

Authorised Version

**Owners Corporations Amendment (Short-stay
Accommodation) Act 2018**

No. 34 of 2018

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Authorised Version



Victoria

**Owners Corporations Amendment
(Short-stay Accommodation) Act 2018[†]**

No. 34 of 2018

[Assented to 14 August 2018]

The Parliament of Victoria enacts:

1 Purpose

The main purpose of this Act is to amend the **Owners Corporations Act 2006** to regulate the provision of short-stay accommodation arrangements in lots or parts of lots affected by an owners corporation.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act does not come into operation before 1 February 2019, it comes into operation on that day.

3 Principal Act

In this Act, the **Owners Corporations Act 2006** is called the Principal Act.

4 Definitions

In section 3 of the Principal Act **insert** the following definitions—

"agent provider means a person who, for a fee, arranges and manages short-stay accommodation on behalf of a lot owner, lessee or sub-lessee;

Building Code of Australia has the same meaning as it has in section 3(1) of the **Building Act 1993**;

short-stay accommodation means accommodation provided under a short-stay accommodation arrangement;

short-stay accommodation arrangement means a lease or licence for a maximum period of 7 days and 6 nights to occupy a lot or part of a lot affected by an owners corporation that is—

- (a) in a building wholly classified as a Class 2 building in Part A3.2 of Volume One of the Building Code of Australia; or

- (b) in the case of a building where only part of that building is classified as a Class 2 building in Part A3.2 of Volume One of the Building Code of Australia—in that part of the building;

short-stay occupant means a person who occupies a lot or part of a lot under a short-stay accommodation arrangement;

short-stay provider means—

- (a) the owner of a lot or part of a lot that is leased or licensed by the owner to a person under a short-stay accommodation arrangement; or
- (b) a lessee or sub-lessee of the owner of a lot or part of a lot that is leased or licensed by the lessee or sub-lessee to a person under a short-stay accommodation arrangement; or
- (c) an agent provider;".

5 New Division 1A of Part 10 inserted

After section 159 of the Principal Act **insert—**

"Division 1A—Complaints and procedures—short-stay accommodation arrangements

159A Complaints—short-stay accommodation arrangements

- (1) An owner of a lot, an occupier of a lot or a manager may make a complaint to the owners corporation about an alleged breach by a short-stay occupant of the conduct proscriptions applying to short-stay accommodation arrangements.

- (2) For the purposes of subsection (1), a short-stay occupant breaches a conduct proscription applying to a short-stay accommodation arrangement by engaging in any of the following conduct—
- (a) unreasonably creating any noise likely to substantially interfere with the peaceful enjoyment of an occupier or a guest of an occupier of another lot (other than the making of noise where the owners corporation has given written permission for that noise to be made);
 - (b) behaving in a manner likely to unreasonably and substantially interfere with the peaceful enjoyment of an occupier or a guest of an occupier of another lot;
 - (c) using a lot or the common property, or permitting a lot or the common property to be used, so as to cause a substantial hazard to the health, safety and security of any person or an occupier;
 - (d) unreasonably and substantially obstructing the lawful use and enjoyment of the common property by an occupier or a guest of an occupier;

- (e) substantially damaging or altering—
 - (i) a lot or the common property, intentionally or negligently; or
 - (ii) a structure that forms part of a lot or the common property, intentionally or negligently.
- (3) A complaint must be made in writing in the approved form.
- (4) An owners corporation must make a copy of the approved form available at the request of a person who wishes to make a complaint under this section.
- (5) A complaint cannot be made under this section in relation to a personal injury.

159B Decision whether to take action in respect of alleged breach by a short-stay occupant

- (1) This section applies if—
 - (a) a complaint is made under section 159A; or
 - (b) it otherwise comes to the attention of the owners corporation that a short-stay occupant has breached a conduct proscription specified in section 159A(2).
- (2) The owners corporation must decide—
 - (a) to take action under this Part in respect of an alleged breach by a short-stay occupant; or
 - (b) to take no action in respect of the alleged breach.

- (3) The owners corporation must not take action under this Part in respect of an alleged breach by a short-stay occupant unless it believes on reasonable grounds that the short-stay occupant has committed the alleged breach.
- (4) A decision under this Part cannot prevent the carrying out of an obligation under section 46 or 47 that is necessary to ensure safety or to prevent significant loss or damage.

159C Notice of decision not to take action—short-stay accommodation arrangement complaint

- (1) If an owners corporation decides not to take action under this Part in respect of an alleged breach by a short-stay occupant, it must give notice of the decision to any person who made a complaint under section 159A in respect of the alleged breach.
- (2) The notice must set out the reasons for the decision.

159D Notice to rectify breach—short-stay accommodation arrangement complaint

- (1) If an owners corporation decides to take action under this Part in respect of an alleged breach by a short-stay occupant, the owners corporation—
 - (a) must give notice of the allegation to the lot owner and the short-stay provider (if the short-stay provider is not the lot owner); and
 - (b) may give notice of the allegation to the short-stay occupant.

- (2) A notice must specify the alleged breach and state that—
- (a) the person to whom the notice is given is required to rectify the breach if this has not been done so already; and
 - (b) in any case, the owners corporation may decide to apply to VCAT to resolve a short-stay accommodation dispute in relation to the breach and may seek one or more of the following orders—
 - (i) a prohibition order under section 169D;
 - (ii) an order for a civil penalty under section 169G;
 - (iii) any applicable order that VCAT may make under section 165.
- (3) A notice under this section must be in writing in the approved form.

159E What if the person does not rectify the breach?

- (1) If a person has been given a notice under section 159D, the owners corporation may decide to apply to VCAT to resolve a short-stay accommodation dispute in relation to the breach and may seek one or more of the following orders—
- (a) a prohibition order under section 169D;
 - (b) an order for a civil penalty under section 169G;
 - (c) any applicable order that VCAT may make under section 165.

- (2) The owners corporation may make a decision under subsection (1), whether or not the person to whom the notice is given has rectified the breach.

159F Report to annual general meeting

- (1) The owners corporation must report to the annual general meeting in relation to—
- (a) the number of complaints made under this Division; and
 - (b) the nature of the complaints; and
 - (c) the number of matters on which action was taken under this Division; and
 - (d) the nature of the matters in respect of which action was taken; and
 - (e) the outcome of each action.
- (2) The report must not identify the person who made a complaint or the short-stay occupant alleged to have committed the breach."

6 Conciliation and mediation

After section 161(1)(e) of the Principal Act **insert—**

"(ea) an agent provider;".

7 New Division 1A of Part 11 inserted

After section 169 of the Principal Act **insert—**

"Division 1A—Short-stay accommodation disputes

169A VCAT may hear and determine short-stay accommodation disputes

VCAT may hear and determine a dispute relating to an alleged breach by a short-stay occupant of the proscribed

conduct (*a short-stay accommodation dispute*).

169B Who may apply to VCAT in relation to a short-stay accommodation dispute?

Any of the following persons may apply to VCAT to resolve a short-stay accommodation dispute—

- (a) the owners corporation;
- (b) a lot owner or former lot owner;
- (c) a lot owner on behalf of an owners corporation;
- (d) an occupier;
- (e) an agent provider.

169C What orders can VCAT make?

In determining a short-stay accommodation dispute, VCAT may make any order it considers fair including one or more of the following orders—

- (a) a prohibition order under section 169D;
- (b) a loss of amenity compensation order under section 169E;
- (c) an order for a civil penalty under section 169G;
- (d) any applicable order that VCAT may make under section 165.

169D Prohibition order

- (1) VCAT may make an order prohibiting the use of a lot or part of a lot for the purpose of a short-stay accommodation arrangement for a specified period if—

- (a) a notice under section 159D has been served on a short-stay provider on at least 3 separate occasions within 24 months (regardless of whether the short-stay provider was an agent provider or a lessee of the lot or part of the lot); and
 - (b) each notice relates to an alleged breach by a short-stay occupant of the proscribed conduct specified in section 159A(2).
- (2) Subject to subsection (3), a prohibition order ceases to have effect if the lot that is used (wholly or partly) for the purpose of a short-stay accommodation arrangement is sold.
- (3) A prohibition order does not cease to have effect upon the sale of a lot that is used (wholly or partly) for the purpose of a short-stay accommodation arrangement, if the sale of that lot is made—
 - (a) where the short-stay provider is the owner of the lot—to a person who has a beneficial relationship with the short-stay provider; or
 - (b) where one of the notices under subsection (1) was served on a short-stay provider who is not the owner of the lot—to the short-stay provider or a person who has a beneficial relationship with the short-stay provider.

- (4) For the purposes of subsection (3), a person has a beneficial relationship with a short-stay provider if the short-stay provider is—
- (a) an associate of the person; or
 - (b) a body corporate of which the person, or an associate of the person, is a member; or
 - (c) a corporation over which the person (either as an individual or jointly with associates) or an associate of the person, can exercise control of; or
 - (d) a corporation of which the person, or an associate of the person, is an executive officer; or
 - (e) in the case of a person that is a corporation—an executive officer of that corporation or an associate of an executive officer of that corporation; or
 - (f) the trustee of a discretionary trust of which the person, or an associate of the person, is a beneficiary; or
 - (g) a member of a firm of which the person, or an associate of the person, is a member.

- (5) In this section the following definitions apply—

associate means—

- (a) an employee of the person; or
- (b) a spouse, domestic partner, parent, sibling or child of the person or the person's representative; or
- (c) a child of the spouse or domestic partner of the person or the person's representative;

control has the meaning given by
section 50AA of the Corporations Act;

executive officer means any person
described as an executive officer,
whether or not the person is a director
of the corporation, who is concerned
with, or takes part in, the management
of the corporation.

169E Loss of amenity compensation order

- (1) VCAT may make an order for compensation in favour of an occupier (*a loss of amenity compensation order*) who resides in the same building or part of a building where a short-stay occupant resides, and has suffered a loss of amenity caused by a breach by the short-stay occupant of the proscribed conduct referred to in subsection (2).
- (2) For the purposes of this section, VCAT may make a loss of amenity compensation order in relation to the following breaches by a short-stay occupant—
 - (a) unreasonably creating any noise likely to substantially interfere with the peaceful enjoyment of an occupier of another lot (other than the making of noise where the owners corporation has given written permission for that noise to be made);
 - (b) behaving in a manner likely to unreasonably and substantially interfere with the peaceful enjoyment of an occupier of another lot;

- (c) using a lot or the common property, or permitting a lot or the common property to be used, so as to cause a substantial hazard to the health, safety and security of an occupier;
 - (d) unreasonably and substantially obstructing the lawful use and enjoyment of the common property by an occupier or a guest of an occupier.
- (3) The maximum amount of compensation that VCAT may order under this section is \$2000 for each affected occupier for each breach.
- (4) An application for a loss of amenity compensation order must be made within 60 days of the relevant breach.
- (5) A loss of amenity compensation order may be made in addition to any order made under section 165(1)(c)(ii).
- (6) Where VCAT makes loss of amenity compensation orders in favour of multiple applicants in relation to the same breach, in determining the amount of compensation to be paid under each order, VCAT must take into account whether the total compensation proposed is proportional to the harm caused by the breach.

169F What must VCAT consider?

- (1) In making an order to resolve a short-stay accommodation dispute, VCAT must consider the following—
- (a) the conduct of the parties;
 - (b) an act or omission or proposed act or omission by a party;

- (c) any other matter VCAT thinks relevant.
- (2) In relation to a prohibition order under section 169D, VCAT must also consider the following—
 - (a) the severity and nature of the breach;
 - (b) the time between the breaches;
 - (c) the history of the short-stay provider's provision of short-stay accommodation arrangements;
 - (d) any measures the short-stay provider took to prevent the breach.

169G Civil penalty for breach by short-stay occupant

Where VCAT determines that there is a breach by a short-stay occupant of the proscribed conduct specified in section 159A(2), VCAT may make an order imposing a civil penalty not exceeding \$1100.

Note

The penalties imposed under this section will be paid into the Victorian Property Fund.

169H Joint and several liability of short-stay provider and short-stay occupant

- (1) A short-stay provider and a short-stay occupant are jointly and severally liable for satisfying any order made under—
 - (a) section 165(1)(c) to compensate for loss or damage incurred as a result of the short-stay occupant substantially damaging or altering—

- (i) a lot or the common property, intentionally or negligently; or
 - (ii) a structure that forms part of a lot or the common property, intentionally or negligently; or
 - (b) section 165(1)(j) to rectify loss or damage incurred as a result of the short-stay occupant substantially damaging or altering—
 - (i) a lot or the common property, intentionally or negligently; or
 - (ii) a structure that forms part of a lot or the common property, intentionally or negligently; or
 - (c) section 169E to compensate for loss of amenity; or
 - (d) section 169G to pay a civil penalty.
- (2) Where a lot owner has appointed an agent provider—
- (a) subsection (1) does not apply to an agent provider; and
 - (b) the lot owner and the short-stay occupant are jointly and severally liable instead for satisfying any order referred to in subsection (1).
- (3) Despite subsection (1), a short-stay provider is not liable for satisfying a loss of amenity compensation order under section 169E if VCAT is satisfied that the short-stay provider took all reasonable steps to prevent any relevant breach by a short-stay occupant of the proscribed conduct specified in section 159A(2)."

8 Repeal of amending Act

This Act is **repealed** on 1 February 2020.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

[†] *Minister's second reading speech—*

Legislative Assembly: 25 May 2016

Legislative Council: 31 August 2016

The long title for the Bill for this Act was "A Bill for an Act to amend the **Owners Corporations Act 2006** to regulate the provision of short-stay accommodation arrangements in lots or parts of lots affected by an owners corporation and for other purposes."