

Airbnb in NSW faces crackdown as Government moves to impose limits on apartment owners

After several false starts the NSW government has released its proposed changes to planning laws that will take the current restrictions off online holiday letting platforms like Airbnb.

And while they will reluctantly allow owners corporations to pass by-laws banning whole home lets while the owner isn't present, they will remove all restrictions on genuine **"sharing"** – renting of rooms – and allow commercial lets, where permitted, of up to six months ... one of the most Airbnb-friendly limits in the world.

This is what their press release said:

The Government's short-term holiday letting plan will support the sharing economy and give consumers more choice while cracking down on bad behaviour, Minister for Better Regulation Matt Kean said.

Mr Kean said the reforms recognise the estimated \$31 billion annual contributions of online booking platforms like Airbnb and HomeAway (formerly Stayz) to the Australian economy while stamping out party houses through a mandatory Code of Conduct.

The plan also includes changes to the *Strata Schemes Management Act*, which will allow owners corporations to adopt a by-law, with a 75 per cent majority, preventing short-term letting in their block if the host does not live in the unit they are letting out.

"We have consulted widely with industry and the community to make sure our nation-leading regulatory framework is the very best approach to short-term holiday letting," Mr Kean said.

Mr Kean said the mandatory Code of Conduct for online accommodation platforms, letting agents, hosts and guests would address impacts like noise levels, disruptive guests and effects on shared neighbourhood amenities.

The Code will also include a new dispute resolution process to resolve complaints, and NSW Fair Trading will have powers to police online platforms and letting agents.

"Under our 'two strikes and you're out' policy, hosts or guests who commit two serious breaches of the Code within two years will be banned for five, and be listed on an exclusion register," Mr Kean said.

"These are the toughest laws in the country and will make sure residents are protected while ensuring that hosts who do the right thing are not penalised."

Minister for Planning and Housing Anthony Roberts said new state-wide planning rules would also come into force, including:

- Allowing short-term holiday letting as exempt development 365 days per year when the host is present;
- When the host is not present, a limit for hosts to rent out properties via short-term holiday letting of 180 days in Greater Sydney, with 365 days allowed in all other areas of New South Wales;
- Councils outside Greater Sydney having the power to decrease the 365 day threshold to no lower than 180 days per year; and,
- Certain planning rules will apply to properties on bushfire prone land.

"The 180 days a year limit approximately equates to weekends, school holidays and public holidays so we felt this was a fair and balanced approach," Mr Roberts said.

"Councils outside Greater Sydney can decide if permitting short-term holiday letting for the entire year is acceptable for their local communities. This recognises the importance of tourism in some regional communities."



New NSW strata laws recognises smoking may cause nuisance or hazard to another person

The [new legislation](#) introduced in NSW in November 2016 has recognised that smoking may cause nuisance or hazard to another person. Further, it has introduced a [new model by-law](#) (which must be adopted) regulating smoke drift.

It offers two options to restrict smoke penetration in by-laws. If neither option A or B is selected, option A will apply.

Option A

- (1) An owner or occupier, and any invitee of the owner or occupier, must not smoke tobacco or any other substance on the common property.
- (2) An owner or occupier of a lot must ensure that smoke caused by the smoking of tobacco or any other substance by the owner or occupier, or any invitee of the owner or occupier, on the lot does not penetrate to the common property or any other lot.

Option B

- (1) An owner or occupier of a lot, and any invitee of the owner or occupier, must not smoke tobacco or any other substance on the common property, except: (a) in an area designated as a smoking area by the owners corporation, or (b) with the written approval of the owners corporation.
- (2) A person who is permitted under this by-law to smoke tobacco or any other substance common property must ensure that the smoke does not penetrate to any other lot.
- (3) An owner or occupier of a lot must ensure that smoke caused by the smoking of tobacco or any other substance by the owner or occupier, or any invitee of the owner or occupier, on the lot does not penetrate to the common property or any other lot.

So, for example, if Option A were adopted, smoking would be permitted within an individual's apartment provided that no smoke escaped into another apartment or into common areas.

Even if the Owners Corporation does not have a by-law which prohibits smoking or smoke penetration, the Owners Corporation could stop a person from smoking under the nuisance/hazard provisions of the legislation if the Owners Corporation could prove such nuisance/hazard being caused.

Breach of By-Laws and Penalties

In NSW, residents in breach of any by-law risk that the Owners Corporation makes an application to [NCAT](#) for the imposition of a civil penalty for breaching the by-law. Such penalties are quite severe. This penalty carries a monetary penalty of up to 10 penalty units (which is \$1,100). A repeat offender (ie one who was fined \$1,100 and breached the by-law again within 12 months of being fined) can be fined \$2,200.

Any owner who is in breach of the occupancy limits set out in the legislation is potentially liable to fines of \$5,500 and \$11,000.

In the event that an owner breaches a NCAT Order to, for example, stop smoke drift, or [remove an animal](#), Section 72 (3) of the [Civil and Administrative Tribunal Act 2013](#) provides for a civil penalty. These penalties have increased to up to \$11,000 for an individual and \$22,000 for a corporation.

Smoking in Strata Buildings: Restrictions on By-Laws

The new strata legislation has enacted a new restriction on by-laws, namely, that [a by-law cannot be unjust, harsh, unconscionable or oppressive](#). Whether or not a by-law falls afoul of these restrictions is determined by NCAT. Further, any such by-law may be invalidated by NCAT.

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We are mindful of the fact that the Owners Corporations' premium is one of the major expenses for strata, however, this should not be isolated as a sole factor when considering the placement of cover with an insurer. The importance of having claims paid when most needed; i.e. the speed at which a claim is assessed and approved; the policy wording to accompany a claim, are additional factors that must be taken into account during the broking process.

Upcoming Events



The Kiama Farmers' Market is held every Wednesday at Surf Beach, located on Manning St. You couldn't wish for a more picturesque backdrop for your weekly shopping expedition! The market is started each week by the "ringing" of the bell and runs from 3 pm to 6 pm when Daylight Saving is in place and then reverts to 2 pm to 5 pm in the cooler months when Daylight Saving comes to an end. No market trading takes place until the bell has been rung.

This is a true farmers' market that cares about the origin of food and the protection of local growers, producers and makers. A market where kids play on the beach, skim stones across the harbour, fossick in the rock pools or sit on the grass to have an afternoon picnic snack or early dinner.

Each week you will find a wonderful selection of seasonal produce being sold directly to you by the farmer or maker. Along with fruit and vegetables, you can expect to find seafood; oysters; local Wagyu beef; honey; eggs; milk straight from the dairy; gelato made from local milk; cider; wine; mushrooms; cakes and tarts; preserves; sourdough bread, street food, ready-made meals... and more!

For more information: <http://www.kiamafarmersmarket.com.au>



The monthly Jervis Bay Maritime Museum Market is held on the first Saturday of each month 8 am - 1 pm. Ease into your weekend by the pond with hot coffee, bacon and egg rolls, live music, delicious food and a relaxed atmosphere. Stroll among the stalls selling a range of local arts and crafts, interesting homewares and fresh produce. **Entry is Free.**

For more information:

<http://www.jervisbaymaritimemuseum.asn.au>



The Huskisson Market is a monthly market with something for everyone, right in the heart of the seaside town. They are held on the sporting ground adjacent to the Huskisson Bowling Club, on the second Sunday of each month. You'll find live plants, unique arts and crafts, fresh produce, bric-a-brac and much more. Be sure to explore this thriving community at the heart of Jervis Bay if the Huskisson Markets are on while you're in the area.

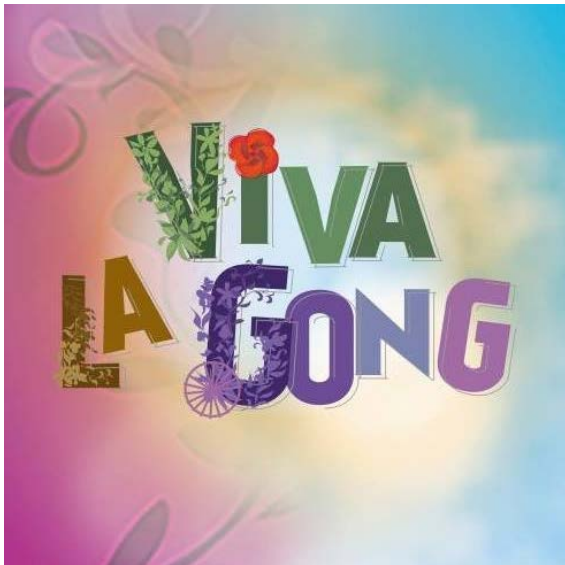
For more information:

<http://www.shoalhaven.com/events>



Get ready for the annual Husky Half Running Festival with the ever-popular Husky Half Marathon in August. It is sure to be another crowd pleaser – a flat, fast course on the scenic shores of Jervis Bay. The view is nothing short of perfection, you'll wish the race was longer! With the half marathon having an option of a two-person team, as well as five kilometre and two kilometre races, there is a distance for everyone. Pack the family up and make a weekend of it!

For more information: <http://www.eliteenergy.com.au/event/husky-running-festival/>



Viva La Gong 10 November 2018

Viva la Gong is presented by Wollongong City Council and is an award-winning, waste-wise art and community festival. Be part of the Festival! Expressions of Interest are now open. If you have something you think would be a great fit for Viva 2018, we'd love to hear from you. Just fill in an expression of interest form on the Get Involved page.

You can follow us on [Facebook](#) and [Twitter](#) for updates on **Viva la Gong**, as well as information about other great cultural events brought to you throughout the year. If you'd like more information about Viva la Gong, give us a call on

(02) 4227 7111 or email culturalservices@wollongong.nsw.gov.au



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