disciplinary action to be reviewed, they must apply for a review within 21 days of receiving notice of the disciplinary action
- the Secretary must decide a review within 28 days
- the Secretary may determine the form of the review application
- the Secretary may decide to impose alternative or additional disciplinary action as a result of the review.

Appeals about listings on the exclusion register are handled under the Amendment Regulation (see below for discussion).

### **10. *Is the review process clear and sufficient? What other matters (if any) should be considered? Why?***

## *Penalty notice offences and civil penalties*

Section 54C of the Act provides that 'A short-term rental accommodation industry participant who contravenes a provision of a code of conduct that is identified by the code as an offence provision is guilty of an offence.' Section 54D of the Act provides that a 'court may...order a short-term rental accommodation industry participant to pay a monetary penalty if the court is satisfied that the participant has contravened a provision of a code of conduct that is identified by the code as a civil penalty.'

The Code identifies the provisions that are penalty notice offences for the purposes of s 54C and civil penalty provisions for the purposes of s 54D of the Act. **Appendix 3** contains a list of all these provisions.

- 11. Are the proposed penalty notice offence and civil penalty provisions appropriate? What provisions should or should not be identified as penalty notice offence and/or civil penalty provisions? Why?**

## Amendment Regulation

The Amendment Regulation amends the Fair Trading Regulation 2012. The Amendment Regulation will declare the Code of Conduct, prescribe classes of STRA industry participants, exclude particular STRA industry participants, provide for appeals against exclusion register listings and enable the Secretary to recover costs by imposing fees.

### *Prescribed classes of STRA industry participant*

Clause 22B of the Amendment Regulation aims to capture STRA industry participants that are not already covered in the definitions in section 54A of the Act.

Under clause 22B(1), ‘persons who provide property management services for residential premises subject to a STRA arrangement are prescribed for the purposes of paragraph (e) of the definition of short-term rental accommodation industry participant in section 54A of the Act’.

Clause 22B(2) provides that ‘property management services’ include services such as ‘creating listings, rental pricing, guest vetting and communications and check-in services’.

This clause is intended to capture organisations that provide end to end property management services specifically to hosts of STRA properties. Examples of these organisations are MadeComfy, Hey Tom and Airsorted.

- 12. Does clause 22B(1) appropriately capture end to end property management services that specifically service STRA properties? Why or why not?**

- 13. What other organisations or persons should be prescribed classes of STRA industry participants (if any)? Why?**

### *STRA industry participants excluded from Code of Conduct*

Certain STRA operators that fall within the Act’s definition of STRA industry participant are excluded from having to comply with the Code under clause 22C. These STRA operators have been excluded from having to comply with the STRA regulatory framework because these types of accommodation are not covered by the STRA package, including the planning law changes. These types of accommodation are covered by other regulatory arrangements and planning system requirements.

- 14. Is it appropriate to exclude the STRA industry participants set out in clause 22C? Why or why not?**

- 15. What other STRA operators (if any) should be excluded from being covered by the Code? Why?**

## Appeals against listing on exclusion register

Clause 22D sets out that a person may appeal to the Secretary about the Commissioner for Fair Trading's decision to list them as an excluded host, host in relation to specific premises or guest on the exclusion register.

### 16. *Is the appeals process clear and sufficient? What other matters (if any) should be considered? Why?*

## Fees and cost recovery

The Commissioner for Fair Trading will be responsible for administering and enforcing the Code and the exclusion register. Section 54B(3)(b) of the Act provides that a regulation may 'authorise the Secretary to recover from short-term rental accommodation industry participants the costs incurred by the Secretary in connection with the enforcement and administration of the code'.

Clause 22E of the Amendment Regulation provides that the Secretary may impose fees on STRA industry participants to recover costs.

The NSW Government will seek to put in place arrangements that provide for the appropriate administration and enforcement of the STRA policy and are of least cost. The NSW Government intends the administration and enforcement of the Code to be cost neutral to government. These costs will include the development and maintenance of the exclusion register, complaint handling and compliance activity.

Potential cost recovery methods may involve:

- all industry participants, or only particular categories of industry participants, such as booking platforms and letting agents, contributing towards the total cost of administering and enforcing the Code
- costs being apportioned to each contributing industry participant according to the proportion of:
  - total number of premises rented out or advertised for rent
  - total number of days that STRA properties were rented out,
  - total STRA revenue, or
  - attributed complaints and reviews received under the Code
- the same fee being charged to all industry participants who contribute to cost recovery.

### 17. *Which industry participants should contribute to the cost of administering and enforcing the Code? Why?*

### 18. *How should costs be apportioned across different STRA industry participants? Why?*

## Penalties

### Civil penalty for contravention of code of conduct

Clause 22F sets out the penalty unit amounts for civil penalty offences in the Code.

### Schedule 1 penalty notice offences

The amendment to Schedule 1 of the Fair Trading Regulation 2012 prescribes \$550 as the amount for penalty notice offences under the Code. This is consistent with all the other amounts that are listed in the Schedule for other penalty notice offences under the *Fair Trading Act 1987*.

### 19. *Is the proposed penalty notice offence amount appropriate? Why or why not?*

# Proposed industry-led STRA property register

The NSW Government is considering the introduction of a mandatory STRA registration system as part of the new regulatory framework. This responds to support from some councils, communities and stakeholders for a registration system, both before and after the Government's announcement of the policy in 2018.

The following outlines the potential scope, intent and outcomes of a registration system for STRA. DCS and DPIE are seeking feedback to inform the design of the system. Feedback is particularly sought from industry participants (including booking platforms, letting agents, hosts and guests), who would be responsible for developing and administering the registration system.

## Intention of registration

A register has the potential to greatly strengthen responses to complaints about STRA. This is because a register could provide information about which properties are used for STRA and the number of days that properties are let.

The register also has the potential to:

- support the integration of the STRA regulatory framework by consolidating data about all STRA properties, including their compliance with local council regulations and exclusion register status
- assist NSW Fair Trading to administer the Code of Conduct through, for example, confirming if a property that is subject to a complaint is registered for STRA
- assist with monitoring the effectiveness of the STRA regulatory framework and provide key data for the 12-month review.

Any registration system would apply to all STRA properties, including those let through online booking platforms, letting agents and other providers.

## Industry is best placed to administer the register

STRA industry participants already hold much of the information that would need to be included in an effective STRA property register. Additionally, industry also has in place existing systems and processes that collect real-time STRA data.

The Government would propose to make industry responsible for funding, developing and administering it under relevant legislation or instruments. This approach could enable the development of a registration system that:

- leverages existing data and systems
- delivers the outcomes sought by much of the industry and its customers
- provides scope for industry innovation
- minimises duplication and red tape.

This approach would also enable industry to choose the appropriate governance structure, as well as design a funding method that reflects the levels of involvement of different STRA participants.

### **20. How can industry be organised to develop and manage the registration system?**

- 21. *What would be the costs to industry in establishing and maintaining the register? How would industry propose to meet these costs?***
- 22. *What role should the Government play in developing or overseeing the register, if any?***

## Proposed outcomes from having a register

While industry would be responsible for designing the detail and operation of the register, the Government has identified a number of outcomes that the register would need to deliver including:

- Enabling all properties used for STRA to be individually and uniquely identified
- Ensuring only registered properties are made available as STRA
- Providing an up-to-date, accurate and accessible source of data on STRA premises in NSW, including number of stays (days) and compliance and enforcement action.

- 23. *Are there other outcomes a register should deliver?***
- 24. *How can the approach ensure registration applies to all STRA operators, regardless of how the property is advertised for rent?***
- 25. *What audit and verification processes would be needed to ensure accuracy of data?***
- 26. *Should there be separate or additional penalties for failure to register? If so, which industry participants should they be imposed on?***

## Register data collection

The scope and quality of the information held on the register would be keys to the register's success.

For the register to be effective, it will likely need to hold:

- The name and contact details of the host
- The street address of the property
- The number of days properties are booked for STRA
- If in a strata building, whether STRA complied with the bylaws
- Records of any breaches, enforcement action or 'strikes'
- Confirmation that the host or property is not listed on the exclusion register.

Information for the register could potentially be collected from a variety of sources, including industry participants and Government. For example:

- hosts, booking platforms or letting agents could be required to register STRA properties
- platforms and letting agents could be required to provide real-time data on bookings (days)
- NSW Fair Trading could provide data on upheld complaints, enforcement action and strikes, and exclusion register status.

- 27. *What information should the register collect? Why?***
- 28. *What role should different industry participants (e.g. hosts and booking platforms) play in the registration process?***
- 29. *What role should Government play in the registration process or providing information for the register?***

## Access to information on the register

Information on the register could facilitate compliance with the STRA regulatory framework. For example:

- Local councils could use the information to enforce compliance with day thresholds
- Industry participants, such as booking platforms, could access the information to ensure they are only advertising registered STRA properties that are not listed on the exclusion register, and which are within the permitted maximum number of days.
- NSW Fair Trading could use the information to confirm whether properties subject to complaints have been used for STRA.

Community members may also wish to be able to confirm whether properties apparently being used for STRA are registered or excluded. However, the register would need to appropriately protect individuals' privacy and safeguard the personal information on the register. This means it may be inappropriate for the STRA property register to be publicly available.

**30. *Should any information on the register be made publicly available? If so, what information could be made available and why?***

**31. *Should industry be required to report registration information, including number of stays (days), to Government and/or local councils? If so, how frequently? Why?***

**32. *Should any information on the register be made publicly available? Why?***

# Other issues

## Commencement date for STRA regulatory framework

### *When could the planning instruments, Code, Amendment Regulation and industry-led register start?*

We are seeking feedback about when the STRA regulatory framework should commence.

Potentially all elements of the new STRA regulatory framework could come into force at the same time. This would include the regulatory elements discussed in this document, as well as the changes to strata legislation. However, given the time that industry may need to develop and establish the register, this is likely to mean that the regulatory framework cannot commence until 2020.

Alternatively, a staged implementation is an option. Under this approach, the planning instruments, Code, Amendment Regulation and strata legislation amendments could potentially come into force towards the end of 2019, and the register could commence in 2020. This would provide industry with the time needed to develop and establish the register, while ensuring other elements of the framework commence this year.

Under either approach, the NSW Government would seek to publish the final Code, Amendment Regulation and planning instruments a number of months in advance of the commencement date. This would provide hosts, councils and communities with the time needed to transition to the new system.

### *What will affected parties need to do to prepare for the start of the STRA regulatory framework?*

Once the final planning instruments, Code and Amendment Regulation are published, hosts, platforms and letting agents will need to take steps to ensure they comply with their new obligations. For example:

- Booking platforms and letting agents will need to update their websites and terms and conditions to comply with their notification obligations under the Code
- Hosts may need to update the insurance for the STRA property and ensure safety standards required under planning instruments are in place.

Government agencies including NSW Fair Trading and DPIE will need to:

- develop the processes and systems needed to administer the STRA regulatory framework. These include complaints handling processes and compliance programs
- undertake information and education activities to communicate the impending changes to affected stakeholders, including STRA hosts and guests.

STRA industry participants will also need to develop and establish the STRA property register, if one is implemented. This is likely to involve establishing appropriate governance arrangements, developing an online registration system and putting in place relevant processes.

**33. How much lead time would industry need to develop and establish the proposed STRA property register? Please provide reasons.**

**34. When should the STRA regulatory framework start? Please provide reasons.**

## *What are the next steps?*

When the consultation period closes, DCS and DPIE will analyse all feedback received and make any necessary refinements to the policy.

Once the planning instruments, the Amendment Regulation and the Code have been finalised by the Minister for Better Regulation and Innovation and the Minister for Planning and Public Spaces, they will be submitted to the Governor for approval. Once approved by the Governor, they will be published on the official NSW Government website for online publication of legislation at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

## Review of regulatory framework after 12 months

The NSW Government has committed to reviewing the STRA regulatory framework 12 months after all policy elements have commenced. The review will be an opportunity to:

- consider the outcomes of the STRA policy
- identify elements that may need to be reconsidered or amended
- ensure the policy is meeting its key objectives and responding to diverse needs and expectations.

## *Scope of the review*

The review will need input from councils, communities, hosts and industry. Accordingly, we welcome initial feedback now about the proposed scope of the review, including suggested considerations and potential data sources.

The review of the STRA policy may consider:

- Whether the policy is meeting its objective to support STRA as a home sharing activity and contributor to local economies, while managing social and environmental impacts.
- Changes in STRA activity over time, including those caused by the new regulatory framework, and whether policy changes are needed.
- Compliance with the regulatory framework, including whether monitoring and enforcement is working efficiently and effectively.
- Whether the policy is sufficiently responsive to complaints.
- The extent to which the planning framework, Code of Conduct, strata laws and registration system operate effectively as part of a cohesive regulatory framework.
- Whether all elements of the regulatory framework are well understood by councils, communities and hosts.
- Improvements needed to ensure the policy meets its objectives and stakeholders' needs and expectations, if any.

## *Administering the review*

It is the NSW Government's intention the review of the policy will commence only after all elements of the policy have been in force for at least 12 months, including the planning framework, Code of Conduct and any registration system. This should provide sufficient time to observe the initial impact of the framework.

The review will call on a variety of information sources, within and beyond Government (including from councils and industry), and may include surveys, booking data, complaints and feedback.

**35. *Do you support the proposed scope of the review? What additional considerations might be necessary?***

**36. *What data sources could the NSW Government use to inform the review? How can industry and councils assist with data collection for the review?***

# Appendix 1 – Summary of questions

Topic	Question	Page number
Planning instruments	1. What is your view on the form of and provisions in the STRA SEPP, Regulation and Safety Standard?	8
	2. Are there any elements of the draft instrument that are open to misinterpretation or require further clarification?	8
	3. What are your views on new policy elements relating to days, flood control lots and bushfire prone land?	8
Code: Industry participants' obligations	4. Are the general obligations for industry participants adequate? If not, what other general obligations should be considered? Why?	10
	5. What types of STRA information will be useful for the Secretary to collect to inform the further improvement of the Code and the STRA regulatory framework? Why?	10
	6. Are the specific obligations on booking platforms, letting agents, hosts, guests and facilitators in the Code adequate? If not, what other obligations should be considered for each of these industry participants? Why?	10
Code: Complaints	7. Is the complaints process detailed in part 6 of the Code sufficient? If not, what other matters should be considered or set out in the process? Why?	11
Code: Compliance and Enforcement	8. Are the grounds for recording a strike fair and reasonable? What other matters (if any) should the Commissioner consider when deciding whether to record a strike? Why?	11
	9. What are potential ways to facilitate industry participants' access to the exclusion register while limiting potential privacy impacts? What factors should be considered?	12
	10. Is the review process clear and sufficient? What other matters (if any) should be considered? Why?	12
Code: Penalty notice offences and civil penalties	11. Are the proposed penalty notice offence and civil penalty provisions appropriate? What provisions should or should not be identified as penalty notice offence and/or civil penalty provisions? Why?	13

Topic	Question	Page number
Amendment Regulation: Prescribed classes of STRA industry participant	12. Does clause 22B(1) appropriately capture end to end property management services that specifically service STRA properties? Why or why not?	13
	13. What other organisations or persons should be prescribed classes of STRA industry participants (if any)? Why?	13
Amendment Regulation: STRA industry participants excluded from Code of Conduct	14. Is it appropriate to exclude the STRA industry participants set out in clause 22C? Why or why not?	13
	15. What other STRA operators (if any) should be excluded from being covered by the Code? Why?	13
Amendment Regulation: Appeals against listing on exclusion register	16. Is the appeals process clear and sufficient? What other matters (if any) should be considered? Why?	14
Amendment Regulation: Fees and cost recovery	17. Which industry participants should contribute to the cost of administering and enforcing the Code? Why?	14
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Amendment Regulation: Penalties	19. Is the proposed penalty notice offence amount appropriate? Why or why not?	14
Proposed industry-led property register	20. How can industry be organised to develop and manage the registration system?	15
	21. What would be the costs to industry in establishing and maintaining the register? How would industry propose to meet these costs?	16
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Topic	Question	Page number
	26. Should there be separate or additional penalties for failure to register? If so, which industry participants should they be imposed on?	16
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	30. Should any information on the register be made publicly available? If so, what information could be made available and why?	17
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Commencement of regulatory framework	33. How much lead time would industry need to develop and establish the proposed STRA property register? Please provide reasons.	18
	34. When should the STRA regulatory framework start? Please provide reasons.	18
12-month review of regulatory framework	35. Do you support the proposed scope of the review? What additional considerations might be necessary?	19
	36. What data sources could the NSW Government use to inform the review? How can industry and councils assist with data collection for the review?	19

# Appendix 2 – STRA Advisory Committee Members

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DCS convened an STRA Advisory Committee to provide input into the development of the Code of Conduct specifically.

The following industry, community and government stakeholders are members of the Committee:

- Airbnb
- Home Away/Stayz
- Real Estate Institute of New South Wales
- Property Council of Australia
- Holiday Rental Industry Association
- The Accommodation Association of Australia
- Property Owners Association New South Wales
- Estate Agents' Co-Operative Inc.
- Owners Corporation Network (OCN)
- Strata Community Association
- Department of Premier and Cabinet
- Destination New South Wales
- Tenants' Union of New South Wales
- Restaurant and Catering Industry Association of Australia
- Local Government NSW
- Australian Federation of Travel Agents.

# Appendix 3 – Proposed penalty notice and civil penalty offences under the Amendment Regulation and Code

Code provision from Part 5 – Rights and Obligations of Industry Participants	Penalties
<p>5.1.3 An industry participant must comply with a request made by the Commissioner to produce information relating to the operation of the short-term rental accommodation industry or this code. The Commissioner will use this information to monitor, evaluate and inform the further development of the regulatory framework for short-term rental accommodation.</p>	<p>Penalty notice offence:</p> <p>Maximum penalty: 1,000 penalty units in the case of a corporation or 200 penalty units in any other case</p> <p>Penalty notice offence amount: \$550 (individuals and corporations)</p>
<p>5.2.7 A booking platform must keep a record of the full particulars of each transaction involving a short-term rental accommodation arrangement that is entered into using its online booking service. The record must be:</p> <ul style="list-style-type: none"> <li>kept for 5 years after the end of the occupancy period</li> <li>in a readily producible form.</li> </ul>	
<p>5.3.7 A letting agent must keep a record of the full particulars of each transaction involving a short-term rental accommodation arrangement that is entered into using the letting agent's services. The record must be kept:</p> <ul style="list-style-type: none"> <li>for at least 5 years after the end of the occupancy period</li> <li>in a readily producible form.</li> </ul>	
<p>5.4.9 A host who is recorded on the exclusion register is either entirely prohibited from participation in the short-term rental accommodation industry, or prohibited only in relation to specific premises as listed on the exclusion register.</p>	
<p>5.4.10 A host must not offer premises for short-term rental accommodation if the premises is recorded on the exclusion register as an excluded premises with respect to the host.</p>	
<p>5.4.11 A host must not enter into a short-term rental accommodation arrangement with a guest if the guest is recorded on the exclusion register as an excluded guest.</p>	
<p>5.5.2 Guest obligations to neighbours</p>	

Code provision from Part 5 – Rights and Obligations of Industry Participants	Penalties
5.5.4 A guest must not copy, or knowingly retain, any keys, security passes or other instrument that facilitates access to the premises, after the end of the occupancy period.	
5.5.6 A guest must notify the host or the host's representative of any dispute or complaint about a guest's or visitor's behaviour as soon as possible after the event or incident has occurred.	
5.5.7 A guest who is recorded on the exclusion register as an excluded guest must not participate in the short-term rental accommodation industry as a guest.	
<p>5.6.3 A facilitator, acting on behalf of a host must keep a record of the full particulars of each transaction involving a short-term rental accommodation arrangement the facilitator enters into on behalf of the host. The record must be kept:</p> <ul style="list-style-type: none"> <li>• for at least 5 years after the end of the occupancy period</li> <li>• in a readily producible form.</li> </ul>	
5.1.4 An industry participant must comply with any direction issued by the Commissioner under part 7.	Penalty notice offence:
5.1.5 An industry participant must not knowingly misrepresent the identity of a person seeking to enter into, or entering into, a short-term rental accommodation arrangement, or the premises subject to a short-term rental accommodation arrangement, if the purpose of the misrepresentation is to avoid a provision of this code that applies because the person or the premises is recorded on the exclusion register.	<p>Maximum penalty: 1,000 penalty units in the case of a corporation or 200 penalty units in any other case Penalty notice offence amount is \$550 (individuals and corporations).</p> <p>Civil penalty: Monetary penalty not to exceed 10,000 penalty units (in the case of a corporation) and 2,000 penalty units (in any other case).</p>
<p>5.2.5 A booking platform must ensure that:</p> <ul style="list-style-type: none"> <li>• premises are not advertised on the booking platform's online booking service for short-term rental accommodation if: <ul style="list-style-type: none"> <li>i. the details of the host for the premises match the details of a person recorded on the exclusion register as an excluded host, or</li> <li>ii. the premises are recorded on the exclusion register as excluded premises</li> </ul> </li> <li>• a guest does not use the booking platform's online booking service to enter into a short-term rental accommodation arrangement if the guest's details match those of a person recorded on the exclusion register as an excluded guest.</li> </ul>	<p>Civil penalty: Monetary penalty not to exceed 10,000 penalty units (in the case of a corporation) and 2,000 penalty units (in any other case).</p>

Code provision from Part 5 – Rights and Obligations of Industry Participants	Penalties
<p>5.3.4 A letting agent must not:</p> <ul style="list-style-type: none"><li>• advertise or offer premises for short-term rental accommodation if:<ul style="list-style-type: none"><li>i. the details of the host for the premises match the details of a person recorded on the exclusion register as an excluded host, or</li><li>ii. the premises are recorded on the exclusion register as excluded premises</li></ul></li><li>• otherwise facilitate the host for the premises entering into a short-term rental accommodation arrangement for the premises if:<ul style="list-style-type: none"><li>i. the details of the host match the details of a person recorded on the exclusion register as an excluded host, or</li><li>ii. the premises are recorded on the exclusion register as excluded premises.</li></ul></li></ul>	