

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

REINSW would like to inform its members that some of the short-term holiday letting reforms have been passed by both Houses and have received Royal Assent. A proclamation date is yet to be announced.

Below is a summary of the changes set out in the *Fair Trading Amendment (Short-term Rental Accommodation) Bill 2018* (NSW).

Key changes

- The *Fair Trading Amendment (Short-term Rental Accommodation) Bill 2018* (NSW), once enacted, will amend the *Fair Trading Act 1987* (NSW) and the *Strata Schemes Management Act 2015* (NSW). As at the date on which this summary was published, a commencement date has not yet been announced.
- The changes regulate conduct in relation to the short-term rental accommodation industry.
- Note that the *Environmental Planning and Assessment Amendment (Short-term Rental Accommodation) Bill 2018*, once enacted, will amend the *Environmental Planning and Assessment Act 1979* (NSW) to ensure the provisions of local environmental plans relating to short-term rental accommodation prevail over the provisions of any State environmental planning policy. As at the date on which this summary was published, no draft Bill is available.

Amendments to the *Fair Trading Act 1987* (NSW)

- Four new definitions will be included in the Act to give clarity around short-term rental accommodation arrangements and its participants:
 - a. **Code of conduct** means the code of conduct declared under the new section 54B of the Act (discussed in more detail below).
 - b. **Residential premises** includes part of residential premises.
 - c. **Short-term rental accommodation arrangement** means a commercial arrangement for the right to occupy a residential premises (or part thereof) for a period of no more than three months at any one time.
 - d. **Short-term rental accommodation industry participant** means (generally) a person who provides other people with the right to enter into short-term rental accommodation arrangements, or a person who is given that right. The expression covers online booking service providers, leasing agents, owners of residential premises who enter into short-

term rental accommodation arrangements (i.e. hosts), occupiers of residential premises subject to such arrangements (i.e. guests) and anyone else as the regulations may prescribe.

- The new section 54B of the Act enables the regulations to declare a code of conduct with respect to numerous matters, including:
 - a. Rights and obligations of participants.
 - b. Administration of the code.
 - c. Registration of residential premises for the purposes of short-term rental accommodation arrangements.
 - d. Provision and enforcement of warnings, disputes and complaints concerning contravention of the code.
 - e. Establishment of an exclusion register which sets out details of participants who have not complied with the code.
 - f. Restricting individuals listed on the exclusion register from participating or engaging in such arrangements.

The regulation may also:

- a. Exclude specific participants or classes of participants from complying with the code or any part of it.
 - b. Provide for appeals against a participant's details being listed on the exclusion register.
 - c. Authorise the Secretary to recover from participants any cost it incurs with respect to enforcing or administering the code.
- Section 54C introduces both criminal and civil penalties if an offence provision in the code is contravened. The maximum penalty for a corporation is 1000 penalty units (equivalent to \$110,000) and 200 penalty units in any other case (equivalent to \$22,000).
 - Section 54D permits a court to order a participant to pay a monetary penalty for the contravention of a civil penalty provision of a code. However, the participant cannot be punished for an offence under both sections 54C and 54D for the same act or omission.
 - Section 54E makes it clear the provisions of the code will prevail to the extent of any inconsistency with a condition of a development consent imposed under the *Environmental Planning and Assessment Act 1979* (NSW). However, this does not authorise the use of

residential premises for short-term rental accommodation if an environmental planning instrument prohibits that use.

Amendments to the *Strata Schemes Management Act 2015 (NSW)*

- The insertion of a new section 137A allows a by-law to be made (with a 75 per cent majority of the owners corporation) prohibiting a lot being used for the purpose of short-term rental accommodation if that lot is not the principal place of residence of the person who is giving another person the right to occupy the lot.
- Such a by-law has no force or effect if the lot is the principal place of residence of the person who is giving another person such a right to occupy the lot.