

South Australia

Short Term Holiday Rental Accommodation Bill 2021

A BILL FOR

An Act to provide for oversight of the short term holiday rental property market, to provide protections for neighbouring residents, and for other purposes.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Short Term Holiday Rental Accommodation Act 2021*.

5 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Interpretation

In this Act, unless the contrary intention appears—

10 **booking platform** means a system consisting of a software application and 1 or more websites operated or maintained by a booking platform provider that enables—

- (a) the display to the public of multiple residential premises being offered for short stay holiday rental accommodation; and

- (b) the making of short term holiday rental accommodation arrangements by use of a website or email address operated or maintained by the booking platform provider;

booking platform provider means a person who, on payment of a fee or other consideration by or on behalf of a short term holiday rental accommodation provider, enables, by means of the booking platform, short term holiday rental accommodation arrangements to be entered into between the short term holiday rental accommodation provider and persons seeking short term holiday rental accommodation;

Commissioner means the Commissioner for Consumer and Business Affairs;

premises includes a part of premises;

residential premises means premises used, or designed or adapted for use, as a place of residence;

short term holiday rental accommodation means rental accommodation at residential premises for a period not exceeding consecutive 30 days or 1 month;

short term holiday rental accommodation provider means person providing short term holiday rental accommodation;

short term holiday rental accommodation arrangement means a lease, licence or other agreement or arrangement under which a person provides short term holiday rental accommodation to another person;

short term holiday rental property occupant means a person occupying residential premises under a short term holiday rental accommodation arrangement;

Tribunal means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*.

Part 2—Code of conduct

4—Code of conduct

- (1) The Commissioner must establish a code of conduct to be observed by short term holiday rental property occupants.
- (2) The Commissioner must, in establishing the code of conduct, consult with the Local Government Association of South Australia.
- (3) The Commissioner must publish the code of conduct in the Gazette and on a web site selected by the Commissioner.
- (4) The Commissioner must review the code of conduct at least every 3 years.

5—Observance of code of conduct—implied term of short term holiday rental accommodation arrangements

Observance of the code of conduct by short term holiday rental property occupants is taken to be a term of every short term holiday rental accommodation arrangement (and any term to the contrary in such an arrangement is void and of no effect).

Part 3—Registration

6—Residential premises used for short term holiday rental accommodation must be registered

(1) A person must not—

- 5 (a) provide, or offer to provide, short term holiday rental accommodation at residential premises for fee or reward; or
- (b) use a booking platform to advertise or promote residential premises for use as short term holiday rental accommodation; or
- 10 (c) use a booking platform to make, or facilitate the making of, short term holiday rental arrangements in relation to residential premises,

unless the premises are registered under this Part.

Maximum penalty: \$5 000.

Expiation fee: \$315.

(2) An application for registration must—

- 15 (a) be made to the Commissioner in a manner and form approved by the Commissioner; and
- (b) be accompanied by the prescribed registration fee.
- (3) The Commissioner must, on application made in accordance with this section, register the residential premises to which the application relates.
- 20 (4) The Commissioner may exempt a person from subsection (1) if there is a data sharing agreement between the Commissioner and the booking platform provider used by the person.

7—Register of residential premises used for short term holiday rental accommodation

- 25 (1) The Commissioner must establish and maintain a register of residential premises used for short term holiday rental accommodation.
- (2) The register will be kept in a manner and form determined by the Commissioner.
- (3) The register must include, in relation to each residential premises on the register, the following information:
- 30 (a) the name and address of the owner of the premises;
- (b) the address of the premises;
- (c) the number of beds in the premises;
- (d) the maximum number of persons that may be accommodated at the premises;
- (e) the number of car parks on the premises.
- 35 (4) The register may include such other information as the Commissioner thinks fit.

- (5) If there is a change in any particulars relating to residential premises registered under this section, the person in whose name the premises are registered must, within 1 month after the change, notify the Commissioner of the change.

Maximum penalty: \$5 000.

5 Expiation fee: \$315.

- (6) If residential premises registered under this Part cease to be used for short term holiday rental accommodation, the person in whose name the premises are registered must, within 1 month after the cessation of such use, notify the Commissioner of the cessation.

10 Maximum penalty: \$5 000.

Expiation fee: \$315.

- (7) Notice to the Commissioner under this section must be given in a manner and form approved by the Commissioner.

8—Annual report by Commissioner

- 15 (1) The Commissioner must, on or before 30 June each year, prepare and publish a report containing prescribed information.

- (2) The report must be published on a web site selected by the Commissioner and may be published in such other manner as the Commissioner considers suitable.

Part 4—Civil remedies and penalties

20 9—Power of SACAT to order compensation and civil penalties

- (1) A person who suffers a loss of amenity caused by the conduct of a short term holiday rental property occupant may apply to the Tribunal for compensation.

- (2) The Tribunal may, in determining whether to make an order for compensation, have regard to—

25 (a) any conduct of the occupant resulting in a local nuisance under the *Local Nuisance and Litter Control Act 2016*; and

(b) any conduct of the occupant in breach of the code of conduct applying to short term holiday rental property occupants under this Act; and

(c) such other conduct of the occupant as the Tribunal considers relevant.

- 30 (3) The maximum amount of compensation that the Tribunal may order under this section is \$2 000 per person who suffers a loss of amenity caused by the conduct of the occupant.

- (4) If the Tribunal makes orders for compensation in favour of 2 or more persons in relation to the same conduct, the Tribunal must, in determining the amount of compensation to be paid under each order, take into account whether the total compensation proposed is proportional to the loss caused by the conduct.

- 35 (5) If the Tribunal determines that the occupant has engaged in conduct that constitutes a breach of the code of conduct applying to short term holiday rental property occupants under this Act, the Tribunal may make an order imposing a civil penalty not exceeding
40 \$1 250.

(6) A short term holiday rental accommodation provider and a short term holiday rental property occupant are jointly and severally liable for any order made by the Tribunal under this section—

(a) for compensation; or

(b) imposing a civil penalty.

(7) Despite subsection (6), a short term holiday rental accommodation provider is not liable for satisfying an order for compensation if the Tribunal is satisfied that the provider took all reasonable steps to prevent the short term holiday rental property occupant from engaging in the conduct that led to the making of the order.

Part 5—Miscellaneous

10—Public warning statements

The Commissioner may, if satisfied that it is in the public interest to do so, make a public statement identifying and giving warnings or information about particular short term rental accommodation occupants who have engaged in conduct resulting in compensation orders being made by the Tribunal on 2 or more occasions.

11—False or misleading information

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided under this Act.

Maximum penalty: \$10 000.

12—Offences by officers of bodies corporate

(1) If a body corporate contravenes a provision of this Act, a person who is an officer of the body corporate is—

(a) guilty of a contravention of this Act; and

(b) liable to the same penalty as may be imposed for the principal contravention when committed by a natural person.

(2) An officer of a body corporate may be prosecuted and convicted of an offence against subsection (1) whether or not the body corporate has been prosecuted or convicted of the principal offence committed by the body corporate.

13—Continuing offences

(1) If an offence against a provision of this Act is committed by a person by reason of a continuing act or omission—

(a) the person is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continues of not more than an amount equal to one-fifth of the maximum penalty prescribed for that offence; and

(b) if the act or omission continues after the person is convicted of the offence, the person is guilty of a further offence against that provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continues after that conviction of not more than an amount equal to one-fifth of the maximum penalty prescribed for that offence.

(2) For the purposes of this section, an obligation to do something is to be regarded as continuing until the act is done regardless of whether any period within which, or time before which, the act is required to be done has expired or passed.

14—Regulations

The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.

Schedule 1—Transitional provision

1—Prosecution of certain offences

A person cannot be prosecuted for an offence against section 6(1) allegedly committed before the second anniversary of the commencement of that section.