

TASMANIA

SHORT STAY ACCOMMODATION BILL 2018

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SHORT STAY ACCOMMODATION BILL 2018

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
1 May 2019

*(Brought in by the Minister for Planning, the Honourable
Roger Charles Jaensch)*

A BILL FOR

An Act to assist in enabling the enforcement of certain permits under the *Land Use Planning and Approvals Act 1993*, and the collection and use of information, in relation to short stay premises, and for related purposes

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Short Stay Accommodation Act 2018*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

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3. Interpretation

- (1) In this Act, unless the contrary intention appears –

applicable premises means premises that are intended, designed, or used, for overnight accommodation by one or more persons, and that –

- (a) are premises to which is assigned, by a planning scheme within the meaning of the *Land Use Planning and Approvals Act 1993*, any of the following zones:
 - (i) General Residential Zone;
 - (ii) Inner Residential Zone;
 - (iii) Low Density Residential Zone;
 - (iv) Rural Living Zone;
 - (v) Environmental Living Zone;
 - (vi) Village Zone;
 - (vii) Activity Area 1.0 Inner City Residential (Wapping); or
- (b) are premises that are prescribed for the purposes of this definition or that are within a class of

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premises that is prescribed for the purposes of this definition –

but does not include premises that are excluded premises;

booking platform, in relation to a booking platform provider, means a system, consisting of a software application and one or more websites, that is operated or maintained by the provider and that enables –

- (a) the display to the public of multiple short stay premises as being available for short stay purposes; and
- (b) short stay booking service arrangements in relation to the short stay premises to be made, other than by means of another website, or electronic address, that is not a website or electronic address operated or maintained by the booking platform provider;

booking platform provider means a person who, on the payment of a fee, or other consideration, by an owner or occupier of, or an agent of the owner or occupier of, short stay premises, enables, by means of a booking platform, short stay customer arrangements to be made in relation to the premises;

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customer means a person (other than a short stay premises provider or an agent of a short stay premises provider) who seeks to enter into a short stay customer arrangement, or who may enter into such an arrangement, on or by means of a booking platform;

Director of Building Control has the same meaning as in the *Building Act 2016*;

excluded premises means –

- (a) premises that are constructed or renovated for use as a hotel, motel or caravan park; and
- (b) premises that are prescribed for the purposes of this definition or that are within a class of premises that is prescribed for the purposes of this definition;

financial quarter means one of the 4 quarters of the calendar year;

planning authority has the same meaning as in the *Land Use Planning and Approvals Act 1993*;

premises includes a part of premises;

primary residence, in relation to a person, means premises that the person uses, or intends to use, as his or her primary residence;

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relevant listing period, in relation to short stay premises, means the period for which information in relation to the premises is to be displayed on a booking platform of a booking platform provider;

relevant permit, in relation to premises, means a permit, granted under the *Land Use Planning and Approvals Act 1993*, authorising the premises to be made available for short stay purposes;

short stay booking service arrangement, in relation to short stay premises, means a contract, or arrangement, with a booking platform provider, for the provider –

- (a) to display on a booking platform of the provider, for a fee or other consideration payable by the short stay premises provider in relation to the premises, the premises as being available for short stay purposes; and
- (b) to make, by means of the booking platform, arrangements between or on behalf of the short stay premises provider and a customer, for a short stay customer arrangement to be entered into in relation to the customer;

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short stay customer arrangement, in relation to short stay premises, means a contract, or arrangement, between –

- (a) a short stay premises provider or a booking platform provider acting on behalf of a short stay premises provider; and
- (b) a customer –

under which the customer will be permitted, on payment of consideration or a fee, to occupy the short stay premises for short stay purposes, but does not include a tenancy agreement or an arrangement under which a person will use the premises as his or her primary residence;

short stay premises means applicable premises in relation to which the owner or occupier of the premises, or an agent of the owner or occupier, enters into, or seeks to enter into, a short stay booking service arrangement with a booking platform provider;

short stay premises provider, in relation to short stay premises, means –

- (a) an owner or occupier of the premises who has entered, or seeks to enter, into a short stay booking service arrangement in relation to the premises; and

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- (b) an owner or occupier of the premises whose agent has entered, or seeks to enter, into a short stay booking service arrangement in relation to the premises;

short stay purposes, in relation to short stay premises, means the purpose of enabling, under a short stay customer arrangement, the occupation of the premises for purposes that include overnight accommodation;

tenancy agreement, in relation to applicable premises, means a residential tenancy agreement under the *Residential Tenancy Act 1997* in relation to the premises.

transition period means the period that begins on the day on which this Act commences and ends on the day that is 6 months after the day on which this Act commences.

- (2) For the purposes of this Act, information is taken to be provided to a booking platform provider if the information is –
 - (a) contained in a document provided to the booking platform provider; or
 - (b) provided to the booking platform provider by electronic means or by entering the information into an electronic document or a part of a booking platform established for, or maintained by, the provider.

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4. Relevant information in relation to short stay premises

For the purposes of this Act, the relevant information in relation to short stay premises is information –

- (a) that states that –
 - (i) there is a relevant permit in relation to the premises; or
 - (ii) the short stay premises provider in relation to the premises is not required to hold a relevant permit in relation to the premises; or
 - (iii) the use of the premises for short stay purposes is a use to which section 12 of the *Land Use Planning and Approvals Act 1993* applies; and
- (b) that states the address of the short stay premises and the number of bedrooms at the premises that are to be used for short stay purposes; and
- (c) where there is a relevant permit in relation to the premises, that states the number displayed on the permit as the number of the permit; and
- (d) that states whether or not the short stay premises comprise all or part of the primary residence of the short stay premises provider.

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**PART 2 – PROVISION AND USE OF INFORMATION
IN RELATION TO SHORT STAY PREMISES**

5. Booking platform providers to ensure display of certain information

- (1) A booking platform provider must not enter into, with a short stay premises provider or an agent of a short stay premises provider, a short stay booking service arrangement in relation to short stay premises, unless the short stay premises provider or the agent has provided, or purported to provide, to the booking platform provider, the relevant information in relation to the short stay premises.

Penalty: Fine not exceeding 100 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

- (2) A booking platform provider must not enter into, with a short stay premises provider or an agent of a short stay premises provider, a short stay booking service arrangement in relation to short stay premises, unless the display to the public of information in relation to the premises, on the provider's booking platform, also displays in relation to the premises the information specified in section 4(a) and (c).

Penalty: Fine not exceeding 100 penalty units and, in the case of a continuing offence, a further fine not exceeding

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10 penalty units for each day during
which the offence continues.

- (3) A person does not commit an offence against subsection (1) or (2) by failing to comply with the subsection before the end of the transition period.
- (4) If a short stay booking service arrangement that has been entered into before the transition period remains in force after the end of that period, the arrangement is to be taken, for the purposes of subsection (1) or (2), to have been entered into on the day after the end of the transition period.

6. Short stay premises provider to provide certain information to booking platform provider

- (1) A short stay premises provider must not enter into, with a booking platform provider, a short stay booking service arrangement in relation to short stay premises, unless the short stay premises provider, or an agent of the short stay premises provider, has provided to the booking platform provider the relevant information in relation to the short stay premises.

Penalty: Fine not exceeding 50 penalty units.

- (2) A short stay premises provider must not authorise an agent to enter into, with a booking platform provider, a short stay booking service arrangement in relation to the short stay premises provider's short stay premises, unless the short stay premises provider –

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- (a) has provided to the agent the relevant information in relation to the short stay premises; and
- (b) has instructed the agent to provide that information to the booking platform provider.

Penalty: Fine not exceeding 50 penalty units.

- (3) A short stay premises provider must not provide to a booking platform provider, or an agent of the short stay premises provider, information that purports to be the relevant information in relation to the short stay premises provider's short stay premises, if the information is false or misleading in a material particular.

Penalty: Fine not exceeding 50 penalty units.

- (4) A person does not commit an offence against subsection (1), (2) or (3) by failing to comply with the subsection before the end of the transition period.
- (5) If a short stay booking service arrangement that has been entered into before the transition period remains in force after the end of that period, the arrangement is to be taken, for the purposes of subsections (1), (2) and (3), to have been entered into on the day after the end of the transition period.

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7. Booking platform providers to provide relevant information to Director of Building Control

- (1) A booking platform provider must provide to the Director of Building Control, within 30 days after the end of each financial quarter, the required information in relation to each short stay premises in respect of which information has been displayed to the public on a booking platform of the provider during the financial quarter.
- (2) For the purposes of subsection (1), the required information in relation to short stay premises is –
 - (a) the information that has been provided to the booking platform provider by the short term premises provider in relation to the premises or his or her agent and that is, or purports to be, the relevant information in relation to the premises; and
 - (b) the relevant listing period in relation to the premises.

Penalty: Fine not exceeding 50 penalty units.

8. Use by Crown of relevant information

- (1) The Director of Building Control may, for the required purposes, provide to a planning authority, a State Service officer, a State Service employee, or a person acting pursuant to a contract or arrangement with the Crown or a

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planning authority, information provided to the Director of Building Control under section 7.

- (2) The Director of Building Control, a planning authority, a State Service officer, a State Service employee, or a person acting pursuant to a contract or arrangement with the Crown or a planning authority, may only use for the required purposes information that is provided to the Director of Building Control under section 7.
- (3) The required purposes are –
 - (a) assisting in ensuring compliance with the *Land Use Planning and Approvals Act 1993* or the *Building Act 2016*; and
 - (b) analysis of the information or the consideration or determination of policies in relation to the provision of housing and the use of housing for short stay purposes; and
 - (c) any other prescribed purpose; and
 - (d) the preparation of a report, or other document, related to the use of the information for another purpose specified in this subsection.
- (4) A person must not –
 - (a) make available to another person who is not a person referred to in subsection (2); or
 - (b) publish –

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information provided to the Director of Building Control under section 7, unless the information is in a form that does not enable individual premises, or the owners or occupiers of the premises, to be identified.

Penalty: Fine not exceeding 50 penalty units.

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Part 3 – Miscellaneous

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PART 3 – MISCELLANEOUS

9. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may specify a form in which information is to be provided to the Director of Building Control under section 7.
- (3) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstances or otherwise, specified in the regulations.
- (4) The regulations may –
 - (a) provide that a contravention of any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 50 penalty units.
- (5) The regulations may authorise any matter to be from time to time determined, applied or regulated by the Director of Building Control or the Minister.
- (6) The regulations may –
 - (a) provide for savings or transitional matters that are necessary or expedient for bringing this Act into operation; and

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- (b) provide for any of those savings or transitional matters to take effect when this Act commences or on a later day specified in the regulations, whether the day specified is before, on or after the day on which the regulations are made.

10. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Planning; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.