

FROM THE GROUND UP – THE APPLICATION OF NEW STRA LAWS IN NSW

About a year ago, some operators of short-term rental accommodation (**STRA**) in New South Wales started hearing a strange noise in the air and naturally assumed it was the sound of the sky falling. As the months passed, more and more operators started to hear the same noises and the growing consensus was indeed that the sky was falling. As of 1 November 2021, the sky fell. Or did it?

A new regime of laws that deal with STRA have been progressively coming into effect in NSW over the last 12 months, with the last piece falling into place on 1 November. At first glance, the latest batch of these new laws specifically targeting the use of dwellings for short-term accommodation, appear to affect every person who lets out a house, apartment or room on a short-term basis.

Under the new laws, established STRA operators understandably are focussing a lot of attention on the fact that if your dwelling is not registered and doesn't have certain physical attributes or safety features, the dwelling cannot be used for STRA. However people who previously didn't live next to a house, or in a complex, that provided STRA, are now more concerned by the fact that under the new laws, any residence could potentially start offering STRA if the owner ticks all the boxes.

Although the new STRA laws are primarily intended to regulate Airbnb style accommodation and other similar practices, the language used in the laws can be quite confusing and appear to make the scope of the laws reach well beyond the average Airbnb host. This has led many organisations that deal with STRA (such as online booking agencies) to require any and all STRA operators jump a number of hurdles if they wish to continue using their services after 1 November 2021.

This would be an appropriate response if the new STRA laws applied to all short-term accommodation. However, not all STRA operators need to take any action as a consequence of the new STRA laws, as the laws simply don't apply to every operator. So who do the laws apply to?

The new STRA laws apply to residential buildings that have not been specifically approved by the local Council to be used as tourist or visitor accommodation. Instead of stressing about whether you are offering hosted or non-hosted accommodation, whether you have the right kind of door locks or fire alarms, or if your building is Class 1a or Class 2, the first question you should answer is "What does the Development Approval for my complex say?" Your Development Approval is one or more documents that have been issued by your local Council which states how your building may be used, provided the building is constructed in accordance with the Council's requirements.

As stated in the STRA Frequently Asked Questions document dated September 2021, issued by the NSW Department of Planning, Industry and Environment:

"Approved tourist and visitor accommodation such as serviced apartments, bed and breakfasts, eco-tourist facilities, hotels, motels, resorts, camping grounds or caravan parks are not required to register for STRA.

They are allowed to continue to be listed on online accommodation platforms."

If the Development Approval that applies to your building confirms that your building is allowed to be used as tourist and visitor accommodation (or some subclass of that use) it means that the new STRA laws do not apply to you at all. It also means that if you (or anyone else) are operating STRA in the building, the sky is not falling after all.

However, if the STRA laws do apply to your complex, the units you rent will need to meet new safety standards and be registered. You, and all other participants in the short-term accommodation arrangement, will need to comply with the STRA Code of Conduct (this includes the letting agent, the online booking agent, the owner of the unit and the guest). Plus there may be a limit on the maximum number of days the unit can be let each year set by your local Council (generally between 180 to 365 days a year).

Be sure to get legal advice if you are unsure how to interpret your Development Approval documents, or if you simply can't find them. And like most laws, be aware that there are exceptions to the exceptions that might apply in your personal circumstances.

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