

Passed by both Houses



New South Wales

Fair Trading Amendment (Short-term Rental Accommodation) Bill 2018

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2018



New South Wales

Fair Trading Amendment (Short-term Rental Accommodation) Bill 2018

Act No , 2018

An Act to amend the *Fair Trading Act 1987* to provide for a code of conduct in relation to the short-term rental accommodation industry and to amend the *Strata Schemes Management Act 2015* to allow strata scheme by-laws to prohibit short-term rental accommodation in certain cases.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Fair Trading Amendment (Short-term Rental Accommodation) Act 2018*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Fair Trading Act 1987 No 68

Part 4, Division 4A

Insert after Division 4 of Part 4:

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

54A Definitions

In this Division:

code of conduct means a code of conduct declared under section 54B.

residential premises includes part of residential premises.

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.

short-term rental accommodation industry participant means any of the following:

- (a) a person who, in trade or commerce, provides an online booking service that enables persons to enter into short-term rental accommodation arrangements,
- (b) a person who carries on business as an agent to enable persons to enter into short-term rental accommodation arrangements,
- (c) 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,
- (d) 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,
- (e) any other person who, in trade or commerce, facilitates short-term rental accommodation arrangements and who is prescribed by the regulations or is of a class of persons prescribed by the regulations.

54B Declaration of code of conduct applying to short-term rental accommodation industry participants

- (1) The regulations may declare that a code of conduct specified or referred to in the regulations is a code of conduct applying to short-term rental accommodation industry participants.
- (2) Without limiting the matters for or in respect of which a code of conduct may make provision, a code of conduct may:
 - (a) set out the rights and obligations of short-term rental accommodation industry participants, and
 - (b) provide for the administration of the code by a specified person or body, and
 - (c) provide for the registration of residential premises used for the purposes of short-term rental accommodation arrangements and for the

- registration system to include details about when residential premises are used for those purposes, and
- (d) provide for warnings to be given to short-term rental accommodation industry participants who contravene the code, and
 - (e) require the provision of information or reports to the Secretary relating to the short-term rental accommodation industry and the operation of the code, and
 - (f) provide for the resolution of disputes and complaints concerning the conduct of short-term rental accommodation industry participants, and
 - (g) authorise the keeping of a register (the *exclusion register*) containing the details of short-term rental accommodation industry participants who have failed to comply with the code, and
 - (h) regulate or restrict access to the exclusion register, and
 - (i) prohibit or restrict persons whose details are listed on the exclusion register from entering into, or participating in, short-term rental accommodation arrangements.
- (3) A regulation that declares a code of conduct may:
- (a) make provision for or with respect to appeals against the listing of a person's details on the exclusion register, and
 - (b) authorise the Secretary to recover from short-term rental accommodation industry participants the costs incurred by the Secretary in connection with the enforcement and administration of the code, and
 - (c) exclude a specified short-term rental accommodation industry participant or class of short-term rental accommodation industry participants from the application of the code or any part of the code, and
 - (d) contain provisions of a savings or transitional nature consequent on the declaration of the code.

54C Offence

A short-term rental accommodation industry participant who contravenes a provision of a code of conduct that is identified by the code as an offence provision is guilty of an offence.

Maximum penalty: 1,000 penalty units in the case of a corporation or 200 penalty units in any other case.

54D Civil penalty for contravention of code of conduct

- (1) A court may, on application by the Secretary or a person authorised in writing by the Secretary, order a short-term rental accommodation industry participant to pay a monetary penalty if the court is satisfied that the participant has contravened a provision of a code of conduct that is identified by the code as a civil penalty provision.
- (2) A monetary penalty imposed under this section:
 - (a) is not to exceed the amount prescribed by the regulations, and
 - (b) may be recovered from the person on whom it is imposed in any court of competent jurisdiction as a debt due to the Crown.
- (3) An application under this section may only be made within the period of 2 years of the date on which the contravention is alleged to have occurred.

- (4) A short-term rental accommodation industry participant who contravenes a code of conduct is not liable to be both punished for an offence against section 54C and the subject of an order under this section if the contravention is essentially the same act or omission.
- (5) A reference in this section to a court is a reference to a court prescribed by the regulations.
- (6) The regulations may make further provision for or with respect to applications and orders for the payment of monetary penalties under this section.

54E Code of conduct prevails over development consent conditions

- (1) The provisions of a code of conduct prevail to the extent of any inconsistency with a condition of development consent imposed under the *Environmental Planning and Assessment Act 1979*.
- (2) For the avoidance of doubt, subsection (1) does not in itself authorise the use of residential premises for the purposes of short-term rental accommodation if that use is prohibited by an environmental planning instrument.

Schedule 2 Amendment of Strata Schemes Management Act 2015 No 50

Section 137A

Insert after section 137:

137A Short-term rental accommodation

- (1) A by-law made by a special resolution of an owners corporation may prohibit a lot being used for the purposes of a short-term rental accommodation arrangement if the lot is not the principal place of residence of the person who, pursuant to the arrangement, is giving another person the right to occupy the lot.
- (2) A by-law has no force or effect to the extent to which it purports to prevent a lot being used for the purposes of a short-term rental accommodation arrangement if the lot is the principal place of residence of the person who, pursuant to the arrangement, is giving another person the right to occupy the lot.
- (3) In this section, *short-term rental accommodation arrangement* has the same meaning as in section 54A of the *Fair Trading Act 1987*.