

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to provide for the regulation of boarding houses and other places of shared accommodation:

(a) by amending the *Environmental Planning and Assessment Act 1979* (**the Principal Act**) as follows:

(i) to enable powers of entry and inspection under the Principal Act to be exercised in relation to premises that are being unlawfully used for the purposes of a boarding house or other place of shared accommodation,

(ii) to facilitate proof of the use of premises as a boarding house or other place of shared accommodation in proceedings under the Principal Act,

(iii) to enable a court to sentence a person to a maximum of 6 months imprisonment for an offence involving unlawful development for the purposes of a boarding house or other place of shared accommodation if the offence caused or contributed to appreciable danger or harm to any person,

(iv) to require proprietors of boarding houses to notify the Director-General of the Department of Services, Technology and Administration of

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relevant particulars and to require those particulars to be entered into a Register of Boarding Houses to be kept by that Director-General, and

(b) by amending the *Environmental Planning and Assessment Regulation 2000* to provide for an increase in the penalty notice amount for an alleged offence involving unlawful development for the purposes of a boarding house or other place of shared accommodation, and

(c) by amending the *Ombudsman Act 1974* to require the Ombudsman to report on the Ombudsman's work and activities in relation to any complaints made about the conduct of a council, or an authorised officer of a council, in the exercise of the proposed powers referred to in paragraph (a) (i).

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act 3 months from the date of assent to the proposed Act unless sooner commenced by proclamation.

Schedule 1 Amendment of Environmental Planning and Assessment Act 1979 No 203

Powers of entry

Division 1A of Part 6 of the Principal Act enables a council to authorise a person to enter and inspect premises for the purpose of enabling a council to exercise its functions. Section 118J of the Principal Act currently provides that these powers of entry and inspection are not exercisable by such a person (an **authorised officer**) in relation to residential premises except with the permission of the occupier concerned, under the authority of a search warrant or in other limited circumstances.

Schedule 1 [2] and [3] extend the circumstances in which an authorised officer may enter and inspect residential premises to include circumstances in which the authorised officer has reasonable grounds to believe that the premises concerned are being unlawfully used for the purposes of a boarding house or other place of shared accommodation.

Schedule 1 [1] makes a law revision amendment to section 118B that makes it clear that a council's authorised officer who enters premises under Division 1A of Part 6 has the power to take films, audio, video or other recordings in connection with the inspection, in line with the powers of authorised officers of the Department of

Planning under Division 2C of that Part.

Facilitating proof in proceedings

Section 124AA of the Principal Act currently provides that the Land and Environment Court may rely on circumstantial evidence to establish that particular premises are used as a backpackers' hostel.

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Schedule 1 [4] re-enacts and extends section 124AA of the Principal Act to cover not only backpackers' hostels, but also boarding houses and other places of shared accommodation.

Schedule 1 [6] inserts proposed section 156 into the Principal Act to make it clear that in any legal proceedings under the Principal Act, evidence of the alteration of premises in a way that is consistent with the use of those premises as a boarding house or other place of shared accommodation is evidence that the premises are being, or are proposed to be, used for those purposes.

Penalties

Section 126 of the Principal Act currently provides for a maximum penalty of 10,000 penalty units (\$1.1 million) for offences under that Act and a further penalty of 1,000 penalty units (\$110,000) for each day that the offence continues.

Schedule 1 [5] inserts proposed section 126A into the Principal Act. The proposed section makes a person who is guilty of an offence involving unlawful development for the purposes of a boarding house or other place of shared accommodation liable to the same maximum penalty as provided for in section 126. In addition, it provides that the person is liable to a maximum penalty of 6 months imprisonment if the offence concerned caused or contributed to appreciable danger or harm to any persons.

Notification and keeping of Register

Schedule 1 [6] inserts proposed section 156A into the Principal Act to give effect to the amendment referred to in paragraph (a) (iv) of the Overview above.

The boarding houses concerned are those in which sleeping accommodation is provided for 5 or more lodgers, or 3 or more lodgers in any one bedroom.

Savings and transitional provisions

Schedule 1 [7] enables the making of regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Environmental Planning and Assessment Regulation 2000

Schedule 2 makes the amendment to the *Environmental Planning and Assessment Regulation 2000* that is referred to in paragraph (b) of the Overview above.

Schedule 3 Amendment of Ombudsman Act 1974

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Schedule 3 makes the amendment to the *Ombudsman Act 1974* that is referred to in paragraph (c) of the Overview above.