

The Tenants' Union of NSW is pleased to offer this response in response to the short-term rental accommodation regulatory framework discussion paper

The Tenants' Union of NSW is the peak body representing tenants' interests in NSW and have been promoting the importance of a fair renting system since 1976. We are a specialist community legal centre, a registered training organisation and the resource service for a state-wide network for local Tenants' Advice and Advocacy Services. The state-wide network assists more than 25,000 clients each year with tenancy issues. Through our experience with a range of accommodation types and engagement with service providers and local communities we are able to offer decision-makers policy recommendations informed by a holistic view of the renting system in NSW.

We have not addressed all questions raised in the discussion paper and do not indicate a view on the questions unanswered.

Topic	Question and Response
<b>Planning instruments</b>	<p><b>1. What is your view on the form of and provisions in the STRA SEPP, Regulation and Safety Standard?</b></p> <p>We note that the primary intention is to strike the right balance between 'home-sharing' and those who are concerned by its impacts. Much of the regulatory framework is actually designed to facilitate or allow for commercial operations. We urge government to consider a clear distinction between those who are genuinely sharing their home, and those running a commercial operation.</p> <p>It is for this reason we have previously recommended that the limit on the number of days before the change of use requires planning permission be set at 60 days per year for un-hosted lettings<sup>1</sup>. We believe this better reflects the split between genuine home-sharing and we re-iterate this view here.</p> <p>We note that international practice has also adopted a more clear split between hosted and un-hosted lettings and multiple jurisdictions do not allow un-hosted STRA without the</p>

<sup>1</sup> Tenants' Union of NSW (2017), *Airbnb in Sydney*, accessed at <https://www.tenants.org.au/tu/news/airbnbs-effect-rents-new-report-tenants-union-nsw>

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	<p>equivalent of planning consent. This is consistent with the preservation of a home-sharing model.</p> <p>We strongly support the proposed fire safety standards and do not recommend any weakening of this standard. Fire and Rescue NSW is currently convening a working group to address the coroner's recommendations from tragic death of Miatta Jibba. Where possible we support a proactive approach from government to safety issues, rather than a reactive one.</p> <p>Indeed these standards may be appropriate to add as a standard required in all residential homes. Arguments for a higher standard of fire safety where an occupant is unfamiliar with their surroundings can often be applied to residential tenants in NSW who have both particularly unstable forms of tenure and homes of poor quality.</p> <p>We remain concerned that tenants are able to be evicted from their homes in order for a landlord to utilise STRA for nearly 6 months in a year. This is a far cry from home-sharing. We recommend reform of the Residential Tenancies Act 2010 to ensure evictions of residential tenants to facilitate STRA only occurs where this is a genuine change of use of the premises.</p> <p>We are also concerned that the blanket exemption of hosted STRA may lead to the creation of mini-hotels, with an onsite manager of multiple listings. This form of hosted STRA should be treated in the same way as un-hosted STRA under planning mechanisms in recognition of the more commercial nature of this type of operation.</p> <p><b>2. Are there any elements of the draft instrument that are open to misinterpretation or require further clarification?</b></p> <p>-</p> <p><b>3. What are your views on new policy elements relating to days, flood control lots and bushfire prone land?</b></p>

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	<p>We do not recommend the proposed change to allow 21 day or longer agreements avoid counting towards the use limit where the stay is un-hosted. We note there is no relevant exemption from the <i>Residential Tenancies Act 2010</i> unless the stay is for holiday purposes. We recommend that if the proposed change is to remain, the length of time should be extended to 3 months.</p>
<p><b>Code: Industry participants' obligations</b></p>	<p><b>4. Are the general obligations for industry participants adequate? If not, what other general obligations should be considered? Why?</b></p> <p>We have argued consistently through the development of the Code that platforms must have greater responsibility to ensure that listings are compliant with planning responsibilities. We recommend support for the integrity of the register be added to this responsibility.</p> <p>Carrying out a check is very simple and trivial on an effective register and do not present an overly burdensome requirement on platforms, letting agents or other industry participants.</p> <p>The Code should apply penalties to all industry participants who attempt or enable evasion of planning instruments and Code of Conduct.</p> <p><b>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?</b></p> <p>Most information should be collected through the register, with reference to participant's obligations under the Code.</p> <p><b>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?</b></p>

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	<p>Booking platforms and letting agents must be required to take greater responsibility, through use of a well-designed and functioning Register, that they are not enabling listings which attempt to evade either the Code or other parts of the STRA regulatory framework.</p> <p>As well as a requirement, and support, to ensure hosts and facilitators are not breaching parts of the framework, the penalties for breaching the Code must be sufficient to prevent the behaviour. We are concerned that the current penalties are not sufficient. We note that in some jurisdictions it was not until after penalties were enforced that real traction on sensible regulation was gained.</p>
<b>Code: Complaints</b>	<p><b>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?</b></p> <p>The complaints process may present too difficult process to obtain an exclusion. While it is appropriate that there be a check on frivolous complaints. We do not offer an alternative at this time, but expect to have feedback on this process at the initial review.</p>
<b>Code: Compliance and Enforcement</b>	<p><b>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?</b></p> <p>We support the grounds for a strike. Before any further grounds are added and before the Commissioner considers it appropriate to record a strike or take other action, the commissioner should ensure they have considered the equity of the participant's tenure.</p> <p>Residential tenants already have obligations under their residential tenancy agreements not to cause or permit (for instance, through the actions of a guest) a breach of neighbours' peace, comfort and privacy and can be evicted for failing to comply with this obligation. Their behaviour is already</p>

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	<p>restricted by the threat of eviction.</p> <p>In contrast, property owners have no similar restraint on behaviour. The Commissioner should consider the already-existing inequitable legal frameworks in place to control behaviour when considering strikes against both tenants and property owners.</p> <hr/> <p><b>9. What are potential ways to facilitate industry participants' access to the exclusion register while limiting potential privacy impacts? What factors should be considered?</b></p> <p>We recommend that the exclusion register should be jointly developed with the general register.</p> <p>Guests who breach the Code of Conduct can be added to the register and their excluded status flagged at point of attempted booking. By definition platforms are online and so this check is simple in a well-designed register.</p> <p>Other participants with obligations not to facilitate excluded participants should be able to also check details. It is necessary to include additional obligations in the framework to prevent misuse of this access. This may be most appropriate in the Code of Conduct.</p> <hr/> <p><b>10. Is the review process clear and sufficient? What other matters (if any) should be considered? Why?</b></p> <p>-</p>
<p><b>Code: Penalty notice offences and civil penalties</b></p>	<p><b>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?</b></p> <p>International experience has made clear that penalty notices</p>

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	<p>which are too small do not act as a deterrent to behaviour. We note that while particularly prominent platforms may now be maturing as organisations, the framework must also be able to effectively regulate new entrants to the industry. Increased competition may be healthy, but may also facilitate less healthy business practices in order to undercut on costs.</p> <p>We recommend penalties be added to the Code of Conduct for failure to register as well as for failure by platforms and letting agents to prevent use of their services by listing unregistered participants.</p> <p>This should align with the penalty notices proposed in the Code of Conduct, rising to 10,000 penalty units per offence in cases of wilful breaches.</p>
<p><b>Amendment Regulation: Prescribed classes of STRA industry participant</b></p>	<p><b>12. Does clause 22B(1) appropriately capture end to end property management services that specifically service STRA properties? Why or why not?</b></p> <p>We support the intention of this clause, and believe the current phrasing is sufficient.</p> <p><b>13. What other organisations or persons should be prescribed classes of STRA industry participants (if any)? Why?</b></p> <p>-</p>
<p><b>Amendment Regulation: STRA industry participants excluded from Code of Conduct</b></p>	<p><b>14. Is it appropriate to exclude the STRA industry participants set out in clause 22C? Why or why not?</b></p> <p>We do not support the exclusion of registrable boarding houses under the <i>Boarding Houses Act 2012</i> from the STRA regulatory framework. The definition of a registrable boarding houses cover a wide range of housing types, some of which operate a mix of longer-term residences and shorter-term residences. There is not adequate regulation that applies consistently to</p>

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	<p>these houses. Further, this Act is currently under statutory review which may lead to significant reforms.</p> <p>We accept that some forms of boarding house may be appropriate for exclusion, but this may be better achieved by a more nature of accommodation. For instance, boarding houses in receipt of the land tax exemption must provide accommodation of 3 months or longer to 80% of the residents. This form of boarding house may be a more appropriate exclusion.</p> <p>Similarly, we do not support the exclusion of holiday parks without further consideration. There appears to us to be a potential for a gap between regulatory frameworks.</p> <p>If these exclusions apply, we recommend steps to ensure these excluded participants cannot register or utilise the services of other STRA participants. This can be done through allowing communication between the register and other registers held by government, such as the Boarding Houses register.</p> <p><b>15. What other STRA operators (if any) should be excluded from being covered by the Code? Why?</b></p> <p>We are not aware of any other exclusions which are appropriate for exclusion.</p>
<p><b>Amendment Regulation: Appeals against listing on exclusion register</b></p>	<p><b>16. Is the appeals process clear and sufficient? What other matters (if any) should be considered? Why?</b></p> <p>-</p>
<p><b>Amendment Regulation: Fees and cost recovery</b></p>	<p><b>17. Which industry participants should contribute to the cost of administering and enforcing the Code? Why?</b></p> <p>Industry participants should contribute to the cost of administering and enforcing the Code via the collection of a fee</p>

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	<p>at the point of booking. This allows particularly the booking platforms to collect fees and transfer them to government in an efficient manner. We understand this to be the model adopted in several other jurisdictions.</p> <p>As the fee will be charged at the same time as the booking fees, this cost will be borne by a combination of hosts and platforms as total pricing of the stay will remain set by demand for the accommodation. We believe this to be appropriate.</p> <p>The costs should also include the cost of running and maintaining the register as well as the Code itself.</p> <p><b>18. How should costs be apportioned across different STRA industry participants? Why?</b></p> <p>Costs should be borne by industry participants who seek to enrich themselves via participating in the industry. Essentially this means all participants other than guests. Costs should be borne most directly by hosts and platforms. We believe other types of participant will see marginal changes in their revenue which can be considered a contribution.</p>
<p><b>Amendment Regulation: Penalties</b></p>	<p><b>19. Is the proposed penalty notice offence amount appropriate? Why or why not?</b></p> <p>We support the current level of penalty notice, but note that more serious offences are not appropriately dealt with by penalty notice and should be referred for prosecution.</p>
<p><b>Proposed industry-led property register</b></p>	<p><b>20. How can industry be organised to develop and manage the registration system?</b></p> <p>Industry participation in the registration system will be crucial. Voluntary participation is clearly ideal and we support efforts to assist this, but we do not believe this should not come at the cost of a watered down scheme.</p>



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	<p>We support the register being funded via industry and that this is best done by the collection of a fee at the time of booking.</p>
	<p><b>21. What would be the costs to industry in establishing and maintaining the register? How would industry propose to meet these costs?</b></p>
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	<p><b>22. What role should the Government play in developing or overseeing the register, if any?</b></p>
	<p>While it may be appropriate for a tender to be used for development of the register. We recommend that government is best placed to host the register with funding provided by industry through fees collected at point of booking.</p> <p>We recommend the co-hosting of the general register and the exclusion register, and expect efficiency savings to be achieved through this joint development.</p> <p>Government hosting the register also means that the register may be able to communicate with other aspects and registers relating to property as appropriate, including Land Registry Services and boarding houses register.</p>
	<p><b>23. Are there other outcomes a register should deliver?</b></p>
	<p>We support the key outcomes expressed here and we particularly endorse the outcome of providing an up-to-date, accurate and accessible source of data on STRA premises in NSW.</p>
	<p><b>24. How can the approach ensure registration applies to all STRA operators, regardless of how the property is advertised</b></p>

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	<b>for rent?</b>
	<p>As we recommend registration, or confirmation of prior registration, should form part of the booking process, we recommend that the industry participant who facilitates the booking must be required to ensure registration applies to the booking. In most cases this is a booking platform, but some letting agents and hosts will also hold this position. It should be open to local and state governments to check the register and some portion of the fees collected should enable the investigation of complaints about unregistered STRA.</p>
	<p><b>25. What audit and verification processes would be needed to ensure accuracy of data?</b></p>
	<p>The register must be able to collect cross-platform data to ensure industry participants are not attempting to avoid the Regulatory Framework. We have received reports of Australian training providers who have encouraged potential hosts to switch between booking platforms to evade the 180 days limit on planning. This is clearly in contravention of the proposed outcomes of the framework.</p> <p>The register must also be able to examine whether the booking is a permutation of other bookings. We are aware of hosts who list a single address for both hosted and un-hosted bookings.</p>
	<p><b>26. Should there be separate or additional penalties for failure to register? If so, which industry participants should they be imposed on?</b></p>
	<p>We support penalties for failure to register as well as for failure by platforms and letting agents to prevent use of their services by listing unregistered participants. This should align with the penalty notices proposed in the Code of Conduct, rising to 10,000 penalty units per offence in cases of wilful breaches.</p>

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	<p data-bbox="555 483 1286 517"><b>27. What information should the register collect? Why?</b></p> <p data-bbox="555 566 1353 636">We support the proposed list of information and additionally recommend:</p> <ul data-bbox="603 645 1326 909" style="list-style-type: none"> <li>• Whether a booking is hosted or un-hosted</li> <li>• Tax file number</li> <li>• Emergency contact details</li> <li>• Host confirmation of compliance with regulatory framework fire safety standards</li> <li>• Identification of the relevant Strata scheme (due to possibility of multiple schemes in one complex)</li> </ul> <p data-bbox="555 992 1382 1061"><b>28. What role should different industry participants (e.g. hosts and booking platforms) play in the registration process?</b></p> <p data-bbox="555 1115 1401 1339">We recommend the register be designed in such a way to maximum ease of registration. This appears most achievable through automatic registration through the booking process, whether by a platform, a letting agent or other. Data from the booking can be easily transferred in real-time to the register and necessary checks Conducted.</p> <p data-bbox="555 1422 1305 1491"><b>29. What role should Government play in the registration process or providing information for the register?</b></p> <p data-bbox="555 1545 671 1579">See Q22.</p> <p data-bbox="555 1675 1382 1789"><b>30. Should any information on the register be made publicly available? If so, what information could be made available and why?</b></p> <p data-bbox="555 1839 1374 2022">We note the outcome of providing an up-to-date, accurate and accessible source of data on STRA premises in NSW. To achieve this outcome information on the register should be collated for public access in accordance with NSW Government's Digital Strategy.</p>

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	<p>As such, this information should be de-identified, and made available as a dataset on an ongoing basis. In particular this will allow data-informed decision-making in an area that has been lacking in authoritative and reliable data.</p> <p>Industry participants have consistently complained that data used in various reports from universities and advocacy groups has been 'scraped' from open data on websites and therefore cannot be relied upon. The register presents us with an opportunity to present the data in a way that will allow accurate analysis of the sector and make policy decisions based on that.</p> <p><b>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?</b></p> <p>Both booking platforms and letting agents are required under the Code of Conduct to have a full record of each transaction in the previous 5 years, and these records must be readily producible. This Code was developed with ample representation from industry.</p> <p>There will be the same, or less, detail in the registration information. We can see no legitimate objection to these details being made available to relevant authorities. To refuse to report or to make access overly onerous would hamper legitimate purposes.</p> <p><b>32. Should any information on the register be made publicly available? Why?</b></p> <p>Refer to q30.</p>

Topic	Question and Response
<b>Commencement of regulatory framework</b>	<b>33. How much lead time would industry need to develop and establish the proposed STRA property register? Please provide reasons.</b>
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	<b>34. When should the STRA regulatory framework start? Please provide reasons.</b>
	<p>The regulatory framework consisting of the Code of Conduct, the property register and the planning rules should commence at the same time. If it is necessary to delay parts of the framework to allow for the development of others this is preferable to a piecemeal approach.</p> <p>A uniform start date avoids unforeseen gaps in the government's considered approach, and enables more effective community education and awareness.</p>
<b>12-month review of regulatory framework</b>	<b>35. Do you support the proposed scope of the review? What additional considerations might be necessary?</b>
	<p>We support the proposed scope of the review. While we are keen to ensure that any aspect of the regulatory framework that is clearly failing is able to be addressed, we also acknowledge that twelve months may be too short a time to gather enough information to assess the implementation of the framework. We recommend government proceeds with the twelve month review and Conduct a second review process at 3 years.</p>
	<b>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?</b>
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