

# **Code of Conduct for the Short-term Rental Accommodation Industry**

**NSW Fair Trading**

**Department of Customer Service**

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## Part A: Introduction

Short-term rental accommodation is a long-standing practice throughout New South Wales, most commonly associated with holiday letting. Many NSW families spend part of their summers in coastal and regional communities and those communities may depend on seasonal tourism to provide a regular boost to the local economy.

Short-term rental accommodation does not involve purely commercial accommodation providers such as hotels, motels and bed and breakfast establishments. It generally involves residential dwellings that may also be used by the owners for their own accommodation at times.

The advent of online accommodation booking services (booking platforms) has seen a significant increase in short-term rental accommodation. Booking platforms have made it much easier for letting agents and hosts to advertise and promote properties and for guests to find suitable short-term accommodation. In addition, short-term rental accommodation in residential premises is now not only used for holidays but also for business travel, emergency accommodation and special events, across a range of premises including free-standing dwellings and apartment buildings in urban and regional centres.

Despite the economic benefits that can flow to local economies and homeowners using their property for short-term rental accommodation, there can be amenity impacts on residential neighbours resulting from inconsiderate or anti-social behaviour by some short-term rental occupants. It is important to ensure that our laws continue to support local economies while ensuring residential neighbours can enjoy the amenity of their homes without unreasonable disturbance. This code of conduct responds to this need by establishing behavioural obligations for short-term rental accommodation participants.

In recent years, there has been an increasing focus on the regulation of the short-term rental industry around the world. In June 2018, the NSW Government announced that there would be a new regulatory framework to manage short-term rental accommodation. The key elements of the framework are:

- a state-wide planning framework to achieve consistency and certainty across local planning controls
- a code of conduct to apply to online accommodation platforms, letting agents, facilitators, hosts and guests
- changes to strata laws to allow owners corporations to adopt by-laws that prohibit non-resident lot owners from offering short term rentals
- a mandatory short-term rental accommodation premises register.

This code of conduct is mandatory and applies to all short-term rental accommodation industry participants.

## 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.

## Part C Definitions

**Act** means the *Fair Trading Act 1987*.

**association** and **association property** have the same meaning as in the *Community Land Management Act 1989*.

**booking platform** means a person who, in trade or commerce, provides an online booking service that enables persons to enter into short-term rental accommodation arrangements.

**by-law** means any by-law in force for a strata scheme or any by-law contained in a management statement (as defined in the *Community Land Management Act 1989*).

**Commissioner** means the Commissioner for Fair Trading in the NSW Department of Customer Service.

**common property** has the same meaning as in the *Strata Schemes Management Act 2015*.

**community scheme** has the same meaning as in the *Community Land Development Act 1989*.

**facilitator** means the prescribed classes of short-term rental accommodation industry participants in clause 11B of the Regulations.

**guest** means a person who, pursuant to a short-term rental accommodation arrangement, is given the right to occupy the residential premises to which the arrangement relates.

**host** means a person who, pursuant to a short-term rental accommodation arrangement, gives another person the right to occupy the residential premises to which the arrangement relates.

**letting agent** means a person who carries on business as an agent to enable persons to enter into short-term rental accommodation arrangements.

**Minister** means the Minister responsible for the administration of the *Fair Trading Act 1987*.

**occupancy period** means the period for which a guest may occupy residential premises under a short-term rental accommodation arrangement.

**ordinary hours** means 8.00am to 5.00pm every day of the week.

**planning laws** means the *Environmental Planning and Assessment Act 1979*, *Environmental Planning and Assessment Regulation 2000*, and any environmental planning instrument made under those laws, but excluding any development consent imposed under the *Environmental Planning and Assessment Act 1979*.

**Regulations** means the *Fair Trading Regulation 2019*.

**Secretary** means the Secretary of the Department of Customer Service.

**short-term rental accommodation arrangement** has the same meaning as in section 54A of the Act.

**short-term rental accommodation industry participant**, or **industry participant**, has the same meaning as in section 54A of the Act.

**short-term rental accommodation premises**, or **premises**, means any residential premises located in New South Wales that are subject to a short-term rental accommodation arrangement, or are being offered for the purposes of entering into a short-term rental accommodation arrangement. Where the premises are located in a strata or community scheme, the premises include the common property or association property in that scheme.

**short-term rental accommodation premises register**, or **premises register**, means the register of short-term rental accommodation hosts and premises administered by the Department of Planning, Industry and Environment.

**premises register operator**, or **operator**, means the Department of Planning, Industry and Environment.

**strata scheme** has the same meaning as in the *Strata Schemes Development Act 2015*.

**strike** means a record of a contravention of this code made against a host, guest, or premises with respect to a host and identified as a strike.

**Tribunal** means the New South Wales Civil and Administrative Tribunal.

**visitor** means any person who, with the guest's consent, is present at the premises at any time during the occupancy period of a short-term rental accommodation arrangement.

## **1 Code administration**

### **1.1 General**

1.1.1 The Commissioner is to administer this code.

1.1.2 The Commissioner may delegate any of the functions conferred on the Commissioner by this code to a suitably qualified person, including to a suitably qualified arbitrator.

1.1.3 The Commissioner or Secretary are not subject to any action, liability, claim or demand for acts, or omissions, taken in good faith for the purpose of executing their functions under this code.

### **1.2 Funding for the code's administration**

1.2.1 Funding to administer this code is to be provided in the way prescribed in the regulations.

## 2 Rights and obligations of industry participants

### 2.1 General

#### *Nature of obligations*

- 2.1.1 Nothing in this code affects the rights of an industry participant to seek legal redress for any matters related to short-term rental accommodation arrangements.

#### *Obligations*

- 2.1.2 An industry participant must act honestly and in good faith in relation to:
- (a) a short-term rental accommodation arrangement
  - (b) any dealing, complaint or dispute relating to a short-term rental accommodation arrangement.
- 2.1.3 An industry participant must comply with a request made by the Commissioner to produce information relating to their activities as a short-term rental accommodation industry participant or this code. The Commissioner will use this information to monitor, evaluate and inform the further development of the regulatory framework for short-term rental accommodation arrangements.

This section is an offence provision under section 54C of the Act.

- 2.1.4 An industry participant must comply with any direction issued by the Commissioner under part 4 of the code.

This section is an offence provision under section 54C of the Act and a civil penalty provision under section 54D of the Act.

- 2.1.5 An industry participant must not knowingly misrepresent the identity of a person seeking to enter into, or entering into, a short-term rental accommodation arrangement, or the premises subject to a short-term rental accommodation arrangement, if the purpose of the misrepresentation is to avoid a provision of this code that applies because the person or the premises is recorded on the exclusion register.

This section is an offence provision under section 54C of the Act and a civil penalty provision under section 54D of the Act.



## 2.2 Booking platforms

### *Information about this code*

2.2.1 A booking platform must inform an industry participant using the booking platform's online booking service of the following matters before, or at the time, the participant enters into a short-term rental accommodation arrangement:

- (a) this code, and
- (b) the obligation of all industry participants, including the booking platform, to comply with this code.

2.2.2 A booking platform must ensure that a copy of this code is readily available on its website.

### *Notice of complaint or dispute*

2.2.3 If a booking platform is made aware of a complaint or dispute concerning a host, guest, or premises subject to a short-term rental accommodation arrangement, the booking platform must notify the host or guest of the dispute or complaint as soon as practicable.

2.2.4 A booking platform must take reasonable steps to ensure that a host or guest is aware of how to lodge a complaint with the Commissioner about a guest, host or premises.

### *Premises register*

2.2.5 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, and
- (b) the registration number for the premises is displayed alongside the details of the premises on the booking platform's online booking service.

This section is an offence provision under section 54C of the Act and a civil penalty provision under section 54D of the Act.

2.2.6 From 1 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 rental accommodation premises.

This section is an offence provision under section 54C of the Act and a civil penalty provision under section 54D of the Act.

### *Exclusion register*

2.2.7 A booking platform must ensure that:

- (a) premises are not advertised on the booking platform's online booking service if:
  - i. the details of the host for the premises match the details of a person recorded on the exclusion register as an excluded host, or
  - ii. the premises are recorded on the exclusion register as excluded premises.
- (b) a guest does not use the booking platform's online booking service to enter into a short-term rental accommodation arrangement if the guest's details match those of a person recorded on the exclusion register as an excluded guest.

This section is an offence provision under section 54C of the Act and a civil penalty provision under section 54D of the Act.

- 2.2.8 If a booking platform is made aware that a host, guest or premises has been recorded on the exclusion register because of a contravention of this code in connection with short term rental accommodation arrangements made using the booking platform's online booking service, the booking platform must notify the relevant host or guest as soon as possible.

This section is an offence provision under section 54C of the Act and a civil penalty provision under section 54D of the Act.

*Record-keeping requirements*

- 2.2.9 A booking platform must keep a record of the full particulars of each transaction involving a short-term rental accommodation arrangement that is entered into using its online booking service. The record must be:

- (a) kept for 3 years after the end of the occupancy period
- (b) in a readily producible form.

This section is an offence provision under section 54C of the Act.

## 2.3 Letting agents

### *Information about this code*

2.3.1 A letting agent must inform an industry participant using the letting agent's services about the following matters before, or at the time, the participant enters into a short-term rental accommodation arrangement:

- (a) this code, and
- (b) the obligation of all industry participants, including the letting agent, to comply with this code.

2.3.2 A letting agent must ensure that a copy of this code is readily available to industry participants using the letting agent's services.

### *Notice of complaint or dispute*

2.3.3 If a letting agent is made aware of a complaint or dispute concerning a host, guest, or premises subject to a short-term rental accommodation arrangement, the letting agent must notify the host or guest of the dispute or complaint as soon as practicable.

2.3.4 A letting agent must take reasonable steps to ensure that a host or guest is aware of how to lodge a complaint with the Commissioner about a guest, host or premises.

### *Premises register*

2.3.5 From 1 June 2021 onwards, a letting agent must only advertise or offer premises or otherwise facilitate the host of the premises entering into a short-term rental accommodation arrangement for the premises if:

- (a) the host and premises are registered on the premises register, and
- (b) the premises' registration number is displayed alongside the premises' details wherever those details are displayed by the letting agent.

This section is an offence provision under section 54C of the Act and a civil penalty provision under section 54D of the Act.

2.3.6 From 1 June 2021 onwards, on the request of the premises register operator, a letting agent must give the operator specified information the letting agent holds about short-term rental accommodation premises.

This section is an offence provision under section 54C of the Act and a civil penalty provision under section 54D of the Act.

### *Exclusion register*

2.3.7 A letting agent must not:

- (a) advertise or offer premises if:
  - (i) the details of the host for the premises match the details of a person recorded on the exclusion register as an excluded host, or
  - (ii) the premises are recorded on the exclusion register as excluded premises
- (b) otherwise facilitate the host for the premises entering into a short-term rental accommodation arrangement for the premises if:

- (i) the details of the host match the details of a person recorded on the exclusion register as an excluded host, or
- (ii) the premises are recorded on the exclusion register as excluded premises.

This section is an offence provision under section 54C of the Act and a civil penalty provision under section 54D of the Act.

- 2.3.8 A letting agent must not facilitate a guest entering into a short-term rental accommodation arrangement, using the letting agent's services as a letting agent, if the details of the guest match the details of a person recorded on the exclusion register as an excluded guest.
- 2.3.9 If a letting agent is made aware that a host, guest or premises has been recorded on the exclusion register as a result of a contravention of this code in connection with short term rental accommodation arrangements made using the letting agent's services, the letting agent must notify the relevant host or guest as soon as possible.

*Record-keeping requirements*

- 2.3.10 A letting agent must keep a record of the full particulars of each transaction involving a short-term rental accommodation arrangement that is entered into using the letting agent's services. The record must be kept:
  - (a) for 3 years after the end of the occupancy period
  - (b) in a readily producible form.

This section is an offence provision under section 54C of the Act.

## 2.4 Hosts

### *Hosts to act lawfully*

2.4.1 A host must not engage in conduct relevant to their capacity as a host that contravenes:

- (a) the criminal law
- (b) planning laws (including any obligation to register on a register of short term rental accommodation premises) or by-laws (if the premises are in a strata or community scheme) that apply to the premises.

### *Obligations to guests and others*

2.4.2 A host must provide the short-term rental accommodation premises in a state that is consistent with any representations made when advertising or listing the premises for rent, or otherwise in communications made to guests.

2.4.3 A host must hold insurance that covers their liability for third party injuries and death on short-term rental accommodation premises. This insurance must be valid for the occupancy period.

2.4.4 A host, or the host's authorised representative, must be contactable within ordinary hours to manage guests, the premises, neighbourhood complaints and other issues related to use of the premises.

2.4.5 A host, or the host's authorised representative, must be contactable outside ordinary hours to deal with emergencies.

### *Information for guests*

2.4.6 A host must give guests the contact details of:

- (a) the host or the host's authorised representative
- (b) an emergency electrical service provider
- (c) an emergency plumbing service provider
- (d) Australian emergency services.

2.4.7 A host must provide guests with an electronic or hard copy of this code and any by-laws that apply to the premises or the common property of any strata or community scheme in which the premises are situated.

### *Obligations to neighbours*

2.4.8 A host must take reasonable steps to ensure guests comply with their obligations in sections 2.5.2 and 2.5.8 of the code.

2.4.9 A host must give the owners corporation or the community association for the strata or community scheme in which the premises are located (if applicable), and the occupants of residential premises directly neighbouring the premises the following information:

- (a) that the host is using the premises for the purposes of offering short-term rental accommodation arrangements on the premises; and
- (b) the contact details of the host or an authorised representative.

2.4.10 A host who is contacted by the owners corporation or the community association for the strata or community scheme in which the premises are located (if applicable), or neighbours or guests of the premises, must take reasonable steps to address any concerns raised about potential contraventions of the code in a timely manner.

*Premises register*

2.4.11 From 1 June 2021 onwards, before advertising or offering premises for the purposes of entering into short-term rental accommodation arrangements, a host must ensure that the host and the premises are registered on the premises register.

This section is an offence provision under section 54C of the Act.

*Exclusion register*

2.4.12 A host must not offer premises for the purposes of entering into short-term rental accommodation arrangements if the host is recorded on the exclusion register as being prohibited entirely from acting as a host for short term rental accommodation.

This section is an offence provision under section 54C of the Act.

2.4.13 A host must not offer premises for the purposes of entering into short-term rental accommodation arrangements if the premises are recorded on the exclusion register as an excluded premises with respect to the host.

This section is an offence provision under section 54C of the Act.

2.4.14 A host must not enter into a short-term rental accommodation arrangement with a guest if the details of the guest match the details of a person recorded on the exclusion register as an excluded guest.

This section is an offence provision under section 54C of the Act.

## 2.5 Guests

### *Guests to act lawfully*

2.5.1 A guest must not engage in conduct in their capacity as a guest that contravenes:

- (a) the criminal law
- (b) planning laws or by-laws (if the premises are in a strata or community scheme) that apply to the premises
- (c) the terms of a short-term rental accommodation arrangement for the premises.

### *Obligations to neighbours*

2.5.2 A guest must not at any time during the occupancy period:

- (a) create noise that because of its level, nature, character, or quality, or the time it is made, is likely to harm, offend, or unreasonably disrupt or interfere with the peace and comfort of neighbours and other occupants of the premises
- (b) act in a violent or threatening manner towards neighbours or other occupants of the premises
- (c) act in a manner that could reasonably be expected to cause alarm or distress to neighbours and other occupants of the premises
- (d) use or enjoy the premises in a manner, or for a purpose, that interferes unreasonably with the use or enjoyment of common property by neighbours and other occupants of the premises in a strata or community scheme
- (e) intentionally, recklessly or negligently cause damage to premises, any common property or any other communal facilities within the immediate vicinity of the premises, or any public property in the vicinity of the premises
- (f) intentionally, recklessly or negligently damage the personal property of neighbours of the premises or other occupants of a strata or community scheme.

This section is an offence provision under section 54C of the Act.

2.5.3 The Commissioner may issue guidelines about what may or may not be appropriate conduct under section 2.5.2 of the code.

2.5.4 A guest must not copy, or knowingly retain after the end of the occupancy period, any keys, security passes or other instrument that facilitates access to the premises.

This is an offence provision under section 54C of the Act.

### *Responsibilities to hosts*

2.5.5 A guest must take reasonable care of the host's premises and the host's property at the premises.

2.5.6 A guest must notify the host or the host's representative of any dispute or complaint about a guest's or visitor's behaviour as soon as possible after the dispute or complaint arises.

This section is an offence provision under section 54C of the Act.

### *Exclusion register*

2.5.7 A guest who is recorded on the exclusion register is prohibited from entering into any short-term rental accommodation arrangements as a guest.

This section is an offence provision under section 54C of the Act.

*Guests responsible for conduct of visitors*

- 2.5.8 A guest is responsible for the actions of visitors they invite onto the premises during the occupancy period and must ensure visitors to the premises comply with section 2.5.2 of this code as if they were a guest on the premises.



## 2.6 Facilitators

- 2.6.1 A facilitator who acts as an authorised representative of a host, to the extent that the facilitator carries out the responsibilities of the host, is subject to sections 2.1 and 2.4 of this code as if the facilitator is the host of the short-term rental accommodation arrangement.
- 2.6.2 A facilitator who acts as an authorised representative of a letting agent, to the extent that the facilitator carries out the responsibilities of a letting agent, is subject to sections 2.1 and 2.3 of this code as if the facilitator is the letting agent for the short-term rental accommodation arrangement.
- 2.6.3 A facilitator, acting on behalf of a host must keep a record of the full particulars of each transaction involving a short-term rental accommodation arrangement the facilitator enters into on behalf of the host. The record must be kept:
- (a) for 3 years after the end of the occupancy period
  - (b) in a readily producible form.

This section is an offence provision under section 54C of the Act.

- 2.6.4 A host's or letting agent's use of a facilitator does not alter their obligations as set out in this code.

### 3 Complaints

#### 3.1 Complaints process for alleged contraventions of this code

- 3.1.1 A person may lodge a complaint with the Commissioner about an alleged failure by a person to comply with an obligation under this code.
- 3.1.2 The Commissioner may determine the form in which a complaint must be made and the supporting information that must be submitted.
- 3.1.3 The Commissioner may obtain information relevant to a complaint from an industry participant who the Commissioner considers is likely to have access to that information.

#### *Notification of complaints*

- 3.1.4 On receiving a complaint about an industry participant, the Commissioner must give the industry participant a notice about the complaint. The notice must include:
  - (a) details about the alleged code contravention as provided by the complainant
  - (b) the potential consequences if a code contravention is found to have occurred
  - (c) instructions on how to provide evidence and submissions to the Commissioner
  - (d) the next steps in the process, including opportunities to appeal the outcome of the complaint process.
- 3.1.5 A complainant can raise a complaint with an industry participant before lodging a complaint with the Commissioner.
- 3.1.6 The Commissioner is not liable for the costs parties to the complaint may incur when dealing with the complaint.
- 3.1.7 The Commissioner must deal with a complaint fairly and as quickly as reasonably possible.

#### *Dismissing complaints*

- 3.1.8 The Commissioner may dismiss a complaint if satisfied:
  - (a) the complaint is frivolous, vexatious, trivial, misconceived or without substance,
  - (b) the complaint has been previously determined under this code.
- 3.1.9 If the Commissioner is satisfied that a complaint should be dismissed under section 3.1.8 of this code, the Commissioner must issue a written notice to the complainant. The notice must include the reasons for the Commissioner's decision.

#### *Evidence*

- 3.1.10 The Commissioner is to consider any submissions and/or evidence provided by the complainant and the participant who is the subject of the complaint before making a decision on the complaint.
- 3.1.11 The Commissioner must allow all parties to a complaint a period of at least 14 days to submit any relevant information for the Commissioner's consideration before making a decision on the complaint.
- 3.1.12 In making a decision, the Commissioner may take into account other representations made by any person or government agencies about the complaint.

### *Decisions*

- 3.1.13 The Commissioner must decide, on the balance of probabilities, whether the industry participant that is the subject of the complaint contravened this code in the manner detailed in the complaint.
- 3.1.14 The Commissioner must give all parties to the complaint notice of the Commissioner's decision about the complaint. The notice must include a statement of the reasons for the Commissioner's decision.

### **3.2 Complaints involving a contravention of other laws**

#### *Contraventions of the criminal law or civil penalty provisions*

- 3.2.1 If a complaint alleges a contravention of a criminal law, the Commissioner may ask the complainant to take the matter to the Police and decline to accept the complaint.
- 3.2.2 If a complaint is based on a contravention of a criminal law or a civil penalty provision that is not administered by the Minister, and the Commissioner accepts the complaint, a finding of a court that there has been a contravention of the criminal law or civil penalty provision is, for the purposes of dealing with the complaint, conclusive evidence of the contravention.

#### *Contraventions of planning laws*

- 3.2.3 If a complaint includes an allegation of a contravention of planning law, the Commissioner may ask the complainant to take the matter to the relevant local council and decline to accept the complaint.
- 3.2.4 If a complaint is based on a contravention of planning laws, and the Commissioner accepts the complaint, evidence of completed enforcement action by a council is, for the purposes of dealing with the complaint, conclusive evidence of the contravention.

#### *Contraventions of by-laws*

- 3.2.5 If a complaint includes an allegation of a contravention of a by-law of a strata scheme or community scheme, the Commissioner may decline to accept the complaint on the basis that the complaint should be pursued by application to the Tribunal.
- 3.2.6 If a complaint is based on a contravention of a by-law of a strata scheme or community scheme, and the Commissioner accepts the complaint, an order by the Tribunal for a financial penalty for the contravention of the by-law is, for the purposes of dealing with the complaint, conclusive evidence of the contravention.

## 4 Compliance and enforcement

### 4.1 Disciplinary action

4.1.1 Where the Commissioner finds that an industry participant has contravened this code, the Commissioner may:

- (a) issue a **warning notice** informing the participant that the participant has been found to have contravened this code and must, in the future, comply with the code or face disciplinary action,
- (b) issue a **direction** to the participant requiring the participant to act or stop acting in a manner relevant to their participation in the short-term rental accommodation industry. Without limitation, the direction may:
  - i. specify a minimum or maximum occupancy period for any short-term rental accommodation arrangement involving the participant
  - ii. specify a maximum number of visitors that can enter the short-term rental accommodation premises or common areas at any one time
  - iii. restrict the participant's use of common property in a strata scheme or association property in a community scheme
  - iv. prohibit the participant engaging in certain behaviour
  - v. impose other conditions on the participant when they participate in short-term rental accommodation arrangements.
- (c) record a **strike** against a host, or a host with reference to specific premises, or guest, or
- (d) record a host, or a host in relation to specific premises, or a guest on the **exclusion register** as an excluded host or guest under section 4.2 of the code.

4.1.2 Any direction the Commissioner issues will be void to the extent it is inconsistent with any planning laws or by-laws.

4.1.3 If the Commissioner is satisfied that a host or guest has contravened this code, the Commissioner can record a strike for the following reasons:

- (a) there has been a serious contravention of this code, or
- (b) the Commissioner is otherwise satisfied that it is appropriate to do so, having regard to all the circumstances of the case including the number and nature of previous contraventions.

4.1.4 The Commissioner may take any other disciplinary action the Commissioner considers appropriate in all the circumstances.

4.1.5 The Commissioner may only take disciplinary action against an industry participant after affording the industry participant procedural fairness in relation to a complaint.

4.1.6 If the Commissioner decides to take disciplinary action against an industry participant, the Commissioner must provide a brief statement of reasons to the participant and inform the participant that they may apply to the Secretary for a review of the decision.

4.1.7 Where an industry participant has been subject to other regulatory action for a breach of criminal laws, by-laws, or planning laws that is also a contravention of this code, the Commissioner may only take disciplinary action against that participant for that contravention if it is necessary to protect the public or this code's integrity.

## 4.2 Exclusion register

- 4.2.1 The Commissioner must keep and administer an exclusion register.
- 4.2.2 The Commissioner is to make publicly available on the internet a means to search the exclusion register and is to ensure the register is updated in real time to the extent possible.
- 4.2.3 The Commissioner may record on the exclusion register either a host, or a host in relation to particular premises, or a guest.
- 4.2.4 The Commissioner must record on the exclusion register for five years:
- (a) the guest as an excluded guest where the guest has had two strikes recorded against them in a two-year period
  - (b) the host in relation to specific premises where the host has had two strikes recorded against them in a two-year period and the Commissioner considers it appropriate that the host only be excluded in relation to those premises
  - (c) the host as an excluded host where a host has had two strikes recorded against them in a two-year period and the Commissioner considers it appropriate that the host be excluded from acting as a host in relation to any premises.
- 4.2.5 The Commissioner must also record a host or a guest on the exclusion register if the Commissioner is satisfied that:
- (a) the person has been charged with a criminal offence and it is in the public interest to record the person on the exclusion register as an excluded host or guest until the criminal proceedings are determined, or
  - (b) the person has been convicted of an offence and it is in the public interest to record the person on the exclusion register for a specified period or indefinitely.
- 4.2.6 The exclusion register must record:
- (a) for an excluded host or guest—their name and any other of their details that the Commissioner considers necessary to identify them
  - (b) for a host excluded in relation to specific premises—the address of the premises and the name of the host who incurred the strikes with respect to the premises
  - (c) any other details about an excluded host, guest or premises the Commissioner considers appropriate.
- 4.2.7 Before the Commissioner records a host or guest on the exclusion register, the Commissioner must take reasonable steps to notify the relevant host or guest of:
- (a) the Commissioner’s intention to record the host, guest or premises on the exclusion register and
  - (b) the period for which the record will remain on the exclusion register.
- 4.2.8 The Commissioner must promptly remove any false, erroneous or misleading information about a host, a guest or premises, from the exclusion register.
- 4.2.9 A premises owner may apply to the Commissioner for the removal of a premises from the exclusion register. The Commissioner is to remove the premises from the exclusion register if the Commissioner is satisfied that the owner is not the host against whom the strikes with respect to the premises were incurred and the host against whom the strikes with respect to the premises were incurred no longer has any direct or indirect interest in the premises.

4.2.10 Despite any other clause of this code, a booking platform, letting agent or host is not required to cancel any short-term rental accommodation arrangement involving a host or premises recorded on the exclusion register where:

- (a) the arrangement was made before the date (the record date) on which the host or guest was recorded on the exclusion register, and
- (b) the occupancy period starts within one month of the record date.

### **4.3 Secretary review of disciplinary action**

- 4.3.1 Appeals against the Commissioner's decision to record a guest, host or host's premises on the exclusion register are covered in the Regulations.
- 4.3.2 An industry participant who has received a warning notice, direction, or strike against their name or in relation to premises may apply to the Secretary for a review of the Commissioner's decision.
- 4.3.3 An industry participant may apply for a review within 21 days of receiving notice of the disciplinary action from the Commissioner.
- 4.3.4 The Secretary may determine the form in which a review application must be made.
- 4.3.5 A review application may include submissions to the Secretary about why the Commissioner's decision should be changed or overturned.
- 4.3.6 The Secretary must decide a review application within 28 days.
- 4.3.7 The Secretary is to notify the applicant of the Secretary's decision and the reasons for the decision.
- 4.3.8 The Secretary may decide to impose alternative or additional disciplinary action on the applicant as a result of the review.