



New South Wales

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

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the *Fair Trading Act 1987* to authorise the regulations to declare a code of conduct applying to participants in the short-term rental accommodation industry,
- (b) to amend the *Strata Schemes Management Act 2015* to allow the by-laws for a strata scheme to prohibit short-term rental accommodation in the case of premises that are not the principal place of residence of the person who is giving the right of occupation.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Fair Trading Act 1987

Schedule 1 inserts proposed Division 4A of Part 4 to make provision for a code of conduct applying to participants in the short-term rental accommodation industry.

Proposed section 54A defines certain terms used in the proposed Division. A *short-term rental accommodation arrangement* means a commercial arrangement for giving a person the right to occupy residential premises or part of residential premises for a period of not more than 3 months at any one time. The regulations may include other arrangements or exclude arrangements from

the definition. The term *short-term rental accommodation industry participant* covers online booking service providers, letting agents, owners of residential premises who enter into short-term rental accommodation arrangements (ie hosts) and persons who reside on premises pursuant to such an arrangement (ie guests). The regulations may also prescribe other persons who facilitate short-term rental accommodation arrangements as industry participants.

Proposed section 54B authorises the regulations to declare a code of conduct to apply to short-term rental accommodation industry participants. The matters to be dealt with by a code include the rights and obligations of short-term rental accommodation industry participants and the setting up of an exclusion register.

Proposed section 54C makes it an offence for a short-term rental accommodation industry participant to contravene a provision of a code of conduct that is identified by the code as an offence provision.

Proposed section 54D authorises a court to order a short-term rental accommodation industry participant to pay a monetary penalty for contravening a provision of a code of conduct that is identified by the code as a civil penalty provision.

Proposed section 54E provides that a code of conduct prevails to the extent of any inconsistency with the conditions of a development consent.

Schedule 2 Amendment of Strata Schemes Management Act 2015

Schedule 2 allows an owners corporation (by a 75% majority) to make a by-law that prohibits 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 is giving the right of occupation under the arrangement. The amendment also provides that a by-law cannot 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 is giving the right of occupation.



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New South Wales

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

No. , 2018

A Bill for

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.

The Legislature of New South Wales enacts:

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1 Name of Act

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

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2 Commencement

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

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Schedule 1	Amendment of Fair Trading Act 1987 No 68	1
Part 4, Division 4A		2
Insert after Division 4 of Part 4:		3
Division 4A	Code of conduct for short-term rental accommodation industry	4
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54A	Definitions	6
	In this Division:	7
	<i>code of conduct</i> means a code of conduct declared under section 54B.	8
	<i>residential premises</i> includes part of residential premises.	9
	<i>short-term rental accommodation arrangement</i> 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.	10 11 12 13 14 15 16
	<i>short-term rental accommodation industry participant</i> means any of the following:	17
	(a) a person who, in trade or commerce, provides an online booking service that enables persons to enter into short-term rental accommodation arrangements,	18 19 20 21
	(b) a person who carries on business as an agent to enable persons to enter into short-term rental accommodation arrangements,	22 23
	(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,	24 25 26
	(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,	27 28 29
	(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.	30 31 32
54B	Declaration of code of conduct applying to short-term rental accommodation industry participants	33
		34
	(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.	35 36 37
	(2) Without limiting the matters for or in respect of which a code of conduct may make provision, a code of conduct may:	38
	(a) set out the rights and obligations of short-term rental accommodation industry participants, and	39 40 41
	(b) provide for the administration of the code by a specified person or body, and	42 43
	(c) provide for warnings to be given to short-term rental accommodation industry participants who contravene the code, and	44 45

(d)	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	1 2 3
(e)	provide for the resolution of disputes and complaints concerning the conduct of short-term rental accommodation industry participants, and	4 5
(f)	authorise the keeping of a register (the <i>exclusion register</i>) containing the details of short-term rental accommodation industry participants who have failed to comply with the code, and	6 7 8
(g)	regulate or restrict access to the exclusion register, and	9
(h)	prohibit or restrict persons whose details are listed on the exclusion register from entering into, or participating in, short-term rental accommodation arrangements.	10 11 12
(3)	A regulation that declares a code of conduct may:	13
(a)	make provision for or with respect to appeals against the listing of a person's details on the exclusion register, and	14 15
(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	16 17 18 19
(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	20 21 22
(d)	contain provisions of a savings or transitional nature consequent on the declaration of the code.	23 24
54C	Offence	25
	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.	26 27 28
	Maximum penalty: 1,000 penalty units in the case of a corporation or 200 penalty units in any other case.	29 30
54D	Civil penalty for contravention of code of conduct	31
(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.	32 33 34 35 36
(2)	A monetary penalty imposed under this section:	37
(a)	is not to exceed the amount prescribed by the regulations, and	38
(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.	39 40
(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.	41 42
(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.	43 44 45 46

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| (5) | A reference in this section to a court is a reference to a court prescribed by the regulations. | 1
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| (6) | The regulations may make further provision for or with respect to applications and orders for the payment of monetary penalties under this section. | 3
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| 54E | Code of conduct prevails over development consent conditions | 5 |
| (1) | The provisions of a code of conduct prevail to the extent of any inconsistency with a condition of development consent imposed under the <i>Environmental Planning and Assessment Act 1979</i> . | 6
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| (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. | 9
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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*.