

***Review of regulations and supply in New South
Wales***

**The Real Estate Institute of New South Wales
Limited**

**Submission on the discussion paper on short and long-
term rental accommodation**

14 March 2024

**TO: Department of Planning, Housing and Infrastructure
By email: STHL@planning.nsw.gov.au**

1. Introduction

This submission has been prepared by The Real Estate Institute of New South Wales Limited (**REINSW**) and is in response to the Department of Planning, Housing and Infrastructure's discussion paper on short and long-term rental accommodation (**Discussion Paper**).

REINSW is the largest professional association of real estate agents and other property professionals in New South Wales. REINSW seeks to promote the interests of its members and the property sector on property-related issues. In doing so, REINSW plays a substantial role in the formation of regulatory policy in New South Wales.

This submission has been prepared in consultation with REINSW's Property Management Chapter Committee with input from a member of REINSW's Residential Sales Chapter Committee who have experience and knowledge in short and long-term rental accommodation. As licensed real estate professionals with experience and expertise in the field of property management and short and long-term rental accommodation, their extensive knowledge within the industry allows them to offer valuable insight on the proposed changes to the planning and regulatory framework for short-term rental accommodation (**STRA**) and how this impacts long-term rental supply in New South Wales. This submission outlines issues and recommendations for Government to consider based on the issues for consultation and policy objectives set out in the Discussion Paper.

2. Incentives to enter the long-term rental market

It is common ground between stakeholders that there is a critical shortage of affordable housing in New South Wales and that undersupply is the main cause of this housing crisis. The market has increasingly become more competitive as this undersupply has driven up property prices, especially for long-term rentals or properties for sale in the lower price bracket of the market.

REINSW's view is that to resolve this housing crisis, Government should focus on the underlying housing supply issues, especially issues within the development and construction industries. However, as the Discussion Paper acknowledges, construction of new housing stock does not occur overnight and REINSW recognises the need to explore interim solutions.

REINSW supports, in principle, policy objectives which prioritise and incentivise property owners who currently use their properties for STRA to enter the long-term rental market. REINSW takes the view that landlords are an important part of the solution to the housing crisis given that 86.7% of rental properties in New South Wales are privately owned and so contributes to much needed housing stock.¹ However, **REINSW opposes** reforms which seek to restrict or impede how property owners can use, and make decisions about, their properties as doing so will only alienate and drive away existing investors from the property market, resulting in even less supply.

¹ID Community, "New South Wales Housing Tenure" profile.id.com.au (accessed 09.02.23).

Consistent with Australia's free market economy, REINSW's view is that property owners should be able to choose how they wish to use their investment – including whether they want to use their properties for STRA, keep them vacant or enter into long-term tenancies. It may be beneficial to implement incentives which encourage property owners to use their property for long-term rental accommodation, however, proposed reforms should not penalise those who decide to use their properties for STRA, or choose to keep them vacant, as this would unjustifiably impact owners' rights to make decisions about their property. REINSW's view is that this would be contrary to an owner's right to own property set out in Article 17 of the *Universal Declaration of Human Rights* which states that:

1. *Everyone has the right to own property alone as well as in association with others.*
2. *No one shall be arbitrarily deprived of his property.*

Instead, **REINSW recommends** Government consider how they can incentivise property owners to use their properties for long-term tenancies. To achieve this policy objective, Government should consider, and address, why STRA has become increasingly attractive to landlords. REINSW believes that STRA has increased in popularity as an investment income for landlords because it is simple, flexible and allows landlords to retain a level of decision-making and control over their asset that is not afforded by the residential tenancies legislation. It also offers a significantly higher return on investment making it, in many cases, a more desirable option for investors.

On the other hand, landlords who offer their properties on the long-term rental market must navigate a complex legislative framework that protects tenants' rights more favourably, address potential disputes with tenants which, if unresolved, may involve investing time and resources at the Civil and Administrative Tribunal of New South Wales (**NCAT**) and, overall, long-term tenancies offer a significant lower rental yield.

REINSW's view is that the Government's recent proposed changes to the rental laws in New South Wales which restrict how landlords can use their property (for example, by removing the ability for a landlord to terminate tenancies without grounds, proposals to introduce portable bonds, restrictions on a landlord's right to choose whether to allow pets, and rental caps) are only likely to make STRA more attractive to landlords.

In short, REINSW's view is that if property owners are moving their property to the STRA market it's because they consider it more beneficial to do so. This can be influenced by a range of considerations including asset protection, return on investment and market demand being present. If market demand is a factor, placing restrictions on a landlord's right to choose whether to offer their property to the market adversely impacts the local economy – especially in popular tourist destinations.

Accordingly, **REINSW recommends** that Government considers the incentives it can offer landlords to encourage them to switch to long-term rentals – for example, by ensuring that the residential tenancies legislation adequately balances the rights of landlords and tenants or by introducing other incentives (for example, through tax initiatives or other financial incentives).

3. STRA Housing Stock Suitability

REINSW's view, based on industry feedback, is that the type of housing stock most needed to alleviate the housing crisis is social and affordable housing. Therefore, when reviewing the current STRA framework and considering how to manage existing housing stock, **REINSW recommends** that Government considers whether non-hosted accommodation currently listed as STRA is affordable housing.

REINSW questions how many of the properties currently rented out as STRA would be considered "affordable" and, therefore, even if transitioned into the long-term rental market or sold to an owner occupier, would be considered appropriate and would help resolve this main undersupply issue. While REINSW's view is that there are likely to be areas in New South Wales where there are affordable properties currently offered as STRA, this is not the case in all areas across the State. REINSW notes that the Discussion Paper identified that it was "historically popular tourist destinations" that had the "highest concentrations of non-hosted short-term rental accommodation registrations".² REINSW believes that many of the properties in tourist areas (for example, Byron Bay, coastal regions of NSW which are popular tourist destinations or even parts of Greater Sydney) would not fall into the "affordable range" and, therefore, not be the type of housing stock necessary to alleviate the housing crisis.

REINSW does not support the view that any housing stock (even stock which is in the high end of the property market) transferred back into the long-term rental market, or sold, will help alleviate the housing crisis on the basis that some property owners will purchase up the property ladder therefore making their, more affordable dwellings, available. REINSW's view is that this approach will not achieve the desired outcome for the following reasons:

- If the housing stock which enters the permanent property pool is not affordable, people will not be able to afford to move up the property ladder (and so this "filtering down" approach will not be successful); and
- the number of people who need social and affordable housing continues to increase as public housing is decommissioned and social housing tenants are instead offered subsidies to support private rental accommodation. Therefore, this approach will not help the sector of the market where housing stock is most needed (i.e. social and affordable housing), rather, it will only ease pressure on the least stressed sector of the market.

REINSW recommends that before making changes to the regulatory framework, Government should consider whether current STRA housing stock, especially in the locations with the highest concentrations of non-hosted STRA, is suitable for social and affordable housing. REINSW is of the view that in some areas, especially tourist destinations, STRA stock may not be the desired type of supply to solve the housing crisis.

4. Day caps

Feedback REINSW has received from industry is that day caps are not achieving the desired policy objectives of ensuring that "financial returns from non-hosted short-term rental

² Department of Planning, Housing and Infrastructure "Discussion paper on short and long-term rental accommodation: review of regulations and supply in New South Wales" (February 2024), pages 10-11.

accommodation are closer to those for long-term rental accommodation” in order to encourage investors to enter the long-term residential market.³ Instead, feedback REINSW has received is that in response to the introduction of the 60-day cap in the Byron Shire (that is due to come into effect later this year), many landlords are simply increasing the cost of their holiday rentals, which they can do given the popularity of this area.

Day caps are also influenced by area demographic and the reason people want to stay in a particular location. STRA is not limited to tourism, but also supports short-term employment opportunities by providing accommodation for transient workers and their families (especially in rural areas), and may support a person’s personal circumstances because the accommodation is located close to public amenities like hospitals. In the case of the latter, it may allow families with a person in hospital to stay nearby. It is important that any changes to the STRA framework factor in circumstances where temporary accommodation may be necessary to support communities beyond tourism.

Furthermore, REINSW is curious to know the number of fines issued to landlords in the STRA market for renting their property for greater than the permissible days. It appears to REINSW that policing, and enforcement of, this area would be very difficult.

In light of the above, **REINSW reiterates its recommendation** in relation to paragraph 2 above that rather than limiting the number of days in which landlords can rent out their properties via STRA, Government should instead incentivise landlords to enter the long-term property market as this will be a more effective solution to this issue. However, were Government to introduce day caps, **REINSW makes recommendations similar to that raised in paragraph 3 above** that any day caps should be location or Council specific in order to more effectively cater to the specific demographics and key attributes of that area.

5. Occupancy limits

Were Government to introduce occupancy limits to reduce disruption to neighbours and communities, **REINSW recommends** implementing a 2 people per bedroom requirement.

6. Regulating tenant’s use of STRA

REINSW is aware that some tenants to a long-term lease sub-let the property as hosted, or non-hosted STRA. REINSW holds concerns about this practice for the following reasons:

- it may impact the wellbeing of guests if an issue arises on the property, as the tenant is not the legal owner;
- it opens a landlord up to liability and risk and, were an issue to arise during a hosted or non-hosted stay, may not be covered by the landlord’s insurance;
- generally, tenants have not sought consent from the landlord;
- tenants, in these circumstances, are essentially acting as an unlicensed and unregulated letting agent; and
- it may impact the landlord’s relationship with their neighbours, a building’s strata scheme or the wider community.

³ Ibid.,32.

To overcome this issue, **REINSW recommends** that Government should require hosts, when registering a property for STRA, to disclose whether they are the legal property owner (and provide evidence in support) and, if not, registration should not be allowed. REINSW also **reiterates its recommendation** in paragraph 8 below with respect to registration and renewal fees.

7. Registration systems based on a lottery

REINSW opposes a lottery based STRA registration system for the following reasons:

- this process lacks transparency;
- a registration system is not used for land or other assets which carry with them restrictions (for example, rural property which have a water licence) and it is therefore not appropriate to implement a registration system for STRA; and
- investors need to be able to make informed investment decisions about their assets. They are contributing their hard-earned savings to such assets, possibly their superannuation and retirement funds. They cannot be expected to make such decisions based on a luck of the draw via a lottery.

While **REINSW opposes** any restrictions to limit STRA licenses greater to the demand, were Government to implement such a scheme, **REINSW recommends** that STRA licences should be sold separately to the property so that they can be transferred or sold individually as an asset – rather by lottery process.

8. Registration and renewal fees

REINSW's view is that the current registration and renewal fees in the STRA framework are insufficient. This low barrier to entry encourages hosts to list property as STRA without fully understanding their rights and responsibilities. REINSW believes that these low fees also contribute to tenants registering as a host of STRA without the landlord's consent. Accordingly, **REINSW recommends** imposing a significantly higher registration and renewal fee as this is more likely to attract registration and renewal only by hosts who are serious about offering STRA on a regular basis and are, therefore, more likely to take their responsibilities and obligations seriously.

9. Summary

In summary, REINSW:

- supports, in principle, policy objectives which prioritise and incentivise property owners who currently use their properties for STRA to enter the long-term rental market but opposes reforms which seek to restrict or impede how property owners can use, and make decisions about, their properties;
- recommends that Government considers incentives it can offer landlords to encourage them to switch to long-term rentals – for example, ensuring that the residential tenancies legislation adequately balances the rights of landlords and tenants or introducing other incentives (for example, through tax initiatives and other financial incentives);

- recommends that before making changes to the regulatory framework, Government should consider whether current STRA housing stock, especially in the locations with the highest concentrations of non-hosted STRA, is suitable for social and affordable housing;
- reiterates its recommendation in paragraph 2 above that rather than limiting the number of days in which landlords can rent out their properties via STRA, Government should instead incentivise landlords to enter the long-term property market as this will be a more effective solution to this issue. However, were Government to introduce day caps, REINSW recommends that any day caps should be location or Council specific to more effectively cater to the specific demographics and key attributes of that area;
- recommends implementing a 2 people per bedroom requirement were Government to introduce occupancy limits;
- recommends that Government requires hosts, when registering a property for STRA, to disclose whether they are the legal property owner (and provide evidence in support) and, if not, to deny them registration;
- opposes a lottery based STRA registration system for the reasons given in paragraph 7 above;
- opposes any restrictions to limit STRA licenses greater to the demand, were Government to implement such a scheme, REINSW recommends that STRA licences should be sold separately to the property so that they can be transferred or sold individually as an asset – rather by lottery process; and
- recommends imposing significantly higher registration and renewal fees.

10. Conclusion

REINSW has considered the Discussion Paper and has provided its comments above, aiming to provide input on as many pertinent aspects of the Discussion Paper as possible. However, REINSW's resources are very limited and, accordingly, it does not have the capacity to undertake a thorough review and is unable to exhaustively investigate all potential issues in this submission. Nonetheless, REINSW has identified a number of matters that it believes will cause significant consumer detriment, some of which appear above.

REINSW appreciates the opportunity to provide this submission and would be pleased to discuss it further, if required.

Yours faithfully



Tim McKibbin
Chief Executive Officer