New South Wales

Fair Trading Amendment (Code of Conduct for Short-term Rental Accommodation Industry) Regulation 2019

under the

Fair Trading Act 1987

[*The following enacting formula will be included when this Regulation is made*:]

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Fair Trading Act 1987*.

Minister for Better Regulation and Innovation

Explanatory note

The objects of this Regulation are as follows:

(a) to declare a code of conduct for the short-term rental accommodation industry,

(b) to prescribe persons who provide property management services as an additional class of persons to whom the code of conduct applies,

(c) to exclude certain classes of persons from the application of the code of conduct,

(d) to provide for appeals against the listing of a person on the exclusion register kept under the code of conduct,

(e) to authorise the imposition and recovery of fees in connection with the enforcement and administration of the code of conduct,

(f) to specify the maximum amount that may be imposed as a civil penalty for contravention of the code of conduct,

(g) to enable the offence of contravention of the code of conduct to be dealt with by way of penalty notice.

This Regulation is made under the *Fair Trading Act 1987*, including Division 4A of Part 4, section 67 and section 92 (the general regulation-making power).

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1 Name of Regulation

This Regulation is the *Fair Trading Amendment (Code of Conduct for Short-term Rental Accommodation Industry) Regulation 2019*.

2 Commencement

This Regulation commences on [*date to be inserted*] and is required to be published on the NSW legislation website.

public consultation draft

Fair Trading Amendment (Code of Conduct for Short-term Rental Accommodation Industry) Regulation 2019 [NSW]
Schedule 1   Amendment of Fair Trading Regulation 2012

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[1]   Part 4A

Insert after Part 4:

Part 4A   Code of conduct for short-term rental accommodation industry

22A   Declaration of code of conduct

The code of conduct entitled *Code of Conduct for the Short-term Rental Accommodation Industry*, as published on the website of the Department on [*date to be inserted*], is declared for the purposes of section 54B of the Act.

22B   Additional class of short-term rental accommodation industry participants

(1)   Persons who provide property management services for residential premises subject to a short-term rental accommodation arrangement are prescribed for the purposes of paragraph (e) of the definition of *short-term rental accommodation industry participant* in section 54A of the Act.

(2)   For the purposes of subclause (1), *property management services* include creating listings, rental pricing, guest vetting and communications and check-in services.

22C   Short-term rental accommodation industry participants excluded from code of conduct

The following classes of short-term rental accommodation industry participants are excluded from the application of the code of conduct declared under this Part:

(a)   the proprietor or manager of tourist and visitor accommodation within the meaning of the standard instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006*,

Note. "Tourist and visitor accommodation" includes backpackers' accommodation, hotel or motel accommodation and serviced apartments.

(b)   the proprietor or manager of a registrable boarding house within the meaning of the *Boarding Houses Act 2012*,

(c)   the park owner or park manager of a holiday park within the meaning of the *Holiday Parks (Long-term Casual Occupation) Act 2002*.

22D   Appeal against listing on exclusion register

(1)   A person whose details have been listed on the exclusion register referred to in section 54B (2) (g) of the Act may apply to the departmental Secretary to have the person's details removed from the register.

(2)   An application must be in writing and specify the grounds for removing the person's details from the exclusion register.

(3)   The departmental Secretary is, within 28 days of receiving an application, to determine the application by deciding:

(a)   to remove the person's details from the exclusion register, or

(b)   to maintain the person's listing on the register.

(4)   The departmental Secretary is to notify the person in writing of the Secretary's decision as soon as practicable after it is made.

public consultation draft

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Schedule 1 Amendment of Fair Trading Regulation 2012

(5) The notice is to include the reasons for the departmental Secretary's decision.

(6) The departmental Secretary may delegate the Secretary's functions under this clause to any other person employed in the Department of Customer Service.

(7) In this clause, **departmental Secretary** means the Secretary of the Department of Customer Service.

22E Fees

(1) The Secretary may, for the purposes of recovering the costs incurred by the Secretary in connection with the enforcement and administration of the code of conduct declared under this Part, impose fees on short-term rental accommodation industry participants.

(2) The Secretary may determine the amount of the fees to be paid and the times when they are payable.

(3) Any fee imposed under this clause may be recovered by the Secretary as a debt due to the Crown.

22F Civil penalty for contravention of code of conduct

(1) For the purposes of section 54D (2) (a) of the Act, a monetary penalty is not to exceed 10,000 penalty units (in the case of a corporation) and 2,000 penalty units (in any other case).

(2) The Local Court and the Supreme Court are prescribed for the purposes of section 54D (5) of the Act.

(3) Despite subclause (1), a monetary penalty imposed by the Local Court under section 54D of the Act is not to exceed 200 penalty units.

[2] Schedule 1 Penalty notice offences

Insert in appropriate order in the matter relating to offences under the *Fair Trading Act 1987* (other than the ACL):

Section 54C $550