

Short-Term Lettings: Will the Proposed Reform Help You?

The NSW Government has released draft documents shedding some light on how the new legislation regulating short term lettings will work in practice. However, they pose as many questions as they answer. Further, the documents are currently being exhibited for public feedback and changes are likely.

The draft documents comprise:

- State Environmental Planning Policy (Short-term Rental Accommodation) 2019.
- Environmental Planning and Assessment (Short-term Rental Accommodation) Regulation 2019.
- Fair Trading Amendment (Code of Conduct for Short-term Rental Accommodation Industry) Regulation 2019.
- Code of Conduct for the Short-term Rental Accommodation Industry.
- Short-term Rental Accommodation Fire Safety Standard.

The Government has also released a discussion paper and established a portal, where these documents are exhibited and feedback can be given. The exhibition is open for public feedback until 11 September 2019. [Planning Portal](#)

Key proposals:

- Planning laws:
 - Short term lettings may constitute exempt development. The main restrictions are that, where the host is not present:
 - If the premises are in Greater Sydney, there is a 180 day per calendar year cap on short term lettings, not including bookings for 21 days or more.
 - Otherwise, the cap (if any) is as set by the relevant council, but must be not less than 180 days per calendar year, not including bookings for 21 days or more. A number of councils have already indicated that they will impose a 180 day cap.

- Short term lettings may constitute complying development if the host is not present and the premises are on bush fire prone lands or a flood control lot and additional safety requirements will apply.
- Premises used for short term lettings will be subject to a new fire safety standard. This gives rise to a number of questions:
 - Are some of the requirements excessive, e.g. installation of smoke alarm activated hallway lighting in all premises?
 - Is it fair to impose the same requirements on premises used infrequently for short term lettings and premises used year round?
 - How is this going to work in strata buildings, which will apparently require substantial and expensive modifications, apparently even if only limited short term letting activity is to occur within the building? How will owners get the owners corporation to do the work? Who will pay for it?
 - Is the work to comply with the standard itself exempt development?
 - Will that work constitute “essential fire safety measures” which need to be addressed in annual fire safety statements? If so, who will pay for that?
 - Does this give owners corporations an opportunity to say no to short term lettings or require owners engaged in short term lettings to bear the cost to the building?
- Code of Conduct:
 - The code is mandatory and imposes obligations on all involved in short term lettings; booking platforms, letting agents, hosts and guests.
 - The Code includes a complaint process, essentially involving a complaint to the Commissioner of Fair Trading.
 - The Code provides for an Exclusion Register, essentially involving two “strikes” within a 2 year period resulting in an exclusion from involvement in short term lettings for 5 years. Some “strike” grounds are specified, e.g. for hosts, serious non-compliance with disclosure or insurance obligations and for guests, serious non-compliance with behaviour obligations. Also, the Commissioner has some discretion to determine that it is “appropriate to record a strike”. Query how useful this is in relation to short term guests who have moved on.
 - Some breaches of the Code will constitute offences subject to a civil penalty, typically \$550, but query how these could practically be enforced against short term guests who have moved on. So far as behaviour and amenity issues are concerned,

hosts will need to review their letting agreements and procedures and owners corporations will need to review their by-laws.

- Property Register - The Government is considering establishing a register of properties used for short term lettings, including specified information relevant to enforcement action. The Government appears to favour an industry administered register, involving collection of real time data.
- Costs – The Commissioner is empowered to recover the cost of maintaining the regulatory framework from the industry, but without specifying how. The discussion paper includes various proposals as to how regulatory costs should be allocated across short term letting industry participants, but clearly these should be borne by those making money out of these activities, i.e. booking platforms and hosts and not parties indirectly involved, like owners corporations and strata managers.

We have considerable experience with these issues and can assist you if you are having difficulties with the amenity of your strata scheme or the letting of your strata lot.

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