



Legislation Review Committee

Correspondence received in response to the Legislation Review Committee
Digist No. 32 – 22 June 2021



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The Hon. Rob Stokes MP
Minister for Planning and Public Spaces

File ref: LAC21/035.08
Our ref: MDPE21/1872

Mr Dave Layzell MP
Member for Upper Hunter
Chair Legislation Review Committee
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

Via email: legislation.review@parliament.nsw.gov.au

Dear Mr Layzell

Thank you for your correspondence regarding the matters identified by the Legislation Review Committee (Committee), in its Legislation Review Digest No.32/57, in relation to the *Environmental Planning and Assessment Amendment (Short-term Rental Accommodation) Regulation 2021* (Regulation).

I note the Committee's concerns regarding the Regulation. I have reviewed the matters you have raised in your review of the Regulation and my comments on these matters are outlined below.

Right to a fair trial – penalty notice offences

I acknowledge the Committee's comments relating to the gulf between the amount payable under a penalty notice issued for non-compliance with the Short-term Rental Accommodation Fire Safety Standard and the maximum penalty liable if the matter proceeded to Court.

I am advised that the penalties for not complying with the Short-term Rental Accommodation Fire Safety Standard are consistent with other fire safety offences in the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation). They include the following offences that each have a prescribed penalty of \$1500 for both individuals and corporations, where a penalty notice is issued, and a maximum penalty of \$110,000 if Court proceedings are brought:

- clause 183(1) relating to fire safety notices
- clause 184(a), (b) and (c) relating to fire exits
- clause 186(a), (b) and (c) relating to paths of travel to fire exits.

Important matters in subordinate legislation

I acknowledge the Committee's preference for new offences to be included in the *Environmental Planning and Assessment Act 1979* (the Act). However, under section 10.13(1A) of the Act, it is possible to create new offences through the EP&A Regulation, so long as the monetary penalty for committing the offence does not exceed \$110,000.

The two new offences created by the Regulation are within this monetary penalty limit, and therefore may be included in the EP&A Regulation and need not be in the Act.

Regulations incorporating standards in instruments that will not be subject to disallowance

I acknowledge the Committee's preference for Parliament to scrutinise any provision, which may result in an offence.

The Short-term Rental Accommodation Fire Safety Standard adopts some standards required of shared accommodation providers under the Building Code of Australia, without requiring a change to the classification of tourist and visitor accommodation, in particular, the smoke alarm requirements.

The Short-term Rental Accommodation Fire Safety Standard includes an additional requirement of an evacuation plan, for both guests and visitors, who may be less familiar with their location than residents of a dwelling.

Given the objective of the provision is to ensure the fire safety of occupants of a property, it is considered that the benefit of being able to update the Short-term Rental Accommodation Fire Safety Standard when required, without needing to wait for a new regulation to be made, outweighs the need for further Parliamentary review of the Short-term Rental Accommodation Fire Safety Standard if and when that Standard is amended.

Should the Committee have any questions, you are welcome to contact Mr Luke Walton, Executive Director, Housing and Economic Policy, at the Department of Planning, Industry and Environment on 9274 6228.

Yours sincerely



The Hon. Rob Stokes MP
Minister for Planning and Public Spaces