

Short term lettings - new rules on the way

The NSW Government has passed the *Fair Trading Amendment (Short-term Rental Accommodation) Act 2018* ("Act"), which is expected to commence in 2019 and which implements a new approach to short term lettings, including those negotiated through Airbnb, Stayz and similar online services. Some aspects of the new laws are not yet clear, as the regulations and code of conduct contemplated by the Act have not yet been released and as associated changes to planning laws have not yet been made. However, this much is already clear:

NSW Government has passed the *Fair Trading Amendment (Short-term Rental*

- The new requirements will apply to "short term rental accommodation industry participants", including online booking services, agents, owners and guests, in relation to "short term rental accommodation arrangements", meaning commercial arrangements allowing a person to occupy all or part of residential premises for a period not exceeding three months.
- The key provisions are:
 - Strata By-laws – Strata schemes will be able to make a by-law prohibiting use of a lot for a short term rental accommodation arrangement, but a special resolution will be required and such a by-law will not prevent a lot owner entering into shared accommodation arrangements, i.e. allowing occupation of part of a lot which the owner continues to occupy.
 - Code of Conduct – There will be a mandatory code of conduct binding on short term rental accommodation industry participants. The code will provide for:
 - Rules for conduct of short term letting arrangements.
 - A register of properties used for short term lettings.
 - An exclusion register relating to persons who have breached the code and are prohibited from further involvement in short term lettings for a specified period.

- Enforcement:
 - Operators will be required to share data with NSW Fair Trading, which will have enforcement functions and powers. Code of conduct provisions identified as offences bear a maximum penalty of \$110,000 for a corporation and \$22,000 for an individual. Breach of code of conduct provisions identified as a civil penalties bear a monetary penalty.
 - Persons who breach the code can be placed on an exclusion register and be prohibited from further involvement in short term lettings for a specified period. The precise details are not yet available, but press releases suggest that this will require two or more serious breaches.
- Planning Laws – The new rules won't permit use of a property for short term lettings where that use is prohibited by a planning instrument, but will prevail over inconsistent development consent conditions.

The Government has also announced its intention to introduce new planning laws in coming months, providing for:

- A 180 day annual cap on short term lettings in Sydney when hosts are not present.
- No set cap outside Sydney, but with councils having power to set caps of not less than 180 days annually.

We have considerable experience with these issues and can assist you if you are having difficulties with the amenity of your strata scheme or the letting of your strata lot.

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