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CHANGES TO THE LAWS REGULATING SHORT TERM ACCOMMODATION

Adrian Mueller
Partner | Senior Lawyer
B.Com LLB FACCAL
[Email](#) | [LinkedIn](#)

CHANGES TO THE LAWS REGULATING SHORT TERM ACCOMMODATION

Introduction

In 2018 the NSW Government announced its intention to make changes to the laws regulating short term accommodation in NSW. The Government proposes to make three key changes to those laws. In this article we take a closer look at those changes.

Code of Conduct

On 14 August 2018, the NSW Parliament passed the *Fair Trading Amendment (Short Term Rental Accommodation) Act 2018 (Amendment Act)*. The Amendment Act has not yet commenced and is therefore not law.

The Amendment Act will give the Government power to introduce a code of conduct to regulate participants in the short term rental accommodation industry. The code of conduct has not yet been released. However, it is intended that the code of conduct will:

- contain rules for hosts providing and guests using short term accommodation arrangements that are intended to prohibit anti-social and irresponsible behaviour,
- allow complaints to be made about specific short term accommodation arrangements,
- establish a Government body to administer the code, administer complaints made about breaches of the code and issue warnings for breaches of the code,
- introduce a “two strikes and you are out” policy under which any hosts or guests who have complaints made about them and are found to have committed two serious breaches of the code are placed on an exclusion register and prohibited from providing and using short term accommodation arrangements for up to five years.

Short Term Accommodation By-Laws

The Amendment Act will also introduce section 137A into the *Strata Schemes Management Act 2015*. Section 137A has not yet commenced and is therefore still not law.

Section 137A will permit an owners corporation to make a by-law to prohibit a lot being used for the purposes of a short term rental accommodation arrangement but only if the lot is not the principal place of residence of the person who is giving another person the right to occupy the lot pursuant to that short term rental accommodation arrangement.



Section 137A says that a by-law is ineffective to the extent that it purports to prevent a lot being used for the purposes of a short term accommodation arrangement if the lot is the principal place of

residence of the person providing the short term accommodation – section 137A does not invalidate the whole by-law.

One of the flaws in section 137A is that it will prevent new by-laws stopping owners who use a lot as their principal place of residence entering into short term accommodation arrangements for the lot whilst they themselves are on holidays and not living in the lot.

Exempt Development

The NSW Government has also announced its intention to make changes to planning legislation concerning short term accommodation. Those new laws have not yet been written but they are intended to amend the *Environmental Planning and Assessment Act 1979*.

Those amendments are intended to:

- make short term accommodation in a lot where the host is present exempt development all year round in NSW;
- make short term accommodation in a lot where the host is not present exempt development for up to 180 days per year in the Sydney Metropolitan Area and for up to 365 days per year in other areas.

Comments About the Proposed Amendments

If the planning laws are changed in the manner proposed, and short term accommodation does become exempt development, it is likely that:

- an owner or occupier who is present in a lot will be able to use the lot, or allow the lot to be used, for short term accommodation all year round; and
- an owner or occupier who does not reside in the lot will be able to use the lot, or allow the lot to be used, for short term accommodation for up to 180 days per year in Sydney;

irrespective of any by-laws and without the consent of the Council.



Further, once section 137A commences, it will be clear that a new by-law cannot prohibit an owner or occupier who uses a lot as his or her principal place of residence using a lot for short term accommodation. However, the position regarding an existing by-law which has already introduced such a prohibition is not clear. If the existing by-law was made under the *Strata Schemes Management Act 1996* and was validly made, then there is a good argument that the by-law remains valid.

The Wash Up

Ultimately, if the reforms to the laws regulating short term accommodation in NSW are introduced:

- owners and occupiers who live in their lots will be able to use their lots for short term accommodation arrangements including through platforms such as Airbnb and Stayz year round; and
- owners and occupiers who do not live in their lots will be able to use their lots for short term accommodation arrangements for up to 180 days per year in Sydney and upto 365 days per year elsewhere;

without Council approval and despite what any by-law says.

Adrian Mueller

Partner | B.Com LLB FACCAL
adrianmueller@muellers.com.au

About JS Mueller & Co

JS Mueller & Co has been servicing the strata industry across metropolitan and regional NSW for 40 years. We are a specialist firm of strata lawyers with in depth and unmatched experience in, and comprehensive knowledge of strata law and levy collection.

02 9562 1266
enquiries@muellers.com.au
www.muellers.com.au



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