



Topic 3 - 2021/22

Short term Rental Accommodation  
Code of Conduct

Compulsory

Continuing Professional Development (CPD)

1 hour

- Learner Guide -

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# Welcome

Welcome to Compulsory CPD Topic 3 2021/22 Short Term Rental Accommodation Code of Conduct; a short course equivalent to one CPD hour.

When RETS is satisfied that you are competent in this course, we will issue you with a Certificate of Completion stating that this hour of CPD has been achieved.

RETS gives you 12 months to complete this course.

In NSW all Class 1 and Class 2 licensed agents are required to complete 3 hours of compulsory topic CPD training each year, plus 3 hours of elective topics. NOTE: Class 1 agents must also complete 3 hours of business skills training.

NOTE: Satisfactory completion of this topic will count as **1 hour** of CPD towards the compulsory learning topics required for the current CPD year. This is only part of your CPD requirements. If you need assistance to understand your CPD responsibilities, you can speak with RETS on 1300 850 980.

## HELP!!

If at any time you get stuck, or do not understand a concept please contact your tutor. You can reach them via email – [tutor@rets.com.au](mailto:tutor@rets.com.au).

Good Luck

Sasha Boe  
Managing Director

# Learning Outcomes

The objective of this topic is to provide an overview of the Short-Term Rental Accommodation Code of Conduct (the STRA Code) which commenced on 18 December 2020. On completion of this topic a person will be able to demonstrate competency of the prescribed learning outcomes detailed below.

Identify the main changes introduced by the Short Term Rental Accommodation (STRA) Code of Conduct, including but not limited to:

- a) the objectives of the STRA Code,
- b) the industry participants covered,
- c) requirements for letting agents, facilitators, hosts and guests,
- d) complaints under the STRA Code,
- e) compliance and enforcement powers available to Fair Trading and penalties for non-compliance.

## Introduction

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### Definition of short-term rental accommodation

We need to look to the legislation for the definition of what is meant by 'short term rental accommodation'.

Firstly, the definition in the Act:

#### **Schedule 1 Amendment of Fair-Trading Act 1987 No 68**

#### **Division 4A Code of conduct for short-term rental accommodation**

#### **industry**

#### **54A Definitions**

*short-term rental accommodation arrangement means*

a commercial arrangement for giving a person the right to occupy residential premises for a period of not more than 3 months at any one time, and includes any arrangement prescribed by the regulations to be a short-term rental accommodation arrangement, but does not include any arrangement prescribed by the regulations not to be a short-term rental accommodation arrangement.

<https://legislation.nsw.gov.au/view/html/inforce/current/act-2018-041>

Then we need to look at the Regulation, as it is referred to in the Act:

**Fair Trading Amendment (Code of Conduct for Short-term Rental Accommodation Industry) Regulation (No 2) 2020 [NSW]**

**Schedule 1 Amendment of Fair-Trading Regulation 2019**

**11B Additional class of short-term rental accommodation industry participants**

(1) Persons who provide property management services for residential premises subject to a short-term rental accommodation 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.

(2) For the purposes of subclause (1), property management services include creating listings, rental pricing, guest vetting and communications and check-in services.

**11C Excluded arrangements**

(1) The following are excluded from the definition of short-term rental accommodation arrangement in section 54A of the Act—

(a) an arrangement under which a person is given the right to occupy—

(i) tourist and visitor accommodation within the meaning of the standard instrument prescribed by the Standard Instrument (Local Environmental Plans) Order 2006, or

Note. Tourist and visitor accommodation includes backpackers' accommodation, hotel or motel accommodation and serviced apartments.

(ii) a registrable boarding house within the meaning of the Boarding Houses Act 2012, or

(iii) a holiday park within the meaning of the Holiday Parks (Long-term Casual Occupation) Act 2002,

(b) an arrangement under which a person resides or is permitted to reside in refuge or crisis accommodation provided by—

(i) a public authority (including the Department of Communities and Justice, the New South Wales Land and Housing Corporation or the Aboriginal Housing Office), or

(ii) a community housing provider registered under the Community Housing Providers National Law (NSW), or

(iii) any other body funded wholly or partly by the Commonwealth or the State,

(c) an arrangement under which a person resides or is permitted to reside in disability accommodation,

(d) any other arrangement under which a person resides or is permitted to reside in temporary accommodation provided or funded wholly or partly by the Department of Communities and Justice.

Section 54A of the Fair Trading Act 1987 thus defines short-term rental accommodation arrangement as follows:

a commercial arrangement for giving a person the right to occupy residential premises for a period of not more than 3 months at any one time.

Section 54A of the Fair Trading Act 1987 states residential premises includes *part of* residential premises.

The following accommodation arrangements are *excluded* from the Code of Conduct:

- tourist and visitor accommodation including backpackers' accommodation, hotel or motel accommodation, and serviced apartments
- boarding houses
- holiday parks
- refuge and crisis accommodation
- disability accommodation
- residential tenancies.

### Common issues with short term accommodation

Short term accommodation bookings have boomed in popularity over the last few years, with the use of booking services such as Airbnb and Stayz. This type of offering for accommodation was initially mostly unregulated, and both consumers and stakeholders such as landlords and owners of adjoining properties were sometimes impacted by issues such as the following<sup>1</sup>:

**Noise-** A very frequently raised amenity issue, due to the potential for guests coming and going at odd hours

**Party houses-** some short-term accommodation is very popular for parties and this impacts on the neighbouring properties

**Waste generation-** is often higher for holiday tenants as perishable items are thrown away at the end of the stay

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<sup>1</sup> <https://legalvision.com.au/holiday-letting-nsw/>



**Traffic and parking-** A higher proportion of adults occupying holiday rentals may cause issues with limited parking space

**Hazards and evacuation-** short term tenants may not be familiar with any hazards that require evacuation of the building.

### Learning activity 1

Review the following realestate.com.au article:

<https://www.realestate.com.au/news/the-unexpected-downsides-of-shortstay-accommodation/>

NOTE: This article was written prior to the STRA Code of Conduct was on the radar of regulatory authorities.

### Test Your Learning

The Australian Housing and Urban Research Institute carried out research on the impact of the rise of short-term letting platforms. What were its findings?

A common complaint from property managers was that sometimes tenants of rental properties sub-leased the property to short term guests, without approval of the landlord.

The need for regulation was clear. The peak industry association for short term rentals is the Accommodation Association (AA). The CEO of the Accommodation Association has stated<sup>2</sup>:

“Until now, short-term rental accommodation has operated without the measures, controls and regulations that the traditional accommodation sector is required to meet. The NSW Government is now moving to level out the playing field by addressing this significant regulatory imbalance. It is in the sector’s interests and in the interests of hosts and consumers and those living close to these properties that the appropriate frameworks for safe and appropriate operation are in place.”

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<sup>2</sup> <https://www.accomnews.com.au/2020/10/new-code-of-conduct-and-regulations-for-short-term-rentals/>

## A regulatory framework is developed

Since 2015 the NSW government has been inquiring into and requesting submissions from stakeholders regarding what type of laws needed to be made to regulate the industry.

The NSW Government is implementing a new regulatory framework for short-term rental accommodation (STRA). STRA will be regulated through:

- A state wide planning framework
- A mandatory short term rental accommodation premises register
- Strata scheme by laws that restrict certain types of short- term rentals
- A mandatory code of conduct that creates new disciplinary actions that NSW Fair Trading can take, including listing non-compliant participants on an exclusion register.

## Planning framework

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NSW Fair Trading advise that there will be changes to planning laws in mid-2021, including a new planning policy that applies consistent regulation of the use of premises for short-term rental accommodation across NSW.

Until the new planning laws start, hosts will need to check with their local council to determine if there are any planning laws that may need to be complied with. In some local government areas, planning approval may be needed before making the property available.

## Mandatory STRA premises register

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From 1 June 2021 onwards, a booking platform must ensure that short-term rental accommodation premises are not advertised on the booking platform's online booking service unless:

- a) the host and premises are registered on the premises register
- b) the registration number for the premises is displayed alongside the details of the premises on the booking platform on line booking service.

Also, from 1<sup>st</sup> June 2021 onwards, on the request of the premises register operator, a booking platform must give the operator specified information the booking platform holds about short-term holiday rental accommodation.

A short-term rental accommodation premises register is under development for commencement in mid-2021.

Hosts will be required to register their premises once the register itself becomes available online with the Department of Planning, Industry and Environment.

## Strata scheme by laws that restrict certain short- term rentals

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On 10 April 2020, strata and tenancy laws changed in relation to short term rental accommodation. Owners can adopt by-laws that limit short -term rental accommodation in their strata scheme, by banning it in lots that are not the host's principal place of residence.

However, if someone lives in a strata property as their principal place of residence, they are still able to rent out their home or rooms while they live there, or while they are temporarily away.

You can review the changes to strata laws as they relate to short- term letting here:

<https://www.fairtrading.nsw.gov.au/housing-and-property/strata-and-community-living/strata-schemes/by-laws-in-your-strata-scheme>

Residential tenancy laws have been changed to clarify that short term rental accommodation arrangements of 3 months or less are not covered under the residential tenancies legislation.

## Change to Residential Tenancies Act

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Section bb) was added to Section 8 of the Residential Tenancies Act 2010:

### **8 Agreements to which Act does not apply**

(1) This Act does not apply to the following agreements—

(bb) short-term rental accommodation arrangements, within the meaning of section 54A of the Fair Trading Act 1987, under which the person given the right to occupy the residential premises to which the arrangement relates does not occupy the premises as the person's principal place of residence.

## Mandatory Code of Conduct

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A mandatory Code of Conduct for the STRA industry applies to all participants in the short-term rental accommodation industry. The code commenced on 18<sup>th</sup> December 2020. Compliance with the code is mandatory for all participants of the short-term rental accommodation industry where the residential premises are in NSW.

### Objectives of the Code

The objectives of the Code of Conduct are contained in Part B, and are shown below:

#### Part B: Objectives

The principal objectives of this code are to:

- (a) set out the rights and obligations of short-term rental accommodation industry participants
- (b) provide for resolution of disputes and complaints about the conduct of short-term rental accommodation industry participants
- (c) outline the compliance and enforcement approach that applies to contraventions of the code by short-term rental accommodation industry participants
- (d) facilitate the oversight of the short-term rental accommodation industry.

The code applies minimum standards of behaviour and requirements on all participants. Section 54A of the Fair Trading Act 1987 defines short-term rental accommodation arrangement as follows:

‘a commercial arrangement for giving a person the right to occupy residential premises for a period of not more than 3 months at any one time’

The following accommodation arrangements are *excluded* from the Code of Conduct.

- tourist and visitor accommodation including backpackers' accommodation, hotel or motel accommodation, and serviced apartments
- boarding houses
- holiday parks
- refuge and crisis accommodation
- disability accommodation
- residential tenancies.

You should review the Code of Conduct here:

[https://www.fairtrading.nsw.gov.au/\\_data/assets/pdf\\_file/0012/925788/Code-of-Conduct-for-the-Short-term-Rental-Accommodation-Industry.pdf](https://www.fairtrading.nsw.gov.au/_data/assets/pdf_file/0012/925788/Code-of-Conduct-for-the-Short-term-Rental-Accommodation-Industry.pdf)

### **Learning activity 2**

Review the requirements in the STRA Code of Conduct as they relate to Letting Agents. You can view this on page 11 on the following link:

[https://www.fairtrading.nsw.gov.au/\\_data/assets/pdf\\_file/0012/925788/Code-of-Conduct-for-the-Short-term-Rental-Accommodation-Industry.pdf](https://www.fairtrading.nsw.gov.au/_data/assets/pdf_file/0012/925788/Code-of-Conduct-for-the-Short-term-Rental-Accommodation-Industry.pdf)

### **Test Your Learning:**

What must a letting agent do if they are made aware of a complaint or dispute concerning a host, guest, or premises subject to a short-term rental accommodation arrangement?

## Requirements of industry participants covered by the Code

The Code covers industry participants including:

PARTICIPANT	DESCRIPTION	WHERE TO LOCATE INFORMATION ABOUT OBLIGATIONS
<b>Booking platforms.</b>	businesses that provide online accommodation booking services for short-term rental accommodation	<a href="https://www.fairtrading.nsw.gov.au/housing-and-property/short-term-rental-accommodation/booking-platform-obligations">https://www.fairtrading.nsw.gov.au/housing-and-property/short-term-rental-accommodation/booking-platform-obligations</a>
<b>Guests</b>	a person given a right to occupy a residential premise covered by a short-term rental accommodation arrangement.	<a href="https://www.fairtrading.nsw.gov.au/housing-and-property/short-term-rental-accommodation/guest-obligations">https://www.fairtrading.nsw.gov.au/housing-and-property/short-term-rental-accommodation/guest-obligations</a>
<b>Hosts</b>	a person who gives the right to occupy a residential premises covered by a short-term rental accommodation arrangement.	<a href="https://www.fairtrading.nsw.gov.au/housing-and-property/short-term-rental-accommodation/host-obligations">https://www.fairtrading.nsw.gov.au/housing-and-property/short-term-rental-accommodation/host-obligations</a>
<b>Letting agents and facilitators</b>	<ul style="list-style-type: none"> <li>• A letting agent is a person who carries on a business as an agent who enables people to enter short-term rental accommodation arrangements and often collects the rental payments for the premises.</li> <li>• A Facilitators provides property management services for residential premises used for short-term rental. Services that can be provided include creating listings, rental pricing, guest vetting and communications, check-in services and cleaning.</li> </ul>	<a href="https://www.fairtrading.nsw.gov.au/housing-and-property/short-term-rental-accommodation/letting-agents-and-facilitator-obligations">https://www.fairtrading.nsw.gov.au/housing-and-property/short-term-rental-accommodation/letting-agents-and-facilitator-obligations</a>

## Short term rental accommodation exclusion register

The Exclusion Register is a list of guests and hosts who have been excluded from participating in the short-rental accommodation industry. Participants can be excluded from the industry if they are found by NSW Fair Trading to have committed two serious breaches (strikes) of the Code of Conduct in a 2 year period.

Booking platforms, hosts, and letting agents are required under the code not to enter into or facilitate short-term rental agreements with people who are listed on the Exclusion Register.

Below we will be looking at the obligations of letting agents and facilitators.



## Letting agent and facilitator obligations

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Both letting agents and facilitators have important roles in helping clients and customers comply with the STRA Code of Conduct.

Review the obligations of letting agents and facilitator obligations here:

<https://www.fairtrading.nsw.gov.au/housing-and-property/short-term-rental-accommodation/letting-agents-and-facilitator-obligations>

### Learning activity 3

Review the following information about the short-term accommodation exclusion register:

<https://www.fairtrading.nsw.gov.au/housing-and-property/short-term-rental-accommodation/short-term-rental-accommodation-exclusion-register>

### Test Your Learning

What is a letting agent's obligation with regards to the Exclusion Register?

## Compliance and enforcement powers available to Fair Trading

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If a breach is found to have occurred Fair Trading may impose one of the following penalties:

- Issue a warning notice to a participant
- Issue a direction to the participant to take or cease certain action
- monetary penalty
- record a 'strike' against a host, host's premises, or guest for serious breaches of the code
- recording a guest, host or host's premises on the exclusion register.

### How complaints are dealt with under the STRA Code

The Code sets out a fair process that must be followed before a penalty is imposed and provides for appeals against decisions to impose a penalty for breaches of the code.

NSW Fair Trading encourages participants to attempt to resolve the matter in the first instance by contacting the relevant industry participant. This includes talking to the guest or host about your concerns about a possible breach of the code or another law.

A complaint can be made to NSW Fair Trading about a potential breach of the code. The complaint can be made on line, through the normal complaint process for NSW fair Trading:

<https://www.fairtrading.nsw.gov.au/help-centre/online-tools/make-a-complaint>

## Conclusion

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This CPD covers Topic 3 of the NSW Fair Trading Compulsory CPD Topics for the CPD year 2021/22. It has focused on main changes introduced by the Short-Term Rental Accommodation (STRA) Code of Conduct, including:

- the objectives of the STRA Code,
- the industry participants covered,
- requirements for letting agents, facilitators, hosts and guests,
- complaints under the STRA Code,
- compliance and enforcement powers available to NSW Fair Trading and penalties for non-compliance.