

Thanks for the opportunity to make a submission to the NSW Government's Department of Planning and Environment's proposed Short-Term Rental Accommodation (STRA) planning framework.

BnbGuard deals with two sectors affected by the legislation - Owners Corporations (OCs) and Local Governments. The impacts of the proposed changes will be felt in similar ways by both types of communities. We encourage the Department to allow these communities as much leeway as possible in handling unwanted STRAs within the bounds of the legislation.

The key point is the burden of proof required by local councils and OCs. If the burden of proof is high and borne solely or primarily by those negatively affected by illegal STRAs, then it will be difficult and expensive to enforce the rules. And if the rules can't be effectively enforced, then they really don't exist. There is a real risk of this happening for these laws in NSW.

The Department should carefully consider how OCs and councils will reliably determine that the host is not present on site overnight. Hosts can use a variety of techniques to appear to live in a property without actually doing so. Our customers already experience some of these, and others have been seen in places like New York. Here are just a few examples:

- A syndicate could rent out properties to its members, who claim to reside there for 6 months before rotating to the next property.
- Hosts can use "ghost hotel" tactics, renting out all rooms in a unit individually, making it nearly impossible to prove the host is not present for a booking.
- Moving a listing to another site (the rise of aggregator websites like Tripping.com make this increasingly easy to do without losing bookings)

However, if the burden of proof rests with the host, it would be relatively cheap and easy for them to show compliance. This also puts the costs of compliance and enforcement on those directly benefiting from STRAs, rather than the community as a whole, which is more fair.

Councils should be able to determine how and how often compliance is reported. The burden and any costs of proof must rest with the STRA hosts themselves, as they would for a motel, boarding house, B&B or other commercial accommodation business.

Similarly, determining whether a property meets the Department's proposed safety requirements will be very difficult for an OC or a council, both of which have a duty to protect guests and residents in their community.

While the Department's proposed safety recommendations are in line with what has been proposed overseas (eg Japan), hosts should be required to pay for regular inspections to prove compliance, and to submit this proof to their local councils or OCs before conducting STRA. This will ensure STRA guests are protected and professionalise the industry.

Local councils should again be clearly allowed to enforce this themselves, so they can quickly shut down non-compliant hosts and ensure the safety of guests. A statewide process would take too long to be effective given how easily hosts could workaroud these rules.

Being able to respond quickly when new loopholes are discovered is key to effectively controlling short-term rentals. NSW's legislation is similar to that used in several overseas regions where it has not worked well (eg New York City^{1,2}, London³).

Similar "booked days" limits overseas have been too easy to ignore, and STRA platforms have been reluctant to help police them. While dominant players sometime will cooperate by policing limits, this merely pushes activity to other websites, who are then strongly incentivised to ignore requests to join policing efforts. This has happened most famously in London⁴ and New Orleans⁵.

Relying on platforms to share data with councils will not be effective as an enforcement mechanism, and the Department should plan for this. While Airbnb accounts for the plurality of STRA listings, it has normalised the phenomenon of home sharing. The technology itself is cheap and easy to set up, which has led to an explosion in smaller STRA platforms targeting particular communities and sub-cultures (eg gay-friendly sites⁶, family-friendly sites⁷, muslim-friendly sites⁸, pet-friendly sites⁹, etc). BnbGuard monitors hundreds of these sites, and there are thousands more out there. Many require little to no real authentication. Also, fake accounts are easy to purchase for sites like Airbnb, despite efforts to stamp them out (and Airbnb is one of the few who take the issue seriously).

Finally, there needs to be a clear, quick process for local councils to apply for a reduction in the number of booking days allowed when a host is not present on site overnight. Closing this off 8 weeks after exhibition, as proposed, is unfair to those councils who still haven't formulated clear policies on STRAs. This is an evolving industry and councils may want to change limits later.

There is big money in STRAs in many areas of NSW. Hamstringing cash-strapped councils so they can't effectively fight back will lead to an explosion of unwanted STRA activity that once entrenched, will be difficult to remove. Communities can't be left helpless to watch whole suburbs get gutted out, with tourists replacing long-term residents, while the state government ponders how to respond. Local councils must be given leeway to enforce local as well as statewide rules in the manner they deem best. They must be able to pass on enforcement and administration costs directly to hosts, as they see fit, for example by applying tourist levies to STRAs as Noosa Shire and Sunshine Coast are doing.

Fundamentally we disagree with a one-size-fits-all approach for what is a highly localised problem. STRAs affect Byron Bay in different ways than they affect Wollongong or Orange. Local governments should be able to try their own solutions to their own particular problems. The areas leading the world in STRA regulation are not state-level entities, they are cities like San Francisco, Vancouver, Amsterdam and Paris. These smaller bodies can respond

¹ www.nytimes.com/2018/08/15/nyregion/airbnb-legislation-albany.html

² www.mcgill.ca/newsroom/channels/news/high-cost-short-term-rentals-new-york-city-284310

³ www.lettingagenttoday.co.uk/breaking-news/2018/1/new-squeeze-on-airbnb-style-short-lets-from-politicians-across-the-uk

⁴ www.realbusiness.co.uk/current-affairs/2018/02/12/airbnb-accuses-rivals-flouting-rules-london-accommodation-battle/

⁵ www.fox8live.com/story/37980482/expedia-refuses-to-answer-new-orleans-subpoena-over-short-term-rental

⁶ www.misterbandb.com

⁷ www.kidandcoe.com

⁸ www.muzbnb.com

⁹ www.holidaypaws.com.au

much more quickly to this rapidly changing industry where the wider impacts are still not predictable.

Sincerely,

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